

Wiltshire Council

Southern Area Planning Committee

26 August 2010

REQUEST FROM OFFICERS TO SECURE RETAIL USE RESTRICTIONS AND TRAVEL PLAN THROUGH PLANNING CONDITIONS RATHER THAN A SECTION 106 LEGAL AGREEMENT – APPLICATION S/2008/1389, PROPOSED DISCOUNT FOODSTORE, UNIT 2 BOURNE RETAIL PARK

1. Report Summary:

1.1 Members to consider the request from officers to vary the resolution to grant planning permission subject to all parties entering into a S106 legal agreement, as agreed on 25th June 2009 by Members of the Southern Area Planning Committee. Officers are now satisfied that the retail use restrictions and travel plan required by the S106 legal agreement can instead be secured through additional planning conditions.

2. Means of securing retail use restriction and travel plan:

2.1 The background to this report is the resolution of the Southern Area Committee in June 2009 to grant permission for the use of a retail unit as a discount foodstore, subject to all parties entering into a S106 legal agreement to:

- a) Restrict the range and type of goods to be sold from the premises (to enable the Local Planning Authority to exercise adequate control over the range of goods sold from the premises in the interests of maintaining the vitality and viability of the town centre); and
- b) Secure a Travel Plan which will encourage more sustainable journeys, and will encourage the reduction of vehicular traffic within the existing highway system around the site, including the A36.

2.2 Negotiations between officers and the applicant over the content and wording of the S106 legal agreement took place over the summer/autumn of 2009, and a final draft agreement was issued by the Council on 6th November, 2009. Schedule 1 of the draft agreement states that:

“1. Unless otherwise agreed by the Council pursuant to paragraph 6 of this Part 1, not to use Unit 2 for retail use other than as a Neighbourhood Foodstore.

[a Neighbourhood foodstore is stated to be a retail foodstore operated by a Deep Discount Retailer ie a retailer which operates small stores in convenient locations close to residential areas selling a limited range of goods].

2. Not to operate any of the following services from the Land

- a. Butchers counter
- b. Fresh fish counter
- c. Delicatessen/cheese counter
- d. Hot food
- e. Banking facilities
- f. Dispensing facilities
- g. Dry cleaning services including the collection of garments or articles for cleaning off-site
- h. Post office services
- i. Lottery or scratchcard sales
- j. Photographic shop or booth
- k. Cafe/restaurant
- l. Sales of cigarettes and/or tobacco

3. Not to sell more than 1500 (one thousand five hundred) product lines from the Land at any one time without prior written authorisation from the Council such authorisation to be at the absolute discretion of the Council.”

2.3 The Council requires all parties with an interest in the land to enter into the S106 Agreement which includes the current tenants. However, the applicant states that it cannot complete the agreement as the current tenants, *Staples*, refuse to enter into it. Officers are not prepared to grant permission for the application without the current tenants being bound by the terms of the legal agreement, due to the potential risk that the tenant could implement the consent free of the retail restrictions and travel plan provisions contained in the S106 Agreement. If the tenant were to sublet or assign its interest the same result could follow. Negotiations over the legal agreement have therefore reached a stumbling block.

2.4 As a result of this situation, the applicant offered to pay the Council’s expenses to seek an opinion from Counsel on what means could be employed to secure the obligations contained in the S106 agreement without *Staples* being a party. The resulting Counsel’s opinion was that there was no means that this could appropriately be done through a S106 legal agreement without the tenants being a party, although it was suggested that this is a case where it may be appropriate for the relevant requirements to be put in the planning conditions rather than the S106.

2.5 Advice contained within the Government Planning Circular 11/95 “Use of conditions in planning permission” is that detailed lists of conditions, such as included within the draft S106 legal agreement, should not generally be restricted by planning conditions. The Counsel’s opinion advises, however, that this must be a matter of planning judgement for the Local Planning Authority depending on the facts of the case. Given that this is a situation where the matter cannot be dealt with by S106, and there are good planning reasons for restricting the goods sold, i.e. in the interests of maintaining the vitality and viability of the town centre, it is considered by Officers that a departure from the Circular is justified in this instance.

3. Implications of recent changes to retail/economic planning policy

3.1 Since the original resolution to approve the application, Government policies relating to the economy, including PPS6 *Planning For Town Centres*, have been rationalised into

a single policy statement, PPS4 *Planning For Sustainable Economic Growth*. This new PPS still contains policy on retail related development, but with changes on how out of town centre retail development should be judged. However, Officers do not consider that these changes have materially altered the merits of the application, since the proposal is still considered to be acceptable in terms of the sequential approach and its impact upon the town centre, which remain as the main planning tests for such developments. The reasons for approval of the application, as originally given at the June 2009 planning committee meeting, will need amending by replacing references to PPS6 with PPS4.

4. Options for consideration:

4.1 Members effectively have two options:

4.2 **OPTION 1** – That the request of Officers to secure the retail use restrictions and travel plan through planning conditions rather than a S106 legal agreement is accepted, with the reasons for approval updated to replace references to PPS6 with PPS4, and that the application be approved subject to the following conditions (new conditions highlighted in bold):

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

Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. As amended by Section 51 (1) of the Planning and Compulsory Purchase Act 2004.

- 2) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

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

Policy: G2

- 3) **Notwithstanding the Town and Country Planning (Use Classes) Order 1987 and the Use Classes (Amendment) Order 2005 (or any Order revoking and re-enacting those Orders, with or without modification), “Unit 2” (as shown edged red in the submitted plan ref: API/BRP/SLP-02) shall be used only for the following purposes:**

(a) a non-food retailer whereby the range and type of goods to be sold will be restricted to the following: DIY and/or garden goods; furniture; carpets and floor coverings; camping, boating and caravanning goods; motor vehicle and cycle goods; and bulky electrical goods. Goods falling outside this range may be sold only where they form a minor and ancillary part of the operation of any of the proposed stores; or

(b) a food retailer with the following restrictions:

- i) **Not to sell more than 1500 product lines from the unit at any one time [product lines are stated to be each stock keeping**

unit such that products or items of the same type e.g. baked beans, but of a different brand, weight, size, or shape shall be treated as separate items];

- ii) Not to use more than 20% of the net sales floor space for the sale of non-food comparison goods as defined in Annex A of PPS4;**
- iii) Not to operate any of the following services: butchers counter; fresh fish counter; delicatessen/cheese counter; hot food, banking facilities; dispensing pharmacy; dry cleaning services including the collection of garments or articles for cleaning off-site; post office services; lottery or scratch card sales; photographic shop or booth; café/restaurant; sales of cigarettes and/or tobacco.**

The use of “Unit 1” (as shown within submitted plan ref: 08.33.04) shall remain in those non-food retail uses cited in (a) above, as originally stipulated within condition 3 to planning permission S/2008/0965.

Reason: To safeguard the vitality and viability of the city centre.

Policy: G1, DP6, PPS4

- 4) The owners / operators of Unit 2 shall maintain accurate and up to date records of the number and type of goods on sale at any one time and shall make this information available at all reasonable times to the Local Planning Authority.**

Reason: In the interests of the enforceability of condition 3, to safeguard the vitality and viability of the city centre

Policy: G1, DP6 PPS4

- 5) There shall be no further internal subdivision of the building for the purposes of creating units of less than 935 square metres internal floor space.**

Reason: In the interests of ensuring that units are still suitable for bulky goods and do not harmfully compete with the town centre.

Policy: G1, DP6, PPS4

- 6) No part of the development shall be occupied for a food retail use until a travel plan based on the Interim Travel Plan submitted with the application has been submitted to and approved in writing by the Local Planning Authority, and those parts identified within the approved travel plan as capable of being implemented prior to occupation have been duly implemented. Those parts of the approved travel plan that are identified as being capable of being implemented after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied for a food retail use. The records of the implementation shall be**

made available to the Local Planning Authority if requested.

Reason: In order to promote sustainable modes of travel to and from the site and to mitigate the impact of the development on the A36.

Policy: G1, G2

- 7) Before development commences to implement a food retail use details of the cycle storage and bin stores shall be submitted to and agreed in writing with the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

Reason: In the interests of amenities and sustainable travel.

Policy: G1, G2

- 8) Before development commences to implement a food retail use a scheme to restrict shopping trolleys leaving the curtilage of the site (edged blue on the submitted site plan) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the building for food retail purposes and shall thereafter be retained in relation to that use hereby permitted.

Reason: In the interests of visual amenity.

Policy: G1, G2

4.3 **OPTION 2** – That the request of Officers to secure the retail use restrictions and travel plan through planning conditions rather than a S106 legal agreement is not accepted.

4.4 The effect of this option would mean that planning permission would have to be refused, since without securing an appropriate legal agreement or planning conditions key planning requirements would not be met.

5. Consultation Undertaken

None

6. Recommendation(s):

That Option 1 be followed.

7. Background Papers:

7.1 APPENDIX I – Original Officer report to the Southern Area Committee

Report Author: Charlie Bruce-White, Planning Officer
Telephone: 01722 434379

APPENDIX I

ORIGINAL OFFICER REPORT TO COMMITTEE (25TH JUNE 2009)

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Deadline	03-Oct-2008		
Application Number:	S/2008/1389		
Site Address:	UNIT 2 BOURNE RETAIL PARK BOURNE WAY HATCHES LANE SALISBURY SP1 2QQ		
Proposal:	VARIATION OF CONDITION 3 TO PLANNING CONSENT S/2008/0965 TO PERMIT A FOOD RETAIL USE OF UNIT 2		
Applicant/ Agent:	MR TREVOR ADEY SAVILLS (L&P) LTD		
Parish:	SALISBURY CITY COUNCIL		
Grid Reference:	415907.811391473 129382.3708179		
Type of Application:	S73B		
Conservation Area:		LB Grade:	
Case Officer:	Charlie Bruce-White	Contact Number:	01722 434682

Reason for the application being considered by Committee

The Director of EDPH does not consider it prudent to exercise delegated powers due to the potential retail impact of the proposal upon the wider area, including the vitality and viability of Salisbury city centre.

1. Purpose of Report

To recommend APPROVAL of the proposal subject to conditions and a legal agreement relation to the restricting of the retail use, and in relation to the securing of a Travel Plan in accordance with the Direction of the Highways Agency, following completion of which the Area Development Manager be authorised to approve planning permission subject to conditions.

(Members should be aware that regards an identical application, which was considered at the May meeting of the Southern Area Committee, the applicant has appealed to the Planning Inspectorate on the grounds that the Council have not determined the application within the statutory eight week period. Officers indicated that at that time, there were three outstanding issues related to the retail impact of the proposal on the vitality and viability of the city centre. Members chose to continue to fight that appeal.

Members should further note that following the previous officer report regards S/08/ 1635 and members resolution regards the appealed scheme, the applicants have now submitted further information, and that information has now been assessed by the Council retail consultant GVA Grimley. This report therefore highlights the planning issues, and whether the applicants additional information has overcome the previously expressed concerns of officers related to the appealed scheme.

If members consider that the applicant has overcome the previously expressed retail concerns regards S/08/1635, and wish to approve this current identical application, officers additionally request that they be granted delegated powers to inform the applicant and Planning Inspectorate that the Council no longer wishes to fight the current appeal, in relation to S/08/1635)

2. Main Issues

1. Principle of development
2. Impact upon the vitality and viability of Salisbury town centre;
3. Access / Highway considerations.

3. Site Description

The site relates to one third of an existing retail warehouse at Bourne Retail Park, situated off Southampton

Road, Salisbury. Currently the retail warehouse is occupied by *Sturtions & Tappers* furniture retailer and the office retail supplier *Staples*. The site is located in a commercial area and adjoins a large car park.

4. Planning History

Application	Proposal	Decision	
95/0992	Retail warehouse space arranged in 2 buildings capable of various sub-divisions to suit individual operator's requirements & construction of vehicular & pedestrian access	A	30.10.95
98/1285	Application for a certificate of a proposed Lawful use for the sale of office furniture, Computers and other office equipment from Units 5 and 6 Bourne Retail Park in compliance with condition 11 of planning permission reference S/95/0992	A	10.03.99
03/2235	Internally illuminated static free standing gantry sign at Staples, Unit 1	R	17.12.03
05/0905	Subdivision of the Staples unit 5 & 6 and new mezzanine floor in each new unit	A	03.08.05
08/0965	External alterations to elevations and internal works to create two retail units	A	18.07.08
08/1635	Variation of condition 3 to planning consent S/2008/0965	Undetermined	

Members should also be aware that there is also another application for a discount foodstore lodged with the Council (S/2008/0550), related to the creation of a Lidl foodstore on the existing haulage site opposite the Wickes store off Hatches Lane. This application is subject of a separate officer report on this agenda.

5. The Proposal

Planning application S/2008/0965 granted consent for the subdivision of Unit 1 Bourne Retail Park, currently occupied by *Staples*, to two smaller units. A bulky goods condition was applied to this consent, similar to how the existing units are controlled, in order to ensure that the type of retailers occupying the unit would not be those most likely to directly compete with shops in the city centre. This condition stated:

The range and type of goods to be sold from the two retail units hereby permitted shall be restricted to the following: DIY and/or garden goods; furniture; carpets and floor coverings; camping, boating and caravanning goods; motor vehicle and cycle goods; office equipment and bulky electrical goods. Goods falling outside this range may be sold only where they form a minor and ancillary part of the operation of any of the proposed stores.

The applicants now wish to allow one of the subdivided units (referred to as "Unit 2") to be occupied by a discount food retailer. No end user for the unit is specified, but potential occupiers could include stores such as *Aldi*, *Lidl*, or *Netto*. The intention would be for *Staples* to then downsize and occupy the other subdivided unit. Consent is therefore sought to vary the bulky goods condition of consent S/2008/0965 in order to include a food retail use.

6. Planning Policy

The following development plan policies and national planning guidance are considered relevant to this proposal:

Local Plan policies G1, G2, TR1, TR11, TR14

Structure Plan policies DP1, DP2, DP5, DP6, TR11

PPS1: *Sustainable Development*; PPS6: *Planning for Town Centres*; PPG13: *Transport*

Other planning documents of relevance include:

SDC Retail & Leisure Needs Study (October 2006)

The Salisbury Vision, including aspirations for the Southampton Road area

7. Consultations

Wiltshire Council Highways	No objection to affect on the county highway.
Highways Agency	No objection subject to securing the implementation of the applicant's travel plan.
Environmental Health	No objection.

8. Publicity

The application was advertised by site notice / neighbour notification

Expiry date 23/10/08

1 letter of objection was received on the grounds that a food retail use in the proposed location would have a significant impact upon the vitality and viability of the town centre.

9. Planning Considerations

9.1. Principle of development

The site is not specifically allocated for a food retail use within the Local Plan, and therefore the proposal should be considered on its merits in relation to guidance contained within PPS6. Section 3 of PPS6 sets out the relevant policy considerations which apply to the application. Applicants are required to demonstrate the following:

- The need for development, having regard to quantitative and qualitative factors;
- That the development is of an appropriate scale, having regard to the catchment area it is to serve;
- That there are no more central sites, within the existing town centre for the development, i.e. the "sequential approach";
- That there are no unacceptable impacts on existing centres; and
- That locations are accessible to their intended catchment by sustainable transport modes.

The following paragraphs address the above matters:

9.2. Impact upon vitality and viability of town centre

Whilst the above criteria contained within PPS6 provide clear guidelines for assessing retail developments, matters are complicated in this case by several concurrent retail proposals and future development which require cumulative affects to be considered.

Other concurrent proposals and future developments include:

- The Tesco and Asda food store planning applications at Amesbury (Asda and Tesco), currently being

considered by the Planning Inspectorate following a recent public inquiry, with a decision not expected until later in the year;

- The Lidl food store planning application at Hatches Lane, off Southampton Road, currently being considered by the Council;
- The future planned redevelopment of the Maltings, which includes the provisions of a larger food store, as provided for within the Local Plan and plans for the forthcoming LDF and Salisbury Vision

Consequently, officers have employed consultants *GVA Grimley* to provide specialist retail advice on the potential impacts of the Bourne Retail Park and Lidl Hatches Lane planning applications, including their relationship with the proposed Amesbury and Maltings food store developments.

Taking into account this advice from *GVA Grimley*, the PPS6 criteria are examined below:

A) Assessing the Need for Development

PPS 6 is clear that “Need” must be demonstrated for the proposal as it is sited within an out of town location. Need is considered in both “quantitative” terms (i.e. is there sufficient demand expenditure in the catchment for the proposal?) and “qualitative” terms (i.e. will the proposal contribute to the overall retail offer of the catchment?).

The applicants retail assessment is specifically based on the fact that the proposal in question is a “deep discount foodstore” and develops an argument the impacts of the proposal would be different to those resulting from a normal retail operation.

Dealing first with quantitative need, although the applicant initially demonstrated that there would be sufficient capacity for the store’s projected sales figures, their initial analysis took no account of the cumulative impact of other current proposals. *GVA Grimley* note that “If one or both of the current food store proposals proposed in Amesbury were to be permitted... we would question whether there would be any significant convenience goods capacity arising in Salisbury in quantitative terms.” This is because residents in the Amesbury catchment who currently shop in Salisbury would be more likely to be drawn to a new Tesco and/or Asda in Amesbury, thereby reducing the turnover of the main Salisbury stores.

The applicant has however now supplied some additional clarification regards the cumulative impact of the proposals, and *GVA Grimley* has indicated that it is happy with the response.

As for qualitative need, it is noted that there are currently no such national multiple discount food retailers in the urban area of Salisbury, with the nearest being the Lidl store in Amesbury. The proposal would therefore meet this need, although *GVA Grimley* questioned the need for two discount food stores in the Southampton Road area, which would occur if both this and the Lidl Hatches Lane developments were approved. However, *GVA Grimley* advise that this is probably not a strong enough reason on its own to refuse the proposal.

As a result of *GVA Grimley*’s advice that the applicants further clarification is acceptable, (and the fact that judging by the public response to the Lidl application there appears to be a high level of support for a discount foodstore from the public), it is considered that the LPA should accept that there is a “need” for the proposal.

B) Securing the Appropriate Scale of Development

The size of the food retail area of the proposed store would be reasonably small for a multiple food store operator (just over 900sqm) and is not considered to be out of scale for the Salisbury urban area and its catchment. However, when taken with the concurrent proposal for a Lidl store at nearby Hatches Lane (approx 1640sqm), the scale of discount retail floorspace in the Southampton Road area would be relatively large, resulting in a less than ideal distribution across the urban area. However, as above, on its own it is not considered that this would be a strong reason to not permit the proposal.

C) Applying the Sequential Approach to Site Selection

The guidance contained within PPS6 states that developers should be “flexible” when exploring the possibility of more central sites and that all options in the centre should be “thoroughly assessed” [paras. 3.14 and 3.15

At the time the application was first submitted, the applicant undertook a sequential test to identify whether

there are any available sites within Salisbury city centre to accommodate the food store. However, since undertaking that initial assessment, the economic climate has altered considerably and a number of stores within the city centre have become vacant, including the former Woolworth's store.

The Council's retail consultant GVA Grimley considered that the applicants had not undertaken an appropriate sequential assessment, to demonstrate why a discount retailer could not practically operate from within the town centre. The applicant was therefore requested to supply additional, up to date information regards this matter.

The applicant has subsequently undertaken such an additional assessment which indicates that having looked again at the vacancies in the city centre, most vacant units were considered too small. Regards the vacant Woolworths store, the applicant goes on to indicate that this store would be unsuitable as its ground floorspace of 2,908sqm is considerably larger than that suggested for this proposal, and further indicates the former Woolworths store does not, in their opinion, lend itself to subdivision, and suffers because of a lack of adjacent parking and due to its awkward loading and delivery area, which requires HGV's to wait in the highway, and use a narrow alleyway to the side of the shop. There is apparently no loading area available to rear of the shop adjacent the river. The applicants also point out that the subdivision of the store would result in the loss of a large retail unit in the town centre.

GVA Grimley has indicated that it is now satisfied that this matter has been covered adequately, and consequently, the local planning authority is now satisfied that the applicants have undertaken an appropriate sequential assessment, and have adequately demonstrated why a discount retailer could not practically operate from within the town centre.

D) Assessing Impact

The guidance contained within PPS6 is clear that cumulative effects are an important consideration within the assessment of out of town development proposals upon the vitality and viability of existing centres [para. 3.21].

The applicants retail assessment is specifically based on the fact that the proposal in question is a "deep discount foodstore" and develops an argument the impacts of the proposal would be different to those resulting from a normal retail operation.

Following concerns from GVA Grimley the applicant has now considered the cumulative impact of both its own application for a discount food store and the concurrent application for a second discount food store on Hatches Lane (Lidl). The applicant has also considered the implications of new food stores in Amesbury and the impact of the recent Tesco extension and potential redevelopment of the Maltings, which includes the provisions of a larger food store.

GVA Grimley has indicated that it is now happy with the applicants assessment of the impact of the proposal. Consequently, the local planning authority is now satisfied that the proposal, either by itself or cumulatively with other retail scheme (including the second discount foodstore scheme) will be unlikely to harm the vitality and viability of the city centre.

9.3. Access / Highway considerations

E) Ensuring Locations are Accessible

PPS6 describes two factors which should be considered in terms of accessibility, first in terms of a choice means of transport, and second in terms of the impact on car use, traffic and congestion.

With regards to the impact of the development on car use, traffic and congestion, this is a key consideration within the determination of this application due to the potentially controversial nature of additional traffic on Southampton Road. The Highways Agency initially issued a Direction of non determination, whilst they requested further information from the applicant, which prevented the Council from progressing the application.

The applicant subsequently undertook detailed work to predict traffic generation from the proposed use, including new traffic flow counts and queue surveys at the Southampton Road / Bourne Way roundabout, and use of Highways Agency data to determine future traffic flow growth.

The results showed a net development trip generation of 16 additional two way trips during the Friday PM peak and 12 additional two way trips during the Saturday peak (which was found to be the busiest period during the week).

Both the HA and the highway department of this Council seem to accept that this proposal could add to the congestion within the road system around the site and Tesco's. However, this particular area is not adopted highway, and therefore the main concern of both highway authorities is the adopted A36 system, which in their opinion, would not be significantly affected, if a Travel Plan is adhered to, and which could result in a reduction of traffic in and around the application site. They also believe that any congestion generated on the unadopted road system around the application site and Tesco's car park would be self regulating.

The site would be accessible on foot and bicycle from the town centre and adjoining residential areas. There are bus stops situated on Southampton Road with regular trips from surrounding areas. It is noted that the proposal also presents opportunities to link trips given the site's proximity to other nearby retail uses. The applicants have also provided a travel plan to promote the use of such sustainable transport modes. With regards to parking matters, it is considered that appropriate levels of parking would be provided by the existing Bourne Retail Park car park, as per guidelines contained within Appendix VI of the Local Plan.

Consequently, based upon the forecasted traffic generation from a proposed food use, together with the submitted travel plan and recent traffic modelling, and taking into consideration that the existing retail unit already attracts traffic to the area, the Highways Agency do not consider that the proposal would have a materially harmful impact upon the strategic road network, and have removed the Direction. Securing the implementation of the travel plan by appropriate means would be essential were the application to be permitted.

Therefore, whilst officers understand the concerns related to additional traffic congestion around the application site, given the stance of the highway authorities regards this application that the suggested Travel Plan will create a situation where the proposed foodstore will ultimately have limited impact on the road system around the site, it is considered that a refusal on highways grounds would be difficult to support.

10. Conclusion

This proposal has been considered against and in conjunction with other retail schemes which have occurred or have been proposed in the surrounding catchment area, in particular the second application for a discount foodstore (Lidl).

PPS6 seeks to promote town centres as the favoured location for retail developments, and provides five criteria in the assessment of such proposals. Following the submission of additional retail evidence and further comments from GVA Grimley, the local planning authority are now satisfied that the applicant has demonstrated a sufficient quantitative need for a deep discount foodstore and that there would be no detrimental impact to the vitality and viability of Salisbury town centre. Furthermore, the local planning authority are now satisfied that the applicant has undertaken a sufficient sequential assessment to thoroughly assess the appropriateness of retail units which have since become vacant, which notably include a former Woolworth's store in the town centre. The proposal would therefore be in accordance with the aims and objectives of PPS6 and saved policy DP6 of the adopted Wiltshire & Swindon Structure Plan, provided that the operation and size of the store is limited and restricted in accordance with the applicants submitted scheme and retail evidence.

Furthermore, whilst it is acknowledged that the proposal is located in an area which suffers traffic congestion, following evidence and information submitted by the applicant, and the advice and formal Direction from the Highways Agency, it is considered that a refusal related to the impact of the proposal in highway terms would be difficult to support, provided the impact of the proposal is mitigated through the imposition of a suitable travel plan.

The overall impact on the surrounding area is considered acceptable, given the secluded nature of the site and the commercial character of the wider surrounding area.

Recommendation

That subject to all parties entering into a Section 106 Agreement to:

- a) Restrict the range and type of goods to be sold from the premises (to enable the Local Planning Authority to exercise adequate control over the range of goods sold from the premises in the interests of maintaining the vitality and viability of the town centre); and
- b) A Travel Plan is entered into which will encourage more sustainable journeys, and will encourage the reduction of vehicular traffic within the existing highway system around the site, including the A36 Road;

then the application be APPROVED, for the following reason:

This proposal has been considered against and in conjunction with other retail schemes which have occurred or have been proposed in the surrounding catchment area, in particular the second application for a discount foodstore (Lidl).

PPS6 seeks to promote town centres as the favoured location for retail developments, and provides five criteria in the assessment of such proposals. Following the submission of additional retail evidence and further comments from GVA Grimley, the local planning authority are now satisfied that the applicant has demonstrated a sufficient quantitative need for a deep discount foodstore and that there would be no detrimental impact to the vitality and viability of Salisbury town centre. Furthermore, the local planning authority are now satisfied that the applicant has undertaken a sufficient sequential assessment to thoroughly assess the appropriateness of retail units which have since become vacant, which notably include a former Woolworth's store in the town centre. The proposal would therefore be in accordance with the aims and objectives of PPS6 and saved policy DP6 of the adopted Wiltshire & Swindon Structure Plan, provided that the operation and size of the store is limited and restricted in accordance with the applicants submitted scheme and retail evidence.

Furthermore, whilst it is acknowledged that the proposal is located in an area which suffers traffic congestion, given that the existing retail store already generates traffic, and following evidence and information submitted by the applicant, and the advice and formal Direction from the Highways Agency, it is considered that a refusal related to the impact of the proposal in highway terms would be difficult to support, provided the impact of the proposal is mitigated through the imposition of a suitable travel plan.

The overall impact on the surrounding area is considered acceptable, given the secluded nature of the site and the commercial character of the wider surrounding area.

and subject to the following conditions:

1 :- FULL PLANNING PERMISSION -COMMENCEMENT 3 YEARS

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

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

2 :- RETAIL- CONTROL OF SHOPPING TROLLEYS

No development shall commence on site until a scheme to restrict shopping trolleys leaving the site has been submitted to and approved by the Local Planning Authority. The development shall not be first brought into use until the approved scheme has been brought into operation. The approved scheme shall be maintained in operation in accordance with the approved details.

REASON: In the interests of the character, appearance and amenities of the area.
POLICY--[G2 visual amenities and highway safety]

3 :- The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

REASON: In the interests of visual amenity
POLICY G2 (general amenities)

4 :- There shall be no further internal subdivision of the building for the purposes of creating units of less than 935 square metres internal floor space.

REASON: In the interests of ensuring that units are still suitable for bulky goods and do not harmfully compete with the town centre.

5 :- The range and type of goods to be sold from the separate retail unit created in the other half of the existing unit currently operated by Staples (as permitted by permission S/2008/0965) shall remain as stipulated by condition 03 of that permission, namely the following: DIY and/or garden goods; furniture; carpets and floor coverings; camping, boating and caravanning goods; motor vehicle and cycle goods; office equipment and bulky electrical goods. Goods falling outside this range may be sold only where they form a minor and ancillary part of the operation of any of the proposed stores. The retail use of "unit 2" as defined by the red line of this application is covered by the S106 Agreement associated with this permission.

REASON: For the avoidance of doubt, and to ensure that the use of the remaining retail unit unit previous permitted is restricted, in order to limit the impact of the proposal on the vitality and viability of the city centre, in accordance with the aims of PPS6.

6 :- Before development commences, details of the cycle storage and bin stores shall be submitted to and agreed in writing with the Local Planning Authority. The development shall be carried out in accordance with the agreed details.

REASON: In the interests of amenities and sustainable travel
POLICY G1 & G2

Appendices:	<p>As below APPENDIX</p> <p>Our Ref : CJBG/smr</p> <p>24 April 2009</p> <p>Ms N Styles Wiltshire Council 61 Wyndham Road SALISBURY Wiltshire SP1 3AH</p> <p>Dear Natasha</p> <p>FOODSTORE PROPOSALS, HATCHES LANE/BOURNE RETAIL PARK, SALISBURY</p> <p>You have asked us to consider the retail planning implications of two current applications involving foodstores on land at Hatches Lane and Bourne Retail Park in Salisbury. Specifically, we have been requested to consider the inter-related matters of need, sequential approach and impact, and any other retail planning policy issues raised by the proposals individually or cumulatively.</p> <p>The Proposal</p> <p>i)Lidl, Hatches Lane</p> <p>The first proposal, submitted by Lidl (UK) GMBh, involves land at Hatches Lane, currently occupied as a haulage business. The proposal is for a new foodstore comprising 1,640 sq m gross, 1,286 sq m net, to be occupied by Lidl as a discount foodstore. The site comprises .48 hectares and provides for a total of 91 car parking spaces. Lidl estimate that the store will provide up to 40 jobs, and the scheme provides for the existing haulage business to relocate to part of the site.</p> <p>ii) Unit 2, Bourne Retail Park</p> <p>The proposals for Unit 2, Bourne Retail Park, are submitted by Aberdeen Property Investors. We understand that consent has already been granted for external alterations</p>
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and works to create two new retail units at Unit 1&2 Bourne Retail Park of 929 sq m each. The applicant is seeking a variation of condition to broaden the range of goods to be sold to include a food retailer, and comparison goods falling outside the currently permitted range where they form a minor and ancillary part of the operation of the proposed stores. No named occupier is indicated, although in the supporting material reference is made to Aldi.

Savills' supporting material refers to Unit 2 having a 929 sq m gross internal area, but elsewhere assumes that the scheme would have a net sales area of 929 sq m. Savills estimate the convenience goods turnover of the store at 2013 at £2.6m assuming the entire net sales area is devoted to convenience goods. However, they also indicate that up to 20% of the turnover of the store could be accounted for by comparison goods, equating to circa £0.5m. Clearly if the unit only comprises 929 sq m gross, the estimated convenience and comparison turnovers assessed by Savills should be regarded as maxima.

Savills estimate that the store would create circa 39-49 additional jobs and could bring an increase in economic growth ie earnings of circa £0.59m per annum to what they indicate is the most deprived ward in South Wiltshire in terms of employment and income.

Policy Considerations

Both proposals are for discount foodstores; in the case of the Hatches Lane scheme this is confirmed as Lidl, but in practice based on the size of units involved we anticipate that either or both would be likely to attract discount retailers of the likes of Lidl/Aldi. As both applicants indicate, there are a substantial number of appeals/call in decisions which establish that the particular characteristics of deep discount retailers, selling a limited range of heavily discounted, predominantly convenience goods, with a more limited ancillary comparison offer should be taken into account when judging the retail policy implications of such proposals.

While the Bourne Retail Park application involves a variation of condition, and the Hatches Lane proposals involve development of a new store, having regard to the advice in PPS6 the same policy tests apply to both proposals ie:-

Demonstration of a need for the scale and form of floorspace proposed, having regard to quantitative and qualitative factors.

The appropriateness of the scale of the development, having regard to catchment that it is intended to serve.

The availability of alternative more central sites ie the "sequential approach".

The impact of the proposals, including their impact on planned investment in any nearby town centre and the vitality and viability of the town centre; and

The accessibility of the proposals to their intended catchment by alternative means of transport.

As the proposals are close to each other and likely to serve a similar catchment area, we anticipate that the overall level of accessibility by alternative means of transport to each is likely to be similar, although localised differences in accessibility and linkages may be material to the Council's consideration. Other planning considerations, including design, sustainability, and traffic and transport issues will also be relevant in judging the acceptability of each, and the relative merits of the proposals, but again these issues are outside our terms of reference.

Finally, we have not considered whether the Hatches Lane proposals raise any employment land issues, or whether any weight should be attached to the proposals for the existing haulage business, which also are matters the Council will judge in its consideration of the proposals.

We consider the key retail policy issues in turn:

Quantitative and Qualitative Need

RPS refer to the previous GVA Salisbury Retail Study which identified circa £2.6m of convenience goods capacity in the Salisbury urban area by 2011, rising to £11.78m by 2016. RPS has re-worked the Retail Study, taking into account the now completed Tesco extension and making an allowance for an increase in turnover attributable to the potential redevelopment of Sainsbury's. RPS has also made a number of minor adjustments to the Retail Study, including re-basing the survey results to factor in where respondents indicated they "don't know" where they do their convenience shopping, on the basis that RPS consider this understates the amount of available expenditure.

Savills has also undertaken its own assessment of convenience shopping needs, based on the Retail Study. Savills suggest a more conservative estimate of £7.99m of capacity at 2013 after taking into account the recent Tesco extension, and have not factored in the effects of a new Sainsbury store in the city centre.

In terms of quantitative needs, the GVA Study and the RPS/Savills assessments all identify more than sufficient capacity for one of the proposed stores by 2011, and both by 2016. The RPS capacity projections are the highest, and we would suggest they should be treated with a degree of caution. This baseline analysis takes no account of the potential implications of a major new foodstore in Amesbury, which would have the effect of reducing the turnover of the main Salisbury stores, and reducing the identified capacity arising within the Salisbury urban area. If one or both of the current food superstore proposals proposed in Amesbury were to be permitted, therefore, we would question whether there would be any significant convenience goods capacity arising in Salisbury in quantitative terms.

We consider there is a qualitative need for a discount foodstore in the Salisbury urban area. A deep discounter such as Lidl or Aldi would provide additional choice and competition, and would provide additional benefits including local employment. In these circumstances, having regard to both the quantitative and qualitative considerations, we consider there is a sound case to support a new discount foodstore in this area.

The case for supporting both proposals at the current time is more marginal in our view and while there would be some additional benefits of further choice and competition between discount foodstores, these would be relatively limited. The quantitative case for two foodstores would be likely to be undermined by approval of a large foodstore in Amesbury and the potential redevelopment of Sainsbury's to provide a large store in the city centre.

The locational benefits of providing a modern deep discount foodstore to serve local needs would also be duplicated by two stores, and would not result in a good distribution of such facilities relative to the local population. In these circumstances, we are not convinced that there is a need for both proposals in such close proximity to each other. However, as you will be aware, DCLG has stated the intention is to drop the needs test. On this basis, while this may constitute a valid reason for refusal at this time, we would not recommend reliance on this reason for refusal.

Scale

We consider that individually, either proposal would be regarded as being of an appropriate scale to this location and the wider needs of this part of Salisbury. We would question whether it would be appropriate to support two discount foodstores in close proximity in this part of Salisbury, and as outlined above, would suggest there would be material advantages from securing a more sustainable distribution of local convenience shopping facilities in order to better serve the needs of Salisbury residents. However, we do not consider this in itself provides a valid reason for refusal.

Sequential Approach

Both applicants have addressed the requirements of the sequential approach, and have

considered the availability of sites and vacant units in Salisbury city centre. RPS has confined its search to sites of .48 hectares or more, having regard to the guidance in PPS6 and experience of other planning inquiries, based on a required minimum sales area of 1,063 sq m net. Savills has confined its search to units of not less than 929 sq m net, and both applicants highlight the importance of a regular sized single level unit with adequate servicing and some adjacent car parking to cater for shoppers undertaking “bulk” purchases. We consider this approach is reasonable having regard to the guidance in PPS6 which acknowledges the relevance of the applicants business model.

Both applicants have considered and rejected the sites identified in Salisbury city centre. Clearly there is significant potential within the city centre, and we recommend that the Council considers the steps needed to bring forward the identified development opportunities, and adopt a proactive approach to bringing sites forward to accommodate retail development within and on the edge of the existing primary shopping area as a key priority. However, based on the issues which need to be addressed and overcome, and the timescales involved in complex town centre developments, we anticipate that none of the sites identified would realistically be available within the short term 2/3 years.

Both applicants have reviewed the availability of vacant units in the town centre. RPS indicate there are no vacant units in the centre which would meet the requirements stipulated in their approach. Savills have also considered vacancies and identified 42 vacant units in the city centre ranging from 20 to 610 sq m which they consider are too small, even when displaying a significant degree of flexibility, to accommodate a national multiple discount food retailer.

We are aware that the former Woolworth’s store has become vacant since completion of the applicant’s supporting statements, and having made investigations understand this comprises circa 2,908 sq m gross. Whilst this unit is significantly larger than either proposal, the option of sub-division should be explained. We understand that the store does not have dedicated customer parking, which we consider may be a significant issue having regard to the requirements of bulk food shopping.

Whilst we understand that the unit is currently available, given the length of time that the unit has been vacant, an alternative operator may have been secured.

However, we would expect the applicants to consider this and any other options which may have become available since completing their assessments, and to set out clearly why they consider this option would not be capable of accommodating the requirements of a discount food retailer.

Impact

Both applicants have considered impact having regard to the guidance in PPS6. Savills have not carried out a quantitative impact assessment, but instead rely on a commentary on what they consider to be the likely impact implications of the proposals. RPS has undertaken a quantitative assessment, and estimates the proposed Lidl store would have an impact of circa 1% on each of the town centre foodstores and other town centre retailers, which would not be a cause for concern. Neither applicant has attempted to consider the cumulative impact of both proposals, or to take into account the implications of a new large foodstore in Amesbury and/or the cumulative impact of the recent Tesco extension and potential Sainsbury’s redevelopment in the city centre.

We consider the impact of a new discount foodstore in this general location would be unlikely to give cause for concern having regard to the guidance in PPS6. Based on the convenience goods turnover of the proposals, which are estimated at between £2.6-2.8m, we anticipate the majority of impact would fall on the nearby out of centre Tesco, and the impact on retailers in the city centre would be limited. We do not expect this level of impact would be likely to prejudice investment in the town centre (subject to consideration of the vacant Woolworth’s unit as above) nor do we consider this level of trade diversion would in itself lead to any significant adverse effect on the turnover or vitality and viability of Salisbury city centre.

Any adverse impact should also be weighed in the balance, having regard to the beneficial effects of new investment in a deprived area, the creation of new employment, and the additional contribution to choice, competition and productivity which a discount foodstore would bring in this location.

We consider the cumulative impact of both discount stores being permitted would, in itself, also be unlikely to be a cause for concern. Inevitably if two discount operators located in such close proximity there would be a significant "mutual impact" and the turnover expectations of both stores would be materially reduced. The majority of the additional impact would still be likely to fall on the nearby Tesco is a large success out of centre store and is not in any event "protected" by policy. The additional incremental impact on Salisbury city centre would be limited, but would be higher than one, and this factor should be weighted in the balance when considering the merits of supporting two stores in this location.

If one or both of the current food superstores currently proposed in Amesbury was permitted, we consider there is a more significant concern at the cumulative impact of new development in Amesbury and the recent extension of Tesco in Salisbury. The combined effect of these proposals could be to lead to a reasonably significant impact on existing town centre foodstores, notably the city centre Tesco which the Salisbury Retail Study identified to be one of the less well performing stores in the centre. Any adverse impacts arising from these stores could be compensated by the positive effects of a new extended Sainsbury's store as part of The Maltings development although the timescale and viability of this development appears uncertain.

In these circumstances, we consider there is a potential concern at the cumulative impact of Amesbury proposals, Tesco extension and one or more discount retailers which could cumulatively affect the position of one of the existing food supermarket anchors in the town centre. In these circumstances, the levels of impact involved could bring into question the viability of one or more of the current city centre foodstores, which would be a cause for concern.

Clearly it is difficult at the current time to assess the implications of every possible permutation of new development. Our overall view is that even taking into these factors, the impact of a single discount foodstore would be limited, and would be unlikely to constitute a sound reason for refusal. However, allied to the points outlined above, we would question whether it would be appropriate to support two similar discount foodstores in such close proximity where the additional benefits generated would be more limited, and where the potential for additional cumulative impact, over and above other proposals in the area, would be more pronounced.

Conclusions

Both proposals are likely to be occupied by deep discount food retailers and both are required to satisfy the key policy tests ie need, scale, sequential approach, impact and accessibility. There are no clear retail policy reasons for favouring one application over the other.

There is identified quantitative and qualitative need for a discount foodstore. There may be sufficient quantitative capacity to support both proposals over the next 3-4 years, although this is to some extent subject to the scale of development permitted at Amesbury. While two stores would provide additional employment and local regeneration, the qualitative case for a second store in this location is less compelling.

A discount foodstore as proposed is of an appropriate scale in this location. However, the provision of two similar stores in such close proximity would not provide a particularly sustainable distribution of convenience facilities serving the Salisbury catchment. In these circumstances, even if there was sufficient quantitative capacity to support both, we consider it would be more appropriate in terms of scale to seek a better distribution of stores relative to local needs. However, we are not convinced that this represents a reason for refusal.

Both applicants have applied a sequential approach, and we are satisfied that there are no sites which could be regarded as currently available, suitable and viable within the city centre on the edge of the centre to accommodate a discount foodstore at the current time. Neither applicant has considered the vacant Woolworth's unit in Salisbury which is potentially large enough to accommodate the requirements of a discount food retailer, and both applicants should be requested to consider this option.

We do not consider either proposal is likely to have any adverse impact on the vitality and viability of the city centre in itself. If both applications were permitted and able to secure operators, we consider they would impact on each other and on the nearby Tesco, and their combined impact on the city centre would not be likely to undermine its vitality and viability.

However, both the need for, and impact of the proposals will be to some extent influenced by the outcome of the call in inquiry into current proposals for Amesbury. A new food superstore in Amesbury would materially reduce the capacity identified in the Salisbury area, by recapturing trade currently lost from Amesbury, and will lead to an impact on the city centre which would be compounded by the recently completed Tesco extension and the current application proposals. Neither applicant has considered the cumulative impact of those proposals which should be tested prior to the grant of planning permission.

If your Council decides to approve one or both proposals, we would recommend the imposition of planning conditions relating to the net sales floorspace, stipulating that the stores are to be occupied by discount retailers, and specifying that any comparison goods sales should be ancillary to the proposed foodstore.

Please do not hesitate to contact me if you would like to discuss.
 With best wishes,
 Yours sincerely

CHRIS GODDARD
 Executive Director

Background Documents Used in the Preparation of this Report:	PLANS AND DATE RECEIVED API/BRP/SLP-02 – 6 TH AUGUST 2009 08.33.03 –6 TH AUGUST 2009 08.33.04 –6 TH AUGUST 2009
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