

REPORT TO THE NORTH AREA PLANNING COMMITTEE

Date of Meeting	6th March 2019
Application Number	18/06980/FUL
Site Address	Land At Malmesbury Garden Centre, Crudwell Road Malmesbury SN16 9JL
Proposal	HYBRID PLANNING APPLICATION: Full Approval for the Demolition of Existing Buildings and the Erection of a Class A1 Foodstore (1,782 sq m Gross Internal Floor Area) with Associated Access, Car Parking and Landscaping. Outline Approval for a Replacement Garden Centre and/or Class B1/B2/B8 Employment Uses.
Applicant	ALDI Stores Ltd.
Town/Parish Council	St Paul Malmesbury Without
Division	Sherston
Grid Ref	393976 188360
Type of application	Hybrid Outline and Full Planning
Case Officer	Lee Burman

Reason for the application being considered by Committee

The Head of Development Management officer has resolved in accordance with the scheme of delegation to report the application to Committee. The reasons for this decision being the mixed nature of the large scale public consultation response received; and the concurrent submission of a further application for a superstore (Lidl) at Malmesbury, which is also reported for committee determination on this agenda. Allowing both applications to be considered at the same meeting ensures transparency in decision making and enables them to be considered in context.

1. Purpose of Report

To consider the development proposal in the context of the development plan and national guidance and the recommendation that the application be approved subject to the conditions recommended below and completion of a S106 agreement within 6 months of the date of this meeting. The S106 agreement is required to market the land for the B1 B2 B8 employment uses and restrict the use of the land to such uses for an appropriate period and tied to the marketing of the site.

In the event that the applicant declines to complete the S106 agreement within 6 months to refuse permission for the reasons set out below.

2. Report Summary

St Paul Malmesbury Without Parish council does not formally object but raises significant concerns and seeks revisions in respect of the proposed highways and access measures.

Malmesbury Town Council does not formally object to or support the proposals but makes comments as to a range of material considerations including highways and access measures, use of the remainder of the site, retail impact and S106 contributions, and Neighbourhood Plan compliance.

15 representations of objection and 14 general comments from interested parties and residents were received.

241 representations of support were received.

Planning Issues raised for consideration by the proposal are:-

Principle of development

Impact on the character, appearance and visual amenity of the locality Including trees

Impact on Heritage Assets including Archaeology

Highways impact and parking

Drainage & flood risk

Impact on ecology

Noise & residential amenity

Section 106 Matters

3. Site Description

The site is located on the north eastern fringes of Malmesbury outside of the defined settlement limits and to the east of the A429 and its junction with the B4014 leading into Malmesbury and Milbourne Lane which connects to the B4040 Charlton Road. The junction is in the form of Whychurch roundabout with access arrangements adjacent having been recently altered.

The site itself includes the existing garden centre with a range of ancillary structures, external storage and parking alongside undeveloped open land. The boundary to the north features dense mature vegetation as do other boundaries in the immediate vicinity of the site although the boundaries to the west adjacent to the roundabout and to the south and east are open or sparsely vegetated.

Immediately adjacent to the roundabout there are a number of detached residential properties. To the east and south is open countryside. To the west and south west lies open agricultural land with the town beyond and separated by the A429. The Charlton Estate lies to the North and North East of the site.

The site and locality is one of known archaeological and ecological potential and which has a history of drainage and flooding issues. The site is also within the setting of a designated heritage asset (the Charlton Estate).

4. Planning History

N/00/01968/OUT	Outline - Builders Merchants, Light Industrial & Warehouse Units (Use Classes B1 & B8) With Means Of Access - Refused
N/91/01908/SEC	Renewal Of Temporary Permission For Retention Of

	Building For Use In Connection with Garden Centre - Approved
N/90/00248/DOC	Discharge Of Condition 2 (N.88.3540.F) – Landscaping - Approved
N/89/01125/ADC	Erection Of 4 No Flag Poles 9 Metres High - Refused
N/88/03540/FUL	Alterations And Extension To Existing Garden Centre Nursery - Approved
N/91/00125/SEC	Renewal Of Temporary Permission For Retention Of Building For Use In Connection with Garden Centre - Approved
N/89/01241/ADC	Non-Illuminated Advert Sign - Approved
N/89/00544/FUL	Erection Of Temporary Building for Use In Connection With Garden Centre - Approved
N/98/02339/OUT	Outline - Erection Of Dwelling and Garage Dwelling And Garage - Withdrawn
N/96/00716/DOC	Discharge Of Condition 4 Of Permission N/92/0415/F - Details Of Landscaping Landscaping/Car Parking Detail - approved
N/96/01238/ADC	Advertisement Consent - 3 No Freestanding Signs 3 No Forecourt Signs - approved
N/96/01015/DOC	Discharge Of Condition No 5 Relating To N/92/0415/F - Details Of Car Parking And Access Car Parking And Access - Approved
N/98/01229/FUL	Polytunnels For Production & Sale Of Plants Polytunnels - Approved
N/88/00594/ADC	Advertisement Signboard - Refused
N/87/00612/DOC	Discharge Of Condition No.2 Requiring Details Of Vehicular Access Relating To Permission N.83.1789.F - Approved
N/92/00415/FUL	Extension To Existing Building to Form Coffee Shop/Restaurant Coffee Shop/Restaurant –Approved
N/01/02659/OUT	Outline - With Details Of Means Of Access, Demolition Of Existing Garden Centre And Erection Of Replacement Garden Centre And Builders Merchants Yard - Withdrawn
N/11/03555/SCR	Screening Opinion - Erection of a Foodstore & Employment Floorspace (B1 & B8 Use Classes) – EIA not Required
N/11/04092/OUT	Full Details For the Demolition of Existing Buildings & Construction of a Foodstore, Associated Customer Car Park, Petrol Filling Station & Associated Highway Works; Together With Outline Details for the Provision of a Builders Merchants & Premises for Employment Use (B1 & B2 Use Classes) - Refused
16/12196/PREAPP	The Erection of an Aldi Discount Foodstore of Approximately 1,800 sq m gross (1,254 sq m net), 147 Car Parking Spaces and Associated Landscape and Access Works
18/07084/SCR	Screening Opinion Request in Relation to Proposed Development Including Provision of Aldi Discount Food Store and the Provision for a Replacement Garden Centre and/or Employment Uses on the Remainder of the Site – EIA Not Required

5. The Proposal

The application submission is a hybrid seeking consent in outline with matters relating to layout, scale, appearance, and landscaping of this element of the proposal reserved in respect of B1, B2 & B8 Employment uses and/or replacement Garden centre; with full planning permission sought in respect of the Aldi foodstore alone.

The full application relates to proposals for the demolition of existing buildings and structures on site and the erection of an A1 retail foodstore of 1,782 sq m gross internal floor area with associated access parking and landscaping works.

The outline element of the application seeks permission in principle for the replacement of the existing garden centre of up to 3,716 sq m (Gross External Area) and / or B1 B2 B8 employment uses of up to a combined floorspace of 3,252 sq m (Gross External Area).

6. Planning Policy

Screening opinions have been issued in the past in respect of similar development concluding that Environmental Impact Assessment (EIA) is not required. A further screening opinion request was submitted for the development now proposed and issued under reference 18/07084/SCR under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and again concluded that EIA was not required.

Wiltshire Core Strategy (WCS) (Adopted January 2015)

CP1 Settlement Strategy
CP2 Delivery Strategy
CP3 Infrastructure Requirements
CP13 Spatial Strategy for Malmesbury Community Area
CP34 Additional Employment Land
CP38 Retail & Leisure
CP50 Biodiversity and Geodiversity
CP51 Landscape
CP55 Air Quality
CP57 Ensuring High Quality Design and Place Shaping
CP58 Ensuring the Conservation of the Historic Environment
CP60 Sustainable Transport
CP61 Transport and Development
CP62 Development Impacts on the Transport network
CP65 Movement of Goods
CP67 Flood Risk
CP68 Water Resources

Saved Policies of the North Wiltshire Local Plan

NE18 Noise and Development
NE14 Trees and New Development
BD1 Employment Land

Malmesbury Neighbourhood Plan (Made February 2015)

Policy 10 & Task 3.1, 3.2, 3.3
Policy 13 Task 6.1 Task 6.4
Tasks 8.1, 8.3, 8.4, 8.5, 8.9, 8.12, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.25

National Planning Policy Framework (February 2019)

2, 7, 8, 10, 11, 12, 14, 38, 47, 80, 83, 85, 86, 89, 90, 91, 92, 108, 109, 110, 111, 117, 118, 124, 127, 131, 155, 163, 165, 170, 175, 180, 189, 190, 192, 193, 196, 197

Planning Policy Guidance (in particular but not exclusively) - Ensuring the vitality of town centres & consultation Requirements

The Town and Country Planning (Consultation) (England) Direction 2009: Given the scale of the proposed development referral to the Secretary of State in the event of a resolution to approve is not considered to be required.

7. Consultations

The applicant team has made multiple submissions in part seeking to respond to representations made and consultation responses received following consideration of the initial application documentation. Consequently there have been two formal consultations undertaken and consultees have received and commented upon multiple submissions. As such the following summary of consultee advice and responses is the position following consideration of all documentation submitted.

Wiltshire Council Spatial Planning & Economic Development Teams – No objection
(Comments and policy assessment addressed in the body of the report)

GVA (Wiltshire Council Retail Advisors) – The application site is an out of centre location and in comparison to the proposed Lidl site is sequentially inferior in retail sequential test terms. This is subject to assessment as to the acceptability of the Lidl site in relation to other material considerations. There are no other more sequentially preferable sites beyond these two and the submitted assessments address matters appropriately.

With respect to the impact to Town Centre vitality and viability the submitted assessment appropriately considers the potential impact through trade diversion utilising the same base data as the Lidl assessment. The individual impact of the Aldi proposal and replacement garden centre (assuming like for like replacement as stated) subject to suitable controls is not significant and not to the extent that the proposal should be refused on this basis. This is also the assessed position in respect of the cumulative impact of both Aldi and Lidl stores (and garden centre), should permission be granted for both.

Wiltshire Council Highways – Objection on the basis of unsustainable location and development plan conflict but would not be minded to seek refusal solely on this basis given material considerations and additional information as to future site use now identified.

Wiltshire Council Ecologist – No objection subject to conditions

Wiltshire Council Drainage – No objections subject to conditions

Wiltshire Council Landscape Officer – No objection subject to conditions

Wiltshire Council Tree Officer – No objection subject to conditions

Wiltshire Council Urban Design Officer – No objections

County Archaeologist – No objection subject to conditions

Wiltshire Council Public Protection – No objection subject to conditions

Wiltshire Police Architectural Liaison Officer – No objections

Wessex Water – No objections but concerns raised as to the lack of drainage proposals and strategy available for the outline elements of the scheme proposals. As the foul drainage system proposed is a private system and connection to the Wessex Water infrastructure can be requisitioned under separate legislation no conditions or informatives are recommended in respect of the Full element of the application/Aldi foodstore proposal.

Environment Agency – No objections subject to conditions and informatives

Malmesbury St Paul Without Parish Council - No formal objection but raises significant concerns and seeks revisions in respect of the proposed highways and access measures.

Malmesbury Town Council - No formal objection to or support for the proposals but makes comments and raises concerns in respect highways and access measures, use of the remainder of the site, retail impact and S106 contributions, and Neighbourhood Plan compliance.

8. Publicity

The application has been advertised by site notice, press notice, neighbour notification letters and consultation with local organisations. As noted above the application has been subject to two periods of formal public consultation.

The consultation response is to a large extent supportive of the provision of a retail foodstore for a discount operator at this location. Little comment is submitted in respect of the other elements of the application proposals or material considerations raised in that context.

The consultation responses in respect of this and the Lidl application indicate a substantial level of local support for the provision of a discount foodstore operator at Malmesbury.

The limited objections that have been submitted can be summarised as follows:

- Harm to the vitality and viability of the town centre
- Harm to the character, appearance and visual amenity of the locality
- Harm to Highways and traffic flows
- Inadequate and unsafe pedestrian access
- No change in circumstances since the Sainsbury proposals was refused at this location
- Site poorly related to the town centre
- Lidl proposal is in a better more accessible location in accord with national and local policies
- Proposed bus stops poorly located and likely to conflict with peak hour traffic movements.
- Loss of employment land
- Harm to residential amenities for neighbours from light intrusion and noise
- Loss of trees
- Inadequate supporting information and detail particularly Outline elements of the submission
- Further retail stores unnecessary and object to loss of the garden centre
- Inappropriate parking layout.

It should also be noted that consultants representing Lidl, Waitrose and the Co-Operative Society made detailed submissions which are available in the public record for review. The

detailed submissions centre on harm to the vitality and viability of the town centre; unsustainable and inaccessible location poorly related to the town centre and sequentially less preferable than other locations; constrained access resulting in harm to and worsening of highways conditions and the free flow of traffic; conflict with national policies and the development plan including in respect of loss of employment land, inadequate supporting information and assessments including that of the Council's retail advisors, and lack of clarity as to the proposed development.

9. Planning Considerations

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLPL) 2011 (adopted June 2006); and The Malmesbury Neighbourhood Plan (MNP) (Made Feb 2015).

9.1 Principle of Development

The application site falls outside of the defined settlement and limits of development for Malmesbury. However, part of the site has been the subject of substantial development and usage for the Garden Centre. The site is also allocated for B1, B2 and B8 employment uses under the saved policy BD1 of the North Wiltshire Local Plan 2011. The site is therefore considered acceptable in principle for the development as proposed by the outline part of the application.

With respect to the Aldi foodstore this site is an out of centre location. The Council's retail advisors GVA consider the site to be sequentially inferior to that proposed by the Lidl application. Albeit their position is that the difference is marginal and that assessment against other material considerations as to site suitability for both is necessary. Furthermore, it is considered that there no other sequentially more preferable sites in Malmesbury beyond these two. Subject to the outcome of consideration as to the suitability of the Lidl proposal it is assessed that the Aldi site would fail the sequential test. As set out in the report to Committee in respect of the Lidl scheme it is considered that the proposed location for that store does result in material harm in a number of respects, particularly to the character and appearance of the countryside, and is not an appropriate location for the proposed development on that basis. In these circumstances, if the Lidl site is rejected, the Aldi site would not fail the sequential test.

As noted above the advice as to town centre vitality and viability impact from GVA follows review of the submitted retail impact assessment (RIA) and clarifications sought and received in respect of the proposed replacement garden centre. The applicant team assert that the submissions in terms of floorspace include the total area used as a garden centre but the proposal for replacement is that it shall be on a like for like basis. The retail advice is that on this basis and subject to controls the impact on the town centre of the Aldi proposal both individually and cumulative with Lidl would not be so significant as to warrant or justify refusal on this basis. Recommended controls include:-

Foodstore element:

- Retail floorspace to be contained within one single retail unit with no ability to subdivide;
- Limit placed on the amount of net sales area (1,315sq m net);

- No less than 80% of the sales area being used for convenience goods sales; and
- No more than 20% of the sales area being used for comparison goods sales.

Garden centre element:

- Up to the same amount of total indoor and outdoor retail floorspace as the existing garden centre;
- The same amount and split of floorspace within permanent buildings and outdoor/polytunnel areas;
- Limits on any floorspace devoted to café/restaurant areas; and
- The same range of goods to be sold as the existing garden centre.

GVA consistent with the Lidl advice also suggest that the identified impacts to the town centre be subject to mitigation through the use of Section 106 financial contributions for town centre enhancements. This is reflected again in the submission of local interested parties such as the Town Council and the requirements of MNP policy 10. Section 106 matters are addressed further below but in short it is not considered that financial contributions from a Section 106 agreement would in this instance meet the regulations on the use of planning obligations and CIL. No quantified level of financial contribution has been identified. No detailed and quantified proposals are advanced or identified by interested parties as to how the contributions would be utilised in the town centre. There is no detailed evidence to demonstrate how such contributions would mitigate impacts to the town centre. The advice of GVA identifies that there is no justified basis for refusal on the grounds of harm to the vitality and viability of the town centre. In these circumstances it is not clear how contributions could be considered necessary as a consequence of and related in scale and kind to the development proposed.

On the basis of these proposals it is considered that the new and replacement retail development would not be of such a scale of built floorspace as to require consultation with the Secretary of State under the provision of the consultation direction and PPG.

As is the case with the Lidl proposal, Policies CP1 CP2 and CP13 seek to direct new development to locations within the defined settlements and at market towns such as Malmesbury additional development is anticipated and supported within the limits of development. It is material to note here that the site is in part previously developed land and is allocated for substantial development in the adopted development plan. Retail development in accordance with national guidance and WCS CP38 is directed to town centres in the first instance. The sequential test is then applied where no town centre sites are available, with edge of centre and then out of centre sites being the order of preference. Locations as close and well related to town centres as possible are generally sought. National guidance and case law does require that retailers adopt some degree of flexibility as to their operations in order to give full consideration to town centre sites that are potentially available but which may be constrained as to scale for example. CP38 does not resist proposals for development outside of town centres in principle. It requires the sequential test to be demonstrably met and for development to be located on the most central site available. It also requires that proposals be supported by a retail impact assessment in accordance with guidance and best practice which demonstrates that the proposal will not harm the vitality and viability of any nearby centres. On the basis of the retail assessment undertaken and advice provided as referenced above it is not considered that the proposal conflict in principle with the provisions of WCS Core Policy 38 or Policy 10 of the MNP.

As with the Lidl application also reported on this agenda it is noteworthy that there is significant support from local residents for the provision of a discount food retailer in Malmesbury. With respect to this Aldi application the public response has been supportive

with limited objection received and with the support being expressed not caveated in respect of the proposed location, which is the case in respect of the Lidl proposal as it involves development of a greenfield site in the open countryside.

The proposals would however entail the loss of land allocated to B1, B2 and B8 uses to A1 retail use and in this respect it is considered there is conflict with Saved policy BD1 of the NWLP 2011. The applicant submits that the employment allocation is one of longstanding that has to date not been delivered due to the costs associated with the provision of access to the development. This appears to be a reference to internal access within the site rather than site access, which has been enhanced in recent years. No detailed evidence (eg as to site marketing) has been produced to demonstrate this to be the case. The applicant goes on to assert that the permission for the Aldi store will support and bring forward the delivery of the remaining land for employment purposes in accordance with NWLP BD1. However no clear methodology is proposed in this respect other than suggested use of conditions restricting the use of the land. It must also be noted that the initial application submissions included no proposals or details in respect of the layout of the remaining land. Additional information as to site layout and employment proposals was sought and submissions have now been made but information remains limited and no delivery mechanism is proposed. The restrictive condition could be subject to variation or removal proposals and so attracts limited weight in terms of delivering the allocated uses. To address this, a Section 106 agreement is considered necessary and it's provision and intended purpose are described below.

The Council's Spatial Planning and Economic Development Teams raised concerns regarding the initial submissions particularly in terms of the available details, supporting information and the loss of part of the employment allocation to retail use. Following additional submissions by the applicant team Officers have removed their initial objections, taking an on-balance view that there is sufficient evidence now available to set aside the conflict with WCS Core Policies 2 and 13 (NWLP policy BD1) that this land should be retained entirely for B1, B2 B8 use classes. This is in part based on the length of time that has elapsed without the land coming forward for employment uses and the fact that this has encompassed a number of economic cycles. It is noted that the proposals still incorporate a significant element of land for employment use and more detail is now available in relation to those proposals supporting the application. Officers are also mindful of the NPPF guidance and support for a flexible approach that enables sustainable growth and provides for business investment. It is however considered that this position is dependent upon delivering the employment land and measures to do so that can be given sufficient weight in the planning balance. In this context it is considered appropriate and necessary to address this through the use of a S106 agreement that restricts the use of the land in the outline application to B1, B2 and B8 (and replacement Garden Centre) uses for a reasonable period in part tied to a requirement to undertake marketing of the site for the specific allocated land uses. The applicant has agreed to this approach in principle. The details in this respect and including as to the marketing strategy are subject to further agreement with the Council but it is considered that this methodology does provide a greater degree of certainty as to delivery of the land and this can be given weight.

On this basis the development proposals are considered to conflict with the provision of CP1 CP2 and CP13 but some level of support for the principle of development is provided under CP38 and Policy 10 of the MNP, site circumstances and other material considerations including the delivery of the BD1 NWLP allocation. It is therefore necessary to consider the proposals against the other policies of the development plan and relevant aspects of national guidance and weigh all considerations in the balance, which is undertaken in the conclusion below.

9.2 Impact on the Character, Appearance and Visual Amenity of the Locality Including Trees

Initial concerns were raised by Landscape, Urban Design and Trees Officers alongside some interested parties as to the impact of development on the character, appearance and visual amenity of the locality. This was at least in part based on proposed impacts to trees on the northern boundary; lack of detail or supporting information in relation to site landscaping and site layout for employment and garden centre uses; potential signage and lighting of the site and the design features, including use of materials of the proposed retail building itself and its visual prominence in the immediate locality.

In response the applicant has submitted additional detail as to the proposed layout of the site with updated supporting information including a revised design and access statement. Revised proposals are advanced now as to site landscaping and boundary treatment and additional detail is available as to the treatment and protection of existing trees on site. Alterations to the design and use of materials in the Aldi foodstore building have also been submitted as have site layout revisions for the Aldi element of the scheme. Additional details and clarifications have been provided as to lighting and signage also. The revised and additional details have been the subject of consultation and review and consideration by officers. In all these respects officers raise no objection and in relation to several aspects now support the development proposals and welcome the submissions that have been made as positive contributions.

It is considered that the Council has sufficient information before it in support of the hybrid outline and full application to assess and determine the proposals in relation to their impact to the character and appearance of the locality. It is also material to note that the site is already partially developed and is also allocated for substantial built development in the employment uses classes. Such development as existing and proposed does and would have an impact on the character and appearance of the locality. However, the development proposal now before the Council is not considered to differ so significantly from this situation as to result in a level of impact that would be harmful and so significantly harmful as to warrant and justify refusal. On this basis it is considered that the proposals do not conflict with WCS CP51 & CP57 (I, ii & iv); MNP Policy 13 as informed by aims and objectives set out in Tasks 8.1, 8.4 & 8.5 and Vol II (Design Guide) ; and para 170 (b) of the NPPF.

9.3 Impact on Heritage Assets including Archaeology

The site is one of known archaeological potential and the development proposed entails intrusive groundworks in respect of previously undeveloped land. The initial application included limited details in relation to archaeological evaluation particularly with respect to the outline elements of the scheme. Consequently the Council's archaeologist raised concerns initially and sought submission of a field evaluation. The applicant team has undertaken that investigation and this has identified some Roman pottery shards in one pit that may have been dug for the extraction of clay, but found that most of the site had been levelled to the natural substrate in relatively recent times to provide storage for the garden centre. In the light of these findings, the Council's archaeologist has withdrawn their initial objection, subject to the imposition of a condition to enable a programme of archaeological mitigation.

Given the existing and proposed planting and landscaping arrangements; existing built form and degree of separation it is not considered that the development proposed will have a detrimental impact on the setting of nearby designated heritage assets with the impact being considered neutral.

On this basis it is not considered that the proposals result in conflict with Wiltshire Core Strategy CP57 (i & iv) and CP58; Malmesbury Neighbourhood Plan Policy 13 as informed by aims and objectives set out in Tasks 6.1 & 8.1 and Vol II (Design Guide); 192, 193, 196, 197 in the NPPF and does accord with the requirements of para 199 of the NPPF.

9.4 Highways Impact and Parking

As noted above the site is located adjacent to and proposed to be accessed from the A429 which is effectively a bypass for Malmesbury and is a long straight road with good visibility and fast moving traffic including as it relates to the locality of the site albeit the Whychurch Roundabout lies directly adjacent. The proposed site access remains as existing from the Whychurch Roundabout, which is one of the principle junctions in the Malmesbury locality and on the local highway network providing one of the main access points to Malmesbury whilst also distributing traffic southward toward the M4 and Chippenham and northward to Cheltenham with linkages eastward to various settlements. The development would be served by the existing access from the roundabout to the Garden Centre with an internal access road then providing access to the Aldi Store.

The initial proposals were supported by a full transport assessment that included proposals in respect of preparation and agreement of a travel plan. The Transport Assessment was subject of review and assessment by Highways Officers and full public consultation. Town and Parish Councils alongside interested parties and some local residents raised concerns as to the accessibility of the site by pedestrians, cyclists and public transport. This reflected the applicant's own findings in respect of the public consultation undertaken and referenced in the statement of community involvement.

Highways Officers in their initial consultation response raised objection and recommended refusal in part on the same basis as objections were raised on highway grounds to the previous Sainsbury's proposals in that the location was unsustainable and contrary to development plan policy. Also objection was raised on the basis of conflict with the neighbourhood plan in terms of requirements for parking provision to support the town centre. Concerns were also raised as to pedestrian accessibility, bus stop provision and inadequate information supporting the outline application proposals. No objection was raised however in respect of the impact of traffic movements to the local road network in recognition of the scope for linked journeys to and from work but also the recent highways works in the vicinity of the site. Officers also expressly did not support the introduction of speed limits, controlled crossings and/or access arrangements on the A429.

The applicant has made multiple submissions following the outcome of the initial consultation exercise with the aim of addressing and responding positively to matters raised and this includes in respect of highway matters. Additional information has been provided whilst additional proposals have been made as to provision of bus stops and pedestrian access. The revised proposals now include the introduction of three uncontrolled pedestrian crossings and a new footway link with widening of the existing footway to 2.0 m; and the inclusion of two new bus stops on the A429 both with raised kerb. The southbound stop will also include a footway link to the existing footway and relocation of existing signage. These sit alongside the previous submissions including the Travel Plan. The revised and additional submissions have been the subject of full consultation and review and assessment by officers.

The further consultation response of Highways Officers raises no objections and acknowledges that additional submissions have been made in response to the initial consultation advice. Minor amendment to the location of one of the bus stops was recommended. Previous in-principle objections as to the unsustainable location and policy conflict were maintained but Officers have made it clear that they would not recommend this

as a sole reason for refusal given the material considerations and site circumstances and so would defer to the planning officer's views in this respect.

In subsequent correspondence between the applicants and highway officers further minor amendments as to the position of one of the bus stops were made to address detailed comments arising from the consultation. Highways officers have further reconfirmed that the Highway authority would not support a reduction in the speed limit at the roundabout. The roundabout has been designed to accommodate the current speed limit; and would not support the introduction of a Pelican crossing on the A429. The A429 is a Primary Route and the LHA do not encourage light controlled/formal crossings on Primary Routes. There are informal crossing points in the vicinity which can be used to accommodate pedestrian movements.

It should be noted that the Town and Parish Councils maintain concerns as to the pedestrian access proposals and accessibility of the site. Similarly interested third parties including Lidl, Waitrose and the co-op have raised concerns in respect of accessibility.

Whilst the previous reason for refusal of the Sainsbury's application; consequent Highways Officers objections and the concerns of interested parties are noted it is not considered that the current application ought to be refused on this basis. Part of the site is already in use and so generates significant access requirements and movements. Furthermore, the site is the subject of an allocation for B1, B2 and B8 employment uses which will also generate significant vehicular movement and access requirements. The application proposals are now informed by additional proposals to enhance accessibility by and for pedestrians and public transport. It must also be borne in mind that there have been significant changes in material circumstances and considerations since the determination of the Sainsbury scheme. In particular large scale residential development has taken place and continues in the vicinity of the site and the MNP allocates further land for development in the area. Large scale investments in additional facilities at the Dyson property have also taken place. Significant works have also taken place in respect of the highway network in the immediate vicinity of the site. In this context the site is not considered to be as unsustainable as previously assessed. In these circumstances it is not considered that the conflict with the development strategy of the plan as defined in policies CP1, CP2 & CP13 as supported by CP61 is now so substantial given these material considerations that refusal on highway grounds could be justified. It is also material to note that there are benefits arising from development which are also material considerations that must be weighed in the planning balance. This is undertaken in the conclusion below.

9.5 Drainage & Flood Risk

The site and locality is one of known flooding from surface and ground water as well as being a water source protection zone. The initial application submissions were supported by a flood risk assessment and drainage strategy. Existing foul and surface water drainage facilities at the site and in the vicinity are constrained with access across third party land required to secure connection and provision. The submitted Geotechnical survey also identified that on site conditions were not suitable for SUDs infiltration. As noted previously initial submissions with respect to the proposed development forming the outline element of the scheme proposals were limited.

The application submissions were the subject of full consultation and review and assessment by the Council's Drainages Officers, Wessex Water and the Environment Agency. Wessex Water raised no objections and identified capacity in the network but identified that a series of consents were required and identified the position regarding third party land issues. Concern was raised as to the lack of information in respect of the outline scheme elements. The Environment Agency raised no objection but identified the need for

conditions in respect of possible contamination to water resources which are considered necessary and reasonable. The Council's drainage officers raised an initial holding objection on the basis of the proposed strategy and inadequate information demonstrating that it was achievable. Concerns were raised as to increased flood risk off-site in the Charlton Stream given local records and the proposal to discharge storm water to this watercourse. Rights of access and potential constraints imposed by third party land ownership were also identified. Officers queried the capacity of the foul network, and requirements in respect of an on-site pumping station. Concerns were raised in respect of separate drainage systems for the Aldi site and the development within the rest of the site.

The applicant resolved to address and respond to these concerns and submitted a revised and updated drainage strategy and flood risk assessment alongside and informed by additional detail in respect of the proposals forming the outline element of the application. The strategy largely remaining unaltered with surface water discharge to the Charlton Stream via an existing ditch and across third party land; with Foul drainage to a private system including pumping station, with a connection to a new main foul sewer in the road network via a formal requisition request to Wessex Water proposed. Both systems to be built to appropriate capacity but with scope for future upgrading. Appraised surface water run off rates proposed are in accordance with recommendations and requirements of the Council's Drainage officers. Wessex Water raised no further comment and has subsequently confirmed that they require no conditions in respect of the Aldi scheme and would consider standard conditions requiring submission and approval of details for the outline element appropriate.

The Council's Drainage officer reviewed and assessed the revised submissions and continued to raise concerns as to the comprehensiveness of the strategy and the assessed baseline position; also in respect of the use of multiple pumping stations and separate storm systems for parts of the site as well as issues as to requisite consents from the Highways Authority and Wessex Water.

Since that time the applicant's drainage consultants have revisited their strategy and provided further information including the whole site area and all development proposed. Officers have subsequently confirmed that the proposals now address all concerns and subject to the use of conditions no objection is raised. Wessex Water has also subsequently confirmed that it does not recommend Foul drainage conditions in respect of the Aldi element of the proposal given the proposed use of private system and a requisitioned connection to the wider network. Given the available information it is considered necessary to apply standard drainage conditions in respect of the outline element of the proposals. As such the proposals are considered to accord with WCS core policy CP67 and para 163 of the NPPF.

9.6 Impact on Ecology

The site features a number of mature trees to the northern and western boundaries potentially affected by the development proposed and lies on the fringes of Malmesbury with part of the site extending into the open countryside adjacent the Charlton Park Estate which features extensive mature woodland and has known ecological value. The initial application submission was supported by a preliminary ecological appraisal albeit this relied on survey work undertaken in 2011 and does also note that part of the site has been subject to grassland recolonization since that time. Earlier survey work identified a population of slow worms on site.

The submissions were the subject of full consultation and detailed review and consideration by the Council's Ecologists. Objection was raised at this stage in part due to the limited information available as to the proposals relating to the outline element of the scheme and

the absence of up to date base line survey information and no Ecological Mitigation and Enhancement Strategy despite the previously identified protected habitats and species on site. Additional information submissions and clarifications alongside greater detail as to development parameters and proposals of ecological mitigation were sought.

The applicant team made a range of submissions to address these matters including greater information and detail as to the proposed development addressed under the outline element of the application; and in this instance an Ecological Appraisal Addendum and Landscape Addendum. The submissions were informed by additional survey and assessment work on site and incorporated an ecological mitigation and enhancement strategy as requested which the applicant team proposed to be subject of conditions for implementation and compliance.

These submissions have been reviewed and considered by the Council's Ecologist and subject to further wider consultation. Officers conclude that there is now sufficient information to assess matters to a sufficient policy compliant standard. Having completed the assessment officers now raise no objection subject to the use of conditions to require compliance with the strategy advanced and to secure the provision and agreement of management plans and additional information. Management plans especially relating to construction phase are also sought by the Environment Agency and Public Protection officers and so a combined condition is proposed in this respect. As such the proposals are considered to accord with WCS core policy CP51 and para 175 of the NPPF.

9.7 Other Matters

Noise/Land contamination/Residential Amenity

The application was supported by a Noise Assessment and a Geotechnical Ground investigation and Assessment. The former recommended the use of conditions to limit and control noise levels and the latter found very limited presence of contamination (gas) and limited risks associated with development but recommended further work be undertaken. The submissions were the subject of full consultation and review and consideration by the Council's Public Protection Officers and the Environment Agency.

The Environment Agency recommended no objection subject to the use of conditions relating to construction and environmental management plan submission and agreement plus several informatives. The Council's Public Protection Officers raised no objections subject to various conditions and sought commitment to ULEV charging provision in the full application element of the scheme proposals. The applicant team's consultants handling contamination and noise matters made further submissions to the Officers and provided various clarifications as to the outcome of the survey and assessment to work undertaken. Subsequently officers maintained no objection and the continued need for conditions related to the control of noise.

Given the assessment work undertaken, advice of Public Protection officers, Use of conditions and existing site circumstances including the existing and allocated uses alongside the location and usage of the A429 it is not considered that the proposals would result in significant harm to existing residential amenity through noise. Similarly the detail submitted in respect of site lighting, use of conditions and existing site circumstances ensure that there would not be significant harmful impact to existing residential amenities through intrusive lighting. The Geotechnical Assessment has been reviewed and considered by officers and it is concluded that there is no significant risk of harm to the environment or residential amenity through disturbance. Sufficient information has been presented in this respect and no conditions requiring further investigation are required albeit the Environment Agency has sought consideration of potential pollution impacts during construction through the Construction Environmental Management Plan.

Section 106 Matters

As noted above it is proposed that the delivery of the saved NWLP employment allocation in policy BD1 as addressed in the outline element of the application be secured through the use of provisions contained in a S106 Planning Obligation. In particular to restrict the use of the land to the permitted and allocated purposes for a reasonable period tied to the marketing of the site and the outcome of that marketing. The approach to the marketing exercise to be developed in agreement with the council but to extend to a period of not less than 12 months and to be at a reasonable valuation reflecting the uses permitted/allocated and the costs associated with site development. The applicant has confirmed acceptance to enter into such an agreement.

The Council's retail advisors (GVA) and the Town Council have made reference to securing financial contributions for enhancements to the town centre to mitigate retail impact. No specific quantum of contribution is identified. There is no methodology available for assessing and calculating an appropriate level of contribution that would link in scale and kind to the development proposed and the assessed impact to the town centre. It must also be noted in this context that GVA identify that the level of impact to the town centre is not such that it would justify refusal either individually or cumulatively in conjunction with the Lidl store proposal. Finally there are no detailed proposals and projects advanced in respect of Town centre enhancement upon which the monies would be expended. The Neighbourhood Plan refers to some aspirations in this respect but there is little detail available as to specific projects that could be related in scale and kind to a quantum of contribution being sought. Also the rationale identified in the plan for those contributions is based upon a dramatic impact to the town centre arising from development which as set out above is not the assessed position. As such it is not possible to assess the extent to which such contributions would mitigate the impact of development in any event. In such circumstances it is not considered that such a requirement would meet the statutory provisions or national planning policy in respect of Section 106 matters, including the CIL regulations which require that contributions be directly related in scale and kind to the development proposed, necessary to make the development acceptable and directly related to the development. The Council's legal department concur with this assessment. Furthermore it is not considered that such requirements are justified under the terms of CP3 and CP38 of the WCS.

10. Conclusion – The Planning Balance

The site is located outside of the limits of development for the market town of Malmesbury. For the retail element of the proposal, the site is out of centre. The site is partially in use and previously developed for Garden Centre purposes and is the subject of allocation for employment uses B1, B2 and B8. The allocation is a saved policy from the NWLP 2011 and so the location has been advanced and considered appropriate for the purposes of development for some time. The development strategy of the plan seeks to direct significant development such as that proposed to a defined hierarchy of settlements as set out in WCS policies CP1, CP2 and supporting area framework policies such as CP13 applicable to the Malmesbury locality. Substantial development to enhance self-containment within the defined settlements at Market Towns such as Malmesbury is anticipated in the WCS. Outside of the defined settlements the countryside is protected for its own value subject to certain defined exceptions in accordance with the NPPF. This strategy for the scale and distribution of development should be considered in the context of the existing use of the site and its allocation for significant development in part proposed under the outline element of the Plan. The site is visually prominent in localised views, situated adjacent to the main arterial route for traffic travelling past and to the town and one of the town's principal access and distributor points.

The retail element of the proposed development is one which is specifically directed to town centre locations as a first preference and subject to a sequential approach to location thereafter. The application site, compared to the Lidl application is the least sequentially preferable location of the two for development. The Council's retail advisors are of the opinion that the Aldi site is marginally sequentially preferable to a material extent in retail terms to that of the Lidl store proposal. The Lidl application is supported by Legal opinion which also considers the Aldi Malmesbury Garden Centre location to be sequentially less preferable. In both respects significant reference is made to similar assessments and conclusions in respect of previous competing supermarket proposals in similar locations – Sainsbury's and Waitrose, which concluded in favour of Waitrose. It is officer's opinion that these submissions do not appear to fully consider and account for material changes in circumstances that have occurred since the determination of those applications. In particular the substantial amount of development, especially residential development, that has taken place to the north of Malmesbury, planned development in that location, and related highways improvements. In addition the evidence of the retail impact assessment as to relatively limited link trips between the town centre and the Waitrose store is of relevance. Taking such factors into account it is officer's view that the sequential difference between the sites is limited. It is also important to note that the retail advice from GVA makes it clear that the Lidl site is only sequentially preferable if it is found not to have any other site specific harmful impacts and/or policy conflicts. This is not the assessed position. The retail evidence and advice also concludes that there would not be a significant harmful impact to the vitality and viability of the town centre individually from Aldi or cumulatively with the Lidl store such that there is conflict with the provisions of national policy and the development plan. It must also be noted that the development plan does indicate some level of need for additional retail provision within Malmesbury albeit this was the position adopted as the Waitrose store was permitted. This is reflected in the findings of the retail impact assessment. The outcome of the consultation exercise identified substantial levels of out commuting to other centres for retail purposes supporting the findings of the retail impact assessment and the provisions of the plan. The public consultation response whilst mixed overall did identify significant levels of support for provision of a discount supermarket retail store, at least somewhere in Malmesbury.

With respect to site specific matters the majority on this site are considered by officers to raise no significant harmful impacts or conflict with the development plan and national policy that cannot be appropriately and satisfactorily mitigated via the use of conditions and a planning obligation (S106 agreement) and some minor amendments/additions information submissions. Ecology, Drainage, Trees and Public Protection are all considered to be satisfactorily addressed in this way. With respect to Highways officers reference is also made to the previous determination of the Sainsbury's proposal at this site. That application was previously refused in part on the grounds that the site was an unsustainable location with respect to accessibility and transportation considerations. Highways Officers do not however consider that the current application should be refused solely on these grounds. As noted above it is considered that there has been a change in material circumstances since the previous determination. Furthermore the proposals have been revised and augmented in terms of accessibility with proposals for improved access arrangements by Public Transport and for pedestrians. It must also be noted that there are benefits arising from development which are referred to below. On balance it is not considered that a refusal on the grounds of unsustainable location and poor accessibility could now be justified.

The proposals do involve the loss of a part of the land allocated for employment uses to retail and this is considered to conflict with saved policy BD1 of the NWLP 2011. As is noted above the applicant has made submissions seeking to justify this position and in this respect references the longstanding allocation not having been delivered due to site development costs being prohibitive. It is the applicant's position that the release of a part of the site for retail uses will assist with this and help deliver the employment land. However little evidence,

in the way of site marketing for example, demonstrating this to be the case has been submitted by the applicant. There is also little proposed in terms of delivering or seeking to deliver the employment land other than the use of restrictive conditions. This in and of itself is not considered sufficient to offset the harm arising from the conflict with Saved policy BD1 and further measures to support delivery should be agreed. In this context an agreed approach to marketing of the site alongside restrictive covenants on its use for an appropriate period secured through the use of a S106 planning obligation are considered necessary and appropriate. This approach would provide a greater degree of certainty that the remaining land would be used for the allocated purpose and limit the scope for this site becoming a de facto out of town retail centre. Such an approach can therefore be given greater weight than the proposed use of conditions. The Council's Legal department has confirmed that the approach is in accord with the NPPF, PPG and statutory provisions relating to planning obligations. It is also noteworthy that the council's Spatial Planning and Economic Development Teams do not raise objection identifying that there are material considerations that would justifying setting aside the conflict with saved policy BD1.

Overall it is considered that whilst there is some level of compliance with some elements of the development plan particularly in terms of elements of CP13 and para 5.73 & CP38 of the WCS; saved policy BD1 NWLP and Policy 10 of MNP there remains conflict with the development strategy contained in CP1, CP2 and other elements of CP13. On balance it is considered the proposals do conflict with the plan and it is therefore necessary to consider what, if any material considerations weigh in favour of the proposal and whether or not this is sufficient to justify a decision otherwise than in accord with the plan.

The conflict with up to date development plan is a harmful impact that should not be set aside lightly given the statutory requirements and national guidance in the NPPF requiring development to accord with the plan. In this instance however it must be noted that the conflict centres on the development strategy and the previously assessed unsustainability and inaccessibility of the site in relation to the town. In this context it is material to note that the site is allocated for development that will generate access requirements and trips by residents of the town and the surrounding area. Furthermore the site is partially developed and in active retail use as a Garden centre with café and this already generates trips and access requirements. The development proposals include replacement of the garden centre on a like for like basis and in this respect it is not considered that this part of the development would be materially less sustainable than at present. The proposals also include a substantial element that is in accord with the site allocations in the saved policy BD1 and so accords directly with the development plan. It is in respect of the retail element that concerns are raised but as noted CP38 and national guidance do allow for such development to take place in out of centre/town locations. CP13 para 5.73 identifies some level of support for additional retail as does Policy 10 of the MNP albeit partly affected by the development of the Waitrose store. Furthermore it is material to note that there has been significant change to the built form of Malmesbury with substantial residential taking place to the north of the town and with more development planned since the previous Sainsbury application was determined. Similarly enhancements to the road network have taken in place in the intervening period improving accessibility. Additionally the grant of consent subject to the proposed S106 agreement requiring marketing of the site for employment uses has potential to deliver the allocated employment uses whilst the applicant asserts that it will also unlock provision of the necessary site infrastructure that will enhance the attractiveness of the site to employers. Finally it should also be noted that the scheme proposals do include enhancements to the accessibility of the site through improved public transport and pedestrian facilities. These are material considerations that can be given significant weight and do indicate that it may be appropriate to set aside the conflict with elements of the development plan.

In addition to this it is also necessary to consider the other benefits of development and also weigh these in the balance. As with the Lidl proposal the Aldi element of the proposals will result in benefits including the additional retail offer for the town, including in respect of discount retail provision resulting in social and economic benefits for residents. In addition, the proposal has separate economic benefits in respect of additional expenditure in the town and the reduction in the leakage of expenditure to other locations, alongside tax revenues. The proposal would also result in additional employment opportunities which also have social and economic benefits. There would be limited economic benefits arising from the construction of the development. Finally the improved retail offer for the town would result in reduced out commuting to other locations for shopping purposes resulting in environmental benefits from reducing vehicular movements. The replacement garden centre will also result in limited economic benefits from construction as will the B1, B2 & B8 elements. In the latter respect these parts of the development have direct economic benefits through job creation and potentially supply chain sourcing of materials and goods. These parts of the proposals also result in increased local tax revenues and result in social benefits though enhanced employment opportunities for local residents.

It must also be noted that the proposals do not result in any site specific harmful impacts that are not capable of mitigation through the use of conditions – unlike the application for the Lidl store.

Overall, it is considered that the benefits do outweigh the relatively limited harm that has been identified and that subject to the completion of a S106 agreement and the recommended conditions consent should be granted.

RECOMMENDATION

Approval subject to the conditions listed below and the completion within 6 months of the date of the committee resolution of a S106 agreement to address use of the remaining land for B1, B2 and B8 purposes including marketing of the site and retention of land for these uses for a suitable period considered to be no less than 12 Months marketing on terms to be agreed with the council reflecting the allocated and proposed uses but not to be commercially disadvantageous.

In the event that the applicant declines to complete the S106 agreement within 6 months to refuse permission for the following reasons:-

1. The proposed development in the proposed location would conflict with the development strategy of the development plan as defined by policies CP1, CP2 and CP13 of the Wiltshire Core Strategy (Jan 2015); Saved Policy BD1 of the NWLP 2011 and thereby conflict with paragraphs 2, 12 and 47 of the NPPF.

Conditions

Outline

1. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details of the following matters (in respect of which approval is expressly reserved) have been submitted to, and approved in writing by, the Local Planning Authority:

- (a) The scale of the development;
- (b) The layout of the development;
- (c) The external appearance of the development;
- (d) The landscaping of the site;

The development shall be carried out in accordance with the approved details.

REASON: The application was made for outline planning permission and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 and Article 5 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

3. An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990.

4. No part of the development shall be first brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

5. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:-

- location and current canopy spread of all existing trees and hedgerows on the land;
- full details of any to be retained, together with measures for their protection in the course of development;
- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- means of enclosure;
- car park layouts;
- other vehicle and pedestrian access and circulation areas;
- all hard and soft surfacing materials;
- minor artefacts and structures (e.g. refuse and other storage units, signs, lighting etc);
- tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

7. No development shall commence on site until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the Local Planning Authority. The landscape management plan shall be carried out as approved in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure the proper management of the landscaped areas in the interests of visual amenity.

8. No development above damp course level shall commence on site until details of the works for the disposal of sewerage including the point of connection to the existing public sewer have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be first occupied until the approved sewerage details have been fully implemented in accordance with the approved plans.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the proposal is provided with a satisfactory means of drainage and does not increase the risk of flooding or pose a risk to public health or the environment.

9. No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

10. The permitted replacement Garden Centre shall be on a like for like basis involving the same total of indoor floorspace as referenced on the application form (84.2 sq m), Polytunnels as permitted (254.6 m sq m) and outdoor retail floorspace as existing; with any cafe/restaurant also limited to the floorspace identified in the application form (97 sq m); and with the same mix and range of goods sold at present.

REASON: In the interests of the vitality and viability of the Town Centre.

FULL

10. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

11. The development hereby permitted shall not, at any time, be subdivided into a larger number of units and the net sales area shall be limited to 1,315sq m with no less than 80% of the sales area being used for convenience goods sales; and No more than 20% of the sales area being used for comparison goods sales.

REASON: To enable the Local Planning Authority to consider individually whether planning permission should be granted for additional units on the site and in the interests of the vitality and viability of the town centre.

12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the site shall be used solely for purposes within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)(or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification).

REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, other than a use within the same class(es), having regard to the circumstances of the case.

13. No development above ground floor slab level shall commence on site until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of visual amenity and the character and appearance of the area.

14. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access / driveway), incorporating sustainable drainage details for the detailed part of submission for the Aldi store including the storm system being sized to take flows from the outline part of the application with assigned discharges for each of the future sites limiting total flow from whole site to 29 l/s, has been submitted to and approved in writing by the Local Planning Authority.

REASON: To ensure that the development site as a whole can be adequately drained

15. The Aldi store part of development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained

16. The development hereby permitted shall not be brought into use until details of the storage of refuse, including details of location, size, means of enclosure and materials, have been submitted to and approved in writing by the Local Planning Authority, and; the approved refuse storage has been completed and made available for use in accordance with the approved details. The approved refuse storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

17. The development hereby permitted shall not be brought into use until details of recycling facilities (including location and range of facilities) have been submitted to and approved in writing by the Local Planning Authority, and; the approved recycling facilities have been completed and made available for use in accordance with the approved details. The approved recycling storage shall thereafter be maintained in accordance with the approved details.

REASON: In the interests of public health and safety.

18. There shall be no customers/members of the public on the site outside the hours of (22:00pm) and (08:00am) from Mondays to Saturdays nor (17:00pm) to (10:00am) Sundays and Bank Holidays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

19. No materials, goods, plant, machinery, equipment, finished or unfinished products/parts of any description, skips, crates, containers, waste or any other item whatsoever shall be placed, stacked, deposited or stored outside any building on the site.

REASON: In the interests of the appearance of the site and the amenities of the area.

20. The development hereby approved shall not be brought into first operation until the Draft Travel Plan Entren 27 July 2018 has been submitted in Final form to and approved in writing by the Local Planning Authority. The Travel Plan shall include full details of implementation and monitoring and shall be implemented in accordance with these agreed details. The results of the implementation and monitoring shall be made available to the Local Planning Authority on request, together with any changes to the plan arising from those results.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

21. The development hereby permitted shall not be brought into use until a scheme to restrict shopping trolleys leaving the site has been submitted to and approved by the Local Planning Authority and; the approved scheme has been brought into operation. The approved scheme shall thereafter be maintained in operation in accordance with the approved details.

REASON: In the interests of the character, appearance and amenities of the area.

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 7, Classes (a) (c) &

(d) shall take place on the building or within the curtilage of the building subject of this permission.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

OUTLINE AND FULL

23. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Design and Access Statements Rev E
160389 1501 P5
160389-1500-P4
SK202 REV A
SK203 REVA
Received 01/02/2019

10632-0050 REV D
Drainage Strategy Craddy's
Received 08/02/2019

160389 1601 P1
160389 1403 P7
Topographical Survey
SK203 Swept Path analysis
160389 1400 P6
160389 1600 P1
160389 1600 P1
Tree Protection Plan
Archaeological Evaluation
Landscape Addendum
Ecological Addendum
11593/PO9
11593/PO8
Received 21/12/2018

160389 1402 P2
160389 1401 P3
B2340-MJA-P105-4756-B
160389 - 1100 P4
Received 27/07/2018

REASON: For the avoidance of doubt and in the interests of proper planning.

24. No part of the development shall be first brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

25. No intrusive groundworks shall commence within the site area indicated as Areas ABCD on plan ref 160389 1403 P7 until:

a. A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and

b. The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

26. The development hereby permitted shall not be first brought into use until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

27. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- i) hours of construction, including deliveries;

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

28. Prior to the commencement of any works on site, including site clearance, vegetation clearance, ground works, demolition and boundary treatment works, an Ecological Mitigation and Enhancement Strategy (EMES) shall be submitted to the local planning authority for approval in writing. This shall include the results of further survey of any boundary trees identified as having moderate or high suitability for roosting bats within and/or bordering both the full and outline areas of the application site. It shall also include, and be informed by, the results of a dedicated reptile survey of the whole hybrid application site and an updated badger survey; the results of the latter may need to be submitted to the LPA as an addendum if the EMES has already been submitted and approved by the LPA prior to the badger survey being undertaken. The surveys must be conducted by suitably experienced and qualified professional ecological consultants. Any mitigation and compensation necessary as a result of the findings of the aforementioned further surveys must also be

presented in the EMES and/or addendum. Specific details of all ecological avoidance, mitigation and compensation measures as well as ecological enhancements shall be clearly detailed within the EMES as well as being shown on a corresponding site plan. In addition to the wildflower, hedgerow and tree planting, ecological enhancement shall also include but not be limited to, the provision of nesting features for birds and roosting features for bats which should be installed on buildings and/or suitable trees. The development shall be carried out in strict accordance with the approved strategy.

REASON: To ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 41 of the NERC Act (2006); and to ensure full details of all ecological avoidance, mitigation and compensation measures as well as ecological enhancements, are provided and implemented in accordance with Paragraph 118 of the NPPF, Section 40 of the NERC Act (2006) and CP50 of the Wiltshire Core Strategy (Adopted January 2015) given that insufficient details were submitted prior to determination of the planning application.

29. Prior to the commencement of any works on site, including ground works, demolition, site clearance, vegetation clearance and boundary treatment works, a Landscape and Ecology Management Plan (LEMP) shall be submitted to the local planning authority for approval. The LEMP shall provide details of the proposed maintenance and management of the site; and details and corresponding plans of landscape planting. The development site shall be managed and maintained in accordance with the measures set out in the approved LEMP in perpetuity unless otherwise agreed in writing with the local planning authority.

REASON: To ensure the appropriate maintenance and management of habitats that provides a function for biodiversity.

30. Prior to the commencement of development works on site, a lighting strategy for biodiversity and site lighting plan that has been prepared with input by, and/or has been reviewed and verified by, the commissioned ecological consultancy shall be submitted to the local planning authority for approval in writing. The strategy shall illustrate the location, height and specification of proposed luminaires, together with a lux plot/lighting contour plan and details of mitigating fixtures to be used such as cowls, louvres or baffles. All lighting shall be installed in accordance with the approved lighting strategy and no other external lighting shall be installed without prior written consent from the local planning authority.

REASON: To minimise light spillage onto boundary habitats and features, sensitive areas for protected and priority species and adjacent habitats, and to maintain dark corridors for wildlife, particularly commuting and foraging bats, and due to insufficient details having been submitted prior to the determination of the planning application as the submitted Proposed External Lighting & Luxplot plan (Drawing no. B2340-MJA-P105-4756-B, 6 July 2018) covers only the Aldi store site (full application area).

31. Prior to the commencement of development works on site, including ground works, demolition, site clearance, vegetation clearance and boundary treatment works, an AIA and Tree Protection Plan for the area of the application site subject to the outline aspect of the application shall be submitted to the local planning authority for approval in writing. Thereafter development shall be carried out in strict accordance with the approved AIA and Tree Protection Plan.

REASON: To ensure appropriate retention and protection of trees at the site, and on account of the information submitted to the Council to date, namely the AIA and Tree Protection Plan (Bosky Trees, 31st October 2018), having only covered the full application area and not the outline application area.

32. The full and outline aspects of the development shall be undertaken in strict accordance with the recommendations and measures stipulated in Section 4 and 5 of the Preliminary Ecological Appraisal (Tyler Grange, 18 May), R03c_Ecology Addendum to Address Consultation Response (Tyler Grange), the Habitat Features Plan (11593/PO8), the Landscape and Ecology Strategy Plan (11593/PO9) and AIA and Tree Protection Plan (Bosky Trees, 31st October 2018). The development shall be carried out with liaison with, and supervision by, a suitably qualified and competent ecological consultant where applicable. The development shall also be carried out in strict accordance with the pending EMES, CEMP, LEMP, lighting strategy for biodiversity and AIA and Tree Protection Plan (the latter is with respect of the outline aspect of the application) once submitted to, and approved in writing by the local planning authority.

REASON: To ensure appropriate and adequate protection and mitigation for ecological receptors including protected and priority species and habitats is implemented in accordance with the NPPF and CP50 of the Wiltshire Core Strategy (Adopted January 2015), and to ensure compliance with the Conservation of Habitats and Species Regulations 2017, the Wildlife and Countryside Act 1981 (as amended) and Section 41 of the NERC Act (2006).

33. The development hereby approved shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the following relevant measures:

- a) An introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location;
- b) A description of management responsibilities;
- c) A description of the construction programme;
- d) Site working hours and a named person for residents to contact;
- e) Detailed Site logistics arrangements;
- f) Details regarding parking, deliveries, and storage;
- g) Details regarding dust mitigation;
- h). Details of the duration of identified works that may affect amenity and measures to mitigate the impact of construction on the amenity of the area and safety of the highway network; and
- i) Communication procedures with the LPA and local community regarding key construction issues – newsletters, fliers etc.
- j) Identification of biodiversity protection zones/buffer zones and tree root protection zones/areas;
- k) The location and timing of works that need to be scheduled and undertaken in such a way as to avoid/reduce potential harm to ecological receptors;
- l) Details of the times pre-construction and during construction when specialist ecologists need to be present on site to supervise specific elements of the works and details of the responsibilities of the ecologist/ ecological clerk of works (ECoW);and
- m) Location and types of protective fences, exclusion barriers and warning signs to be installed for the site clearance and construction periods.
- n) Pollution prevention measures

Development shall be carried out in full accordance with the approved CEMP. There shall be no burning on site at any time. Hours of construction shall be limited to 0730 to 1800hrs Monday to Friday, 0730 to 1300hrs Saturdays and no working on Sundays or Bank Holidays; with any 'one off' departures from this being agreed with the LPA prior to works commencing.

REASON: To protect local; amenity from adverse effects of noise, dust and odour

34. Prior to occupation a lighting scheme must be submitted for the approval of the Local Planning Authority in accordance with the Institute of Lighting Professional's Guidance notes for the reduction of obstructive light. The scheme must be designed by a suitably qualified person in accordance with the recommendations for environmental zone E2 in the ILP document "Guidance Notes for the Reduction of Obtrusive Light GN01:2011.

35. Before commencement of operation of the approved lighting scheme the applicant shall appoint a suitably qualified member of the institute of lighting professionals (ILP) to validate that the lighting scheme as installed conforms to the recommendations for environmental zone E2 in the ILP document "Guidance Notes for the Reduction of Obtrusive Light GN01:2011

REASON: To protect local amenity from adverse effects of light

36. Prior to the commencement of building works above ground of the relevant part of the development, full details of any internal and external plant equipment and trunking, including building services plant, ventilation and filtration equipment and commercial kitchen exhaust ducting / ventilation, shall be submitted to and approved in writing by the Local Planning Authority. All flues, ducting and other equipment shall be installed in accordance with the approved details prior to the use commencing on site and shall thereafter be maintained in accordance with the manufacturer's instructions.

REASON: To protect local; amenity from adverse effects of noise

37. Prior to commencement an assessment of the acoustic impact arising from the operation of all internally and externally located plant shall be undertaken in accordance with BS 4142: 2014 by a suitably qualified person. The assessment shall be submitted to the Local Planning Authority together with a scheme of attenuation measures to ensure the rating level of noise emitted from the proposed plant shall be less than background. The scheme shall be submitted to and approved in writing by the Local Planning Authority. A post installation noise assessment shall be carried out to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.

REASON: To protect local amenity from adverse effects of noise

38. Hours of operation of any store must be limited to 0800 to 2200hrs and deliveries limited to 0700 to 2300 hrs Monday to Friday. Deliveries shall be limited to 0700 to 1300hrs on Saturdays and Sundays/Bank Holidays. Hours of operation on Sundays and Bank Holidays should be no more than 1000 to 1600hrs.

REASON: To protect local; amenity from adverse effects of noise

39. The development shall be carried out as specified in the approved Arboricultural Impact Assessment & Tree Protection Plan prepared by BOSKYTREES Arboricultural Consultancy dated 31st October 2018 and shall be supervised by an arboricultural consultant, if required.

REASON: To prevent trees on site from being damaged during construction works.

40. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

REASON: To prevent pollution of controlled waters.

INFORMATIVES:

1. The submitted CEMP must include safeguarding measures to deal with the following pollution risks: - the use of plant and machinery - wheel washing and vehicle wash-down and disposal of resultant dirty water - oils/chemicals and materials - the use and routing of heavy plant and vehicles - the location and form of work and storage areas

2. Please note that Council offices do not have the facility to receive material samples. Please deliver material samples to site and inform the Planning Officer where they are to be found.

3. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a license may be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.

4. The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place. Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

5. The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

6. The applicant should note that the costs of carrying out a programme of archaeological investigation will fall to the applicant or their successors in title. The Local Planning Authority cannot be held responsible for any costs incurred.

7. The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

8. This permission does not permit the display of any advertisements which require consent under the Town and Country Planning (Control of Advertisements) (England) Regulations, 2007 or under any Regulation revoking and re-enacting or amending those Regulations, including any such advertisements shown on the submitted plans.

9. This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the [INSERT].

10. Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

11. The further approval of the Local Planning Authority in respect of those matters reserved by condition(s) [INSERT] of outline planning permission dated [INSERT] is required before development commences.

Background Documents Used in the Preparation of this Report:

Application submissions (Initial and Revised/Additional)

Wiltshire Core Strategy Jan 2015

Malmesbury Neighbourhood Plan 2015

National Planning Policy Framework July 2018

Planning Practice Guidance

Application submissions 18/02180/FUL