

## REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>29<sup>th</sup> May 2013</b>		
<b>Application Number</b>	<b>12/00165/FUL</b>		
<b>Site Address</b>	<b>Land to the Rear of Avon Mills, Malmesbury, Wiltshire</b>		
<b>Proposal</b>	<b>Redevelopment to Provide a New Foodstore (Class A1) with Associated Car Parking, Servicing, Pedestrian, Cycle and Vehicular Access (Including Associated Highway Works), Landscaping (to Include Cut &amp; Fill &amp; Formation of Landscaped Earth Berm) &amp; Boundary Treatments.</b>		
<b>Applicant</b>	<b>Simons Developments Limited &amp; Waitrose Limited</b>		
<b>Town/Parish Council</b>	<b>Malmesbury Town Council</b>		
<b>Electoral Division</b>	<b>Minety</b>	<b>Unitary Member</b>	<b>Cllr Simon Killane</b>
<b>Grid Ref</b>	<b>400802 190910</b>		
<b>Type of application</b>	<b>Full</b>		
<b>Case Officer</b>	<b>Brian Taylor</b>	<b>01249 706683</b>	<b><u><a href="mailto:Brian.taylor@wiltshire.gov.uk">Brian.taylor@wiltshire.gov.uk</a></u></b>

Cllr Killane requested that the application be determined by the Area Planning Committee as the proposal could potentially represent a large change to the local area with a large number of local residents expressing their views.

### 1. Purpose of Report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

### 2. Report Summary

The main issues in the consideration of this application are the acceptability of:

- The principle of development in the context of the National Planning Policy Framework, North Wiltshire Local Plan, emerging Core Strategy and the Draft Malmesbury Neighbourhood Plan
- The impact on the historic environment
- The Impact on the landscape
- Design and scale of the development
- Impact on residential amenity
- Ecological implications of the redevelopment of the site
- Impact of the development on archaeology;
- Flooding and Drainage implications
- Impact on highways and highway safety
- Other material considerations

189 letters of objection and 97 letters of support have been received. (additional letters have been received, but have not yet been analysed and update will be reported to the Committee)

A petition supporting the application with 41 signatures and a petition with 66 signatures objecting have also been received.

Malmesbury Town Council object to the application

### **3. Site Description**

The site is located to the north of the roundabout junction of the main A429 and B4042. The site is elevated above the road, although when approached from the south is largely screened by hedgelines and trees on the roadside and boundary of the site. It is within the Malmesbury Conservation Area forming part of the setting of the town, but is outside the framework boundary (it adjoins it, close to Avon Mills).

Approaching from the north the site is visible to the east of the road. This is particularly true when crossing the River Avon road bridge, where the field itself slopes gentle into the Avon valley and the site is clearly visible (rather than just the hedging on the boundary).

The site is also visible from vantage points within the town (such as St John's Street – particularly towards the eastern end – Silver Street which are discussed later within this report). However, because, of its elevated position, the site itself (in its undeveloped state) is not particularly prominent from the town, the most visible parts being the boundary hedging.

To the south and west of the site the B4014 leads down into Malmesbury, to Avon Mills (a complex of listed buildings). Between the road and the site is steep grassed verge which is for the most part heavily planted and treed.

Views across the site from the east of the A429 are possible from a public footpath. These give panoramic views of the historic town in the winter months through the hedges. The site itself (excepting the boundary hedges/trees), in its undeveloped state, is not particularly prominent or even visible.

The site is currently an agricultural field, with a field access from the main A429. It slopes gently to the north.

### **4. Relevant Planning History**

There is no planning history of relevance to this application.

### **5. Proposal**

The proposal is to provide a foodstore (Class A1) with associated car parking, servicing, pedestrian, cycle and vehicular access (including associated highway works), landscaping & boundary treatments.

The applicants have consulted with local residents both prior to submission and whilst the application has been under consideration by the Council, and have made a number of amendments to address concerns such as the impact of the store on the landscape and public and private views; and the impact of the car-parking element of the proposal.

Members will be aware that the Council is considering two retail proposals for Malmesbury:

The first application is submitted by Sainsburys Supermarkets Ltd and Grafton Merchandising GB Ltd (Buildbase) (reference 11/04092/FUL) and is considered elsewhere on this Committee agenda). That application is for full planning permission for a new foodstore, comprising 5, 101 sq. m, gross, 2,744 sq. m. net (including 329 sq.m net of comparison goods sales), associated car parking, petrol filling station and outline planning permission for new B1/B2 units and a unit for Buildbase. The application site is 3.7 hectares, located to the east of the Junction of Crudwell Road (A429) and the B4014, currently comprising Malmesbury Garden Centre which has been located on the site since 1983 (the Sainsbury Application).

The second application is the subject of this report (the Waitrose application).

There are many documents, plans, drawings and other illustrative materials submitted by the applicants that support these applications. Members are encouraged to familiarise themselves with the proposals and accompanying material (all available online) prior to the Committee meeting.

Since the original submission of the planning application in January 2012 there the applicants have sought to respond to concerns and issues that have been raised by consultees, local residents and the Council. A comprehensive set of amendments were received in January 2013. Those amendments are summarised as follows:

- Further traffic calming was required at the vehicular access to the site - the 30 mph zone to be extended farther along the A429 and creation of a 'gateway feature'
- Reinforce existing landscaping/planting with extensive planting within the boundary.
- The crest of the banks was duly raised slightly to ensure that the building is concealed in most views (even before the proposed planting establishes itself), and the planting will now include a large proportion of mature and semi-mature specimens.
- The earth bank in the northwestern corner was a little too steep and appeared artificial. This area will now be treated as a 'natural rock feature'.
- The service yard has been reduced in size, creating sufficient space to form a landscaped bank to mask views from the A429
- Surfacing materials in the car park have now been revised to focus on more natural finishes, such as bonded gravel, rather than tarmac. The planting has also been redesigned to substitute larger soft landscape areas capable of taking mature trees, rather than spreading a larger number of potentially vulnerable small trees around the area.
- Artificial lighting in the car park has been developed, using special fittings on short poles, to minimise spillage outside of the site.
- The car park has been redesigned to leave a large area of landscape intact around the Avon Mills buildings. It could retain much of its current appearance, or provide amenity space for the residents.
- A pelican crossing linking the bridge to the entry steps and ramps.

The application was supported by the following documents:

- Habitat Survey
- Bat Survey
- Arboriculture Assessment
- Landscape and Visual Appraisal
- Statement of Community Involvement
- Town Planning and Retail Statement
- Design and access statement
- Noise report
- Archaeological Assessment

and full plans including:

- Site Layout Plan
- Ground Floor Plan
- Full elevations
- Landscape Master plan
- Roof Plan
- Site Sections
- Landscape Cross Sections
- External Lighting Concept Plan

In addition the applicants have proposed the following matters to be dealt with via a legal agreement::

- Highways Works - Discussions with Highways Department have indicated a likely requirement for the following:
  1. New shared cycleway/pedestrian footway and upgraded bus shelter on the north side of High Street. (Indicative Cost- £75,000).
  2. New pedestrian crossing on High Street (Indicative Cost - £114,000).
  3. New traffic calming gateway feature on A429 north of the proposed site entrance (to act in tandem with introduction of a 30 mph speed limit Indicative Cost - £45,000).
- Travel Plan - A requirement for the preparation and submission of a staff travel plan for agreement by the Local Planning Authority prior to the store opening is acknowledged.
- Car Parking -Wiltshire Council Highways Department have indicated that a detailed Car Park Management Plan will be required to ensure that the proposed car parking spaces remain publicly available private spaces (in accordance with the Council's Car Parking Strategy) and are operated in accordance with the Council's prevailing regime with regard to charging policies etc.
- Town Centre Enhancement Strategy- proposed as the basis for further consultation.
  1. A capped financial contribution of £27,500 to fund the preparation of a bespoke town centre action plan for Malmesbury. The action plan to be prepared by The Retail Group following the approach as set out in the attached proposal document. Importantly, the approach will be inclusive with local stakeholders playing a key role. Ultimately, those stakeholders will form a Town Team to lead the implementation of the action plan (see below). This element would be triggered on commencement of development.
  2. A share of the proceeds of the Waitrose Car Park with a "top up" contribution capped at a maximum total payment of £20,000 per annum towards the implementation of the action plan. This element would be payable at store opening and thereafter the first, second and third anniversary of the store opening (i.e. £80,000 in total).
  3. A financial contribution of £3,000 per annum payable on the first, second, third and fourth anniversary of completion of the action plan (i.e. £12,000 in total) to fund ongoing support of the Town Team from The Retail Group in the form of attendance at a annual review meeting.

At this stage it is envisaged that the implementation contribution will be utilised by the Town Team and could include measures such as:

- public realm improvements at Cross Hayes to enhance the Conservation Area (as per Princes Trust recommendations - "Malmesbury String of Pearls"); or public realm enhancements elsewhere in the town such as new street furniture, signage of landscaping; or
- Christmas lights; or
- promoting the town centre which could include anything from further strategic advice or funds towards promoting events such as speciality markets etc.

## 6. Planning Policy

National Planning Policy Framework (NPPF) –In particular the sections relating to ensuring the vitality of town centres (paragraphs 24 to 27) and the protection of heritage assets (paragraphs 17 and 128 to 134)

North Wiltshire Local Plan 2011- in particular:

- C2 – Community Infrastructure
- C3 – Development Control Policy
- HE1 – Development in Conservation Areas
- NE15 - The Landscape and character of the countryside
- R4 – Proposals outside town centre primary and town centre secondary areas

Wiltshire Core Strategy Submission Draft document July 2012

Planning (Listed Buildings and Conservation Areas) Act 1990

## 7. Consultations

**Malmesbury Town Council** object on grounds of prematurity to the Neighbourhood Plan process; location outside of the framework boundary and within the Conservation Area; set a precedent for other greenfield developments; and not be best location for development and should work with the town to find a new one. The objection is supported by full detailed information which sets out the retail and environmental information. This is available to view on the file and website. (*Note : Malmesbury Town council have endorsed the draft Neighbourhood Plan* ).

**Malmesbury St Paul Without Parish Council:** Object on grounds of prematurity due to the progress being made on the Neighbourhood Plan; The site is a greenfield site within a Conservation Area and in conflict with Policy HE 1; the character and distinctiveness of this site is that of a green field and part of the historic setting of the Silk Mills and the town the proposal is in conflict with Policy NE15; general concerns about the conservation, environmental and archaeological aspects of the application ; similarly on the highways aspects we note consultation has taken place with Wiltshire Highways, however we would wish that the Case Officer is provided with a clear statement that the arrangements being proposed are acceptable and will not cause the road safety environment in the area to deteriorate. Subsequent comments from MStPWPC maintain the objections but welcome the amendments that the applicants made during the process of the application to address local concerns (*Note: Malmesbury St Paul Without Parish Council have endorsed the draft Neighbourhood Plan* ).

**Charlton Parish Council** object on grounds of adverse economic impact on High Street and tourism; Increased traffic through Charlton – even a small increase would compound existing problems; and lights and noise pollution

**WC Highways:** “The proposal takes access from the A429, a National Primary Route. Structure Plan Policy T8 and Core Policy CP62 will need to be considered, the tests being whether the site is within a built up area and, if not, has an over-riding need been demonstrated. As far as the first part is concerned, the site is currently open land at the edge of the built up area. It is not, in (the highway officers view) within the built up area. The second part of the test is,(in the highway

officers view) a planning issue in that an over-riding need can only be demonstrated in planning terms and never in highway terms as no alternative access to the site is available.

Another policy matter to be taken into consideration is Parking Strategy Policy (PSS) Managing publicly available private non-residential parking. The developers will need to address this policy and produce a Parking Management Plan.

As far as detail matters are concerned, the entrance to the service yard is very close to the site entrance with service vehicles having to give way to cars exiting the car park. There is a serious danger that service vehicles could block back on to the main road and the layout and priorities in this area need to be re-considered.

Walking routes to the store from the surrounding areas are very much dictated by the topography and consequently are not ideal. Similarly the walk from the adjacent bus stop involves an uphill walk and the need to cross the whole of the store car park, not a very attractive route. However it would be difficult to accommodate buses within the site, even if operators were able to divert services within timetable constraints.

Two proposed crossings are shown on High Street fronting the site. (The highway officer) considers that at least one of these will need to be a controlled crossing, ideally the one nearest to the bus stops. A shelter and raised kerbs will need to be provided for the new bus stop.

The off-site works, the new access and the Parking Management Plan will need to be secured by means of a legal agreement.”

*Comments following revisions:* Following amendments to the proposals and discussions the Highways Officers raise no objection subject to conditions and legal agreement.

**Spatial Plans** – *The spatial plans team provided initial advice in April 2012 which concluded:*

“In summary the key factors are:

- Both sites are technically out of centre sites.
- Land at Avon Meads is sequentially preferable as it is well related and more accessible to the town centre.
- The GVA retail advice suggests that the Waitrose proposal on land at Avon Meads could function as an edge of centre site.
- There are no sequentially preferable sites in the town centre. Land at Avon Meads is sequentially preferable to the land at the Garden Centre. The Sainsbury’s proposals on land at the Garden Centre therefore fails the sequential test.
- The retail advice suggests that the Waitrose proposals at Avon Meads would not have significant impact on the town centre and that any impact that does result will be outweighed by the potential for ‘linked trips’.
- A further consideration with the location of the garden centre site is that it is an extant local plan allocation for employment that is being proposed to be taken forward in the core strategy. Whilst employment allocations should not be retained for the sake of it, in this case the location is not sequentially preferable for retail development and remains a good location for employment development.
- Both proposals are premature of the Wiltshire Core Strategy and the process for identifying specific sites for development.
- Specific sites for development, including retail, could be identified through the Malmesbury Neighbourhood Plan. There is a clear appetite to do this.
- Allowing this proposal could predetermine the location of retail development in the town and reduce the ability of local community to input into the allocation of specific sites in Malmesbury.
- However if land at Avon Meads is the only sequentially preferable site then consideration should be given to whether there is any justification for allowing the site to come forward ahead of the neighbourhood plan. The retail advice suggests that the Waitrose proposal on

land at Avon Meads could meet retail need in a manner that is complimentary to the existing town centre function and this could bring significant benefit to the town. However this must be balanced against other site specific considerations such as the strong objection to development on the site because of the impact development would have on the historic setting of the Conservation Area and Abbey.

In conclusion, my opinion would be that land at the Garden Centre is not sequentially preferable for retail development, it would be likely to lead to a negative impact on the town centre, and it is therefore contrary to policy. Land at Avon Meads could function as an edge of centre store and bring significant benefit to the town as it will meet retail need and potentially claw back trips for convenience shopping to other towns, in a location that has the potential for linked trips to the town centre and where impact on the function of the town centre is minimised. Ideally a site for retail should be brought forward with the local community through the neighbourhood planning process, but if this is the only sequentially preferable site, then consideration should be given to the benefits the proposals on land at Avon Meads could bring to the town. This must however be weighed up against site specific factors such as the landscape and urban design objection to development on this site. In my opinion this would need to be resolved if consideration was to be given to the site coming forward prior to the identification of a site in the neighbourhood plan.

Should you be minded to permit the development on land at Avon Meads it is essential that any proposal is complimentary to the existing uses in the town centre. GVA suggest that this could be achieved on land at Avon Meads by ensuring the car park is available for those using the town centre for linked trips, appropriate signage, way marking and linkages and the exclusion of, for example, a coffee shop, pharmacy, post office and extensive range of non food shopping – see GVA retail advice for further information.”

The team asked for additional information relating to a sequential assessment of the Station Yard site and the impact of the comparison provision in the Waitrose application on the town centre . This additional information was submitted and in April 2013 the Spatial Plans team concluded:

***“A sequential assessment of the Station Yard site***

Further information demonstrates that the Station Yard site is unsuitable and unavailable for a new foodstore. Agents for Waitrose suggest that it would be difficult and constrained to develop and result in a sub-optimal location and a costly store to construct. A feasible site would be difficult to assemble and would not be available for some time, if at all.

Work by the neighbourhood planning group for Malmesbury supports the general conclusion that Station Yard is unsuited as a foodstore site. Arguably, it is also no more sequentially preferable than the location proposed by Waitrose. Their site at Avon Mills is also considered within the scope of ‘edge of centre’ by the draft neighbourhood plan and is its preferred location subject to several requirements and meeting design criteria.

***Impact of the comparison provision in the Waitrose application of the town centre***

Agents for Waitrose have submitted further information showing a minimal impact from Waitrose trading in comparison goods. They also indicate the limited range of comparison goods typically offered for sale. There would not seem to have any significant impacts upon the current style and form of shopping in Malmesbury town centre as result of selling comparison goods.

The addition of a foodstore represents quite a fundamental change for the town centre which can be said to bring with it some uncertainty for its vitality as well as opportunities. The future of the town centre is a focus for the emerging neighbourhood plan which will represent the most up to date and relevant detailed framework for future investment. This includes, subject to the current consultation, proposals to alter the town centre boundary taking account of the trading anchor a new foodstore represents. It would seem prudent to impose planning conditions that limit the scale and range of comparison goods a foodstore can offer in order to create greater certainty and confidence for investment by new and existing town centre retailers whilst they adapt to a quite profound change in trading conditions.”

**Environment Agency** – “We have reviewed the Flood Risk Assessment (FRA) undertaken by BWB (dated the 9th January 2012). We have also received and reviewed a FRA Addendum (Rev B, dated 29th February 2012). Following consideration of the submitted information I can confirm we are satisfied that the proposals will not increase flood risk on site or off site. We therefore have no objection to the planning application”, subject to appropriate conditions and informatives: (conditions detailed at end of report)

**WC Principle Ecologist** – No objection

**WC Rights of Way Officer** : Initial comments -“Footpath Malm19 comes in on the east side of the A429, there is then some demand to get towards the town centre. At the moment the routes people take can be quite random (and not very safe) as there are no crossing facilities on any of the arms.

The additional of new crossing facilities on the NW arm of the roundabout would provide a safer way of negotiating the roundabout for users of Malm19. This is likely to lead to more people going directly west from Malm19, across the A429 and linking onto the proposed footway/cycleway next to the NW arm of the roundabout, ie this development will focus footpath users to using this route. Therefore a 1.2m wide stone dusted path linking from where the ped/cycleway turns north into the store next to the roundabout, along to opposite Malm19 is felt to be justified from this development. The design of this path is to be approved by the rights of way section before construction begins, it is to be constructed at the same time as the ped/cycleway.” Following discussions with Highways Officers these requirements are not being pursued by Wiltshire Council.

**WC Public Protection (Environmental Health): Air Quality:** Whilst there is a Transport Assessment, I would have expected to have seen an Air Quality Assessment accompanying this document for such a development. *(NB: An Air Quality Assessment has been submitted and the Public Protection Officer has confirmed that this is acceptable, subject to the submission of a Construction Environment management Plan as indicated within the report.)*

**Noise:** In section 6.0 relating to Noise from mechanical services plant, the consultant is recommending a noise condition of NR30 at night, which equates to a Rating Level of 35dB. Whilst BS4142:1997 recognises these levels as being low, this would lead to an excess of Rating Level over background level of +9dB compared against the lowest background noise level of 26dB LA90. This would in my opinion, cause an adverse impact on these receptors and it is normal practice for supermarkets to design fixed plant in order to comply with a Rating Level of -5dB below the lowest background noise level on ‘new build’ designs . This should certainly be possible in terms of siting and plant selection.

I would therefore recommend that all fixed plant should be so sited and designed as to not exceed a Rating Level of 21dB at any noise sensitive receptor when measured in accordance with BS4142:1997.(ie -5dB below LA9026dB).

I also have a concern regarding the impact of night-time deliveries. I can see that the consultant has assessed the likely impact on nearby receptors in terms of LAMax’s received, but again it is normal for such activities to be assessed using BS4142:1997, which, at night, is a 5 minute assessment and may suggest that deliveries at night could provoke complaint. I am therefore minded to recommend that deliveries do not take place between the hours of 23:00hrs and 07:00hrs.

**Wiltshire Council Archaeologist:** The evaluation undertaken by Northamptonshire Archaeology revealed some good evidence for the Late Iron Age and Romano-British settlement in the southern half of the site. On this basis further investigation and excavation will be necessary if this site is to be developed. If planning permission is granted it is requested that a planning condition to be attached to enable this further work to be done – pre-commencement.

**Wessex Water** – Wessex Water: have confirmed that water supply can be provided; assume that surface water will be attenuated to 'greenfield run-off (see EA comments above); there should be separate systems for drainage of the site; there is capacity in the local public sewer, but a detailed engineering report will be required to confirm point of connection; and there is capacity available for sewerage treatment to serve the development (informatives to be added to any decision)

**English Heritage:** The full version of the comments is available on the file: Initial comments can be summarised

“It is our view that in its impact on the character and appearance of the conservation area and to the settings of the Grade II Listed St John's Bridge and Avon Mills the application will cause substantial harm to designated heritage assets. From a broader perspective the overall setting of the town will be substantially harmed to the extent that it is reasonable to conclude that the setting of the Abbey, a Grade I Listed Building and its defining feature, must also be compromised.

We do not believe that the application has presented a description of the significance of relevant heritage assets or their setting(s) in proportion to their importance in accordance with policy 128 of the National Planning Policy Framework (NPPF) and as a consequence the full scope of the impact on these from the development proposals is under-estimated. In that substantial harm will result policy 133 of the NPPF applies, and the application therefore needs to demonstrate that such harm is necessary and outweighed by substantial public benefits.”

Following further submitted information, whilst maintaining their 'in principle' objection, English Heritage commented that (in summary, a full version of their comments is available on the file):

“There have been further design changes to reduce the profile of the scheme. We are pleased that the relationship with Avon Mills has been improved.

The landscaping and planting regime has been modified. It is difficult to tell from what is provided whether this will actually fit comfortably in the surrounding landscape as well as eliminate all signs of the scheme from outside the site (entrances excluded), deaden noise and avoid being able to artificial lighting when dark, but we are happy to leave judgement on the efficacy of this to the discretion of your authority.

In accordance with policy 133 of the NPPF, substantial harm to heritage assets needs to be outweighed by substantial benefits. While such a foodstore will no doubt reverse some of the economic leakage the town currently experiences, it would seem that there may be some degree of trade draw from existing local outlets, and the value of preventing that leakage is presumably underpinned by a demonstration of linked journeys resulting in an uplift of trade to town centre businesses. It is therefore a question of whether the specific contributions identified in the Planning Obligation, though valid and welcome, when added to the economic impacts arising specifically from the nature of the scheme, will constitute benefits that are sufficiently substantial.”

(The Council, the applicants and English Heritage discussed what a package of benefits for the town might cover in the event of an approval. While that decision would only take place on the basis that the store would not harm the town's economic profile and performance and indeed help to redress trading leakage, English Heritage suggested that it is useful to think of such investment as a once-in-a-generation opportunity and exploit it as broadly as possible to help re-define the town's unique selling points and pro-actively add sustainable value to its offer. English heritage acknowledged the applicants offer to fund an Action Plan for the and suggested that the applicants provide further information to help demonstrate that the scheme will deliver substantial public benefits as a necessary NPPF response to the substantial harm (as interpreted by English Heritage) to heritage assets.)

**WC Senior Conservation Officer:** “Malmesbury is a unique historic town, the oldest Borough in England, created by charter c. 880AD. It is set in a dramatic location on a ridge between two

branches of the Avon. Large areas of the mediaeval and earlier fortifications are still clearly visible and the topography has ensured the retention, around the historic core, of a compact urban form, ringed by the rivers and the open, green land immediately beyond. The current integrity of this green ring, which has survived from Saxon times, can clearly be seen in Fig.14 of the Malmesbury Conservation Area Appraisal.

These green river valleys and adjoining open green/agricultural land are an essential component of the character and setting of the town, completing a scene within which the town can be seen and a backdrop when looking to the countryside beyond.

The conservation officer would have fundamental concerns about any urbanized development, with building, extensive remodelling of the terrain, lighting and large areas of hard standing on this very historic site, development of which would represent a huge sacrifice of over 1000 years of history, which once lost can never be regained for future generations (PPS 5 policy HE9.1).

The agricultural land forming the application site rises up from the valley to the east of the Avon Mills, forming a continuous green ring around the town. There are important views both into and out of the town over this land, where it is either a backdrop to the historic buildings or in the foreground of the view:

There are significant views out from Silver Street/Back Hill where the field acts as a backdrop to and integral component of the setting of the listed Avon Mills Complex, emphasizing the sharp division between the town and the countryside beyond. Similarly clear views may be obtained from Baskerville, east of St. John's Street, and the footpath descending to it from the north, where the field can again clearly be seen as the setting of the listed mills.

The view into the town over this field from the footpath on the far side of the bypass gives, even with full foliage on the trees and tall maize in the field, a panorama of the historic town including the Abbey and the Avon Mills. A very high proportion of the buildings seen are listed, the whole being an urban composition and setting of the highest quality and significance.

The inclusion of these fields in the conservation area is an obvious recognition of the very important role they play in forming and framing the setting of the historic town.

The unusual integrity of Malmesbury, its setting and its survival since Saxon times had led to frequent plaudits not least from John Betjeman, who said: "Malmesbury is a jewel in the crown North Wiltshire, the queen of hilltop towns."

In my view, lighting, substantial new building and hard-standing, alterations to the landform and substantially increased planting will fundamentally alter the green/open character and appearance of the conservation area at this point, destroy the integrity of the green ring around the town, as well as obscuring views both into and out of the town and preventing the ready appreciation of the relationship between the town and its setting. I consider that this will be to the gross detriment of the setting to the historic town and the many listed buildings and structures which it contains. In addition the ability to read the origins of the town and development as a fortified promontory would be critically diminished. Such an outcome would clearly be contrary to the provisions of PPS 5, in particular policies: HE 7.2; 7.4; 7.5; HE9.1; 9.2 & HE 1.1.

**WC Urban Design/Landscape Officers** - (these comments have been summarised - a full version of the comments is available on the file or website):

The applicant's submitted Design & Access Statement (says that they take full account of Malmesbury's historic environment, seeking to protect and enhance it through good design and appropriate mitigation strategies. The need for 'mitigation' emphasises the significant harm this development will have on the setting of the historic town. The key element of the applicant's mitigation strategy appears to be that the impact of the proposals can be moderated on the basis of screening the proposed foodstore building and car park from the immediate surroundings and from certain public viewpoints where the field can be clearly viewed. My comments indicate that

this fails to appreciate the importance of the local context, and the scale of the screening measures proposed will in themselves have an adverse impact on the historic setting, and are therefore inappropriate.

In recent years the importance of safeguarding this setting from modern development pressures has been recognized in town planning with the Development Framework Boundary in this area drawn tightly along the urban edge of the historic town on the 'north' side of the River Avon and the Malmesbury Conservation Area extending well beyond this boundary to encompass the 'green' landscape, including the application site. The Malmesbury Conservation Area Management Plan, adopted February 2010 as supplementary planning guidance (title abbreviated as 'CAMP' below), and the associated Malmesbury Conservation Area Appraisal (April 2007) (title abbreviated as 'CAA' below) emphasize the importance of protecting this unique setting and character in guiding the application of Local Plan policy.

In this context the North Wiltshire Local Plan Policies HE 1: Development in Conservation Areas and NE15: The Landscape Character of the Countryside are applicable to this site. HE1 says that development will only be permitted where the proposal will preserve or enhance the character or appearance of the area. NE15 similarly says that development will be permitted if it does not adversely affect the character of an area and features that contribute to local distinctiveness.

The proposal will not achieve this. Losing the open field to development will critically diminish the historic setting and character explained above in the following ways. These aspects will have a cumulative effect on eroding both the appearance and experience of this setting:

1. The foodstore bulk, its service yard, earth berms and extensive customer car parking will create a significant visual and physical barrier, and break in the ring of 'green' landscape around the base of the historic town mapped on the plan page 18 of the CAA as making a contribution to the character of the Conservation Area.
2. The field is also part of the green 'rural' buffer stretching between the historic town and its nearest defined settlement at Burton Hill,
3. The continuation of the green landscape through the site around the 'toe' of the historic town is a consistent and particularly apparent graphic feature on historic plans through the ages and aerial photographs (see page 13: Fig 14 of the CAA shown above). This association will be lost by development of the field:
4. The foodstore, associated earth berms and substantial planting on top of these berms will add a significant mass and height across the field which is already elevated in relation to the adjoining 'green' landscape. This will have the effect of diminishing the visual scale and drama of the historic town rising up from the river onto the plateau (including that of the grade II listed Avon Mills) within the setting of the site and where viewed with it (see point 6 below):
5. The proposed earth berms and planting on top of these berms will create an abrupt and distinctly unnatural change in the characteristic topography of the field and with that of the related green landscape on each side:
6. The mass, height and scale of the foodstore and associated earth berms will detract from and diminish the setting of the historic town including Avon Mills in views to and from the green landscape and countryside. Light levels and spill from external lighting necessary to adequately service the proposed function also has the potential to be visually intrusive on this setting:

The urban design officers comments have indicated how he considers the proposed development is inappropriate in this sensitive setting. Consideration of planning policy and guidance in relation to this setting together with the topography of the 'green' landscape would appear to have focused

modern development on the hinterland to the north of the town, distanced from the setting of the historic town rising up onto the plateau.

Possible additional long stay car park for the town: The applicant refers in their submitted D&A Statement page 4 2.3 para1 to the possible incorporation of a car park within the site made in the 'CAMP'. (see page 26 of the CAMP-development guideline number 4 which states "consideration of the land to the south of Avon Mills as a possible additional car park for Malmesbury to relieve the congestion in the main body of the Conservation Area.....").

This text in the CAMP in no way indicates that this location has been found suitable by Wiltshire Council for an overflow car park which the D&A Statement suggests. Furthermore the CAA (page73 3.18.14) indicates this "could be considered as one option" i.e. other sites may be found more appropriate.

## 8. Publicity

The application was advertised by site notice, press advert and neighbour consultation. In addition the applicants carried out their own consultation activity and the Malmesbury Neighbourhood Steering Group have engaged the community in discussion/consultation about retail provision in general and this application in particular.

189 letters of **objection** have been received making the following points:

- Increased risk of flooding and pollution from surface water run-off
- Impact on views of Malmesbury from A429 and Baskerville
- Adverse impact on high street and Co-Op store
- Premature in terms of Neighbourhood Plan /Localism
- Will create jobs which will lead to pressure for new homes
- Development of a Greenfield site in open countryside – other brownfield sites are available
- Fails to preserve or enhance the Conservation Area or setting of the listed buildings
- Ecological concerns/impact on wildlife
- Additional traffic on A429 and High Street
- New pedestrian junction is close to road junction
- Pedestrian access is poor , particularly use of steps to site.
- Unsustainable development
- Overdevelopment of this historic town
- Potential for noise and light pollution
- Store is too small for Malmesbury and in the wrong location

Petition with 66 signatures objecting on following grounds: Greenfield site; no identified need; negative impact on Malmesbury; no need for extra parking; negative impact on environment due to traffic, noise, light pollution and loss of habitat.

97 letters of **support** have been received making the following points.

- May benefit town centre shops subject to requirements – footpath into town centre; pedestrian crossing at St John's Bridge; store parking to include public parking; no right turn on egress from site
- Will retain shoppers in and attract shoppers to Malmesbury
- No flood risk if plans properly carried out
- No negative impact on high street as restricted range of goods proposed and sensitive design
- Proposal will have less impact on town centre than Sainsbury's
- Co-op store is not adequate and competition will be good
- Site within walking distance of town centre
- Site is not of great amenity value (only to a limited number of residents)

- Support for Waitrose as a supermarket operator
- Will bring employment and economic growth
- If new supermarket is needed this is the best site
- Will reduce residents trips to Chippenham and to (in Gloucestershire) Cirencester and Tetbury

A petition supporting the application with 41 signatures has also been received

## **9. Planning Considerations**

### **Environmental Impact Assessment**

A screening opinion was sought in 2012 to establish whether an Environmental Impact Assessment (EIA) was required to accompany an application for the foodstore. At that time the Council considered that there was no requirement for an EIA and set out its reasons in a letter of 28/0212. However, that opinion did not expressly address the concerns subsequently raised in terms of heritage and landscape issues. The applicants submitted a further request and the Council has produced a revised Screening Opinion addressing the relevant issues. The conclusion remains that an EIA is not required in support of this application.

### **The principle of retail development.**

The adopted North Wiltshire Local Plan 2011 (2006) provides the current statutory local level planning policy for North Wiltshire. The site lies outside the framework boundary and is therefore in countryside in policy terms. The plan defines the primary and secondary shopping retail frontage of Malmesbury town centre . Policy R4 only allows retail proposals on the edge or outside the defined town centre shopping areas when certain criteria are met. These criteria are that:

- i. There is a need for the development.
- ii. It can be demonstrated the sequential approach has been followed.
- iii. Proposals do not individually or cumulatively undermine the vitality of the existing centre.
- iv. The proposal is accessible by a range of walking, cycling and public transport.

Criteria (i) is no longer specifically contained within national policy. However criteria ii-iv and are reflected in the requirement to provide sequential and impact assessments.

With regards to future planning policy, the Wiltshire Core Strategy Pre-submission Document has been submitted to the Secretary of State for independent examination. It is proposed that the Wiltshire Core Strategy will supersede all the Structure Plan policies which are relevant to Wiltshire, and that it will also replace a number of the policies in the North Wiltshire Local Plan. Paragraph 216 of the NPPF indicates that decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation of the plan; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF. In regard to retail the proposed core policy 38 requires all retail uses that are not within primary and secondary retail frontages to be accompanied by an impact assessment. It also requires such proposals to meet the sequential approach.

The site lies outside the defined development framework. It is a Greenfield site with no allocation. The Pre-Submission Core Strategy also includes a strategy for each community area including Malmesbury. These strategies identify issues and considerations, as well as housing and employment requirements. In regard to retail one consideration is:

“there is little capacity for additional convenience retail provision in Malmesbury. However, there has been market interest and as many residents from the town travel outside of the community area to shop, there may be scope for an appropriate scale of supermarket development at Malmesbury during the plan period, providing this contributes towards

strengthening the town centre, be of high quality design and sensitive to the historic environment”.

It is acknowledged therefore that whilst there is little capacity for convenience retail use in the town there could be greater capacity if retail expenditure were clawed back from supermarkets in other towns such as Chippenham and Cirencester.

Core Policy 38 (‘Retail and leisure’) of the pre-submission draft Core Strategy sets out that “All proposals for retail or leisure uses on sites which are not within a Primary or Secondary Retail Frontage, including extension of existing units, must be accompanied by an impact assessment which meets the requirement of national guidance and established best practice, and demonstrates that the proposal will not harm the vitality or viability of any nearby centres. All such proposals must also comply with the sequential approach, as set out in national guidance, to ensure that development is on the most central site available.”

In determining retail proposals the North Wiltshire Local Plan Policy R4 is still relevant (in that it accords with the NPPF policies in relation to the sequential test and assessment of impact). Policy R4 states that retail proposals outside of defined town centre shopping areas will only be permitted where: the sequential test has been followed and there are no other sequentially preferable sites; the proposal does not undermine the vitality and viability of the existing centre; and the proposal is accessible by a range of means.

The Council instructed consultants GVA (in January 2012) to prepare an independent review of two applications for new foodstore proposals in Malmesbury. A full report was received from GVA dated 27<sup>th</sup> March 2012. A full version is publicly available on the website. The report concludes in terms of ‘need’ that:

“we consider there is a case for a larger food store in Malmesbury in order to; increase market share and establish more sustainable convenience shopping patterns; provide additional choice and competition to the existing Co-op Stores; and provide an improved main food shopping offer.”

And in terms of the sequential test that:

“we consider that the Waitrose site could function as an edge of centre location in PPS4 terms with appropriate conditions. In any event, policy EC5.2 of PPS4 would suggest differentiating between out of centre proposals. The preference should be given to sites which are well served by choice of transport and which are closest to the centre and have a higher likelihood of forming links with the centre. In these circumstances, we consider that Waitrose would be regarded as a sequentially preferable site in the circumstances of Malmesbury.”

And in terms of impact on the town centre:

“In these circumstances, while neither proposal is likely to result in the closure of the town centre Co- op, or undermine the wider strength and attractiveness of Malmesbury town centre, we consider there is a material difference between the Waitrose proposals and Sainsbury’s.”

The report concludes with these paragraphs:

“In these circumstances having regard to policy EC17, we do not consider the Waitrose store is likely to lead to any significant adverse impact on the vitality and viability of Malmesbury town centre. The proposal will have an impact on existing convenience retailers, and to a lesser extent comparison retailers but this will be mitigated by the possibility of linked trips. In these circumstances we would recommend the Council balances this negative impact of the proposals against

the additional benefits of providing choice and competition, and addressing the identified need for improved convenience retail.

We consider the Sainsbury proposals raise more significant concerns against Policy EC17. Specifically, if the Council concludes that the Waitrose proposed site is suitable for new food store development (having regard to its wider policy consideration of conservation area, listed building, access and other issues) we consider this site would be sequentially preferable to Sainsburys. As such, the Sainsbury's proposals would fail to comply with the sequential approach which would in itself be a reason for refusal. Furthermore, at the levels of impact indicated, we consider the Sainsbury proposal would have much more significant impact on both convenience and comparison retailers in the town centre. While the store would also provide choice and competition, and generate employment and other assets, we consider the impact implications of the centre are much more significant, which would shift the planning balance."

It is clear from the above that the Council's consultants consider that this proposal (The Waitrose application) would be unlikely to lead to any significant adverse impact on the vitality and viability of Malmesbury town centre. There will be an impact on existing convenience and comparison retailers, although this adverse impact could be mitigated by linked trips. Any adverse impact that there may be also needs to be weighed against any benefits arising from provision of improved choice and competition and addressing the identified need for improved convenience retail.

It should be noted that since the report was commissioned and delivered the National Planning Policy Framework (NPPF) has replaced Planning Policy Statement 4 as the guidance on retail planning matters. However, Policy EC17 which is referred to in the above conclusions is reflected in NPPF in paragraphs 24 to 27:

"24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale."

"26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.

The policy approach in the NPPF to assessing retail proposals, in terms of the sequential and impact assessments required, is therefore of similar effect to the previous policy in PSS4. On

the basis of the assessment provided by the Council's advisors Officers consider the site of the Waitrose application is sequentially preferable and is unlikely to have any significant adverse impact upon the vitality and viability of Malmesbury town centre. Whilst it is likely the proposal will have an impact on existing convenience retailers, and to a lesser extent comparison retailers this will not be significant and is expected to be mitigated by the possibility of linked trips.

Therefore the proposal accords with Development Plan and national retail planning policy.

## **The Neighbourhood Plan**

The Malmesbury Neighbourhood Steering Group has recently published for consultation 'The Draft Malmesbury Neighbourhood Plan'. The consultation period for this document ended on 26<sup>th</sup> April. The content of the Draft Plan is important element of the Council's consideration of the proposals and the Steering Group have committed to providing as much of the consultation responses as possible to members prior to making a decision. Members are encouraged to familiarise themselves with the contents of the whole of the Draft Plan but certain extracts are of particular relevance.

Section 3 of the Draft Plan refers to retail in the town, with the first section of the chapter dealing with the supermarket proposals. Reviewing potential sites for a supermarket was one of the key objectives identified. The Malmesbury Community Area Strategy identified in the draft Wiltshire Core Strategy suggests that there might be scope for a supermarket and initial public consultation by the MNSG:

"found that the majority of residents would support a new supermarket in the Malmesbury area (70% for, 30% against). However the majority would not support a supermarket if it had a negative impact on Malmesbury High Street (58% against, 42% for). So while residents want a new supermarket they also want to protect Malmesbury's High Street shops."

Having identified that there is both a need and support for a supermarket in Malmesbury the MNSG reviewed a number of sites and came to the conclusion that the most appropriate site is the site subject of this application:

"The Avon Mills (Land SE of) site is the preferred site out of five potential supermarket sites that were assessed in the MNSG site selection process. That process involves rating sites by reference to criteria for location, access, buildability, conservation and environment that address issues 5 to 8 above. That site selection process was endorsed by the MNSG Community Engagement.

We know that this site is available for development because it is the subject of a planning application .....

60% of respondents to the Community Engagement agreed with our preliminary ratings of five supermarket sites which placed this as a preferred site.

While other supermarket sites are being investigated, at the time of publication of this draft, the above site is both preferred and deliverable."

As such the Draft Neighbourhood Plan includes a policy (Policy 6) to the effect that "*Permission will be given to develop a supermarket on the Avon Mills (Land SE of) site*"

The Draft Plan goes on to list requirements for the proposed supermarket: Including 218 car parking spaces; pedestrian and cycle links to and within Malmesbury Town Centre; Measures to minimise the impact on views and heritage setting; Measures to minimise the impact on Neighbours; Measure to minimise the of all the Avon Mills buildings, St John's Street and the Lower High Street. And in order to integrate the store with the Town Centre financial contributions will be sought for: a shuttle bus into town; support for a 'Town Team' to manage the development

of Malmesbury's retail economy; Improvements to identified sites in the town to enhance its retail performance.

The Draft Neighbourhood Plan has made excellent progress as a frontrunner project. The work carried out by MNSG has been invaluable in seeking local views, identifying issues and proposing solutions. Wiltshire Council acknowledges the valuable work that has been done. However, it is also acknowledged that until the Plan is finally adopted it is considered to carry little weight in planning terms. Whilst the decision on the Filands residential planning appeal is currently the focus of some dispute between the appellants and the Secretary of State, the Inspectors comments are of some relevance to the weight that can be given to the Draft Neighbourhood Plan.

An assessment of the response to the Draft Neighbourhood Plan is not yet available. Officers will update Members at the Committee meeting when more detailed information is available.

Both the retail assessment and the Neighbourhood Plan carried out assessments of alternative locations including the Sainsburys application site and other potential development sites in and around Malmesbury. However none were found to provide the a site so well located in relation to the town centre and allowing for a size of store that would meet locally identified need.

Both the GVA retail assessment and the Draft Neighbourhood Plan identify benefits from a supermarket proposal on this site – the potential for linked trips and the store being complementary to the function of the town centre. Additional benefits such as highways improvements, pedestrian and cycle access improvements, travel plan and town centre enhancement strategy are also proposed as part of this proposal.

### **Prematurity**

The issue of prematurity in the context of the emerging Core Strategy and the Neighbourhood Plan has been raised by a number of parties. The NPPF, in particular paragraphs 14 and 216, provides the approach required when a LPA is progressing a new draft plan. The issue of prematurity is capable of constituting a potential form of harm to be considered in a decision-making process; it is another material consideration to be weighed in the balance.

The Council needs to consider whether this application is premature and if so what the consequences are. Members will be aware of a disputed Inspectors report relating to an appeal at Filands in relation to residential development. Whilst that decision is still in dispute the conclusions reached in terms of prematurity reflect the approach adopted elsewhere by the Inspectorate and the Secretary of State in planning appeals and reflects the policy approach of the NPPF. In this respect the Inspector's approach at paragraph 90 is useful:

*"I have considered whether allowing the development proposed now would have such a negative community effect, through prematurity, as to prejudice the ability of any future adopted [draft CS or NP], to influence the siting, location or phasing, of new development either within the wider district as a whole or as regards this market town in particular. But I have concluded that there are no such significant negative effects sufficient to outweigh the presumption in favour of sustainable development."*

Given that both draft Core Strategy (in proposing that additional retail development is required) and the DNP (by proposing this site for a food store) give strong indications of how the Council and community see retail development progressing there are considered to be no significant negative effects sufficient to outweigh the presumption in favour of sustainable development. Therefore officers consider that it would not be justifiable to refuse planning permission simply on the basis that the proposal is premature.

Wiltshire Council, in agreement with the applicants had intended that the application should only be reported to the Area Planning Committee after the consultation period on the draft Neighbourhood Plan had closed. The application was scheduled to be determined at the April 24<sup>th</sup> meeting. However, the consultation period was subsequently extended to take account of the Easter break and only ended on 26<sup>th</sup> April (two days after the April NAPC). It was recognised by

Officers, members and the applicants (and the neighbourhood Plan Steering Group and other third parties) that it would be more appropriate to determine the application after the consultation period, so the application was rescheduled for this Committee..

Some objectors have argued that no decision should be taken on these applications until the Neighbourhood Plan is finalised and adopted. The Council has in the past indicated that it may favour that approach. However, it is clear that both the development control process (administered by the Council) and the policy formulation work undertaken by the Neighbourhood Plan steering Group has progressed to a stage whereby conclusions on key issues – relevant to both the Waitrose and Sainsbury’s applications – can be made having regard to the overarching national policies set out in the NPPF.

### **The impact in the historic environment**

The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory duties for local planning authorities in assessing proposals that affect a heritage asset. Section 66 states:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority ..... shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”.

Section 72 states:

“... with respect to any buildings or other land in a conservation area..... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

The National Planning Policy Framework (NPPF) sets out the principles by which planning decisions should be made. Paragraph 17 states that planning should:

“conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations”

The NPPF goes on (at paragraphs 128 -134) to elaborate on the requirements for applications that affect heritage assets:

“In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance...”

“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal”

“In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.”

The NPPF goes on to advise that when considering the impact of a proposed development on the significance of a designated heritage asset (such as a conservation area, *great weight* should be given to the asset's conservation. The more important the asset, the greater the weight should be. It explains that 'significance' can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.

The NPPF provides that where a proposal will lead to substantial harm or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve *substantial* public benefits that outweigh that harm or loss. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. At paragraph 138 the NPPF states that "Not all elements of a .... Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area .... should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area .... as a whole."

The Councils own conservation and landscape officers have raised concerns about the principle of development of this site, as has English Heritage.

Malmesbury is a unique historic town, the oldest Borough in England, created by charter c. 880AD. It is set in a dramatic location on a ridge between two branches of the Avon. Large areas of the mediaeval and earlier fortifications are still clearly visible and the topography has ensured the retention, around the historic core, of a compact urban form, ringed by the rivers and the open, green land immediately beyond. The current integrity of this 'green ring', which has survived from Saxon times, can clearly be seen in Fig.14 of the Malmesbury Conservation Area Appraisal.

These green river valleys and adjoining open green/agricultural land have been identified as an essential component of the character and setting of the town, completing a scene within which the town can be seen and a backdrop when looking to the countryside beyond.

Concerns have been raised by the Council's own Conservation, Landscape and Urban Design Officers about *any* development here, with building, extensive remodelling of the terrain, lighting and large areas of hard standing on this very historic site.

The agricultural land forming the application site rises up from the valley to the east of the Avon Mills. There are views both into and out of the town over this land, where it is either a backdrop to the historic buildings or in the foreground of the view:

There are views from Silver Street/Back Hill where the field acts as a backdrop to and integral component of the setting of the listed Avon Mills Complex, emphasizing the sharp division between the town and the countryside beyond. Similarly clear views may be obtained from Baskerville, east of St. John's Street, and the footpath descending to it from the north, where the field can again clearly be seen as the setting of the listed mills.

The view into the town over this field from the footpath on the far side of the bypass gives, a view of the town including the Abbey and the Avon Mills. A very high proportion of the buildings seen are listed, the whole being an urban composition and setting of the highest quality and significance. The inclusion of these fields in the conservation area is an obvious recognition of the very important role they play in forming and framing the setting of the historic town.

In the adopted Malmesbury Conservation Area Management Plan General Proposal C states:

*"That in considering development proposals account is to be taken of the comments relating to and features identified in the townscape and character analysis of the Malmesbury Conservation Area Appraisal."*

In the Appraisal the significant features identified include “*The view south-east from Back Hill to open countryside*”: Policy HE1 of the North Wiltshire Local Plan 2011 states:

*“In Conservation Areas, proposals for development..... will only be permitted where the proposal will preserve or enhance the character or appearance of the area. Open spaces, village greens, gaps between buildings, fields, gardens and trees that provide attractive views and vistas to, from and within public areas will be protected from development that would fail to preserve or enhance the character or appearance of a Conservation Area.”*

However, the Malmesbury Conservation Area Management Plan does indicate that the site could be used for additional car parking):

“Area 18 (River Valley – Tetbury Branch) Development Guideline 4: Consider land to the south of Avon Mills as a possible additional car park for Malmesbury, to relieve the congestion in the main body of the Conservation Area which, at present, seriously detracts from its character. Any permission granted should however insist on very high standards of landscaping and screening to reduce the impact on the river valley and views of the town.”

English Heritage have also raised concerns. In their initial response to the submitted application the organisation made the following comments (extracts from a letter dated 17<sup>th</sup> May 2012):

“It is our view that in its impact on the character and appearance of the conservation area and to the settings of the Grade II Listed St John's Bridge and Avon Mills the application will cause substantial harm to designated heritage assets. From a broader perspective the overall setting of the town will be substantially harmed to the extent that it is reasonable to conclude that the setting of the Abbey, a Grade I Listed Building and its defining feature, must also be compromised.

We do not believe that the application has presented a description of the significance of relevant heritage assets or their setting(s) in proportion to their importance in accordance with policy 128 of the National Planning Policy Framework (NPPF) and as a consequence the full scope of the impact on these from the development proposals is under-estimated. In that substantial harm will result policy 133 of the NPPF applies, and the application therefore needs to demonstrate that such harm is necessary and outweighed by substantial public benefits.”

and

“Policy 9 of the NPPF emphasises that sustainable development involves seeking positive improvements in the quality of the built, natural and historic environments taking account of local character (policies 17, 58 & 61), and policy 6 highlights that sustainable development constitutes compliance with policies 18 to 219 as a whole.

In that there is a significant departure from the policy provisions of the NPPF we do not believe that this application constitutes sustainable development and would endorse any decision of refusal.”

The applicant has met with English Heritage and the Council to attempt address the concerns summarised above, through additional assessments and revised plans. However, English Heritage has subsequently reaffirmed its ‘in principle objection’, but acknowledged that the revisions do constitute an improvement on the originally submitted design and reduce and mitigate impacts associated with the specifics of the scheme. EH also indicated that even where there is substantial harm the economic benefits that may arise from the scheme which secures the future of Malmesbury as a thriving centre are the type of benefits that could be weighed in the balance.

English Heritage made the following comments (summarised) on the proposals (without prejudice to their ‘in principle’ objection)

In terms of the design philosophy the approach taken is to "disguise" the scheme and minimise its presence and impact as much as possible. .

This is complemented and largely enabled by boundary treatment and particularly planting which will utilise existing vegetation and reinforce it where necessary to create a visually impermeable screen.

The spatial and relative disposition of access, car-park and store seems a logical response to site character and is appropriately simple in its conceptual handling. Within the site, treatment should further aim to minimise the degree of "urbanisation" through the beneficial use of planting and surface materials.

The shift in character of the site as a consequence of such a scheme will of course be the result of more than just physical change. The intensification of use through human and vehicular activity will be unavoidable; thought should therefore be given to how boundary treatment can minimise or even eliminate noise levels, and lighting should be designed to avoid not only spill outside the site but the ability to see light from outside the site looking in.

There have been further design changes to reduce the profile of the scheme. We are pleased that the relationship with Avon Mills has been improved.

The landscaping and planting regime has been modified. It is difficult to tell from what is provided whether this will actually fit comfortably in the surrounding landscape as well as eliminate all signs of the scheme from outside the site (entrances excluded), deaden noise and avoid being able to see artificial lighting when dark, but we are happy to leave judgement on the efficacy of this to the discretion of your authority.

In accordance with policy 133 of the NPPF, substantial harm to heritage assets needs to be outweighed by substantial benefits. While such a foodstore will no doubt reverse some of the economic leakage the town currently experiences, it would seem that there may be some degree of trade draw from existing local outlets, and the value of preventing that leakage is presumably underpinned by a demonstration of linked journeys resulting in an uplift of trade to town centre businesses. It is therefore a question of whether the specific contributions identified in the Planning Obligation, though valid and welcome, when added to the economic impacts arising specifically from the nature of the scheme, will constitute benefits that are sufficiently substantial.

There is undoubtedly significant concern regarding the effect that the proposals will have on the historic and landscape setting of Malmesbury and this should not be underestimated. However, the applicants have submitted a detailed appraisal and provided a response to the heritage objections raised (including an assessment by Cotswold Archaeology) which address the concerns expressed by English Heritage and the Councils own conservation, landscape and urban design officers.

It is not in dispute that the site makes a positive contribution to the significance of the conservation area and adjacent listed buildings. The NPPF states that "...the relative heritage significance of the element affected and its contribution to the significance of the Conservation Area....as a whole" needs to be considered when determining the suitability of a proposed development. In this regard, the applicants argue that the proposed development site is one of the least significant elements of the Conservation Area and the least significant part of the setting of Avon Mills listed building. The applicants argue that this position of relative significance is presented in the Conservation Area Appraisal (adopted February 2010), and further reinforced in the Conservation Area Management Plan (February 2010) in discussions concerning "development guidelines" and the creation of car parking within the site.

The applicants argue that the heritage significance of Malmesbury including many of its 'landmark' historic buildings can be appreciated from key vantage points within and towards the town. These 'important views and panoramas' are presented in the Conservation Area Appraisal. Although, the proposed development will be visible from one of the identified views (and

from other locations within and towards the town) the significance of the designated heritage assets when appreciated from these views would in no way be harmed.

The key assessment in this regard is whether the development will result in substantial harm to or total loss of significance of heritage assets. The applicants have argued that whilst the development of the site will clearly have an impact upon the setting of the listed buildings and the conservation area, there will not be substantial harm or loss to the heritage assets claimed by English Heritage and others. The proposed development site is not currently publicly accessible and does not lie on the direct route of any public footpaths. The site does not possess the same 'attractive' riverside characteristics enjoyed by the land parcels to its north (and west) i.e. those that lie immediately adjacent the river.

The proposed development would result in the loss of agricultural land that can be appreciated as providing an agricultural (or non-urban) setting to the town, and thus contributing to the Conservation Areas significance. The applicants have sought to make amendments to the scheme throughout the application process to address the concerns that the supermarket will be visible in key views. The applicants have reduced the height of the building, enhanced the planting and bunding/berms around the site. In many views (for example across the A429 from the east) the building itself will potentially have little impact, views still being gained across much of the site towards the town beyond; from the north it is the berm and additional planting that will be the significant addition to the landscape; from ground level to the south and west little of the building will be seen, although it is acknowledged that residents of Avon Mills will be looking directly across at or down onto the site, and these private views will change significantly.

There are two courses of action in assessing this aspect of the proposal. If the Council consider that the development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. Alternatively, if the Council consider that the proposed development will lead to substantial harm to or the total loss of the significance of a designated heritage asset, the application should be refused, *unless* it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss.

Despite the advice from English Heritage and conservation and landscape officers your planning officers consider that taking account of the applicants' analysis and responses to the objections made, that the harm will not be substantial, and any harm that does arise therefore needs to be weighed against the benefits that might arise from the proposed development.

In particular, officers consider that the site is of relatively lesser significance when compared to other elements of the Conservation Area and is an area that contributes relatively little to the setting of specific designated heritage assets and that the proposed development would "*..lead to less than substantial harm to the significance of a designated heritage asset..*" . Therefore, in determining the suitability of the proposed development "*...this harm should be weighed against the public benefits of the proposal*" (NPPF, paragraph 133).

However, should Members agree with the views expressed by English Heritage and others, and consider that the proposed development **will** lead to substantial harm to or total loss of significance of a designated heritage asset, officers consider that the harm is necessary to achieve substantial public benefits that would outweigh that harm or loss.

The GVA report indicates that the store will enable linked trips and is likely to be complementary to the town centre (rather than competing with it or adversely affecting it). As such this could be seen as sustaining the longer term viability of the existing retail function of the town. There is clearly a desire and need for additional retail floorspace in Malmesbury and anecdotal evidence from many of those commenting on the applications indicate that residents do travel out of town for a weekly shop and that existing shops and stores cannot cater for this type of demand.

In addition the applicants have set out a series of actions and contributions (set out under 'The Proposal' heading) to be secured through a legal agreement. This includes: highways improvements; provision of pedestrian/cycleway; a pedestrian crossing; traffic calming on the A429; Travel Plan for staff; public car parking on the site to facilitate linked trips and a comprehensive town centre enhancement strategy.

The Applicants have presented a proposal for the foodstore that is tailored to the specific constraints on this site: its location within a conservation area; proximity to listed buildings; on a site that is on a busy main road. The store is largely screened from public views (not only by the proposed landscaping - including berms and bunds and planting that enhances existing hedgerows- but also by the building itself sitting low in the site. From outside it will in time become appear to become part of the natural landscape. Where the store is most visible, from within the site itself it presents a contemporary and high quality face.

Overall the economic benefits to the town centre will help secure its continuing role as a retail centre for the surrounding area. The benefits outlined above are significant and sufficient to outweigh the impact upon the heritage assets identified. This approach appears to have been endorsed in the draft Malmesbury Neighbourhood Plan

### **Impact on the Landscape.**

Policy NE15 (The landscape character of the countryside) of the North Wiltshire Local Plan sets out states that "The landscape of North Wiltshire and its locally distinctive characteristics shall be conserved and enhanced, development will be permitted if it does not adversely affect the character of an area and features that contribute to local distinctiveness." It sets out that : "Development shall take into account.....the setting of, and relationship between, settlement and buildings and the landscape....."

The NPPF states that "The planning system should contribute to and enhance the natural and local environment by.... protecting and enhancing valued landscapes...". The NPPF refers to the need to carefully consider development proposals located in designated areas such as Areas of Outstanding Natural Beauty and National parks. Whilst the site is within the conservation area (as discussed above) it is not within any area designated for its landscape value. That is not to say that the landscape has no value.

In many aspects the concerns raised regarding the impact on the landscape are similar to those discussed above. The Councils landscape officer has commented that the proposals conflict with Policy NE15 as it will adversely affect the character of the area and features that contribute to its local distinctiveness. In his assessment (summarised above) the proposal will create a break in the 'ring of green' around the base of the historic town, will impact on the rural buffer between the town and Burton hill, the building and its earth berms will have the effect of diminishing the scale and drama of the town rising from the river onto a plateau and will be an abrupt and unnatural change in the topography.

The applicants have responded to these comments by amending the proposals to lower the height of the store, produce a more naturalistic appearance to the berms add more landscape planting around the site to break up the built form.

### **Design and scale of the development**

This issue is related to the previous section. The approach taken by the applicants is to accept that this is a sensitive site and to ensure that as far as is possible the built form and the service areas, circulation and parking areas are able to be assimilated into the landscape. To this effect the building its self is very low lying, actually sunk into the site, with a berm or bund surrounding three of its sides. From many vantage points to the north, west and east the walls of the building will be entirely hidden from view by land form and landscaping. Only the front of the building will be fully 'exposed' presenting a contemporary glazed entrance. Much work has been undertaken to ensures that the car parking areas are kept as low key as possible.

Officers have concluded that, if the principle of a supermarket building is deemed acceptable on the site then the proposal is as good a solution as any, providing a contemporary building, set

within a well designed and landscaped site which makes every effort to minimise its impact upon the surrounding area, historic landscape and neighbouring listed buildings.

### **Impact on residential amenity**

The site is immediately adjacent to the converted mill buildings of Avon Mill (the Avon MNills buildings comprise the Outer Silk Mills; Avon Lodge; Inner silk Mills and the Old Mill House). Not only will any development on this site have a potential impact on the setting of the listed building, but it will have an potential impact on the amenity of the residents of the mill buildings. There have been a high number of objections received from the residents of these buildings. This is understandable as the site is in an elevated position and development may be perceived to potentially overlook or dominate the neighbouring site; and the current greenfield outlook of many residents will be replaced by development.

The applicants have sought to address many of the concerns of local residents. They have submitted a visual analysis of the impact upon residential amenity of residents of Avon Mill. The applicants have also responded by making some very real changes to the proposal. The building has been reduced in height (by lowering it into the site and will be to a great extent screened from view by existing and proposed planning and a berm or bund. The most impact is likely to come from the car parking areas. Again in an attempt at reduce any disturbance through vehicle movement, noise and lights the applicants have redesigned the scheme to move the parking as far away from the boundary with the Avon Mills properties as possible. The closest parking space is around 18 metres away from the Outer Silk Mills building, but the main bulk of the parking is over 25 metres away and behind planting. The applicants have also indicated that they are willing to come to an agreement with the residents of Avon Mills as to how the area of land between the two sites can be used (it is currently sloping, unsuitable for any form of agriculture, outside and residential curtilage and beyond the requirements of the application proposals. Using this land for informal recreation by the residents may secure the long term management of this area and provide additional amenity land for Avon Mills residents.

Lighting of the scheme has also been referred to in objections, both in terms of impact on residential properties and the wider landscape. The applicants have submitted a 'External Lighting Strategy' which aims to reduce light spillage and avoid any adverse impact on residential properties. The submitted plans and strategy are considered acceptable and implementation of the strategy and proposals will be secured through conditions.

Undoubtedly the view from some of the properties on the Avon Mills site will change. However Officers are content that the applicants have made real and significant changes to the originally submitted scheme which will ensure that the residential amenity of these properties are not so adversely affected that it would justify a refusal on these grounds.

### **Impact on highways and highway safety**

The site is accessed by vehicles from the main A429. This is a simple junction with stacking land for right turning vehicles. The access has been discussed and agreed with the local highways authority.

Pedestrian access is provided via the two routes from the B4014 which leads from the roundabout junction with A429 and the St Johns Bridge. There will be set of steps (close to the Outer Silk Mills) that lead up from proposed pelican crossing to the site. A ramped access (avoiding any steps) will provided along side the road towards the roundabout junction and then into the site close to the junction itself. Whilst the site is very elevated above the road when viewed from St Johns Bridge, for example, the road rises reasonably gently towards the roundabout and it is possible to achieve a very accessible route.

Malmesbury town centre is located on a hill, to access any part of the town that is not within what is perceived to be the town centre will involve moving down a hill; this topography is an accepted constraint of living in Malmesbury. Getting to and from the town centre to the site, will involve

negotiating a hill (leading down to St Johns Bridge, but as has been demonstrated there are no other sites within the town centre or walking distance of the town centre that are more accessible.

As part of the package of contributions that the applicants have agreed (through negotiation with Officers and the town) is provision of public car parking on the site; a footpath/cycleway; pedestrian crossing and traffic calming on the A429 by way of a gateway feature.

### **Ecological implications of the redevelopment of the site**

Many objectors have raised concerns about the loss of habitat and impact on wildlife. However the Council principal Ecologist has reviewed the proposals and has raised no objections, as in the most part the site is an agricultural field and the majority of the planting around the site will be retained and enhanced.

### **Impact of the development on archaeology;**

The evaluation undertaken by Northamptonshire Archaeology revealed some good evidence for the Late Iron Age and Romano-British settlement in the southern half of the site Further investigation and excavation will be necessary prior to any development commencing.

### **Flooding and Drainage implications**

Both The Environment agency and Wessex Water have confirmed that subject to conditions the issues relating to flooding, surface runoff and foul sewer can be adequately addressed.

### **S106 Contributions**

Earlier in the report the measures that the applicant has sought to provide via a legal agreement have been set out (under 'The Proposal') and these have been referred to throughout the report, principally to illustrate some of the 'public benefits' that may be secured in approving this scheme. These can be summarised as highways works, car parking, travel plan, and the town centre strategy

Regulation 122 of the Community Infrastructure Levy Regulations 2010 ("the CIL Regs") provides: This regulation applies where a relevant determination is made which results in planning permission being granted for development.

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development...

The effect of regulation 122(2) is that if a s.106 obligation does not comply with the requirements set out above, then it cannot be taken into account as a reason to grant planning permission, but that does not mean that such an obligation is unlawful, or unable to be taken into account.

Case Law has established that "... [t]here is nothing objectionable in principle in a council and a developer entering into an agreement to secure objectives which are regarded as desirable for the area, whether or not they are necessary to strengthen the planning case for a particular development."

Officers consider that each of the matters being secured through the proposed legal agreement are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.

## **10. Conclusion**

Despite its location above Malmesbury on a main thoroughfare the site itself is not particularly prominent, in that it is screened by hedges, but views tend to be afforded across it rather than into

or onto it. However, when approaching by road from the north or when viewed from the eastern end of St John's Street the field is clearly visible as it slopes towards the Avon valley. However, any development in this location will have an impact on the setting of this historic town. There are very clear and strong objections in principle from English Heritage and the Council's own Conservation and Landscape Officers. The site has been identified in the Conservation Area management Plan as a potential location for a public car park.

The Council's retail advisors in this case have clearly indicated that there is a need for additional retail development in the town. In an assessment of the two retail applications (Waitrose and Sainsbury's) those advisors have concluded that this application is sequentially preferable and would serve to support the existing town centre rather than harm it. Other potential sites (there are not many given the historic nature and topography of the town) have been assessed by the Council's advisors and the local Neighbourhood Plan Steering Group and the only site that would be deliverable, provide for linked trips into the town centre and potentially enhance the town centre is the site that is the subject of this application.

All other 'technical matters' have been resolved (to the satisfaction of officers) and the objections received and considerations of all the material considerations have not resulted in concerns that would lead officers to recommend refusal.

Although there are strong objections to the development of this site because of harm to the historic landscape setting of Malmesbury; on the other hand there are very strong economic and policy reasons that in order to ensure Malmesbury continues as a vibrant town additional retail development (on a scale akin to that proposed) is an essential requirement, and there are no other suitable sites readily available that perform that required function better.

If the Council considers that the proposed development would lead to less than substantial harm to or loss of a designated heritage asset, then any harm arising should be weighed against the public benefits of the proposal. Alternatively, should the Council consider that the proposed development would lead to substantial harm to or total loss of the significance of a designated heritage asset, the application should be refused, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss.

On balance officers consider that the development would harm the heritage asset (in particular the conservation area), but not substantial harm (for the reasons articulated in this report) and therefore Members need to weigh the harm against the public benefits of the proposal.

Officers have discussed this matter at some length with English Heritage. Whilst EH is clear that it objects to the proposals on heritage grounds, it acknowledges that the Council has a duty to take all material considerations into account in coming to a decision. They have acknowledged that securing the economic future of the town centre is potentially a substantial benefit to Malmesbury and therefore the whole of the conservation area..

The applicants have sought to address each of the concerns raised by the objectors and in particular in relation to 'heritage and landscape' comments. Significant changes have been made to the scheme to help it "blend" more effectively into the landscape (lowering of the store, additional landscaping, pulling activity away from site boundaries etc.)

The economic case for additional retail development in Malmesbury is clear cut. The site meets the sequential test and there are no other comparable sites that would meet the needs of the town. These facts weigh heavily in favour of the proposal. Whilst the heritage and landscape objections are understood, officers consider that the potential harm would be less than substantial. There are significant public benefits that are likely to accrue from this proposal. The site is such that it is considered it will complement the existing town centre. Through the provision of publicly available parking on the site the possibility of linked trips is encouraged. The applicants have offered a package of measures (secured through a legal agreement) that are considered beneficial to the economy and amenity of the town (including a town centre enhancement strategy; traffic calming measures on the A429; a pedestrian footway/cycleway; a pedestrian crossing and Travel Plan).

Coupled with the high quality of the design and landscape proposals, officers recommend that permission be granted subject to conditions a s106 legal agreement.

## **11. Recommendation**

That authority be delegated to the Area Development Manager to GRANT Planning Permission subject to a legal agreement to secure community benefits including highways improvements; provision of pedestrian/cycleway; a pedestrian crossing; traffic calming on the A429; Travel Plan for staff; public car parking on the site to facilitate linked trips and a comprehensive town centre enhancement strategy.

For the following reason:

“The economic case for additional retail development in Malmesbury is clear cut. The site meets the sequential test and there are no other comparable sites that would meet the needs of the town. These facts weigh heavily in favour of the proposal. Whilst the heritage and landscape objections are understood, the Council has concluded that the potential harm would be less than substantial. However, there are significant public benefits that are likely to accrue from this proposal. The site’s location and the application proposal itself are considered to complement the existing town centre. Through the provision of publicly available parking on the site the possibility of linked trips is encouraged. The applicants have offered a package of measures (secured through a legal agreement) that are considered beneficial to the economy and amenity of the town (including a town centre enhancement strategy; traffic calming measures on the A429; a pedestrian footway/cycleway; a pedestrian crossing and Travel Plan). The proposal is considered to comply with policies C2 (Community Infrastructure); C3 – (Development Control Core Policy); HE1 (Development in Conservation Areas); NE15 (The Landscape and character of the countryside); and R4 ( Proposals outside town centre primary and town centre secondary areas) of the North Wiltshire Local Plan 2011; The National Planning Policy framework (in particular In particular the sections relating to ensuring the vitality of town centres (paragraphs 24 to 27) and the protection of heritage assets (paragraphs 17 and 128 to 134); the policies of the Wiltshire Core Strategy pre-submission document and the Draft Malmesbury Neighbourhood Plan”

Subject to the following conditions (a detailed schedule of conditions will be provided prior to the Area Planning Committee):

