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## **Lidl UK GmbH**

### **Full Planning Application for a Lidl Foodstore Development**

**Land at Mitchells Way, Wombwell**

### **Planning and Retail Statement**

**July 2015**

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## Contents

	<b>PAGE</b>
<b>1 Introduction</b>	<b>1</b>
<b>2 The Site and its Surroundings</b>	<b>4</b>
<b>3 The Proposed Development</b>	<b>8</b>
<b>4 The Lidl Retail Operation</b>	<b>10</b>
<b>5 Review of Relevant Planning Policy</b>	<b>17</b>
<b>6 Land Use Principles</b>	<b>27</b>
<b>7 Sequential Site Assessment</b>	<b>36</b>
<b>8 Retail Impact Assessment</b>	<b>43</b>
<b>9 Other Material Considerations</b>	<b>51</b>
<b>10 Summary and Conclusions</b>	<b>66</b>

## Appendices

**Appendix 1 – Proposed Site Layout Plan**

**Appendix 2 – Relevant Appeal Decisions**

**Appendix 3 – Plan of the Catchment Area**

**Appendix 4 – Retail Impact Spreadsheets**

**Appendix 5 – Executive Summary: The Impact of Lidl  
Supermarkets on Defined Retail Centres**

# 1 INTRODUCTION

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- 1.1 This Planning and Retail Statement has been prepared by Walsingham Planning on behalf of Lidl UK GmbH (Lidl), the applicant for the development of Land at Mitchells Way, Wombwell. It is intended to assist the Council's consideration of the suitability of the proposed development, in particular in relation to matters outlined within national and local planning policy.
- 1.2 The application seeks full planning permission for the erection of an A1 retail foodstore and sub-station with associated car parking, access, landscaping, servicing and other associated works.
- 1.3 The A1 retail unit is proposed to be occupied by Lidl; a deep discount foodstore, which performs both a 'main food' and 'top-up' shopping role. Deep-discount stores act as complementary retailers to mainstream food shopping. The proposal will address the identified qualitative deficiency in convenience shopping within the area and therefore meet an identified qualitative need. Furthermore, it will provide increased competition, enhanced consumer choice and up to 40 local jobs in addition to accommodating an entirely new type of convenience shopping facility in Wombwell.
- 1.4 The application is submitted following pre-application discussions with the Council. An initial pre-application meeting was held at the Council's offices on 13 January 2015 and was attended by representatives from the Council's Planning team, as well as representatives from Lidl, Walsingham Planning and Ed Spivey Associates (highways). A follow-up meeting was also held at the Council's offices on 7 July 2015 to discuss the design of the scheme in further detail. This meeting was attended by representatives from Lidl, HTC (scheme architects) and Walsingham Planning, as well as representatives from the Council's planning and design team.
- 1.5 Local businesses and residents have also been consulted on the proposed scheme. A public exhibition was held in Wombwell on Thursday 9 July 2015. Overall, the proposed scheme was received positively by attendees of the event. Further information on the consultation process is presented in the submitted Statement of Community Involvement.

1.6 This Statement addresses the planning issues raised at the pre-application meeting and public exhibition and provides the consideration and assessment of the proposal against the key planning policies and material considerations. It also provides evidence of the unique qualities of the Lidl deep-discount operation and its complementary role to mainstream convenience retailers.

1.7 This Planning and Retail Statement should be read in conjunction with the other supporting documentation submitted as part of the application. The Statement is structured as follows:

- Section 2 The Site and Its Surroundings**
- Section 3 The Proposed Development**
- Section 4 The Lidl Retail Operation**
- Section 5 Review of Relevant Planning Policy**
- Section 6 Land Use Principles**
- Section 7 Sequential Assessment**
- Section 8 Retail Impact Assessment**
- Section 9 Other Material Considerations**

1.8 **Section 10** sets out our **Summary and Conclusions** which are:

1.9 The proposal would provide a much needed improvement to the quantitative and qualitative convenience goods offer within Wombwell by providing a deep-discount retailer which at present does not exist within the town. Lidl will provide increased consumer choice in price and products, enhance healthy competition and productivity, as well as meeting the needs of the whole community.

1.10 The site is located around 750m from Wombwell District Centre, and is therefore categorised as out-of-centre in retail planning policy terms. However, the centre can be easily accessed by foot by walking directly along Barnsley Road. Our sequential assessment, in **Section 7**, shows that there are no suitable, available and viable sites for retail development within our defined catchment area. As such, the identified site represents the most appropriate opportunity for expanding the local retail offer.

- 1.11 The site can be accessed by a range of modes of transport, notably bus, private vehicle and on foot. The development is therefore well-placed to serve the needs of local residents, a substantive proportion of which cannot readily access the existing out-of-town main foodstores (such as Tesco Extra at Wombwell Lane and Morrisons at Cortonwood).
  
- 1.12 The proposal will secure the development of a prominent site on a gateway approach to Barnsley Town Centre and Wombwell. The proposed scheme will bring the site into active economic use, creating 40 new jobs and enhancing the vitality and viability of the local area in a sustainable way.
  
- 1.13 In light of the above, we therefore respectfully suggest that planning permission should be granted in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

## 2 THE SITE AND ITS SURROUNDINGS

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### Site Description

- 2.1 The application site is broadly triangular in shape and comprises previously undeveloped 'greenfield' land. The site extends to 1.3 ha and is currently used for low-level agricultural purposes. In terms of boundary treatment, the site is characterised by dense patches of woodland on its north western and north eastern flank. Unlike the boundaries, the centre of the site is completely unconstrained in terms of vegetation or shrubbery.
- 2.2 The site is bordered directly by Mitchell's Way (A633) to its south west, and by Bradberry Balk Lane to its north west. The north east boundary of this site follows the alignment of the disused former Dearne and Dove Canal. To the north west is Mitchell's Industrial Park and to the south of the site is an area of land subject to a consent for the development of 220 dwellings. To the north east of the site beyond the former Dearne and Dove Canal is an area of dense woodland and the Trans-Pennine route. To the west is residential accommodation.
- 2.3 The site is located around 750m to the north of Wombwell District Centre, which can be accessed directly along Barnsley Road. Existing shops and services in Wombwell include a Tesco Express, a Heron Frozen Foods store, in addition to a Wilko and an array of estate agents, hairdressers and take-aways. Wombwell is located close to the residential neighbourhoods of Darfield and Stairfoot. The nearest higher order centre is Barnsley Town Centre, which is located around 5km to the north-west of Wombwell.

### Accessibility and Sustainability

- 2.4 The site is situated within an accessible location, being sited on Mitchells Way; a main arterial route which connects Barnsley Town Centre and Wombwell.
- 2.5 Seven bus services run within the vicinity of Mitchells Way and pass along Barnsley Road (Services 22, 22M, 22X, 67, 67A 203, 222, 226 and X20). Bus stops for both northbound and southbound services are located in very close proximity to the site,

being just 70m and 75m away, respectively. The site is considered to benefit from excellent public transport accessibility, being served by at least 11 buses per hour in each direction. The site boundary is also 1.5km (as the crow flies) from Wombwell railway station, which provides regular services to Huddersfield, Sheffield and Leeds.

- 2.6 More importantly, given its outskirts on a predominantly residential location, the proposed store is within easy walking distance of the residential areas of Wombwell, and will be a short walk from many homes (including the new residential development on the opposite side of Mitchells Way), businesses, sports facilities and services.
- 2.7 Further details on the accessibility of the site are provided in **Section 9** and within the Transport Assessment and Travel Plan submitted with the application.
- 2.8 It is clear from the outset, however, that the site is positioned within a prominent and highly accessible location. The proposed development will represent a more efficient use of this detached, small triangular area of agricultural land. Moreover, the new Lidl store will contribute to the improvement of local shopping choice, providing a valuable new facility for the community and creating new local employment opportunities in the form of 40 new jobs. As such, it is evident that the proposed scheme represents a sustainable form of development, in line with the objectives of national and local planning policy, as we discuss in later sections of this report.

### **Planning History**

- 2.9 Planning application B/79/2525/WW was submitted and approved for the use of unused land as a haulage depot for a period of 2 years in 1979.
- 2.10 There have been no other planning applications of relevance to the current application proposal.

### **Planning Designation**

- 2.11 The site is designated in the development plan as Urban Greenspace, to which Policy CSP35 of the Core Strategy applies. The pre-application advice provided

does however confirm that this policy is not applicable in this instance, since the Council recognise that this is a historic and inappropriate designation of the site.

- 2.12 The site is also designated as being within the South Yorkshire Forest to which Saved UDP Policy GS34 applies, and also falls with the broadly-defined River Dove Valley Corridor to which Core Strategy Policy CSP33 applies.

### **Flood Risk**

- 2.13 The application site is identified as being within Flood Zone 1 on the Environment Agency's Flood Zone Map. As such, the site is assessed as having a less than 1 in 1,000 annual probability of river or sea flooding. The redevelopment proposal is for an A1 foodstore, which is a 'less vulnerable' use and is an appropriate form of development within a Flood Zone 1 area.
- 2.14 Notwithstanding the limited risk of flooding at this site, a Flood Risk and Foul Drainage Assessment has been undertaken and submitted with this application. This is described in further detail in **Section 9**.

### **Heritage Designations**

- 2.15 The site is not within a Conservation Area and there are no listed buildings located within the application site. However, we note that to the north of the site is the grade II listed Bradberry Balk Bridge which crosses the former Dearne and Dove Canal.

### **Socio-Economic Context of Wombwell**

- 2.16 The Barnsley Settlement Study was published in May 2007 and contributed to the Doncaster Core Strategy evidence base. The study identifies Wombwell as a key district centre and states:

*'The status of Wombwell as a self-sustaining main town, with strong functional links to urban Barnsley means it remains appropriate for growth. Wombwell has a railway station with fairly frequent services to Sheffield and is therefore, well located to serve both the Sheffield City region and the sub*

*regional role of urban Barnsley. This growth should also incorporate the adjoining town of Darfield particularly where sites which are within easy reach of key services’.*

- 2.17 Given its status as a self-sustaining main town, the study recognises that Wombwell plays a high order service role as part of Barnsley’s main urban area. As such, the level of services provided in the settlement is required to meet the day-to-day needs of local residents as well as other settlements from a wider hinterland.
- 2.18 At the local level, our examination of Office for National Statistics (ONS) Census data for the Wombwell ward indicates that - at March 2011 - 5.8 per cent of economically active residents classified themselves as unemployed. This is some 1.4% more than the national average of 4.4 per cent. Moreover, paragraph 4.19 of the Core Strategy confirms that Barnsley is the only sizeable urban district in the region with fewer jobs than people in work, as at 2007.
- 2.19 In light of the statistics above, Wombwell would benefit from the provision of additional good quality employment opportunities in order to sustain its position as a self-sustaining settlement. The provision of a deep-discounter foodstore would also help to contribute to Wombwell’s high order service role.

### 3 THE PROPOSED DEVELOPMENT

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- 3.1 This application seeks full planning permission for ***‘the erection of an A1 retail foodstore and sub-station, with associated car parking, access, landscaping, servicing and other associated works’*** on land at Mitchells Way, Wombwell.
- 3.2 The retail unit is proposed to measure 2,470sq.m (total gross internal area) with a sales area of 1,424sq.m. The unit will be occupied by Lidl, a deep-discount foodstore operator. At first floor, it is proposed to provide 200sq.m floorspace in the form of a staff meeting room, staff canteen and toilets.
- 3.3 The proposal includes the provision of 132 parking spaces of which five spaces will be reserved for the use of less able-bodied customers and four spaces for parent and child users; these spaces will be situated in close proximity to the store entrance. Drawing Ref. 1849 10 N – ‘Proposed Site Layout’ shows the layout of the proposed development and is set out at **Appendix 1**.
- 3.4 The site will be sensitively developed to provide a modern, high quality foodstore with surface level car parking and landscaping. The retail unit will be positioned at the north of the site with car parking to the south and west.
- 3.5 There will be a single access point for both pedestrians and vehicles provided from Bradberry Balk Lane to the west. Delivery vehicles will utilise the same access point, driving into the store in forward gear and reversing into the loading bay at the side of the store. The access point will be designed to form a new bell mouth, with a slight extension of the pedestrian/cycle lane along Bradberry Balk Lane off Mitchells Way. In addition, as discussed in later sections of the report, a new footpath will be provided from the store entrance, extending to the north of the site, with a safe crossing point provided over Bradberry Balk Lane.
- 3.6 Soft landscaping will be provided throughout the site, especially to the south of the store and along the site border. The south-eastern corner of the site will not be developed, due to the change in levels and its constrained shape. This area will be reserved and maintained as a wildflower meadow.

- 3.7 The proposal will allow the site to be developed into a long-term viable use, which will complement the existing convenience retail provision within Wombwell. Lidl provides a deep-discount operation, a format which is not currently available in the local area. The operator sells high quality products at competitive prices and will be a new fascia to the area.
- 3.8 The proposal will provide opportunities for both main food and 'top-up' shopping for convenience goods and will therefore perform a complementary role to the existing stores in the local centre, and to the larger foodstores located further afield. The new format of retailer will provide increased consumer choice and enhanced competition. The development will improve the qualitative retail offer in Wombwell, and will provide a new facility that meets the needs of the whole community. The retail unit is also expected to generate 40 valuable new jobs for the local area.

### **Community Consultation**

- 3.9 The National Planning Policy Framework encourages early consultation by developers with both the Local Authority and the local community. As previously highlighted, the applicant has engaged with the Local Planning Authority with a pre-application meeting held on 13 January 2015 and subsequent design meeting held on 7 July 2015.
- 3.10 Furthermore, Lidl has undertaken a community engagement exercise with the local community by holding a public exhibition to explain the proposed development. The exhibition was held on Thursday 9 July at St Michael and All Angels Church in Wombwell and ran between 2.30pm and 7.30pm. The feedback from the event was overwhelmingly positive.
- 3.11 During the exhibition members of the public were given the opportunity to sign a feedback form on the proposed development, ask questions and provide feedback on the proposed design and layout. The Statement of Community Involvement submitted alongside the application provides full details regarding the comments received.

## 4 THE LIDL RETAIL OPERATION

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4.1 This section provides an overview of the Lidl retail operation including the position of the company within the UK retail market, the discount format, pricing structure and product range. It sets out how Lidl's deep discount operations set it apart from convenience retailing undertaken by the 'big four' mainstream operators.

### **Position within the UK Market**

4.2 Lidl and Schwarz Grocery Wholesale was founded in Germany in the 1930's, with the first Lidl store trading in the UK opening in 1994. Lidl now has over 10,000 stores in 27 countries.

4.3 Lidl currently has over 600 stores trading in the UK market nationwide. The Competition Commission's Groceries Market Investigation Final Report (April 2008) confirms at Appendix 3.1, page A3 (1)-1 that in 2008 Lidl had around 1.3% of the UK grocery market share. This has increased in recent years to approximately 1.8%<sup>1</sup>.

4.4 The Lidl retail philosophy focuses on simplicity and maximum efficiency at every stage of the business from supplier to customer, enabling the company to sell high quality products from a limited range of exclusive own brand labels at the lowest prices. This accounts for Lidl's trading success.

4.5 Lidl is classified within the Verdict UK Grocery Retail report as a 'hard' or 'deep' discounter within the convenience goods retail market, alongside operators such as Aldi and Netto (now trading as Asda). Deep discounters concentrate on selling a limited range of primarily own brand goods at extremely competitive prices. Lidl is therefore distinct from the mainstream food retailers in the range of goods that it provides.

4.6 The distinct offer provided by Lidl is further highlighted by the Competition Commission's Groceries Market Investigation. The glossary to the document refers to Lidl as a 'Limited Assortment Discounter' or 'LAD', which are defined as:

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<sup>1</sup> Figures from Verdict UK Food and Grocery Retailers Report 2010.

*'Limited Assortment discounter (i.e. grocery retailers offering noticeably lower prices than a conventional supermarket but which stock a limited range of products)'*

4.7 Further reference is made to the LADs at paragraph 3.3. It states:

*'Limited Assorted Discounters (LADs) carry a limited number of grocery products and base their retail offer on selling these products at very competitive prices, the three major LADs in the UK are Aldi, Lidl and Netto. Each of Aldi, Lidl and Netto carries in the region of 1,000-1,400 product lines in stores ranging from 500-1400 sq. m. (Stores of a similar size operated by a large grocery retailer generally carry around 5,000 products.)'*

4.8 Paragraph 4.80 highlights that due to the limited number of products carried by the LADs they are not close substitutes for other foodstores of a similar size, it states:

*'The limited number of products carried by LAD stores means that these stores are not close substitutes for similarly sized stores operated by CGL (Co-op, M&S, Sainsbury's, Somerfield and Tesco). In particular, we note that Aldi, Lidl and Netto stores typically sell fewer than 1,000 products. In comparison large grocery retailers generally sell around 5,000 to 10,000 products in stores in the same size range as those operated by LADS (i.e. 500 to 1400 sq. m). The results of our entry analysis also show that Aldi, Lidl and Netto stores are not close substitutes for the stores of large grocery retailers.'*

4.9 The findings of the Competition Commission's report confirm that Lidl provides a different offer from the main food retailers. In addition the report states that *'deep-discounters or LAD retailers, such as Lidl, do not impact to any significant degree upon larger food retailers'* (paragraph 4.71, table 4.5).

4.10 The material difference between large food retailers and Lidl has been acknowledged both by the Competition Commission and the Secretary of State. When making his recommendations to the First Secretary of State, in relation to a Lidl foodstore proposal in the London Borough of Merton, the Planning Inspector<sup>2</sup> noted that:

*'The Lidl offer is materially different to that provided by the mainstream food retailers.'*

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<sup>2</sup> Paragraph 283 of appeal ref. APP/T5720/V/04/1171394 (**Appendix 2**) (Inspector Robert Forster)

- 4.11 Furthermore, it was recognised by the Inspector in her consideration of a Lidl scheme in New Addington, Croydon<sup>3</sup> that:

*'The Lidl offer is materially different to that provided by the main food retailers...And as a result... would meet a qualitative need by extending consumer choice. Furthermore, it would add a new dimension to the competition within the area.'*

- 4.12 In a more recent appeal decision (see **Appendix 2**) involving a LAD proposal in Walsall the Inspector noted the different offer provided by deep discount retailers. The Inspector stated:

*'PPS4 sets out that additional weight should be given to meeting qualitative deficiencies in deprived areas to enable choice to meet the needs of the whole community. The Secretary of State has recognised the complementary role of deep discount stores. I accept that the major food retailers have sought to respond to such retailers by the introduction of value ranges and that this may partially erode the price advantage of such stores. However in Walsall, the main supermarkets are in a significant majority and in the catchment areas there is only one other LAD on the periphery of the area.'*

- 4.13 It is important to note that in the case of Walsall, which pre-dates current Government guidance, the Inspector recognised that the materially different offer and qualitative benefits of LAD stores, despite the attempts of the main food retailers such as Tesco and Asda to introduce their own value ranges. Furthermore the Walsall case is similar to this case in terms of the qualitative deficiency in the deep discount convenience offer.

### **Pricing structure and products**

- 4.14 Lidl's retail strategy is to offer customers the highest quality products at the lowest prices. They are able to do this due to the pan European bulk purchasing policy based upon offering a limited range of products. This gives Lidl immense buying power enabling the company to achieve significant cost savings that can then be passed onto the customer in the form of lower prices. The savings are further

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<sup>3</sup> The Inspector's decision is set out in **Appendix 2**.

enhanced through efficiencies in store management, sourcing new property, building stores and administration.

- 4.15 As set out above, Lidl sells a limited range of about 1,800 carefully selected products, of which 90% are own brand. The store has very limited duplication of products whereas the large main foodstore offer a range of one type of product. This range is supplemented by a limited selection of branded goods. In comparison, the 'big four' food retailers (Tesco, Asda, Sainsbury's and Morrisons) can offer up to 10,000 lines of mainly branded goods from similar size stores to those that Lidl operate.
- 4.16 The Lidl product range comprises Continental and UK items which appeal to a broad customer base. The company aims to keep the shopping experience simple for customers; this is done through the store layout. Lidl has a 'no frills' policy by avoiding unnecessary packaging, presentation and store fit out costs, enabling the savings to be passed on to the customer.
- 4.17 Lidl also differentiates itself from larger food retailers and small local convenience stores by not offering any of the following concessions and services:
- Fresh Meat Counter
  - Fresh Fish counter
  - Delicatessen/cheese counter
  - Hot food counter
  - Pharmacy
  - Dry Cleaning
  - Film Processing
  - Post office
  - Mobile phone shop
  - Café/restaurant.
- 4.18 The above facilities and services do not fit with the company's retail concept and business model. The facilities result in added expenses to the business model which Lidl chooses not to offer. Offering the identified services would have an adverse impact in the prices of the goods offered to customers. Lidl has a successful trading format and does not intend to change it. As Lidl does not provide concessionary services, it underlines the fact that Lidl does not compete to any significant degree with other retailers, rather Lidl stores are complementary to the existing pattern of

convenience shopping within an area, providing increased and enhanced consumer choice and productive competition.

- 4.19 Indeed, in a recent appeal decision (November 2013) concerning a proposal for an out-of-centre Lidl foodstore in Huntingdon, the Inspector concluded that:

*“as it would represent a specialist discount foodstore, I find that there is insufficient evidence to show that it would cause any significant harm to this vitality and viability, particularly as it would not compete directly with the retail premises and would be complementary to the activities within the Town Centre”<sup>4</sup>.*

- 4.20 The price advantage offered by Lidl when compared to other retailers has also been accepted in planning appeals. Lidl is able to provide a basket of products (based upon goods of comparable quality) at a price 16%+ cheaper than the most competitive of the mainstream retailers. Therefore a new Lidl store in Wombwell would offer genuine consumer choice in product and price for the whole community. Furthermore, Lidl was awarded the title of ‘Best Value-for Money retailer’ by Which? in 2008.

### **Store Format**

- 4.21 The market position of Lidl as a ‘deep-discounter’ is dictated by its ability to cut cost throughout its business. Products are displayed from the original pallets which are delivered to the store and in their original boxes rather than them being stacked on shelves; this reduces the cost associated with manual handling by removing the need to breakdown pallets and transferring products onto shelves.
- 4.22 Lidl has one of the highest net to gross sales floorspace rates within the grocery sector. This is so that the majority of products at the store can be put out for sale on their pallets rather than requiring large areas for storage.
- 4.23 The minimum size of store is purposefully designed in order to provide safe and spacious movement around the store for less able bodied customers and patrons

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<sup>4</sup> Appeal reference: APP/H0520/A/13/2198872. The Inspector’s decision is presented in **Appendix 2**.

with pushchairs. Furthermore, by placing items direct onto the sales floor, Lidl ensure easy access to these items for all customers.

### **Locational Strategy**

- 4.24 Lidl stores tend to serve a relatively compact catchment area as they primarily provide a local shopping facility, selling a limited range of goods. The locational strategy of Lidl is for stores in main urban areas, such as Wombwell, to serve a primary catchment that broadly equates to a 0-5 minute drivetime isochrones.
- 4.25 A number of 'Store Door surveys' have been undertaken by Lidl. The surveys have confirmed that a significant proportion of customers visit the store by means other than private car. This shows that a significant proportion of trips will be by public transport or represent local walk-in trade.

### **Customer behaviour**

- 4.26 Many customers will use Lidl stores for their main weekly grocery shop, taking advantage of the low prices, but then visit other retailers to buy branded products or more specialist/luxury items or use services that are not offered by Lidl, such as the fresh fish counter or newsagency.
- 4.27 Most Lidl customers continue to visit local convenience stores close to their homes for top up shopping requirements. In addition, they will use these stores or other supermarkets to buy products that Lidl doesn't sell such as tobacco. Lidl often trades in close proximity to other shops such as Londis, Spar and independent retailers as it complements the role that these stores perform.

### **Employment Opportunities**

- 4.28 The proposed Lidl store will employ 40 staff in-store. Lidl has a policy of employing local people from all backgrounds to work at their stores at a range of positions and levels of seniority. This allows for a short commute to work and a range of training opportunities for local people. Lidl is an equal opportunities employer with a strong social inclusion policy. The company also runs a comprehensive management

development scheme and a range of training programmes, enhancing the skills of its staff and contributing to staff retention.

- 4.29 Staff are recruited from the local community using a variety of methods including local newspaper advertisements, job centre advertisements and open days.

### **Opening Hours**

- 4.30 Lidl stores usually open between 0700-2200 Monday to Saturday and either 1000-1600 or 1100-1700 on Sundays. The standard opening hours of Lidl stores are therefore more limited than most large mainstream foodstores and small convenience retailers.

### **Deliveries**

- 4.31 Lidl products are purchased throughout Europe and then packaged in Lidl's brand and distributed directly to the relevant regional distribution centre of which there are currently eight in the UK.
- 4.32 Lidl are mindful of the need to minimise any disturbances to neighbouring residents and landowners. To assist in achieving this, each store has only one or two dedicated deliveries per day (with an additional delivery only during peak trading periods). This provides all the necessary produce, including frozen and chilled goods, which are carried using individual temperature controlled units that can be loaded on to the vehicle. The method ensures that there is minimum disruption by removing the need for noisy air conditioning units on vehicles. During the deliveries it is company policy that the engine remains switched off to reduce disturbance. The total unloading time of a delivery is approximately 45 minutes to 1 hour.

### **Sustainability**

- 4.34 Lidl undertakes a comprehensive approach to the sustainability of its stores from locational choice and materials used in construction to the operational elements of the store. The measures undertaken by Lidl are set out in **Section 9** and in the submitted **Sustainability Statement**, where they are explained in more detail.

## 5 REVIEW OF RELEVANT PLANNING POLICY

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- 5.1 Section 38 (6) of the Planning and Compulsory Purchase Order Act 2004 states that ***'if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination should be made in accordance with the plan, unless material considerations indicate otherwise'***. Any issue that relates to the use and development of land is capable of being a material planning consideration; this includes for example government statements of planning policy.
- 5.2 The site is within the administrative boundary of Barnsley Metropolitan Borough Council. The development plan applicable to the application site comprises:
- The Barnsley Core Strategy (2011); and
  - The Saved Policies of the Barnsley Unitary Development Plan (UDP) (2000).
- 5.3 The Council had also begun work on a new 'Development Sites and Places' Development Plan Document (DPD) which progressed only as far as initial consultation whereby the main issues and potential options were considered, in 2012. However, in light of the changes to national planning policy through the adoption of the NPPF, the Council took the decision to suspend the progression of the DPD and instead pursue the option of developing a new Local Plan. As such, no weight can be attributed to the halted DPD, and we do not consider this further in our commentary below.
- 5.4 The Council is currently in the process of considering comments made following a draft Local Plan public consultation exercise, which was undertaken between November 2014 and January 2015. Given the progression of the Plan to just draft level, it is considered that only very limited weight can be applied to its policies, aims and overall objectives at this stage. As such, this document is not considered further in our assessment below.

- 5.5 The National Planning Policy Framework (NPPF) was published in March 2012, and replaces all previous national planning policy statements. The NPPF is a relevant material consideration to take into account in determining the planning application.

## **National Planning Policy**

### ***National Planning Policy Framework, March 2012***

- 5.6 The National Planning Policy Framework (NPPF) was published in March 2012 and is a material planning consideration in the determination of the application. It replaced all previous national planning policy statements and guidance notes. The NPPF sets out the Government's economic, environmental and social planning policies for England. These policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations.
- 5.7 Paragraph 7 explains that there are three dimensions to sustainable development: economic, social and environmental, as follows:
- **An economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and co-ordinating development requirements, including the provision of infrastructure;
  - **A social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
  - **An environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

5.8 The NPPF sets out a presumption in favour of sustainable development. Paragraph 14 of the document specifically states that: *'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking'*.

5.9 Paragraph 14 continues by stating that:

*'For decision-taking this means:*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
  - *specific policies in this Framework indicate development should be restricted'*.

5.10 The document identifies 12 Core Planning Principles that should underpin both plan-making and decision-taking, these include:

- Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth;
- Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;

- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value; and
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

5.11 Paragraph 18 of the Framework states that: *'The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future'*.

5.12 In addition, Paragraph 19 states: *'The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system'* [our emphasis].

5.13 Section 2 of the Framework sets out the Government's policy in relation to maintaining the vitality of town centres. Paragraph 23 states that local planning authorities should: *'Promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres'*.

5.14 Paragraph 24 of the document explains that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre. Paragraph 26 then describes the requirement for an impact assessment, which should be undertaken for edge and out-of-centre retail developments exceeding 2,500sq.m floorspace (unless a local threshold takes precedent).

5.15 Since the proposed Lidl foodstore will be on an out-of-centre site, we have undertaken a sequential search for in and edge-of-centre sites, and our assessment is presented in **Section 7**.

- 5.16 However, we note that there is no national or local requirement to produce a retail impact assessment, as the size of the proposed foodstore (at 2470sq.m GIA) falls just below the impact threshold specified in the NPPF. Nevertheless, in order to address queries raised at the pre-application stage, we have chosen to take a comprehensive approach, and we present a quantitative assessment of retail impact in **Section 8** of this report.
- 5.17 Section 4 of the Framework relates to the promotion of sustainable transport. Paragraph 32 states that: *'All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment'*. A Transport Assessment and Travel Plan has been prepared and submitted as part of the planning application.
- 5.18 Paragraph 34 confirms that: *'Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised'*. The application site's location on Mitchells Way, in close proximity to a residential area and within 50m of a bus stop, is in accordance with this policy, as the development will be accessible by a wide range of transport modes.
- 5.19 Paragraph 35 highlights the need to facilitate sustainable modes of travel. It states that: *'Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people.'* It goes on to highlight that developments should be designed and located where practical to:
- *accommodate the efficient delivery of goods and supplies;*
  - *give priority to pedestrian and cycle movements, and have access to high quality public transport facilities;*
  - *create safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and where appropriate establishing home zones;*
  - *consider the needs of people with disabilities by all modes of transport''.*
- 5.20 Paragraph 66 advocates community consultation in relation to the design of proposed developments stating that: *'Applicants will be expected to work closely with those directly affected by their proposals to evolve designs that take account of the views of the community. Proposals that can demonstrate this in developing the design of the*

*new development should be looked on more favourably*". The applicant's approach in this regard is set out in the submitted Statement of Community Involvement.

- 5.21 Paragraph 187 of the NPPF deals with decision making and states that "*Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area*".
- 5.22 Paragraphs 196-198 provide guidance for the determination of planning applications. Paragraph 196 states that: '*The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions*'.
- 5.23 Finally, Paragraph 197 reconfirms that: '*In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development*'.

## **Development Plan**

### ***Core Strategy***

- 5.24 The Barnsley Core Strategy was adopted in September 2011. The document sets the key strategic direction for local policy. The Plan will be used when considering planning applications and to co-ordinate investment decisions that affect the towns, villages and countryside of Barnsley.
- 5.25 Objective 5 seeks to provide the Borough with the conditions needed for the retention, attraction and growth of innovative people and firms to create a diverse economy. Notwithstanding this, it seeks to attract more growing firms in economically competitive and new sectors.
- 5.26 Furthermore, Objective 6 seeks to ensure all new development is sustainably designed and built to the highest standards by insisting on development that contributes to and enhances local distinctiveness and is built in appropriate materials,

as well as requiring developments to achieve nationally recognised design and sustainability standards.

- 5.27 Noting that the application proposal represents private investment, seeking to provide a well-designed neighbourhood foodstore and creating around 40 jobs, the importance of the proposal and its compliance with the aforementioned strategic objectives should not be underestimated.
- 5.28 Sustainable construction is identified in **Policy CSP2**. In essence, developments will be expected to demonstrate how it minimises resource and energy consumption, and how it is located and designed to withstand the longer term impacts of climate change. In addition, all non-residential development exceeding a certain threshold will be expected to achieve at least BREEAM standard of 'very good' or equivalent.
- 5.29 **Policy CSP3** relates to SuDS and states that relevant planning applications must include an assessment to show that SuDS will work and be maintained. Measures should be taken to avoid water contamination and safeguard groundwater supply.
- 5.30 In relation flood risk, **Policy CSP4** expects proposals over 1000sq.m floorspace or 0.4 hectares in Flood Zone 1 to demonstrate how the proposal will make a positive contribution to reducing or managing flood risk, as well as requiring development proposals to use Sustainable Drainage Systems.
- 5.31 **Policy CSP5** identifies the requirement for non-residential developments exceeding 1000sq.m floorspace to incorporate decentralised, renewable or low carbon energy sources and other appropriate design measures sufficient to reduce the development's carbon dioxide emissions by at least 20% subject to such measures being practicable and not unacceptably prejudicing the viability of the development.
- 5.32 In terms of location of growth, **Policy CSP8** states clearly that priority will be given to development in Barnsley and its surrounding principal towns. Wombwell is identified as a principal town and the application site lies wholly within its settlement boundary.
- 5.33 The supporting text of Policy CSP8 at paragraph 9.58 reads: *'individual principal towns will be the main local focus for housing, employment, shopping, leisure, education, health and cultural activities and facilities'*. Evidently, the concept of a retail foodstore development within the Wombwell settlement is wholly appropriate, subject to other planning policy and material considerations.

- 5.34 **Policy CSP25** requires new development to be accessible to public transport and meet the needs of pedestrians and cyclists, as well as satisfying the relevant parking standards for all modes of transport as set out in the relevant Supplementary Planning Document. Where necessary, planning applications will be required to provide a Transport Assessment and a Travel Plan in accordance with the relevant guidance and associated thresholds. Where the above requirements cannot be satisfied, financial contributions may be sought.
- 5.35 New development will be expected to be designed and built to provide safe, secure and convenient access for all road users. **Policy CSP26** continues to state that financial contributions may be sought where a development is not suitably served by the existing highway, or would create or add to highway safety problems or the efficiency of the highway for all road users.
- 5.36 **Policy CSP29** outlines the key design principles that new developments are expected to accord with. As well as contributing to place-making, development should assist in the rejuvenation of environments by virtue of adding to local distinctiveness. Moreover, new development should contribute towards creating attractive, sustainable and successful neighbourhoods, as well as being universally accessible to the elderly, disabled and individuals with children.
- 5.37 **Policy CSP31** identifies the retail hierarchy and seeks to principally direct retail development to existing centres. Edge-of-centre and out-of-centre development will only be allowed where it meets the requirements of Planning Policy Statement 4 (PPS4). Noting the absence of PPS4 as an adopted national planning policy, it is considered that the main guidance on retail planning policy in relation to this application is now the NPPF.
- 5.38 At the strategic level, we identify that the application site lies within the River Dove Valley Corridor. **Policy CSP33** notes that network of green infrastructure in this area will be secured by protecting open space, creating new open spaces as part of new development, and by using developer contributions to create and improve green infrastructure. Supporting text paragraph 9.230 reads:

*'Green infrastructure can be described as including strategic networks of accessible, multifunctional sites (including*

*playing fields, parks, woodland, informal open spaces, nature reserves and historic sites) as well as linkages (such as the principal transport corridors, river corridors and floodplains, wildlife corridors and greenways)'.*

- 5.39 **Policy CSP35** refers to Green Space. In essence, the Council will allow development proposals that result in the loss of green space where an assessment shows that there is too much of that particular type of Green Space in the area which it serves and its loss would not affect the existing and potential green space needs of the borough; or an appropriate replacement green space of at least an equivalent community benefit, accessibility and value is provided in the area which it serves. The application site is assessed as a 'Greenway' in the Council's Green Space Strategy Part One Document (2006). As such, the pre-application advice from the local planning authority confirmed that Policy CSP35 is not directly applicable in this case, but rather that Policy CSP33 relating to green infrastructure is the more relevant policy designation.
- 5.40 **Policy CSP36** relates to biodiversity and geodiversity. Development which may harm a biodiversity or geological feature will not be permitted unless effective mitigation and/or compensatory measures can be ensured. Accordingly, an extended Phase 1 Habitat Survey accompanies application submission.
- 5.41 In relation to contaminated land, **CSP39** identifies that where the future users of a development would be affected by contamination or stability issues; or where contamination may present a risk to the surrounding environment, proposals must be accompanied by the relevant report in accordance with the required guidance. A Phase I Ground Investigation Study thus forms part of the application submission.
- 5.42 **Policy CSP40** deals with pollution control and protection. Development will be expected to demonstrate that it is not likely to result, directly or indirectly, in an increase in air, surface water and groundwater, noise, smell, dust, vibration, light or other pollution. Moreover, developers will be expected to minimise the effects of any possible pollution and provide mitigation measures where appropriate. Given this, an Air Quality Assessment accompanies the planning application.

**Saved UDP Policies**

- 5.43 Limited weight should be given to the UDP saved policies in the determination of this planning application. Although numerous saved policies were extended past 2007, following approval by the Secretary of State, they are now very out-of-date.
- 5.44 **Saved Policy S3** relates to retail development outside defined shopping centres. In essence, this saved policy echoes Policy CSP31 of the Core Strategy. All new retail development which is proposed on a site outside the central shopping area of Barnsley town centre and the principal shopping and commercial centres defined on the proposals map, including Wombwell, will only be permitted where there are no sequential preferable sites available within or on the edge of a defined centre or where there is no available allocated site.
- 5.45 **Saved Policy GS24** relates to the site's designation in the South Yorkshire Forest. This states that all development within the forest area must accord with the saved policies of the UDP and developers will be encouraged to make a positive contribution to the forest.

## 6 LAND USE PRINCIPLES

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- 6.1 The review of national planning policy in **Section 5** shows that there is a real focus on the need for sustainable economic development, especially in current market conditions. Government policy is clear that there should be a presumption in favour of sustainable development, that economic growth is a high priority and that planning should encourage and not act as an impediment to sustainable growth.
- 6.2 The application site is located within the urban area of Wombwell, and is subject to a historic 'Green Space' designation. We explain in this Section why this designation is no longer applicable, and this matter was agreed with the local planning authority at the pre-application meeting. Instead, however, it is acknowledged that the site is located within an area of Green Infrastructure, given the site's location within the broadly-defined River Dove Valley Corridor. As such, it is necessary to address the provisions of Core Strategy **Policy CSP33**, which we discuss below.
- 6.3 As the site is proposed for retail use, both Core Strategy **Policy CSP31** and national planning policy dictate that a sequential assessment must be undertaken to demonstrate that there are no sequentially preferable sites within or on the edge of existing centres that are suitable, available and viable to accommodate the application proposal. We consider the specific requirements of the sequential test in **Section 7** below. Although there is no national or local policy requirement to undertake a retail impact assessment, to be robust we have undertaken an impact assessment, and we outline our impact analysis in **Section 8**.

### **Green Space and Green Infrastructure**

- 6.4 The site is located within a large area of land designated as 'Green Space' in the adopted Development Plan. However, this is a historic designation and not one which is still relevant, given the site's use and characteristics. The site forms only the southern, triangular tip of an extensive area of dense woodland, and bears no direct relationship to the wider Green Space area to which it adjoins.

- 6.5 Indeed, the land to the north of the site comprises publicly accessible woodland, whereas the application site is privately-owned farmland, which is not accessible to the public and offers no public amenity benefit.
- 6.6 We note that Policy CSP35 of the Core Strategy and emerging Policy GS1 of the Consultation Draft Local Plan states that ‘Green Space’ refers to any land within or close to towns and villages that has or could have demonstrable value for **recreation or wildlife**. In this respect, we reiterate that the site comprises grade 3 agricultural land that is privately-owned and used for low level agricultural activities. It is clear that the site is not publically accessible or open directly for public benefit/recreation. Furthermore, the site does not possess any value in terms of wildlife and nature conservation, and the Extended Phase 1 Habitat Assessment submitted in support of the application demonstrates that there are no ecological interests on site. As such, the site does not comply with the Council’s definition of ‘Green Space’, and it appears as though it has been conjoined to the wider woodland area to its north for convenience or by historic mistake.
- 6.7 In light of the above, representations have been submitted to the Draft Local Plan consultation exercise, which recommend the removal of the historic ‘Green Space’ designation from the application site, which is a separate entity to the woodland to its north. The Council is currently considering these representations, which will inform the Publication version of the Local Plan.
- 6.8 At the pre-application meeting and in the Council’s formal pre-application response, the case officer confirmed that the site’s historic ‘Green Space’ designation is now redundant. The pre-application advice received from the Council, in a letter dated 30 January 2015, specifies that:

*“The Greenspace allocation in the UDP is an historic designation that is now not considered to be appropriate albeit that it is repeated in the emerging Local Plan. The main concern is to preserve a route for the canal, which is just outside of the proposed site. Therefore in this regard the relevant Core Strategy Policy is CSP33 Green Infrastructure and under the terms of this policy the Council will need any future application to show that there is no conflict with the route of the canal”.*

6.9 We note that the application site is assessed as a 'Greenway' in the Council's Green Space Strategy Part One Document (2006), and it also falls within the broadly-defined River Dove Valley Corridor, as identified on Diagram 6 in the Core Strategy. As such, the site's consideration as 'Green Infrastructure' rather than 'Green Space' is more appropriate. We now turn to consider the provisions of Core Strategy Policy CSP33 (Green Infrastructure) below.

6.10 Core Strategy Policy CSP33 sets out a series of objectives for the creation, maintenance and enhancement of the green infrastructure network, as follows:

- To provide attractive environments where people want to live, work, learn, play, visit and invest;
- To meet the environmental, social and economic needs of communities across the Borough and the wider City regions;
- To enhance the quality of life for present and future residents and visitors;
- To help meet the challenge of climate change;
- To enhance biodiversity and landscape character;
- To improve opportunities for recreation and tourism;
- To respect local distinctiveness and historical and cultural heritage; and
- To maximise potential economic and social benefits.

6.11 The policy objectives are therefore very broad in their scope. The application scheme is certainly not contrary to these objectives, as it does not involve the loss of any publicly accessible open space, or any ecological or wildlife interests. Furthermore, the application site does not conflict with the local greenway or canal network, as the former Dearne and Dove Canal (which has now been filled in) lies outside the application site and is unaffected by the application proposal.

6.12 Conversely, the application scheme offers the opportunity to develop an under-used agricultural site, which is of irregular-shape and detached from any main landholding, and is unviable for long-term agricultural use. Indeed, the site once adjoined the larger area of farmland on the opposite side of Mitchells Way (which is now under construction for residential development), but it became segregated when Mitchells Way was built, which now bisects the two areas of land.

- 6.13 The remaining triangular area of land, which forms the application site, is now redundant but it can be brought back into economic use by the application proposal. This accords with Policy CSP33 which notes that green infrastructure should – in addition to meeting environmental needs - also meet the social and economic needs of communities, and provide environments where people want to work and invest. The proposal will also enhance the quality of life for existing and future residents of Wombwell by providing a discount foodstore, to address the deficiency in main foodstore provision in the town in a sustainable and accessible location.
- 6.14 It is also notable that the application scheme offers the opportunity to improve the green infrastructure network, in line with the aspirations and objectives of Policy CSP33. As shown on the Landscape Masterplan that has been submitted with the application, the south-east corner of the application site has been earmarked for a wildflower meadow. This will provide an area of visual and ecological interest, and will enhance the environmental value of the greenway compared to its current status (as an under-used agricultural field, with no planting).
- 6.15 In addition, although the application proposal does not conflict with the canal corridor itself (as this lies outside the site), it is acknowledged that an access point to an informal woodland path lies to the rear of the application site. This is not a public right of way and is not a level, well-lit or safe route, but it does attract some dog walkers. Following the proposed development scheme, this route will be discouraged, as it would involve walking to the rear of the proposed sub-station and foodstore.
- 6.16 To mitigate for the loss of this route – even though it is informal – the applicant proposes to improve the local footpath network around the site. There is an existing shared cycle/footpath which runs along Mitchells Way, and it is proposed to extend this around the corner of Bradberry Balk Lane, to the store entrance junction. It is also proposed to create a new footpath on the opposite side of the store entrance, which will run to the north and provide a crossing point, linking to the existing footpath on the opposite side of Bradberry Balk Lane. These measures are shown on the Proposed Site Layout Plan, which is presented in **Appendix 1**.
- 6.17 The applicant is also willing to provide a financial contribution towards some directional signage on Bradberry Balk Lane, to redirect users of the existing informal footpath link across Bradberry Balk Lane (using the proposed new crossing point)

and towards the formal canal footpaths, namely the Trans-Pennine Trail which runs to the north of the site. The applicant welcomes the opportunity to discuss this or alternative suitable options with the local planning authority further during the course of considering the application package.

- 6.18 In summary, the application proposal will result in no adverse impact on the use, value and extent of Wombwell's 'Green Infrastructure' network. On the contrary, the proposal includes enhancements to the network, through the provision of a new wildflower garden on-site, and by enhancing local footpath links and signage – which will redirect users away from existing unsafe and informal walking routes and towards the formal canal route of the Trans-Pennine Trail. As such, the application scheme is entirely in accordance with the broad policy objectives set out in Core Strategy Policy CSP33, which is the correct policy to apply to the proposal.

### **Proposed Retail Use**

- 6.19 With regards to the proposed foodstore, we consider that retail use is acceptable on the application site, and this principle was discussed with the Council at the pre-application meeting held in January 2015.
- 6.20 In particular, we note that there is a quantitative and qualitative need for a discount foodstore in Wombwell, to enhance local competition and widen consumer choice. Deep discount foodstores fulfill a specific role in providing complementary food provision, and they trade alongside the major food superstores and independent grocery shops, enhancing consumer choice.
- 6.21 It is evident that that there is a shortfall in supermarket provision in Wombwell itself. Within Wombwell there is a Tesco Express, a Heron Frozen foodstore, and Fultons grocery store. The remainder of the convenience offer is confined to a butchers, a bakers and several newsagents/general grocery stores. Thus, it is clear that existing convenience provision is limited to small-scale convenience stores.
- 6.22 Currently, local residents must travel beyond Wombwell to access a main food supermarket, with the closest alternative being the out-of-centre Tesco superstore at Wombwell Lane, the Aldi at Stairfoot, or the out-of-centre Morrisons supermarket at

Cortonwood. A new foodstore at Mitchells Way, Wombwell, could be expected to clawback local trade that currently leaks beyond the settlement.

- 6.23 The proposed Lidl foodstore will provide 1,424 sq.m of sales floorspace and will provide a valuable new shopping facility for local residents. Related to this, we also note that there is a lack of discount foodstore provision in this part of Barnsley. The nearest Lidl supermarkets are located within Barnsley Town Centre (4 miles away) and Mexborough (over 5 miles from Wombwell). There is an Aldi at Stairfoot, but this is still over 2 miles from Wombwell, in a location which can mainly be reached by car. There is thus a qualitative need for a discount foodstore in Wombwell itself, to widen consumer choice and address local deficiencies in the main food and 'top up' retail offer.
- 6.24 It is also notable, as we set out in **Section 2**, that Wombwell has a high rate of unemployment, a growing elderly population, and a substantial proportion of households do not have access to a car. In these circumstances, the provision of a local discount foodstore will help to meet local day-to-day food shopping needs, in a much more convenient and accessible location.
- 6.25 The qualitative need for the proposal has also been confirmed by the public consultation exercise, where 88 per cent of people who completed feedback forms noted their support for the scheme. Two of the primary reasons cited for supporting the application proposal were: (a) Wombwell does not currently have sufficient local supermarket provision; and (b) desire for discount food provision.
- 6.26 We also consider that there is a clear quantitative need for an additional foodstore to serve the urban area of Wombwell. There is no up-to-date Borough-wide assessment of retail needs available on the Council's website. However, an assessment of retail capacity in the Wombwell and Darfield area was undertaken last year by the applicants for a new foodstore and row of units in Darfield (application reference: 2014/1232). This assessment is also applicable to the current application proposal, as the catchment areas of the two sites overlap.
- 6.27 The Planning and Retail Statement, submitted in support of the Darfield scheme and prepared by DPP in October 2014, contained an assessment of convenience

expenditure capacity in Table 7 of its Appendix 3. The assessment is reproduced in **Table 6.1** below.

- 6.28 **Table 6.1** shows that there will be around £333m convenience expenditure available in the Wombwell / Darfield / Stairfoot area at 2019. Deductions are then made for: (a) the turnover of existing convenience shops and services in the area; (b) the turnover of the committed new Sainsbury's store at Stairfoot; and also (c) the convenience turnover of the Darfield scheme itself. Even once these deductions are made, it is shown that there is still a surplus of **£218m convenience expenditure available at 2019**. The Council accepted DPP's need assessment when determining the Darfield application, and the Committee Report comments that: "*the submitted impact assessment indicates that the proposal would still only result in 19% of convenience....trade being retained in the catchment area*".

**Table 6.1 – Summary of Convenience Retail Capacity at 2019**

Expenditure in PCA	£333,436,072
Turnover of floorspace in PCA (from within PCA)	£59,426,496
Residual capacity	£274,009,577
Turnover of commitments (Sainsbury's)	£51,752,949
Turnover of Darfield proposal from within PCA	£4,194,064
<b>Residual capacity</b>	<b>£218,062,563</b>
Trade retention	19%

*Source: DPP's 'Planning and Retail Statement' submitted with the Darfield application scheme*

- 6.29 Our retail impact assessment, which is presented in **Appendix 4**, shows that the Lidl application proposal will only generate a convenience turnover of £3.86m at 2019. It is clear based on **Table 6.1** that there is sufficient convenience expenditure capacity in the local area to accommodate this uplift in turnover. Indeed, even after the proposed development, there will still be **£214m** surplus convenience expenditure available in the local area (i.e. £218m – 3.86m).

- 6.30 Thus, it is evident that there is an urgent quantitative need for additional convenience floorspace in the Wombwell area. Furthermore, it is clear that there is sufficient convenience expenditure capacity to support the Sainsbury's commitment at Stairfoot, the Darfield proposal, and the application scheme, with additional surplus remaining.
- 6.31 We therefore consider that there is a demonstrable quantitative and qualitative need for the application proposal.
- 6.32 It is also notable that the application site itself is well-located to provide an additional foodstore for the community. Although the site is not located in or on the edge of Wombwell District Centre, it is only situated around 750m from the centre. Furthermore, the route between the site and the centre is straight-forward and direct, as the centre can be accessed along Barnsley Road, which leads onto the High Street. The only major road to cross is Mitchells Way itself, and this is aided by pedestrian crossing points and a pedestrian island.
- 6.33 The site is also very accessible by public transport, being situated only 70m from a bus stop, and with 11 bus services passing the site in each direction, per hour. It is also within easy walking distance of the dense residential neighbourhoods of north Wombwell, and the new housing development which is under-construction on the opposite side of Mitchells Way.
- 6.34 Thus, although, the site is categorised as out-of-centre in retail planning policy terms, we consider that the site is easily accessible to local residents. In **Section 7** below, we demonstrate that there are no more centrally located sites within Wombwell itself, Darfield or Stairfoot Local Centre that are suitable, available and viable to accommodate the proposed scheme. Thus, the application site is the most sustainable location for the proposal and the most appropriate opportunity for expanding the local food retail offer.
- 6.35 Given the size of the proposed development (under 2,500 sq.m of floorspace) there is no national or local requirement to undertake a retail impact assessment. Nevertheless, to be robust we have undertaken an impact assessment and our analysis is set out in **Section 8** below. However, in summary, we find that the

proposal will have no significant adverse impacts on any designated centre located either within or outside the catchment area of the proposed store.

- 6.36 For these reasons, we consider that the principle of the proposed retail development is entirely appropriate on the application site, and is in accordance with both national and local retail planning policy.

## 7 SEQUENTIAL SITE ASSESSMENT

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### Introduction

7.1 As the application site is located out-of-centre, in this section we provide an assessment of sequentially preferable sites, in line with national and local planning policy. First, we consider the policy context for undertaking a sequential search for sites, and then we outline the applicant's operational and market requirements. We then explain how the catchment area has been defined, and finally provide a sequential assessment of potential alternative sites against the criteria set out in the relevant policy guidance.

### Policy Context

7.2 Paragraph 24 of the NPPF requires planning applications for 'main town centre uses' that are not in an existing centre and not in accordance with an up-to-date development plan to be the subject to a sequential assessment. The *Planning Practice Guidance* (March 2014) provides further guidance on the application of the sequential approach. The PPG makes clear that the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses.

7.3 Paragraph 010 of the PPG addresses the application of the sequential test to decision-taking. The PPG states that: "*The application of the test should be proportionate and appropriate for the given proposal*".

7.4 The PPG then goes on to provide a short checklist of the considerations to take into account when determining whether a proposal complies with the sequential test, as follows:

- "*with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.*"

- *is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal*.

7.5 The PPG concludes that: where *“there are no suitable sequentially preferable locations, the sequential test is passed”*.

### **Operational and Market Requirements**

7.6 The approach to selecting sites that are available, suitable and viable requires consideration of the operational and the market requirements of the applicant. Lidl's market and operational requirements have been set out in detail in **Section 4** and are outlined again briefly below.

7.7 In this case, the applicant seeks an appropriate site for a deep discount foodstore, with associated car parking and servicing. The specific operational requirements that will determine whether a site or premises is suitable and viable for the operations of a Lidl store include the following:

- A site that is in close proximity to other retail uses so that it can benefit from linked trips which attract and drive trade.
- A site which can accommodate a store which measures at least 2,470 sq.m (GIA), so that the operator can provide enhanced consumer choice by offering its full product range;
- A site that has enough room for the safe manoeuvre of customer vehicles and delivery vehicles on site.
- A site that is easily accessible by a range of means of transport for the catchment population;
- A site with excellent visibility to attract passing trade;

- A site that would be able to offer similar benefits to its customers, such as dedicated free parking (or parking fees reimbursed through shopping at the store) that existing large format stores are able to offer. Any restrictions to potential customers that make a new store less attractive than existing ones are likely to be untenable in terms of developing a viable operation.
- Direct access to dedicated car parking so that customers can easily transfer goods to their vehicles.
- A site that can provide a dedicated service area to the rear of the store with adequate provision to accommodate heavy goods vehicles. Given the nature of the operation (i.e. the sale of perishable convenience items) an established programme of deliveries is required at each store.
- A single storey, open and unrestricted sales floor area. It follows that only sites that benefit from a relatively flat topography, or are able to be developed to provide one, are suitable to accommodate discount foodstores.

## Location and Site Search Criteria

### *Catchment Area*

- 7.8 In terms of the application proposal, it is imperative that the Council considers the proposed development in the correct context, in respect of the catchment area that the development seeks to serve. The proposal has come forward to meet an identified need for additional foodstore provision in Wombwell itself. As explained above, there is no large format supermarket in the town, and there will be a clear benefit to consumers by increasing choice through the provision of local discount supermarket.
- 7.9 The catchment area of the proposed store is shown on the Plan presented in **Appendix 3**, and has been agreed with the local planning authority. In summary, the catchment area is based around a 5 minute drive-time, which reflects the expected trade-draw of a typical Lidl foodstore. The catchment area comprises Wombwell District Centre, Stairfoot Local Centre and the emerging Darfield Local Centre. The

boundaries of the catchment area have also been designed to reflect the location of other similar stores in the local area. For example, we do not expect the catchment area to extend any closer to Barnsley Town Centre, which is served by an existing Lidl foodstore at Peel Street.

### ***The Need for Flexibility***

- 7.10 The sequential approach in this instance needs to be applied with a common sense approach. As shown in the appeal decision in Oxford (presented in **Appendix 2** and described in **Section 4** above), the 2,470 sq.m (GIA) Lidl store cannot be realistically disaggregated and offer the normal Lidl range of convenience goods.
- 7.11 Nevertheless, in order to demonstrate flexibility in accordance with the requirements of the NPPF, sites capable of accommodating a store of 1,970 sq.m (GIA) i.e. approximately 500 sq.m smaller than the proposal have been considered. To accommodate a store of this size, sites of approximately 1 ha would be required to allow for servicing and car parking. This represents significant flexibility from the applicant. A store below this size, would be a departure from the company standard, and will require significant variation in design, layout, operation and stock display.

### ***Search for Sites***

- 7.12 We have undertaken a thorough search for sites in Wombwell District Centre, Stairfoot Local Centre and the emerging Darfield Local Centre. Our search for sites has included:
- A review of development plan allocations;
  - Visits to the centre; and
  - Contact with local commercial agents.
- 7.13 As we explain below, our survey identified no sites within the aforementioned centres.

## **Sequential Assessment**

- 7.14 The sequential approach to site selection has been undertaken using a methodology which demonstrates flexibility and complies with the requirements of the NPPF and the Planning Practice Guidance. Our findings are now set out below.

### ***Wombwell District Centre***

- 7.15 Within the defined centre boundary for Wombwell, only four vacant units were identified. The largest vacant unit at High Street, previously occupied by Superdrug, provides only 425sq.m floorspace and is evidently of a size not capable of being able to accommodate Lidl's requirements, even when accounting for flexibility. Two of the remaining three units, including a vacant public house on the edge of the centre boundary, are located in smaller terraced buildings dispersed across the centre. It would therefore not be possible to adjoin the floor areas provide by each of the four sites identified.
- 7.16 In addition, no suitable vacant or under-used sites were found within or adjacent to the boundary of the centre.

### ***Stairfoot Local Centre***

- 7.17 Within the defined centre boundary, only one smaller end terraced unit was identified as being vacant. The unit, previously occupied by a take-away is much too small for the application proposal and is thus considered unsuitable. There are no other identified sites within or adjacent to the centre boundary.

### ***Darfield Local Centre***

- 7.18 Darfield is identified as a local centre in the Core Strategy. However, no boundary for the centre has yet been defined, although a draft boundary is proposed in the emerging Local Plan. At this stage, there is therefore no defined 'centre' in which to identify sites as part of a sequential assessment.
- 7.19 Nevertheless, at the request of the Council, consideration has been given to the former Foulston School site, Nanny Mar Road, Darfield, which is located on the edge of the emerging Darfield Local Centre boundary. Outline planning permission (reference 2014/1232) was granted for a mixed-use development including a

discount foodstore and dwellings at the site in February 2015 subject to a S.106 agreement. It is understood that no occupant for the discount foodstore has been named.

- 7.20 The consented scheme allows retail development of up to 3,410 sq.m sales area at the site, although the proposed foodstore itself will only provide 1,254 sq.m sales floorspace (the remainder of the floorspace is to be divided between 5 small units).
- 7.21 The foodstore specification is therefore below the requirement sought by Lidl. Indeed, the proposed foodstore is only 1,765 sq.m (GIA), which is below the minimum size threshold sought by Lidl (1,970 sq.m), as set out in paragraph 7.11 above, even allowing for a reasonable degree of flexibility in terms of size, scale and format. Indeed, the Darfield unit is 705 sq.m (gross) smaller than the Lidl proposal (2,470 sq.m), which would require Lidl to reduce its floorspace by around 30 per cent, which would be contrary to its business model and is beyond a reasonable degree of flexibility.
- 7.22 It is also understood that the developer of the Darfield site is in advanced talks with a potential occupant for the main foodstore element. On this basis the consented scheme can be considered unavailable for Lidl to lease. Furthermore, our review of the Council's online database of land and property for sale indicates that the site is no longer available to purchase freehold from Barnsley MBC.
- 7.23 The above demonstrates that although the site is suitable for a retail scheme, the site is not available for freehold or leasehold purchase, and in any case the proposed unit is unsuitable for the application scheme, being 30 per cent smaller than the applicant's required unit size.
- 7.24 Furthermore, the Lidl application scheme has been specifically designed to meet an identified quantitative and qualitative need for additional main foodstore provision in Wombwell. The Darfield site is technically out-of-centre at the present time – until a boundary for the centre is adopted. However, even when this occurs, and assuming that the Foulston school site is shown to be edge-of-centre, the site is not as sustainable as the application site at Mitchells Way, which is situated within 750m of a District Centre boundary and benefits from a larger catchment population.

- 7.25 Indeed, if the Lidl store located in Darfield, this would not meet the need for a foodstore in Wombwell and would still require the town's residents to travel by car to undertake a main food shop. Thus, the Darfield site does not meet the need which the Lidl application intends to address; namely for a main foodstore to address deficiencies in the existing offer within Wombwell.

### **Summary**

- 7.26 In summary, we have undertaken a thorough search for sites within the catchment area of the proposed development. We have identified no sites within or on the edge of the identified retail centre's which are suitable and available and viable for the proposed foodstore scheme, even allowing for flexibility with regards to the scale and format of the store.
- 7.32 The application proposal is therefore fully in accordance with the sequential 'test' as set out in paragraph 24 of the NPPF and Policy CSP31 of the Core Strategy.

## 8 RETAIL IMPACT ASSESSMENT

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- 8.1 This section assesses the impact of the application proposal, having regard to paragraphs 26 and 27 of the NPPF and Policy CSP31 of the Core Strategy. We provide a quantitative and qualitative assessment of the impact of the proposed use on town centre vitality and viability and on existing, committed and planned public and private investment.
- 8.2 It should be clear from earlier sections of this report that the application proposal is for the erection an A1 convenience foodstore, providing 2,470sq.m GIA and a sales area of 1,424sq.m. The application scheme is therefore just below the default impact threshold of 2,500sq.m set out in paragraph 26 of the NPPF, which indicates that the scale of retail floorspace proposed is unlikely to be of concern. Furthermore, we note that there is no locally adopted impact threshold in place, to override the provisions of the NPPF.
- 8.3 Notwithstanding the above, at the pre-application meeting the Council requested that the applicant consider retail impact as part of its application submission, due to the existence of other foodstore commitments within the defined catchment of the application site. As such, to be robust, we have undertaken a cumulative retail impact assessment, and we consider the impact of the scheme on centres located both within and beyond the catchment area of the proposed store.
- 8.4 It is notable that paragraph 26 of the NPPF sets out the requirements of the impact assessment, and paragraph 27 states that if an application has a “*significant adverse impact*” it should be refused. Paragraph 27 has been purposely drafted in these terms because all development will have an impact. The pertinent question therefore is not whether there will be an impact, but whether the impact is significant.
- 8.5 Our retail impact assessment is presented in the set of spreadsheets contained in **Appendix 4**. In our commentary below, we outline our methodology and the key findings of our retail impact assessment.

### **Methodology**

- 8.6 The **base year** for our assessment is **2015**. We assume that the proposed foodstore redevelopment can be completed within the next two years, and so we test impacts at a **design year** of **2019**, when mature trading patterns should have been

established. All monetary figures quoted in our spreadsheets are in a **2012 price base**, to align with the Planning and Retail Statement prepared by DPP for planning application 2014/1232 (Darfield application).

- 8.7 From the outset it should be noted that our impact assessment expands upon and updates DPP's submission, to add in the effects of the Lidl foodstore proposal. There is no up-to-date Borough-wide retail study available on the Council's website. As such, we have chosen to use DPP's retail tables as a base, in order to allow direct comparability between the two application submissions and because the Council has already accepted the methodology and conclusions put forward by DPP (in approving the Darfield scheme) and so the tables form a reasonable foundation to build upon.
- 8.8 Turning to our methodology, **Table 1 in Appendix 4** provides a breakdown of the retail floorspace proposed at Mitchells Way, and the turnover that it is likely to generate. The proposed redevelopment will provide 1,424sq.m of retail sales floorspace in total. It is expected that approximately 80 per cent of this floorspace will be used for the sale of convenience items (i.e. 1,140sq.m) and 20 per cent will be used for the sale of comparison goods (i.e. 284sq.m). Based on Lidl's company average convenience sales density (£3,331 per sq.m, using a 2012 price base), we expect that the convenience sales floorspace will generate a turnover of £3.79m at 2015, rising to **£3.86m** by 2019.
- 8.9 We have not undertaken a detailed analysis of the impacts associated with the small amount of additional comparison goods floorspace proposed within the foodstore, as these impacts are likely to be minimal.
- 8.10 When considering retail impact, it is also necessary to take into account any extant retail commitments, so as to consider the cumulative effect of all schemes. We are aware of two commitments for retail development within the broad catchment area of the proposed development, which are scheduled to come forward following the approval of their respective planning applications. The commitments are as follows, and the floorspace and turnover of each scheme is detailed in **Table 2 of Appendix 4**:
- Sainsbury's, Stairfoot; and
  - Foodstore (no named occupier) and other convenience retail units, Darfield.

- 8.11 **Table 3 in Appendix 4** presents - for reference - our solus retail impact assessment and shows the impacts that will be associated with the Lidl proposal in isolation, before the retail commitments listed above are factored in. **Table 4 in Appendix 4** then sets out our full cumulative retail impact assessment, based on our estimate of the pattern of trade diversion likely to be associated with the uplift in sales floorspace on site.
- 8.12 In modelling the trade impacts, we have taken into account the generally accepted principle that 'like affects like'; that is, that foodstores are most likely to compete with similar-sized competitor stores. When assessing impacts, we have also taken into account the location of other foodstores with respect to local residential areas and the application site, as well as existing shopping patterns.

### **Main Findings**

- 8.13 We consider in turn below the anticipated impacts on the main centres in and around the catchment area, and describe the implications of the proposed development for these centres, with regard to their current trading performance and existing level of vitality and viability.

#### Stairfoot Local Centre

- 8.14 **Table 3 in Appendix 4** shows that the Lidl scheme by itself is likely to divert £0.79m convenience expenditure from Stairfoot Local Centre, of which the vast majority will be drawn from the existing Aldi store. We understand that the Aldi store is trading very strongly and we do not expect that this level of trade diversion will materially affect the operation or viability of the store.
- 8.15 When account is also taken of the identified commitments, the cumulative level of trade diversion from Stairfoot rises to £2.11m. Although this seems high, it should be noted that the vast majority of this diversion is to the existing committed developments at Stairfoot and Darfield (which accounts for £1.65m of the diversion). Thus, our **Table 4** shows that the convenience impact on Stairfoot will rise from 12 per cent (with the two commitments), to 15 per cent (with the two commitments and the Lidl proposal). The additional trade impact which results from the application

scheme is thus marginal, and will not in itself affect the overall vitality and viability of Stairfoot.

- 8.16 Indeed, it is notable that one of the commitments – the Sainsbury's store – is to be located on the edge of Stairfoot Local Centre itself, and will generate a convenience turnover of around £52m. Whilst we have not factored this into our formal assessment, it is clear that the Sainsbury's scheme will help to bolster the vitality and viability of Stairfoot, and will generate new convenience turnover and potential linked trips in the Stairfoot area. Thus, delivery of the Sainsbury's scheme will more than balance out the minimal trade diversion expected to the Lidl scheme (£0.79m), and the overall health of Stairfoot Local Centre is still expected to improve over the five year period to 2019.
- 8.17 Accordingly, we do not consider the level of impact associated with the application scheme will adversely impact the centre and should not be considered as significant.

#### Wombwell District Centre

- 8.18 At paragraph 9.224, the Core Strategy identifies the centre to be '*better than average in terms of vitality and viability*'. The district centre has a busy high street, although it has a limited convenience retail offer (as described in **Section 6** above). As such, given the lack of competing provision, the Lidl foodstore is expected to complement rather than compete with the existing food retail offer in Wombwell.
- 8.19 We estimate that the proposed foodstore development will divert – on its own - £0.34m from Wombwell District Centre, which equates to a solus convenience impact of just 5 per cent. When the two other foodstore commitments are factored in, the cumulative convenience impact rises to **10 per cent** at 2019, which is still not significant given the current health of the centre.
- 8.20 It should also be noted that the existing cumulative position (without Lidl) is already an impact of 8 per cent on Wombwell District Centre (as shown in **Column G of Table 4**). The cumulative level of impact only rises by 2 percentage points, to 10 per cent, when account is also taken of the Lidl proposal. Indeed, the level of trade diversion to Lidl is relatively minimal at £0.34m, and will derive almost entirely from national chain stores (Tesco and Fultons), which are not expected to close as a

result of this small level of impact. The effect of the Lidl proposal itself, is therefore minimal on the District Centre.

- 8.21 We certainly do not consider therefore that this level of impact will affect the vitality and viability of the district centre, which has a busy and vibrant high street. Unlike the Stairfoot and Darfield applications, which will draw further trade away from Wombwell, the Lidl application scheme proposes a new local foodstore to serve the residents of the town. It is clear that there is a quantitative and qualitative need to improve foodstore provision in Wombwell (as outlined in **Section 6** above), and this can be addressed by the application proposal. As such, we consider that the application scheme will benefit Wombwell rather than have a material adverse impact on its District Centre.
- 8.22 As further evidence of this, in **Appendix 5** we present an Executive Summary from a research study undertaken in 2013 which examined four case studies of out-of-centre Lidl developments and two case studies of edge-of-centre Lidl schemes. The study found that the Lidl stores did not have a detrimental impact on their nearby centres, and that the stores complemented the existing centres. This reinforces our view that the proposed Lidl foodstore will not have a detrimental impact on the vitality and viability of Wombwell District Centre.
- 8.23 Moreover, whilst it cannot be quantified, there is an opportunity for the proposal to deliver positive benefits for the other shops and services in Wombwell District Centre. Indeed, by clawing back trade that currently leaks outside the catchment area to out-of-centre superstores, the proposal will retain more expenditure locally. Furthermore, given that the application site is located only a 750m walk from the district centre, the Lidl proposal could potentially generate some linked trips, creating spin-off benefits for other local traders.

#### Darfield Local Centre

- 8.24 **Table 4 in Appendix 4** shows that the cumulative impact of the commitments (without Lidl) on Darfield Local Centre would be 4 per cent at 2019. The level of impact rises by just two percentage points to 6 per cent, when the effects of trade diversion to the Lidl store are factored in. This is not in itself a material level of impact. Moreover, it is notable that the level of convenience trade diversion to Lidl

equates in monetary terms to just **£0.04m (Table 4)**. This minimal level of diversion is not expected to affect the vitality and viability of Darfield, which will continue to perform a useful day-to-date 'top up' function for its local residents.

- 8.25 Moreover, the health of Darfield is likely to improve further once the committed foodstore development on the Foulston school site is delivered, as this will provide a new edge-of-centre foodstore, which will generate additional linked trips for the centre.

#### Out-of-Centre Foodstores

- 8.26 In addition, the application proposal is expected to divert trade from existing out-of-centre foodstores, and there are several such stores located close to the site within and just beyond the catchment area. **Table 4 in Appendix 4** demonstrates that the proposed scheme is likely to divert £0.46m from the popular Tesco Extra store at Wombwell Lane; £0.39m from the Morrisons at Cortonwood; and £0.08m from the Co-op at Darfield.

- 8.27 However, since all of these stores are located out-of-centre, they benefit from no national or local planning policy protection. Nevertheless, we do not expect that these minimal levels of diversion will have an adverse effect on the operations of these stores, which are all trading well.

### **Summary in Relation to Retail Impact**

#### Impact on Committed and Planned Public and Private Sector Investment

- 8.28 Paragraph 26 of the NPPF specifies that impact assessments should consider the *"impact of a proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of a proposal".* From the outset it is clear that there are no in-centre proposals which are committed or in the pipeline for any of the centres in the catchment area. As such, there are no schemes for the application proposal to impact upon.

- 8.29 Notwithstanding this, we are aware that there are two consented edge-of-centre foodstore proposals, which have been factored into our retail impact assessment as commitments, as discussed above. These are the proposals for a Sainsbury's store in Stairfoot, and a mixed-use scheme in Darfield.
- 8.30 Although not in-centre (and not relevant to the NPPF policy test), it is important to note that these proposals will also not be compromised by the proposed development of a Lidl store on land at Mitchells Way. Indeed, the need assessment set out in **Section 6** above shows that there is more than sufficient convenience expenditure capacity to support the Lidl proposal, the Sainsbury's scheme and the Darfield application.
- 8.31 Furthermore, our retail impact assessment shows that – whilst there will inevitably be some competition between the three new stores – the Lidl proposal is only expected to divert £0.46m from both the Sainsbury's and Darfield schemes, which is minimal. What our retail assessment does not take into account – given that the Lidl proposal post-dates the other two applications – is the diversion that could operate in the opposite direction; from Lidl to the Sainsbury's and Darfield stores. Given that the Lidl application is made in full and is likely to be delivered in advance of the Darfield scheme (which is speculative and made in outline), it is more likely that the Darfield store – when it opens - will divert trade from the operational Lidl store, than the other way around.
- 8.32 In either case, it is clear that there is sufficient scope for all three schemes to be delivered, and we do not anticipate any negative impact on this planned private investment. Although there will be some competition between the three stores, there is sufficient expenditure capacity in the catchment area to support them all, with residual surplus beyond. Moreover, as stated at the outset, the Darfield and Sainsbury's schemes are edge-of-centre proposals, and there are no in-centre proposals which will be affected by the application scheme.
- 8.33 The application scheme will not therefore impact on existing, committed or planned public and private investment in the local catchment area.

#### Impact on Town Centre Vitality and Viability

- 8.34 While we have identified in our retail impact assessment a certain level of trade diversion to the proposed Lidl foodstore, no centre is expected to experience a significant level of adverse impact.
- 8.35 The level of impact identified on each of the centres within and outside the catchment area is considered to be marginal, and certainly nowhere near the NPPF test of 'significant adverse impact'. This is not surprising given the trading characteristics of Lidl stores, as outlined in **Section 4** above.
- 8.36 As a consequence of the above, the proposed foodstore will not have a significant adverse impact on the vitality and viability of any designated centres. As such, we have demonstrated that the application scheme is acceptable with regards to paragraphs 26 and 27 of the NPPF.

## 9 OTHER MATERIAL CONSIDERATIONS

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9.1 This section of the Statement addresses the other material considerations that will need to be taken into account in the assessment of the application.

### **Sustainability Measures**

9.2 Lidl undertakes a variety of sustainability measures as standard procedure in the operation of its stores. The measures minimise the environmental impact of the store. Some of the measures taken are:

- Lidl charge for carrier bags rather than hiding the cost through higher prices. This provides the customer a clear financial incentive to reuse bags and decide whether a plastic bag is necessary.
- The stores only have one delivery per day which also removes waste on their return journey to the regional distribution centre where the waste/recyclable material is stored and managed centrally.
- Lidl is a sector leader in recycling and reduction of land fill waste. The company recycles all paper/cardboard and plastic produced in store.
- Lidl use highly efficient condensing boilers, which recover waste heat from the combustion process. All heating is regulated by sensors so that the heating is not on if it is not required.
- Lidl stores use a manual dock leveller for deliveries, reducing noise emissions and energy use.
- All stores are fitted with a 'Building Management System' incorporating movement sensor, LUX meters and thermostatic ground control. This ensures that the back of house areas of the store are only lit when they are being used, that external lighting is only used when required and that the temperatures of the various areas within the store are maintained at their

correct levels. Lighting within the sales area is cut back to one third before and after trading hours.

- Water consumption is carefully monitored and on average is limited to 13 cubic metres per month (156 cubic meters per annum).

9.3 Lidl also produce and implement Travel Plans to promote sustainable transport choices.

9.4 As set out above, Lidl stores are therefore designed, built and operated to industry leading standards and the company is constantly looking for new and creative ways of reducing energy consumption and emissions.

9.5 The Sustainability Statement submitted with the application sets out in more detail the measures which will be adopted to reduce both energy consumption and carbon dioxide emissions, and achieve a sustainable form of development.

9.6 The application proposal is thus fully in accordance with the provisions of Policies CSP2 and CSP5 of the Core Strategy and NPPF.

### **Jobs and Economic Growth**

9.7 The proposed retail operation will generate up to 40 full time and part time employment positions at the application site. These positions will be at a range of positions and levels of seniority. Lidl offers an excellent work ethic and training opportunities for their staff to progress within the company.

9.8 This is an important material consideration because ONS data indicates that 5.8 per cent of economically active residents classified themselves as unemployed. This is some 1.4% more than the national average of 4.4 per cent. The proposal will therefore provide valuable new jobs and training and contribute to achieving a lower rate of unemployment within the local area.

9.9 A reduction in the level of unemployment will also indirectly increase the affluence and spending power of the local population. The increase in disposable income may have associated benefits for other retailers within Wombwell and the wider local economy.

9.10 We consider that these benefits are a material consideration to which significant weight should be given in determining the planning application. Indeed, paragraph 18 of the NPPF specifically states that: *'the Government is committed to securing economic growth in order to create jobs and prosperity'*.

### **Sustainable Development**

9.11 Related to the above sub-sections, we consider that the application scheme represents a sustainable form of development, as defined by paragraph 7 of the NPPF.

9.12 Indeed, in relation to the three dimensions of sustainable development set out in the NPPF, we note the following:

- *An economic role* – the application scheme will make more efficient use of an unviable and constrained agricultural plot within the settlement boundary. The retail proposal will generate around 40 new jobs. The application proposal will also meet an identified qualitative and quantitative need for a deep discount foodstore in the local area, and will widen local shopping choice.
- *A social role* – there is an identified qualitative need for the application proposal. The location of the proposed foodstore is highly accessible to local residents through public transport and on foot.
- *An environmental role* – the application proposal is set to make more efficient use of a sterile plot of agricultural land. The proposals include the provision of a wildflower meadow and native plant species. As set out above, Lidl will also adopt a range of sustainability measures designed to minimise the environmental impact of the development and reduce carbon dioxide emissions.

9.13 The NPPF makes clear that there should be a presumption in favour of sustainable development and that *"development which is sustainable can be approved without delay"* (paragraph 15).

## **Environmental Amenity**

- 9.14 The site is positioned on the edge of Wombwell in a highly accessible location, in walking distance of the settlement's district centre and peripheral residential areas. The main concerns regarding environmental amenity are therefore likely to arise from any air pollution and noise generated by the development.
- 9.15 Accordingly, a Noise Assessment accompanies this planning application with the aim of assessing potential impact of the proposed development with reference to the NPPF and other pertinent guidance. The investigation identifies that the nearest noise sensitive receptors are the residential dwellings, which are currently under construction, on the opposite side of the Mitchells Way, approximately 80m from the delivery bay of the proposed foodstore.
- 9.16 The survey notes that the principal noise source generated from deliveries is that of palletted goods being distributed. Assuming noise levels generated from other Lidl developments, the predicted delivery noise levels are judged to generate no significant adverse impact on the nearest noise sensitive receptors. However, in accordance with the recommendations set out in the assessment, a landscaping buffer is provided alongside the delivery bay, as well as a wall alongside delivery bay. In summary, the potential noise impact from deliveries is considered to be negligible.
- 9.17 External plant servicing for the proposed foodstore will comprise condensing units and a refrigeration plant for the temperature control of produce. It is proposed that the external plant will be located on the south western elevation, thus screened by the building itself from the nearest residential dwellings, which are currently under construction. In general terms the impact of noise from the external plant is considered to be low.
- 9.18 Lidl are mindful of the need to minimise any disturbances to neighbouring residents and landowners. To assist in achieving this, the store intends to be served by only one delivery per day (with a second delivery only during peak trading periods). This will provide all the necessary produce, including frozen and chilled goods, which are carried using individual temperature controlled units that can be loaded onto the vehicle. The method ensures that there is minimum disruption by removing the need for noisy air conditioning units on vehicles. During the deliveries it is company policy

that the engine remains switched off to reduce disturbance. The total unloading time of a delivery is approximately 45 minutes.

- 9.19 It is notable that Lidl successfully operates many stores located on sites without any reported local concerns. The applicant is willing to discuss with the Council measures to reduce any noise impacts on existing and planned residential developments, and believes that this can be achieved through the application of appropriate planning conditions.
- 9.20 As noted, impact on air quality is considered to be a potential issue, as identified in the pre-application advice that was given. As such, an Air Quality Assessment also accompanies this planning application. The purpose of the assessment was to assess air quality impacts during the construction and operational phases of the development. It is important to note that the investigation methodology was agreed with the Council prior to the undertaking of the assessment.
- 9.21 Potential construction phase air quality impacts from fugitive dust emissions were assessed as a result of earthworks and construction activities. It is suggested that standard good practice dust control measures, as described in the report, will be sufficient to ensure that adverse effects are not caused.
- 9.22 Dispersion modelling was undertaken in order to predict operational air quality impacts as a result of road vehicle exhaust emissions associated with traffic generated by the development. Results were subsequently verified using monitoring results obtained from Barnsley Metropolitan Borough Council. This indicated that impacts were not predicted to be significant at any sensitive location in the vicinity of the site.
- 9.23 Proposed mitigation measures for the development were identified in accordance with the Council's suggested guidance. These are detailed within the Travel Plan, which accompanies the planning application. In summary, the assessment identifies that impact on air quality should not be considered a constraint to granting planning permission. The proposed development thus fully accords with Policy CSP40 of the Core Strategy and NPPF.

## **Trees and Landscaping**

- 9.24 The Arboricultural Report submitted with the application shows that there are currently 7 items of vegetation on the site, comprising 6 groups of trees and 1 hedge. Of these, 3 groups were identified as retention category 'B' and 3 groups and 1 hedge were identified as retention category 'C'. The survey explains that most of the trees are located on the periphery of the application site. Where the trees are being retained, measures will be taken to ensure the trees are protected during the construction phase, using appropriate Root Protection Areas.
- 9.25 We consider that the loss of trees required as part of the redevelopment, will be mitigated by the extensive landscaping and tree planting programme planned for the site, as shown on the submitted Landscape Masterplan (Ref: R/1746/1 Rev. A). Indeed, it is proposed that a variety of native species will be planted, of a range of species, and comprising advanced nursery stock to give early structure and maturity to the scheme. This will be complemented by ornamental shrub planting and groundcover planting. The result will be an increase in the quality and long-term prospects of tree and landscape coverage on the site, which will be well-managed and maintained and will improve the visual appearance of this gateway site from Mitchells Way and Bradberry Balk Lane. The new trees will be appropriately sited and will be visible from the surrounding roads, the car park of the proposed foodstore, and from the new dwellings (not yet constructed) across Mitchells Way, so as to provide wide-ranging amenity value.
- 9.26 As such, and overall, the landscaping and planting scheme will thus be appropriately integrated into the surrounding context of the application site. The proposals thus wholly accord with Policy CSP39 of the Core Strategy.

## **Flood Risk and Foul Drainage**

- 9.27 A Flood Risk and Foul Drainage Assessment has been prepared and submitted with the planning application. The site is within an identified Flood Zone 1 area and has a low risk of fluvial flooding. The application site is also considered to be at low risk of flooding from groundwater, surface water, sewers, overland sources, groundwater, artificial water bodies or reservoir failure.

- 9.28 One of the principal aims of the NPPF is to steer development away from areas of high flood risk towards Flood Zone 1. The development is classified as 'less vulnerable' in accordance with Table 2 of the PPG and is entirely within Flood Zone 1 according to the current Environment Agency Flood Map for planning. Based on the above it can be considered that the Sequential Test is considered to have been passed.
- 9.29 In terms of flood risk mitigation it is proposed to discharge the surface water run-off from the application site to the existing ordinary watercourse located to the north of the application site. This watercourse would be able to accept the level run-off from the site. The peak discharge to this watercourse will be restricted to 5 l/s with on-site attenuation provided.
- 9.30 In terms of surface water drainage, it is proposed to drain the surface water runoff from the new development into a gravity surface water drainage system which will eventually discharge into the existing headwall and ordinary watercourse located to the north of the application site. As noted, it is proposed to restrict the peak discharge to 5 l/s, with on-site attenuation being provided by utilising below ground cellular storage tanks to store the 1 in 100 year plus 20 allowance for climate change storm event volume. In addition a suitable sized oil/petrol interceptor will be incorporated into the drainage system to minimise any pollution of the receiving watercourse. A copy of the surface water drainage plan is found at Appendix D of the submitted Flood Risk and Foul Drainage Assessment.
- 9.31 In terms of foul drainage disposal, it is proposed to drain the application site via a gravity system draining to a new below ground foul pumping station located within the southern part of the application site. From here, the foul drainage will be pumped up along the western boundary to discharge into the existing Yorkshire Water manhole. A copy of the proposed foul drainage plan is found at Appendix D of the submitted Flood Risk and Foul Drainage Assessment.
- 9.32 In terms of SUDS, the Phase 1 Investigation Report notes that the underlying ground conditions are not suitable for utilising infiltration techniques. However, based on the recommendations provided in the Phase 1 report, this assumption is yet to be ascertained by means of a detailed site investigation. Further detail on the possibility of incorporating the use of SUDS is explored in the Flood Risk and Foul Drainage Assessment.

- 9.33 On the basis of the above and content of the submission material, we consider that the development proposal complies with policies **CSP3** and **CSP4** of the Core Strategy and government guidance contained in the NPPF relating to flood risk.

### **Ground Conditions**

- 9.34 The application submission includes a Phase 1 Site Investigations Report. This report is based on fieldwork undertaken in June 2015, which included a desk study and site walkover.
- 9.35 Geological records show that the area proposed for development is underlain by topsoil, and locally, made ground associated with the presence of several outbuildings in the western portion of the site, over Oaks Rock sandstone. A fault, trending north west/south east, is shown on and about the northern corner of the site, down throwing strata to the north east. Based on the geological setting of the site and Coal Assessment reports, it is considered that there is a low risk of coal mining affecting surface stability.
- 9.36 Preliminary risk evaluation has indicated that pollutant linkages are possible to a variety of receptors. Potential heavy metals, asbestos fibres, organic and inorganic contaminants in topsoil, made ground and/or shallow soils, may pose a potential risk to construction workers, site end-users and controlled waters. Risks related to these potential linkages are currently given a qualitative assessment of 'low' and 'low to moderate'. The precise nature of the risks should be investigated further through site investigation.
- 9.37 The risk of significant gas generation has been assessed as currently 'moderate' at the site. The Phase 1 Investigation Report advises that this should be suitably addressed through the monitoring and reporting of ground gas concentrations/flow. Additionally, the Phase 1 Investigation Report recommends the following further investigations to inform foundation design, and allow determination of contamination constraints and abnormal costs:
- Window sample to investigate soil and groundwater conditions and to allow recovery of soil samples for testing. Standard Penetration Tests to be undertaken within boreholes in order to provide geotechnical data for the underlying soils;

- Trial pitting to assess stability of shallow excavations;
- Installation of gas and groundwater monitoring and sampling wells in selected boreholes;
- Chemical and geotechnical laboratory testing to adequately categorise the shallow soils and groundwater; and
- Gas monitoring (nominal six visits over a three month period) and subsequent reporting.

9.38 Once the further investigation works have been undertaken, any mitigation measures will be recommended as appropriate to ensure that ground conditions are suitable for the proposed development. The applicant will accept a condition relating to the further investigation works and implementation of any required mitigation, as is standard course. There would therefore be no grounds for objecting to the application proposals on the basis of contamination. In particular, government guidance contained in paragraph 120 of the NPPF is complied with, as well as Core Strategy Policy CSP39.

### **Ecology**

9.39 An Extended Phase 1 Habitat Study accompanies the planning application and provides conclusions and recommendations for the Council to consider based on a desk study and field survey; the latter of which was undertaken in July 2015. In summary, the investigation provides the following conclusions and recommendations:

- The nearest designated site is 1.5km in distance from the application site. It is likely that the development impacts will be restricted to the site and the development is not anticipated to give rise to any direct adverse impact on any statutory or non-statutory designated sites.
- There are two patches of Japanese Knotweed on land adjacent to the application site. While the proposed development is not considered to result in the spread of this species, it is recommended that fencing should be

installed along the boundary to ensure the Knotweed is not disturbed. Continual monitoring of the species is also advised.

- While the loss of roadside verge habitat off Bradberry Balk Lane is considered to be minimal, it is recommended that an ecological watching brief is put in place during the site clearance work along the roadside verge to ensure that any reptiles that may be present can be relocated. It is suggested that this can be the subject of the suitably worded planning condition.
- The vegetation removal required as part of the proposed development will not result in a significant reduction in the availability of suitable bird nesting habitat in the local area. Any vegetation clearance should be undertaken outside the bird breeding season.
- There are no bat roosting opportunities present on site and as such the proposed development is not anticipated to result in an impact on roosting bats. In addition, the proposed development is considered unlikely to give rise to any adverse impact on great crested newt. No evidence of badger was recorded during the investigation.

9.40 On the basis of the above, it is recommended that native species are selected to create new tree and shrub planting areas in the landscaping scheme. Indeed, the proposed landscaping scheme as shown on the submitted Landscape Masterplan (Ref: R/1746/1 Rev. A) incorporates the use of native species across the site, as well as a wildflower meadow in the south-eastern corner, in order to maximise biodiversity benefit.

9.41 It is apparent that the site has limited wildlife and ecological potential. Where suitable, recommendations are provided in order to mitigate any impact potential. It is therefore considered that the proposed development accords with Policy CSP36 of the Core Strategy and the key principles of the NPPF.

### **Archaeology**

9.42 Based on the pre-application advice provided by the South Yorkshire Archaeology Service in relation to the development proposals, a Geo-physical Survey accompanies the planning application. The purpose of the survey was to locate and

characterise any anomalies of possible archaeological interest within and adjacent to the application site. The methodology for the investigation was agreed with the South Yorkshire Archaeology Service prior to the undertaking of the survey work.

- 9.43 To summarise, the course of a former track and strong traces of ferrous material from near surface debris, including brick and metallic fragments, were recorded at the site. None of the aforementioned findings at the site can be interpreted as having an archaeological origin. The site is therefore considered to have limited archaeological value.

### **Travel and Access**

- 9.44 The application site is in a sustainable location and is accessible by a range of modes of transport. This is highlighted in the brief review below, and in the submitted application material.

### ***Public Transport***

- 9.45 The nearest public bus stops are located on Barnsley Road just to the south of the adjacent roundabout. There are also bus stops on Barnsley Road to the north west of the application site. Bus stops for both northbound and southbound services are located in very close proximity to the site, the nearest being just 70m and 75m away respectively. Noting the recent footpath improvement works surrounding the site and the extended shared footpath/cycle path proposed, the nearby bus stops are well placed to allow easy access to the development by public transport.
- 9.46 The northbound bus stop has a shelter with seating, timetable information, bus box road markings, and a bin. It is served by the 22, 22X, 22M, 222, 226, 67, 67A and X20 services. The southbound bus stop also has a shelter with seating, timetable information, bus box road markings, and a bin. It is served by services 22, 22X, 22M, 222, 226, 203 and X20. As a result, a minimum of 11 buses per hour pass the site in each direction. Therefore, access by bus is excellent and readily available.
- 9.47 The site is also accessible by rail, and is within walking distance of Wombwell railway station, which is located approximately 1.5km from the site as the crow flies. The

station is served by two rail routes comprising of the Nottingham to Leeds line and the Sheffield to Leeds line.

### ***Walking and Cycling***

- 9.48 The surrounding area benefits from a good level of pedestrian access. A shared cycle/footpath extends along Mitchells Way and there are footways on both sides of all the other roads in the vicinity. The nearest bus stops from the application site are accessible via recent improvements to the footpaths adjacent to the site. Both bus stops are considered to be within the desirable and preferred walking distance as specified in the document '*Planning for Public Transport in Developments 1999*'.
- 9.49 The application site is also within cycling distance of many of the neighbourhoods surrounding Wombwell, and will be a short walk from many homes, businesses and services. As noted a shared cycle/footpath extends along Mitchells Way, which is well linked to the surrounding road networks in the vicinity.
- 9.50 As noted in sections of this report, the proposals include the provision of a new footpath from the store entrance, extending to the north of the site, with a safe crossing point provided over Bradberry Balk Lane. It is also proposed to extend the shared cycle/footpath which runs along Mitchells Way around the corner of Bradberry Balk Lane, to the store entrance junction. It is anticipated that this will enable the development to become more publically accessible to customers and staff.

### ***Private Vehicles***

- 9.51 The application site does not currently have a site access. It is proposed that access will be via a new junction off Bradberry Balk Lane. The proposed development incorporates a new car park, with 132 spaces. Of the 132 spaces provided, three will be designed to parent and child standard and five will be designated as disabled bays.
- 9.52 To ensure the safe and efficient operation of the highway, the application includes proposals for additional white line markings at the new bell-mouth junction. It is notable that the local road network has experienced few accidents in recent years, and the development will not increase them in terms of numbers or severity.

- 9.53 The Transport Assessment, submitted with the application, provides a detailed and robust numerical analysis of future traffic conditions with the development in place. The Assessment demonstrates that there are no highways or transportation grounds for refusing the planning application.

### **Design Considerations**

- 9.54 The design, layout and appearance of the proposed development have evolved following careful consideration of the surrounding area, Lidl's operational requirements, and feedback from the pre-application and public consultation exercise. The applicant's aim is to provide high quality materials within its built form, which will be in-keeping with surrounding uses and appropriate for development of a prominent site.
- 9.55 In terms of the amount of development proposed on the site, the application proposes one building, which will provide 2,345sq.m of gross external floorspace. The scheme also includes the provision parking for 132 cars, cycle storage, trolley bays, and areas of landscaping.
- 9.56 The level of development proposed on the site is considered acceptable and in keeping with the character of the area. In particular, it is considered that it makes an efficient use of this site, but does not represent an overdevelopment of it.
- 9.57 The layout of the site and siting of foodstore have been determined by a number of factors, including the need to ensure that the building has maximum visibility from the highway network, and that the elevations fronting Mitchells Way and Bradberry Balk Lane are attractive and in-keeping with this gateway route. The site layout has also been informed by the need to preserve environmental amenity.
- 9.58 The layout has evolved during the design process, to take into account constructive feedback received at the pre-application meeting and from the public consultation exercise. In particular, we note that:
- The proposals include the provision of a new footpath from the store entrance, extending to the north of the site, with a safe crossing point provided over Bradberry Balk Lane. It is also proposed to extend the shared cycle/footpath which runs along Mitchells Way around the corner of Bradberry

Balk Lane, to the store entrance junction. This will enable the development to become more publically accessible to customers and staff.

- The landscaping scheme has been intensified, to provide a wildflower meadow at the south-eastern corner of the site. According with the recommendations from the Extended Phase 1 Habitat Survey, it is considered that the meadow will provide an attractive focus along Mitchells Way.
- Ornamental tree planting along Mitchells Way around the corner to Bradberry Balk Lane is proposed to lessen the visual impact of the foodstore. Provision for native species shrub planting at the south eastern elevation is also included in order to provide an attractive visual buffer along the delivery bay.
- The inclusion of an additional disabled bay in the car park at a conveniently placed location close to the store entrance.

9.59 The wider area contains no dominate building type or style. Having regard to this fact, it is considered that the design and external appearance of the building are acceptable. The proposed development incorporates the use of high quality modern materials and landscaping. By virtue of this, the application scheme is acceptable in terms of its scale and massing.

9.60 The scheme has also been designed having regard to the principles of 'Secured by Design'. This is achieved through the implementation of the following:

- the boundaries of the site being secured by a mixture of planting and boundary fencing;
- lighting being provided to the car park and external pedestrian routes;
- the development being designed to maximise natural surveillance and minimise blind corners;
- entrance to the building being designed to be safe and have maximum visibility; and
- the internal layout designed so that there are good views of the entrance/exit.

- 9.61 In addition, the applicant's proposal has adopted the principles of inclusive design as set out in best practice. This will ensure the delivery of a development that is accessible to all.
- 9.62 Having regard to this information, it is considered that the submitted scheme demonstrates the principles of good design and the delivery of a high quality development. Specifically, we consider that the development complies with relevant national and local policies relating to design, including Policy CSP29 of the Core Strategy.
- 9.63 Further details regarding the design concept are set out within the Design and Access Statement submitted as part of this application.

## 10 SUMMARY AND CONCLUSIONS

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- 10.1 This report has assessed the proposal against the provisions of the National Planning Policy Framework, together with relevant policies contained within the Development Plan.
- 10.2 The application scheme seeks planning permission for permission for the erection of an A1 retail foodstore and sub-station with associated car parking, access, landscaping, servicing and other associated works. The foodstore is to be occupied by Lidl.
- 10.3 In this report, we have considered the implications of the application scheme and have considered all relevant planning policies. We have arrived at the following conclusions:
- The proposal will help to meet an identified quantitative and qualitative need for additional convenience retail floorspace in Wombwell.
  - The proposal will introduce a new dimension to convenience goods retailing in Wombwell and will contribute to creating healthy competition and widening consumer choice in an area where there are no main foodstores and no deep discount provision.
  - The proposal will secure the redevelopment of an unviable plot of farmland in the settlement boundary, in a prominent location, bringing it into more intensive economic use.
  - There are no more sequentially preferable sites that are suitable, viable and available to accommodate the proposed development, even allowing for flexibility in the format and scale of the proposed foodstore.
  - The new foodstore will not have any material adverse impacts our identified district and local centres, and will not compromise any committed or planned public and private investment.

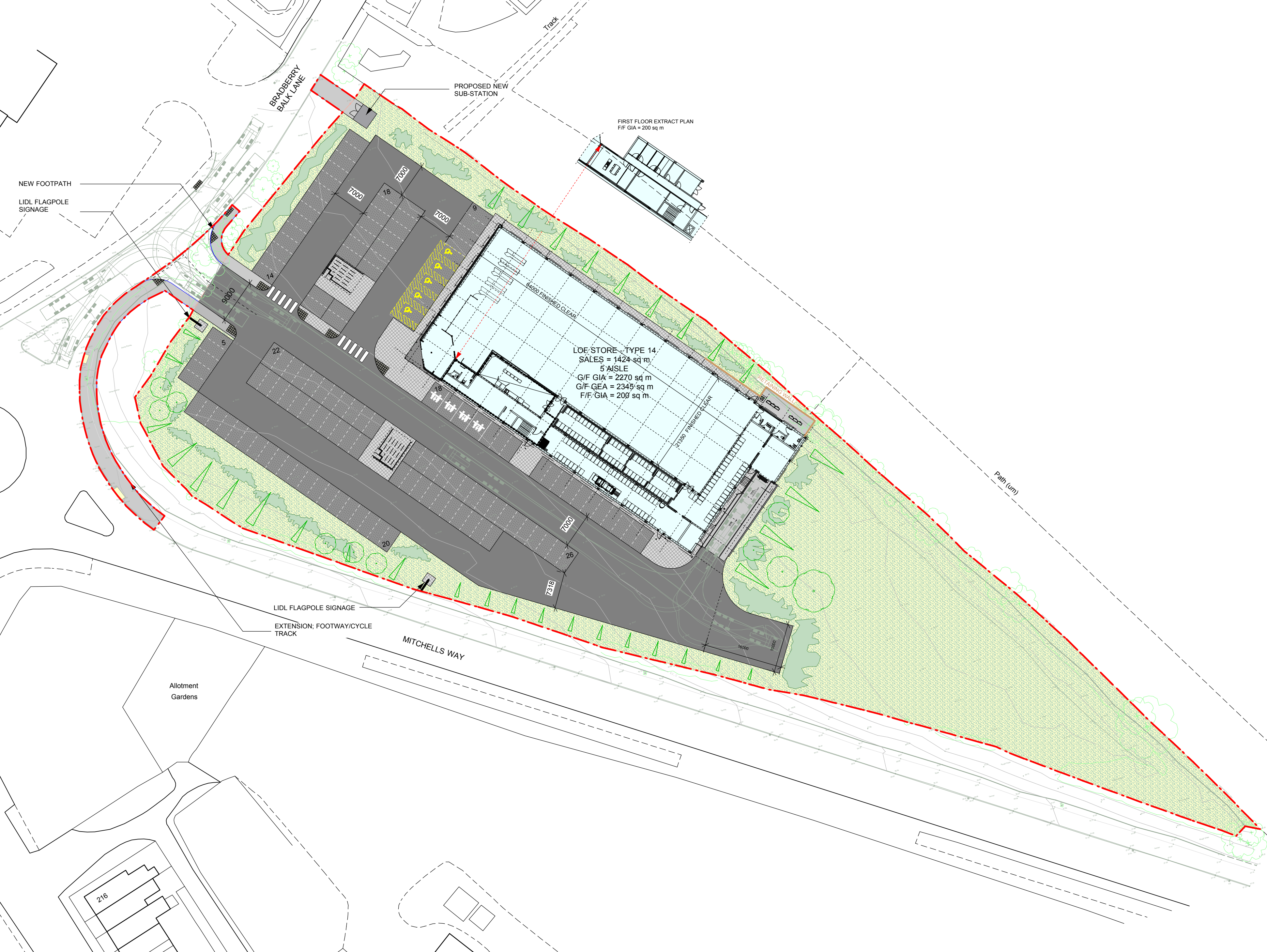
- The proposal represents a sustainable form of development in a highly accessible location. It will provide a local facility that local residents can walk to and access by public transport.
- There will be a positive economic impact as a result of the development through the creation of up to 40 new jobs and increased earnings in the local area. This is particularly important given the relatively high level of unemployment identified in Wombwell.
- The proposal is of a bespoke design, and will create a high quality, modern development that makes efficient use of the land.
- The layout of the site has been carefully designed, and incorporates features such as landscaping along its borders to limit any impact on the amenity of the surrounding area.
- The proposed store will be designed, built and operated to industry leading standards in order to reduce energy consumption and emissions, factoring in numerous sustainability measures.

10.4 In light of the above, we further conclude that:

1. The proposal accords with national and local planning policy, as set out in the National Planning Policy Framework and the Development Plan;
2. There are no other material considerations, that outweigh the presumption in favour of sustainable development as set out in the National Planning Policy Framework; and
3. The site is considered suitable and appropriate for the proposed development.

10.5 Our overall conclusion therefore is that the application should be treated favourably and planning permission should be granted in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

## Appendix 1



Site Area (sq m)	13,154.5 sq m
Store Type Reference	LOF Type 14 (19.03.15)
Sales Areas (sq m)	1,424 sq m
Number of Aisles	5 Aisle
G/F GIA (sq m)	2,270 sq m
G/F GEA (sq m)	2,345 sq m
F/F GIA (sq m)	200 sq m EST
Car Park Spaces	132

Rev	Date	Description	Drawn
N.	30.07.15	Parking spaces reordered to include fifth disabled space in line with client instruction	DW
M.	29.07.15	Boundary Amended in line with planning consultant comments to include highways works. Drawing size amended show all site area and scheme rotated.	DW
L.	27.07.15	Updates in accordance with Highways Consultant	LS
K.	23.07.15	Site Access amended in accordance with Highways Consultant	LS
J.	21.05.15	Access into site widened to 9m. Flagpoles labelled. Tracking added. Scale changed to 1:500 @ A3	MH
H.	13.05.15	Layout updated as per previous sketch.	NJV
G.	13.05.15	Sketch - car park updated for discussion	MH
F.	08.05.15	Retaining wall adjacent to Mitchells Way omitted. Parking layout amended accordingly.	DW
E.	29.04.15	Scheme updated for planning issue	DW
D.	27.04.15	FF added	LS
C.	27.04.15	Sales area increased from 1421 to 1424 sq m	MH
B.	23.04.15	Updated with proposed EGL's and retaining wall requirements	MH
A.	13.04.15	2 Trolleybays + landscaping added	LS

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client  
**Lidl UK GmbH**

project  
**New Store  
 Mitchells Way, Wombwell,  
 Barnsley**

drawing title  
**Proposed Site Plan**

date **April 2015**  
 status **Planning Issue**  
 scale **1:500 @ A2**  
 drawn **DW checked JH**  
 job no. **1849** dwg no. **10** rev. **N**

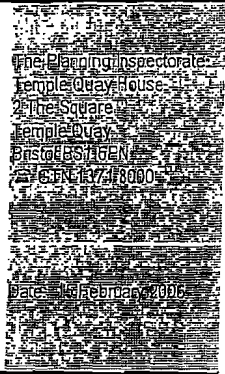
## Appendix 2



# Report to the First Secretary of State

by Robert Forster BA Hons Dip LD MRTPI

an Inspector appointed by the First Secretary of State



TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY LIDL (UK) GmbH

LONDON BOROUGH OF MERTON

Inquiry held on 17-19 January 2006

216-218 Rowan Road, London, SW16

File Ref: APP/T5720/V/04/1171394

File Ref: APP/T5720/V/04/1171394

Land at 216-218 Rowan Road, London, SW16 5HX

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 13 December 2004.
- The application is made by Lidl (UK) GmbH to London Borough of Merton.
- The application Ref: 04/P0946 is dated 30 April 2004.
- The development proposed is redevelopment of site: provision of a retail store and the erection of a part one and part two storey building to provide 12 flats with communal facilities with associated parking provision (117 spaces) and landscaping.
- The reason given for making the direction was that the proposal may conflict with national policies on important matters.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - a) Whether the proposal is in accordance with the relevant policies and provisions of Merton's Unitary Development Plan, adopted in 2003, and the London Plan 2004.
  - b) Whether the proposal is in accordance with national policy contained in PPG 1 (General Policies and Principles), in particular with guidance on design and urban design.
  - c) Whether the proposal is in accordance with national policy contained in PPG 3 (Housing) in particular with guidance on the reallocation of employment land for housing.
  - d) Whether the proposal is in accordance with national policy contained in PPG 4 (Industrial and Commercial Development & Small Firms) in particular with regard to the loss of employment land.
  - e) Whether the proposal is in accordance with national policy contained in PPG 6 (Town Centres and Retail Developments) together with other related Government statements, in particular with guidance on need for retail development outside of centres, the sequential test, impacts on nearby centres and a choice of means of transport.
  - f) Whether the proposal is in accordance with national policy contained in PPG 13 (Transport) in particular in relation to the sustainable location of facilities and access by a choice of means of transport.
  - g) Whether the proposed development is in accordance with national policy contained in PPG 25 (Flood Risk) in particular in terms of the implications of potential flood risk.
  - h) Whether any permission should be subject to conditions, and if so, the form they should take.
  - i) Any other relevant material planning considerations.

**Summary of Recommendation: I recommend the application be approved, subject to conditions and a unilateral undertaking.**

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## Procedural Matters

1. The original application was for a Lidl store plus 5 houses and 12 flats for affordable rent. This application was subsequently changed by the removal of the 5 houses from the scheme, and substitution of 12 sheltered units for the affordable units. The number of parking spaces has been reduced from 109 for the store plus 18 for the residential to 75 for the store and 8 for the sheltered housing. This reduced parking scheme, illustrated on Plan 0311 D 101 K at Appendix 10 to Document 10, is the basis on which the public inquiry was conducted.

## The Site and Surroundings

2. The site is located approximately 1.6 kilometres north east of the core shopping area of Mitcham town centre and 1 kilometre north-west of Norbury district centre (which lies within the London Borough of Croydon). The site is also situated approximately 580 metres south of Streatham Vale local centre (which lies within the London Borough of Lambeth).
3. The application site extends to approximately 0.8 hectares and is located on the eastern side of Rowan Road, close to the junction of Hassocks Road, within the London Borough of Merton (LB Merton). The site is rectangular in shape and is now vacant having previously been in industrial use. The site is currently identified in the adopted Merton UDP for Class B1 business use.
4. The application site was first developed for industrial purposes in the 1920s and comprises of a series of single and two-storey buildings that take up the majority of the land. The site was most recently occupied by UGI Smith Metres, who vacated in 1996 to consolidate their business at nearby 170 Rowan Road (which has itself now been vacated). The site has been vacant since this date and the buildings are now largely derelict and are vandalised.
5. The existing buildings have an incongruous appearance within the locality being much larger than the adjoining residential properties. The buildings are also known to contain a large amount of asbestos and have been used for various anti-social activities, whilst there is a problem with pigeon and rat infestation. There is also known to be ground contamination.
6. The sole existing vehicular access to the site is from Rowan Road, which is set centrally within the site frontage. Rowan Road is a residential road that is subject to a 30mph speed limit, and also an evening and weekend lorry ban (which also covers surrounding roads). There is a good network of pedestrian footways in the area. In addition, there are existing bus stops on both sides of Rowan Road, one of which is immediately outside the site. There are two existing bus services that serve these stops.
7. The surrounding area is predominantly residential in character, consisting mainly of two-storey terraces. To the north, the site adjoins the terraced properties in Hassocks Road and to the east semi-detached properties in Byards Croft. To the south the site adjoins a more recent development of flats off Stirling Close and also some maisonettes fronting Rowan Road. To the west, across Rowan Road, are further residential properties.
8. Whilst the surrounding area is predominantly residential, there are also a number of retail and service uses within the vicinity of the site along Rowan Road. These consist

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of a number of small shopping parades, which include a small convenience store, a pharmacy, newsagents, florist, bookmakers, greengrocer, a café, a hair salon and several hot food take-aways. These retail and service uses provide a limited facility to residents of the surrounding area.

9. The site is currently accessed via Rowan Road and it is proposed that the foodstore development will use an improved access in a similar location. Rowan Road is part of the B272 which runs from the A23 at Streatham Common, to the north, to the A236 Croydon Road, to the south. Rowan Road is primarily a residential road approximately 9m wide in the vicinity of the site and has street lighting and footways on both sides of the road. Parking is restricted on sections of Rowan Road in the vicinity of the site by single yellow lines, the restrictions being between 8am and 6.30pm on Mondays to Saturdays.
10. Fifty metres north of the site access, Rowan Road has an unsignalled priority junction with Hassocks Road. Hassocks Road is a residential road approximately 7m wide and has a 30mph speed limit, street lighting and footways on both sides of the road. There are two disabled on-street parking spaces but otherwise parking is unrestricted.
11. Approximately 300m to the east of its junction with Rowan Road, Hassocks Road has a priority junction with Byards Croft. Byards Croft is a residential cul de sac and has a 30mph speed limit, street lighting and footways on both sides of the road. Byards Croft is approximately 4.5m wide. It is proposed that the residential development will access onto Byards Croft.
12. North of the development site at the Hassocks Road junction, Rowan Road turns to the left and has a junction with Greyhound Terrace. Greyhound Terrace is also a primarily residential road approximately 9m wide and has a 30mph speed limit, street lighting and a footway on its southern side.

#### Pedestrian Facilities

13. Footways on Rowan Road, Hassocks Road and Greyhound Terrace are generally between 2 and 2.5m in width. Footways on either side of Byards Croft are approximately 1m wide. All the roads within reasonable walking distance of the site have good provisions for pedestrians. The residential area to the north of Hassocks Road and east of Streatham Vale is a 20mph zone.
14. There are pedestrian refuges on Rowan Road adjacent to the southern boundary of the site and a zebra crossing near the junction with Rowan Crescent. There are also dropped kerbs along Rowan Road.
15. In general, the residential roads in the vicinity of Rowan Road have footways on either side of the roads, streetlights, dropped kerbs and the terrain is flat.

#### Planning Policy

16. The development plan comprises the London Plan and the adopted Merton UDP.

#### The London Plan

17. The London Plan sets out the spatial development strategy for London covering a period of 15 to 20 years. It is intended to be the strategic plan setting out an integrated

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social, economic and environmental framework for the future development of the capital. The policies of the plan sit within an overarching policy of sustainable development. The intention is to achieve a more compact city that will enable a more effective use of scarce resources, including land, energy, transport, water and construction materials.

18. The London Plan sets out the Mayor's key objectives for the capital. The intention is that UDP policies should take these objectives fully into account. These are as follows:

- to accommodate London's growth within its boundaries without encroaching upon open spaces;
- make London a better city for people to live in;
- to make London a more prosperous city with strong and diverse economic growth;
- to promote social inclusion and tackle deprivation and discrimination;
- to improve London's accessibility; and
- to make London a more attractive, well designed and green city.

19. The London Plan places a strong emphasis upon economic development and making London a more prosperous city with strong and diverse economic growth. Policy 3B.5 refers to strategic employment locations and states that the Mayor will promote a managed and varied industrial offer in such locations. The application site does not fall within a strategic employment location. In addition, paragraph 3.128 of the plan recognises that manufacturing jobs are forecast to fall by 25% between 2001 and 2016. Paragraph 3.129 goes on to state the surplus land should help meet strategic and local requirements for other uses such as education, community activities and, in particular, housing.

20. The London Plan, as with national policy, seeks to focus new retail development within town centres as part of an overarching approach to support and regenerate these locations. This is embodied in Policy 3D.1, although as with PPS6, this does not preclude out-of-centre retail development. The policy goes on to state that proposals for out-of-centre development should be treated in line with relevant national policy. In addition, Policy 3D.3 states that boroughs should seek to maintain, manage and enhance local and neighbourhood shopping facilities. In this respect, paragraph 3.2.31 states:

"The existence of thriving local convenience shopping is important, especially for less mobile people and those on low incomes for whom ready access to the components of a good diet are essential to support good health."

21. A key theme of the London Plan is the need to provide additional housing within the capital, partly to address the demand for housing coming from population growth, but also to address the historical shortage of affordable housing and the high cost of existing housing. The intention is that new residential development is located so as to maximise the use of scarce land, to conserve energy and to be within easy access of jobs, schools, shops and public transport.

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22. Policy 3A.1 confirms that the Mayor will seek the maximum provision of additional housing in London towards achieving an annual output of 30,000 additional homes from all sources. Policy 3A.4 goes on to state that boroughs should take steps to identify the full range of housing needs within their area and respond to these. Paragraph 3.19 states that homes built for general mainstream use but designed to meet the Lifetime Homes standards will contribute towards redressing the severe shortage of accessible housing in the capital. This enhances choice, enables independent living and helps to create more balanced and inclusive communities.
  23. The London Plan contains several policies relating to the delivery of affordable housing. Policy 3A.10 deals specifically with special needs and specialist housing. It states that UDP policies should provide for special needs housing, including sheltered housing with care support. Paragraph 3.65 of the plan stresses that many older people often leave London because they feel disproportionately affected by housing of low quality and that social and health care does not meet their needs. In addition, many pensioners in London live in households without a car and convenient, cheap, safe and reliable public transport is therefore a priority for them.
  24. There are also a number of policies which are aimed at achieving very high standards of design as a means of making London a better city to live in and one which is more attractive and green and more inclusive with the need to travel minimised. The policies set out various principles of design aimed at achieving a compact city and also promoting world class architecture and design. Particular emphasis is also placed upon mixed use development to encourage a reduction in the need to travel long distances. Development should also be safe and secure, taking into account the objectives of designing out crime and anti-social behaviour.
  25. The London Plan also contains a raft of transport related policies which seek to achieve closer integration between land use and transport. The key objective, as with national policy, is to improve London's accessibility to ensure that development is situated in locations that could be well-served by public transport, walking and cycling.
  26. The London Plan also contains a wide range of policies aimed at improving the use of energy, dealing with contaminated land, improving air quality, the efficient use of water, reducing noise and tackling climate change. These policies are intended to contribute towards the overarching objective of achieving sustainable patterns of development within the capital.

#### **Merton Unitary Development Plan**

27. The adopted Merton UDP sets out the framework for planning within the Borough up to 2016. One of the key themes of the UDP, as is the case with national policy and the London Plan, is to promote more sustainable patterns of land use and development.
28. The UDP contains a number of strategic policies of relevance to the application proposals. Policy ST.1 confirms that all development proposals will be expected to meet the principles of sustainable development and ST.3 encourages mixed-use developments as one of the means of achieving more sustainable patterns of living and working. In addition, Policy ST.12 promotes the re-use of previously developed land. Policy ST.17 also stresses the importance of achieving a high quality urban environment to strengthen the established character and townscape quality of the Borough.

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29. Policy ST.14 relates to employment land and states that outside the main employment area such land will be protected and loss will only be permitted under certain circumstances.
30. Policy ST.29 refers to retail development and states that a need must be demonstrated for this and the sequential approach to site selection must also be satisfied. Policy ST.30 seeks to maintain a wide distribution of local shopping facilities to meet people's day-to-day needs and help reduce dependence on the car. Paragraph 2.63 states that such local facilities can contribute to reducing social exclusion from services and bring particular benefits to the elderly and young people.
31. Policy ST.9 seeks to protect and enhance the character and amenity of all residential areas in the Borough and to improve quality of life through better access and provision to a wide range of services and facilities locally.
32. Policy ST.13 states that the Council will seek provision for a range of housing types and tenures to meet the needs of all sectors of the community.
33. Policy ST.31 seeks to integrate land use and transport planning with the objectives of promoting walking, cycling and public transport, restraining non-essential private car movements, improving environmental conditions and road safety, enhancing accessibility generally and reducing travel demand.
34. Policy E6 deals specifically with the loss of employment land outside the designated industrial areas of the Borough. The policy states that:

“Outside the industrial areas shown on the Proposals Map, development which results in the loss of employment land will be acceptable only under the following circumstances:

If the land is in a predominantly residential area, and the development proposal will provide a local community or cultural facility.

If the land is in a predominantly residential area, residential use will be permitted provided that: the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment or community use as confirmed by full and proper marketing of the site for 5 years for employment or community purposes.

Compensatory measures comprising employment benefits locally may be sought for loss of employment land. Such measures will be sought through planning obligations.”

35. Policy TC.2 is of particular relevance in that it deals with town centre-type uses (i.e. retail and leisure) outside of designated centres. The policy states that such uses will only be permitted if the following criteria are met:
- (i) A need for the development can be demonstrated.

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(ii) All potential sites within the centres at Wimbledon, Mitcham and Morden have been thoroughly assessed and ruled out, followed by an assessment of edge-of-centre sites with good pedestrian access to the town centre core shopping area, and then followed by a full consideration of sites within local centres.

(iii) The applicants can demonstrate that they have been flexible about the format, scale, design and parking provision in the sequential search of sites, as set out in (ii) above.

(iv) The proposed development will be accessible by a choice of means of transport.

(v) The vitality and viability of the town centres of Wimbledon, Mitcham or Morden will not be harmed by the proposed development.

(vi) The proposal would not undermine the development plan strategy.

36. The UDP also contains a number of policies relating to housing needs. Policy HN.3 seeks to promote a mix of housing types and sizes in order to create mixed and inclusive communities to meet a variety of needs. Policy HN.4 relates specifically to housing for older people and states that:

“Planning permission may be granted for housing specifically for older people after consideration of the following criteria:

the topography of the area;

the proximity of the site to public transport facilities;

the environment (including safety and security); provision of garden area and the effect of traffic noise and fumes which will arise from the siting of the development;

the convenience of the site’s location in relation to local shops, services and other community facilities.”

37. The London Plan also contains a number of detailed transport policy requirements for UDPs. Those of particular relevance to the application proposals are:-

**“Policy 3C.20 Improving conditions for walking**

UDP policies should:

- ensure that safe, convenient, accessible and direct pedestrian access is provided from new developments to public transport nodes and key land uses, taking account of the need to connect people to jobs, to town centres and to schools.”

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**“Policy 3C.21 Improving conditions for cycling**

UDP Policies should:

- identify and implement high quality, direct, cycling routes, where possible segregated from motorised traffic, giving access to public transport nodes, town centres and key land uses
- encourage provision of sufficient, secure cycle parking facilities within developments.”

**“Policy 3C.22 Parking strategy**

The Mayor, in conjunction with boroughs, will seek to ensure that on-site car parking at new developments is the minimum necessary and that there is no over-provision that could undermine the use of more sustainable non-car modes. The only exception to this approach will be to ensure that developments are accessible for disabled people.

UDP policies should:

- adopt on- and off-street parking policies that encourage access by sustainable means of transport, assist in limiting the use of the car and contribute to minimising road traffic.
- adopt the maximum parking standards set out in the annex on parking standards (Annex 4) where appropriate, taking account of local circumstances and allowing for reduced car parking provision in areas of good transport accessibility.
- recognise the needs of disabled people and provide adequate parking for them.
- encourage good standards of car parking design.”

38. Transport related policies in the adopted UDP include:-

**“Policy WC.1: Increasing Walking**

Design of new development proposals will be expected to support the objective of increased walking across the Borough in one or more of the following ways:-

- (i) Improvement of pedestrian access through the creation of new or more direct footpath links.
- (ii) Safeguarding, widening or improvements to existing footpaths, access routes or public rights of way with accessible routes for all, wherever possible.
- (iii) Employing measures that provide natural surveillance, security, signage and lighting of footpaths.”

**“Policy WC.3: Cycle Facilities**

New developments, such as rail stations, shopping centres, work places and schools, and those involving new dwellings or flat conversions will be expected to provide secure cycle parking facilities in accordance with the cycle parking standards in Schedule 6.”

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**“Policy PK.2: Car Parking Standards**

The Council will require all developments to provide appropriate levels of car and cycle parking in accordance with the standards adopted by the Council which are detailed in Schedule 6. Car parking standards are set as the maximum permissible provision and should therefore not be exceeded unless it can be demonstrated that a higher level of parking is needed and it can be shown that the applicant has taken other measures to minimise the need for parking.”

**“Policy LU.5: Developer Contributions**

Developers will be required to demonstrate that their development is adequately served by a variety of modes of transport and will not have an adverse effect on transport in the vicinity of the site. Where public transport is inadequate or where the development will require additional facilities to be provided to meet this policy the Council will require developers to contribute towards measures in the vicinity of the development to enhance:

- Public and community transport services and infrastructure;
- facilities for pedestrians and cyclists;
- on-street parking controls;
- traffic calming/reduction measures;
- access facilities for people with disabilities.

Contributions will be sought through planning obligations where they can be used to overcome the adverse transport impact of the development and such contributions will take account of the type of development and the ability of the transport network to serve the site.”

39. As with the London Plan, the UDP also contains a wide range of policies relating to design, improving the use of energy, dealing with contaminated land, improving air quality, the efficient use of water and drainage, and noise and waste minimisation.

**The Proposals**

**Proposed Foodstore**

40. The proposed foodstore will extend to 1,766m<sup>2</sup> gross, with a sales area of 1,286m<sup>2</sup> net. The store will comprise one of Lidl's concept outlets, where the company will trial new products and merchandising prior to deciding whether to roll them out across the entire store portfolio.
41. The foodstore will be located toward the centre of the site, set back approximately 35 metres from Rowan Road. The entrance will front Rowan Road, with a single delivery bay located on the southern side of the building. The store will consist of a relatively low rise single storey building, incorporating a pitched roof. The roof will overhang the front elevation of the store in order to provide a covered area for the storage of trolleys and cycle parking. The gable end of the roof will front Rowan Road and will be clad in zinc and incorporate the Lidl corporate logo. The front elevation

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will also incorporate extensive glazing. The flank and rear elevations will be treated primarily in brick and painted render.

42. Pedestrian and vehicular access to the store will be from Rowan Road. The customer car park will wrap around the north and western sides of the store, with disabled car parking located closest to the store entrance. The drawings that accompanied the original planning application submission indicated a car park providing 109 spaces. However, the applicant is prepared to accept a condition, limiting the store car park to a maximum of 75 spaces, which is in line with the London Plan car parking standards. A recycling facility has also been incorporated within the site layout. A revised site layout plan is contained at Appendix 10 to Document 10.
43. The design and massing of the proposed foodstore building was considered to be acceptable by the LPA. However, Planning Officers did raise concerns over the potential of the car park to dominate the Rowan Road frontage. In order to address this concern the revised site plan also shows reinforced boundary treatment to the Rowan Road frontage and the provision of additional landscaping. An elevational plan showing the boundary treatment to Rowan Road is contained at Appendix 11 to Document 10. The elevation plan illustrates how the application proposals can provide a much stronger frontage to Rowan Road, reinforcing the building line which has been established by the dwellings on either side of the site.
44. The design and layout of the store was also considered to be acceptable by the Metropolitan Police in terms of crime prevention. A copy of the letter from the Police is contained at Appendix 12 to Document 10.

#### Sheltered Housing

45. The residential element of the application proposals will be located on the eastern part of the site, adjacent to Byards Croft. It will consist of a part single and part two-storey building comprising 12 self contained sheltered units with a warden's office and facilities, communal day room, kitchen and toilet facilities and a landscaped courtyard.
46. The residential buildings will incorporate a pitched roof with the elevations being treated in a combination of brick, painted render and timber cladding. The buildings will be flanked to the north, east and south by amenity areas including timber decking, which will provide further areas for residents to relax and spend time.
47. Vehicular access to the sheltered housing would be directly from Byards Croft, which would lead to 8 dedicated car parking spaces.
48. As with the foodstore, neither the LPA nor the Police raised any objections to the residential element (Appendix 12 to Document 10).

#### The Case for Lidl and LB Merton

49. The application site has a lengthy planning history associated with the previous industrial use and a number of planning consents have been granted for various extensions and alterations to the factory buildings, none of which are of relevance to the application proposals. However, since the site was vacated by UGI Smith Metres in 1996, a number of proposals have come forward seeking to redevelop the site for alternative uses, which are of relevance. These are described below.

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50. In May 1999 an outline planning application (Ref No: 99/P0440) for the redevelopment of the site to provide 43 residential properties was refused by LB Merton under delegated powers. The Planning Officer's report identified the principal concern as relating to the loss of employment land, which resulted in the following reason for refusal:

"The proposed redevelopment of the site for residential purposes would result in a loss of employment land contrary to the Council's employment strategy and objectives to support new economic development as set out in Policies SW1, SW2, SW3, H3 and W9 of the adopted UDP (April 1996)."

51. In July 2000 a further application (Ref No: 00/01525) was submitted for the redevelopment of the site to provide 7 industrial/warehousing units (Use Classes B1, B2 and B8), including associated parking, servicing and relocated access. The applicant subsequently lodged an appeal against the failure of the LPA to determine the application within the relevant period. Nevertheless, the application was reported to Committee where Members resolved that if they had been in a position to determine the application it would have been refused for the following reason:

"The proposed B2 and B8 uses will be likely to result in loss of amenity to neighbouring residential occupiers, particularly with regard to noise, disturbance and traffic generation and would undermine the Council's employment strategy and objectives to direct such uses to the designated industrial areas, contrary to Policies EP2, M43, W4, W7, W8 and W10 of the adopted UDP (April 1996) and site designation 19P and Policies E4, E10, E11, LU3 and PE3 of the second deposit UDP (October 2000)."

52. The Planning Inspector who dealt with the appeal acknowledged that within the (then) draft UDP the site was identified for B1 use only and also as lying within an area subject to an evening and weekend lorry ban. The Inspector identified the main issues as being the impact on the character and appearance of the locality; the effect on the living conditions of nearby occupiers and the implications for highway safety in Rowan Road.
53. The Inspector noted that neither the LPA nor any other party had objected to the principle of the redevelopment of the site for employment purposes and that subject to the use of suitable external materials and landscaping, the overall scheme would result in a significant visual improvement on and around the site. The Inspector did though note that the site is surrounded by houses and in the case of those along Hassocks Road to the north, ones with small rear gardens, which would have been closest to the proposed industrial/warehousing units.
54. In terms of character and appearance, the Inspector considered that in the absence of any details regarding potential operations or occupiers, unrestricted B2 and B8 uses should not normally be permitted in such close proximity to residential properties. The Inspector also noted that despite the previous industrial use of the site, B2 and B8 use would be out of character with the predominantly residential nature of the locality.

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55. On the issue of living conditions, the Inspector acknowledged that the new buildings would be lower than those existing on site and any overshadowing of surrounding houses and gardens would be less than the current position. The Inspector did however note that by their very nature, B2 and B8 uses can be expected to generate noise and disturbance greater than that arising from office, high technology or light industrial operations (Use Class B1). The Inspector concluded that he was not satisfied that planning conditions could be imposed to ensure that there would be no adverse impact upon neighbouring residential properties from such noise and disturbance, including the likely generation of traffic movements by large vehicles.
56. With regard to highway safety, the Inspector noted that the road network surrounding the site was typical of a residential area and the lorry ban operating in the area during the evenings and weekends was indicative of the local problems caused by large vehicles, such as would normally be involved with servicing a B8 use. The Inspector went on to consider that the local roads were not well suited to provide either direct access to the main road network needed by storage and distribution operations, or to cope with a material increase in large vehicle movements. The Inspector therefore concluded that the likely traffic generation for the scheme would be materially harmful to the interests of highway safety on Rowan Road and adjoining local streets.
57. In view of the above, whilst the Inspector noted the economic and visual benefits of redeveloping a semi-derelict brownfield site, he considered that the need for development was not so great or urgent as to justify overriding the LPA's objections. The appeal was therefore dismissed.
58. A copy of the Inspector's decision letter relating to application 00/01525 is contained at Appendix 4 to Document 10.
59. The recent planning history of the application site raises a number of points of relevance in relation to the current proposals. In the first instance, the above decisions (combined with the allocation of the site in the now adopted UDP) restrict any potential employment development to B1 use, which in itself reduces the number of potential employment users. In addition, the proximity of residential properties means that the LPA would still need to impose conditions limiting the hours of any B1 development, which would impose a further constraint upon employment use. Further to this, it is clear that the local road network is constrained, especially in terms of access by larger goods vehicles. It cannot be assumed that a B1 use will not result in any such movements.
60. The site at 170 Rowan Road (to which UGI Smith Meters relocated in 1996) is located just to the south of the application site and is much larger, extending to 2.4 hectares in area. The site is roughly rectangular in shape and was used as a munitions factory during the Second World War, following which it was occupied by UGI until February 2001 when it became vacant. As with the application site, the site is within a predominantly residential area bounded by housing on all sides. The site has a relatively extensive planning history relating to various minor extensions and alterations to the factory buildings. The most relevant applications are considered below.
61. In December 2001 a planning application (Ref No: 01/P/1216) was refused by the LPA for the redevelopment of the site for 12 separate B1 units, totalling 3,600m<sup>2</sup>, 9 live/work units, 1 retail unit of 350m<sup>2</sup>, a nursery unit and 62 residential properties,

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together with associated parking provision and landscaping. The reason for refusal was as follows:

“The proposal would lead to an unacceptable loss of an important employment generating site, prejudicial to the Council’s objectives of maintaining an adequate supply of employment land for businesses and preventing the continued erosion of the industrial base of the Borough, contrary to Policies SW1 and W9 of the adopted Unitary Development Plan (April 1996) and Policies ST14 and E9 of the second deposit draft Unitary Development Plan (October 2000).”

62. In May 2003 a further application (Ref No: 03/P1075) was submitted, again for the mixed-use redevelopment of the site. The application as originally submitted proposed 1,851m<sup>2</sup> of adaptable B1 accommodation, 531m<sup>2</sup> of retail, a nursery/doctor’s surgery, live/work units and 290 residential units. The non-residential floorspace (including employment) amounted to less than 30% of the site area.
63. In considering the potential loss of employment land, the Committee Report refers to a marketing report submitted with the application that indicated that the majority of interest in the site has been from residential developers. One of the main reasons suggested for this was the congested road access to the site, which “generates problems for business users who increasingly wish to operate 24 hours per day 7 days a week. In addition, the report states that the site had been marketed for significantly less than the 5-year period usually required. The report does though go on to conclude on the issue of the loss of employment land, that given the time that the premises had been on the market and the limited prospects of redevelopment solely for employment uses, a mixed use scheme, with 50% of the site area retained for employment use would be acceptable.
64. The Committee Report, in recommending approval for the application in March 2004, also recognised that the development would make an important contribution to tackling general housing needs within the Borough and also increasing the affordable housing stock. In addition, that the development would provide other benefits and bring into productive use a derelict site, which has been the subject of fly tipping and other nuisance activities in the past. Members went on to resolve to approve the application in line with the officer recommendation subject to the completion of a Section 106 agreement.
65. The draft Section 106 relating to this application has never been signed. It is understood that it would have required all of the B1 accommodation to be made available before any of the housing could have been occupied. However, a revised scheme has been submitted and was reported to Committee on 20th October 2005, at which Members resolved to uphold the officer recommendation and grant planning consent subject to conditions and the completion of a Section 106 agreement. The approved scheme allows for a minimum of 6,000m<sup>2</sup> of B1 (b: research and development) and (c: light industry), and 121 residential units. This means that only 43% of the site would remain in employment use, with the remainder being developed for housing. In addition, the heads of terms of the draft Section 106 require only 3,124m<sup>2</sup> of B1 to be made available before the occupation of any of the housing.

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66. The planning history relating to 170 Rowan Road is significant for a number of reasons:

1. 170 Rowan Road is highly comparable to the application site in terms of location. However, it is easier to develop for employment use, being much larger (2.4 hectares) and already cleared of buildings. It therefore represents a much more attractive site for B1 development than the application site.
2. The LPA has been prepared to grant planning permission for alternative uses at 170 Rowan Road, a more suitable employment site, despite significantly less than 5 years marketing. Indeed, the site was only vacated in 2001, which hardly represents long term vacancy as is the case with the application site.
3. 170 Rowan Road has remained undeveloped since the LPA first resolved to grant planning permission for a mixed-use scheme in March 2004. Furthermore, the LPA has now resolved to approve a revised scheme that allows for nearly 60% of the site to be developed for housing, with a draft Section 106 Agreement that requires only an element of B1 floorspace to be made available before any housing can be occupied.
4. In approving a scheme that allows for nearly 60% of 170 Rowan Road to be developed for housing, the LPA has clearly accepted that there would be no adverse impact upon the supply of employment land and buildings within the Borough.

### **The Lidl Retail Operation**

#### **Position Within the UK Retail Market**

67. Lidl commenced trading in the UK in November 1994 and since that date has grown to become a substantial presence in the convenience retail market, with over 400 stores currently trading nation-wide. The latest publication of the Verdict report on grocers (2005) confirms that Lidl now has around 1% of the UK convenience market.
68. Lidl is classified by Verdict as falling within the "deep" or "hard discounters" sector of the convenience retail market, also including Aldi and Netto, distinct from the mainstream retailers, such as Tesco, Asda, Sainsbury's and Morrisons. Deep discounters concentrate on selling a limited range of primarily own brand goods at extremely competitive prices. The Competition Commission has recently recognised that Lidl, Aldi and Netto are different from the main grocery retailers due to their limited product range.
69. Verdict research (How Britain Shops for Food and Groceries 2000) shows that deep discounters retain a high degree of loyalty from their customers, with 75% of main users saying they would not prefer to use another store if given the choice. This is primarily due to the competitive pricing, with 78% of customers having identified this as the reason for shopping at these retailers. Nationally around 16% of shoppers visit a deep discounter on a regular basis, with 5% using them as their main store for food shopping.

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## Store Format and Locational Strategy

70. Lidl operate stores of between 640m<sup>2</sup> to 1,407m<sup>2</sup> net sales area. However, the smaller "first generation" stores do not operate profitably and the majority are in the process of either being extended or relocated to larger sites. The minimum store size that is required to enable Lidl to operate their business model efficiently is 1,063m<sup>2</sup> net sales.
71. Lidl stores operate on a single level, with storage areas and ancillary space typically equating to only around 25% of gross floor area. A single level store is critical to the retail operation. This allows pallet loads of products to be moved directly from the delivery bay to the sales area. This keeps costs to a minimum by reducing the need for pallet loads to be broken up and re-stacked on display shelves. This arrangement is critical to the ability of the company to offer products at low prices.
72. Lidl stores serve a relatively compact catchment area and are intended to provide a local shopping facility. The locational strategy of Lidl is for stores to serve an area that broadly equates to a 0-5 minute drive-time isochrone, with a population of between 20,000 and 40,000. Stores are positioned so that the catchment that they serve slightly overlaps with those of other nearby Lidl stores. The fact that Lidl stores serve a compact area is borne out by the fact that a relatively large proportion of customers visit by means other than the private car as compared to the main food retailers. Recent survey data from a number of Lidl stores in Greater London, contained at Appendix 6 to Document 10, reveals that on average, nearly 40% of all respondents arrive either on foot, by cycle or on public transport.
73. The term "deep discounter" is somewhat misleading as it suggests that Lidl loss lead on all merchandise. This is not the case. Rather Lidl are able to offer high quality products at low prices due to extensive pan European bulk purchasing for nearly 6,000 stores. This enables the company to achieve significant economies of scale that can then be passed on to the consumer in the form of highly competitive prices.
74. There are a number of other factors that enable Lidl to offer consistently low prices. As explained above, stores are designed to receive all goods on pallets as part of one daily delivery, loaded directly from vehicle to shop floor and displayed for sale in this form. This arrangement means that the costs of providing display shelves is minimised, as is the amount of storage space and also the staff requirement for goods handling. The company also benefits from an extremely efficient operation in terms of sourcing new property, building stores and administration.
75. The economies of scale that are achieved through bulk purchasing and the other factors identified above enable Lidl to consistently offer goods at very competitive prices. The latest Verdict report confirms that hard discounters such as Lidl can achieve prices that are up to 30% less than the mainstream food retailers. Indeed, of those questioned in the survey (Appendix 6: Document 10) 47% confirmed that the main reason for shopping at Lidl was the price of the goods.
76. Lidl stores carry a comparatively limited range of primarily own-brand products (around 95%). A standard store will stock around 950 product lines. In contrast, similar sized foodstores operated by the mainstream food retailers can offer between 10,000 and 15,000 lines of mainly branded goods. Larger foodstores operated by these

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retailers offer in excess of 30,000 lines. Even retailers such as Kwik Save carry between 4,000 and 6,000 product lines.

#### Customer Behaviour

77. Lidl customers tend to purchase part of their main grocery shop (i.e. basic staples) in store, taking advantage of the low prices, but then visit one of the mainstream retailers to purchase more specialist or luxury items. Again, that many customers use Lidl for a main grocery shop, or at least part of this, is borne out by the survey data at Appendix 6 to Document 10. Of those questioned 64% use Lidl for their main shop. The complementary role Lidl stores perform is underlined by the fact that they often trade alongside the mainstream food retailers, such as Tesco, Sainsbury's and Asda.
78. Many Lidl customers also continue to visit smaller convenience stores close to their home for top-up/basket shopping (i.e. buying a pint of milk or a loaf of bread). In addition, they will also visit such stores to purchase items Lidl do not sell, for example, tobacco or newspapers/magazines or to buy lottery tickets. Of those questioned in the survey, 41% use other stores. Of these 27% use the Co-op or other local shops. 38% of those questioned also combined their shop at Lidl with other activities, primarily visiting other shops. Again, Lidl often trade alongside smaller convenience stores, such as the Co-op, complementing the role that these perform.

#### Employment Opportunities

79. Lidl is already a major employer within LB Merton, with its head office at 19 Worple Road in Wimbledon employing 150 staff. The company also has an existing store within Morden, which employs 25 full time equivalent staff. The application proposals will provide a further 25 full time equivalent jobs. The proposals will therefore provide important employment opportunities within the locality.

#### Opening Hours

80. Lidl stores generally open for a core period of between 0900 to 2000 Monday to Friday; 0800 to 1800 on Saturday and either 1000 to 1600 or 1100 to 1700 on Sundays. The standard opening hours of Lidl stores are therefore more limited than the mainstream food retailers and also smaller local convenience stores. This is another factor which underlines that Lidl do not compete to any significant degree with smaller convenience retailers.

#### Deliveries, Waste and Energy

81. Lidl are mindful of the need to minimise any disturbance to neighbouring residents and landowners. To assist in achieving this each store has only one delivery per day. Deliveries do not arrive before 0700 Monday to Saturday and 0900 on Sundays. Total unloading time is generally around 45 minutes during which vehicle engines are switched off. New stores also feature graded ramps in the service bay and manual dock levellers, negating the need for noisy scissor or tail lifts.
82. Lidl are committed to the recycling of packaging material, with their merchandising and display formats being designed to facilitate this. All recyclable material is compacted and stored on site for collection twice a month. Non-recyclable material is taken back to the regional distribution centre on returning delivery vehicles on a daily basis. This eliminates the need for unsightly external storage and limits the number of

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vehicle movements to and from stores. The operation of Lidl stores is also based upon reducing the use of energy.

### National Planning Policy

PPS1: Delivering Sustainable Development (*this has replaced PPG1 as referred to in the call in letter*)

83. PPS1 emphasises the benefits of regeneration. For example, paragraph 27(ii) encourages LPAs to:

“Promote urban and rural regeneration to improve the well being of communities, improve facilities, promote high quality and safe development and create new opportunities for the people living in those communities. Policies should promote mixed use developments for locations that allow the creation of linkages between different uses and can thereby create more vibrant places.”

84. Paragraph 27 (vii) and (viii) goes on to stress that LPAs should promote the more efficient use of land through high density, mixed use development and the use of suitably located previously developed land and buildings, in addition to reducing the need to travel and encouraging accessible public transport provision to secure more sustainable patterns of development.
85. PPS1 at paragraphs 33 to 39 places particular emphasis upon high quality and inclusive design for all development. However, paragraph 38 stresses that design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout and access of new development in relation to neighbouring buildings and the local area more generally. In addition, LPAs should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.
86. The application proposals will clearly contribute toward the objectives of achieving sustainable development set out in PPS1, in that it will involve the beneficial redevelopment of a brownfield site. The proposals will also contribute toward social cohesion by improving local shopping provision. The proposal will also increase the potential for people to walk and use public transport.

### PPG3: Housing

87. PPG3 highlights that the Government is committed to maximising the re-use of previously developed land, empty properties and also the conversion of non-residential buildings for housing, in order to promote urban regeneration and minimise the amount of greenfield land taken for development. Significantly, PPG3 recognises that policies will alter over time and this may be to the extent that a particular use or allocation of land is no longer appropriate. An update to PPG3: Supporting the Delivery of New Housing, published in January 2005 contains a paragraph 42 (a) which places the emphasis upon LPAs to favourably consider applications for housing or mixed use developments on employment land, which is no longer needed for such use, unless any of the following apply:

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“The proposal fails to reflect policies in [PPG3] particularly those relating to a site’s suitability for development and the presumption that previously-developed sites (or buildings for re-use or conversion) should be developed before greenfield sites;

The housing development would undermine the planning for housing strategy set out in the Regional Spatial Strategy or the Development Plan Document where this is up-to-date, in particular if it would lead to an over-provision of new housing and this would exacerbate the problems of, or lead to, low demand;

It can be demonstrated, preferably through an up-to-date review of employment land ... that there is a realistic prospect of the allocation being taken up for its stated use in the plan period or that its development for housing would undermine regional and local strategies for economic development and regeneration.”

88. As will be demonstrated later in this case, the application site is no longer required for employment purposes. The redevelopment of the site to provide a mixed use development including housing is therefore clearly consistent with PPG3

PPS6: Planning for Town Centres (*this has replaced PPG6 as referred to in the call in letter*)

89. PPS6, as its name suggests, focuses primarily on the planning for the future of town centres and emphasises that these remain the preferred locations for new retail development and other main town centre uses (i.e. leisure, entertainment facilities, offices and arts, culture and tourism facilities). The document does not though preclude such uses from locating in edge or out-of- centre locations subject to certain key tests being satisfied.

90. Chapter 3 of PPS6 sets out the considerations that should be taken into account by LPAs in determining planning applications for new retail development in edge or out-of-centre locations. These considerations include:

- the need for the development;
- if development is of an appropriate scale;
- whether there are any more central sites that are either available, suitable or viable for the development;
- that there are no unacceptable impacts on existing centres; and
- that locations are accessible.

91. As will be demonstrated later in this case, all of these considerations can be answered satisfactorily in relation to the proposal.

PPG13: Transport

92. PPG13 emphasises the importance of integrating land use planning with transport to ensure more sustainable patterns of development. One of the key objectives of PPG13

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is to ensure that jobs, shopping, leisure facilities and services are accessible by public transport, walking and cycling, in order to reduce reliance upon the private car. The guidance states that this is important for all, but especially for those who do not have regular use of a car, and also to promote social inclusion.

93. The application site is well related to existing public transport, with Rowan Road being served by four bus services. Of these, two stop immediately outside the site at the existing bus stops. The site is also surrounded by a dense residential area and the proposals also include secure cycle parking. There will as such be the opportunity for people to walk and cycle to the site. Further to this, the applicant has reduced the level of car parking for the retail floorspace to a maximum of 75 spaces, significantly below the maximum standards set out in PPG13 and in line with the London Plan. The applicant will also prepare a green travel plan to promote sustainable transport choices.

#### PPG25: Development and Flood Risk

94. PPG25 explains how flood risk should be considered at all stages of the planning and development process in order to reduce future damage to property and loss of life. The application site does not lie within an area that is identified as being at risk of flooding although flood-risk was raised in the call-in letter. It has since been clarified that the reference is to the methods of surface water drainage to be adopted. The site is already fully developed being almost entirely covered with buildings and hard surfacing. The application proposals will if anything lead to an improvement in the current situation for surface water run-off and the applicant will work with the Environment Agency, through an appropriate condition to secure sustainable means of drainage to the development.

#### The Local Planning Context: The London Plan

95. The London Plan places a strong emphasis upon economic development and making London a more prosperous city with strong and diverse economic growth. Policy 3B.5 refers to strategic employment locations and states that the Mayor will promote a managed and varied industrial offer in such locations. It is notable that the application site does not fall within a strategic employment location.
96. The London Plan, as with national policy, seeks to focus new retail development within town centres as part of an overarching approach to support and regenerate these locations. This is embodied in Policy 3D.1, although it should be noted that as with PPS6, this does not preclude out-of-centre retail development. Indeed, the policy goes on to state that proposals for out-of-centre development should be treated in line with relevant national policy. In addition, Policy 3D.3 states that boroughs should seek to maintain, manage and enhance local and neighbourhood shopping facilities. In this respect, paragraph 3.2.31 states:

“The existence of thriving local convenience shopping is important, especially for less mobile people and those on low incomes for whom ready access to the components of a good diet are essential to support good health.”

97. A key theme of the London Plan is the need to provide additional housing within the capital, partly to address the demand for housing coming from population growth, but also to address the historical shortage of affordable housing and the high cost of

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existing housing. The intention is that new residential development is located so as to maximise the use of scarce land, to conserve energy and to be within easy access of jobs, schools, shops and public transport.

98. Policy 3A.10 deals specifically with special needs and specialist housing. It states that UDP policies should provide for special needs housing, including sheltered housing with care support.

99. Transport related policies in the London Plan of particular relevance to the application proposals are:-

*Policy 3C.20 Improving conditions for walking*

*Policy 3C.21 Improving conditions for cycling*

*Policy 3C.22 Parking strategy*

[See paragraph 37 for full details of these policies]

#### Merton Unitary Development Plan

100. The adopted Merton UDP sets out the framework for planning within the Borough up to 2016. One of the key themes of the UDP, as is the case with national policy and the London Plan, is to promote more sustainable patterns of land use and development.

101. Policy ST.29 refers to retail development and that a need must be demonstrated for this and the sequential approach to site selection must also be satisfied. Policy ST.30 seeks to maintain a wide distribution of local shopping facilities to meet people's day-to-day needs and help reduce dependence on the car. Paragraph 2.63 states that such local facilities can contribute to reducing social exclusion from services and bring particular benefits to the elderly and young people.

102. Policy E6 deals specifically with the loss of employment land outside the designated industrial areas of the Borough (See paragraph 34 for details).

103. Policy TC.2 is of particular relevance in that it deals with town centre-type uses (i.e. retail and leisure) outside of designated centres. The policy states that such uses will only be permitted if certain criteria are met (see paragraph 35).

104. Policy HN.3 seeks to promote a mix of housing types and sizes in order to create mixed and inclusive communities to meet a variety of needs. Policy HN.4 relates specifically to housing for older people and gives criteria by which they can be judged, including the convenience of the site's location in relation to local shops, services and other community facilities.

105. Transport related policies in the adopted UDP for The London Borough of Merton include:-

*Policy WC.1: Increasing Walking*

*Policy WC.3: Cycle Facilities*

*Policy PK.2: Car Parking Standards*

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*Policy LU.5: Developer Contributions*

[see paragraph 38 for details of these policies]

106. Policy LU5 includes provisions for contributions to overcome adverse transport effects of a development. The proposal includes making provision towards improving transport infrastructure in the vicinity of the site, through the unilateral undertaking.

**Employment Land Matters**

107. The application site is currently allocated for B1 business use within the adopted Merton UDP. The site represents an isolated allocation and does not lie within one of the main employment areas. The UDP allocation does not restrict the range of B1 uses that could take place at the site, but the LPA's preference has been for some form of light industrial development and this would be consistent with the location outside a designated centre.
108. It is also evident from the recent planning history of the site that any employment use will be limited to B1 use, primarily on the grounds of residential amenity and highway safety. The fact that the site is restricted to B1 use clearly reduces the number of businesses that might be interested in this location.
109. The application site has been vacant since 1996, a period of at least 9 years, and despite marketing no serious interest has been expressed in any form of employment or community use. Indeed, most expressions of interest have related to residential development. It is accepted that the site has not been marketed for a continuous 5 year period, but the LPA has not sought to rigidly apply this element of Policy E6 in relation to other sites. In particular, this is notable in relation to nearby 170 Rowan Road, a much larger employment site, where the LPA has been prepared to grant planning consent for housing on around 60% of the site (1.4 hectares) on the basis of little, if any, marketing.
110. The marketing that has been undertaken in relation to the application site clearly indicates that there is limited demand for B1 or community use within this part of the Borough. The lack of demand for the application site is clearly compounded by its physical characteristics and constrained location. In particular:
1. The existing buildings at the application site are outmoded and, in any event, derelict and vandalised. They could not therefore be adapted for B1 or other use.
  2. The significant costs that will be associated with clearing the site, in addition to dealing with the large amounts of asbestos and remediating the ground contamination that exists, combined with the low rental values that B1 use or community use will achieve in this location, means that such uses are not viable. The Proof of John Stephenson includes a viability appraisal that clearly illustrates this as being the case (Document 11: Appendix 4).

3. The site is isolated from any other employment areas, being surrounded on all sides by residential properties, the gardens of which abut the site boundaries. Although B1 use is by definition acceptable within residential areas, the hours of operation of business users would still need to be restricted by conditions to preserve the amenities of surrounding residents. However, many B1 users now seek sites that offer the potential to operate on a 24-hour a day, 7-day a week basis. As such, the proximity of the residential properties significantly reduces the attractiveness of the site even to B1 users.
4. The site is poorly related to the strategic road network and access can only be achieved through predominantly residential roads that are subject to an evening and weekend lorry ban.

111. It is also significant that LB Merton commissioned the DTZ Merton Employment Land Study (October 2005) which classifies both the application site and 170 Rowan Road as being "Poor" in qualitative terms for future employment use. The qualitative assessment is detailed in the second fold-out table following page 32 of the DTZ Study (Document 11: Appendix 2). The assessment is summarised below:

Table 1: Qualitative Assessment for Employment Use

	216-218 Rowan Road	170 Rowan Road
Physical condition	Poor	Poor
Quality of wider environment	Poor	Poor
Accessibility	Poor	Poor
Occupancy/demand	Medium	Low
Site development constraints	High	High
Contribution to policy objectives	Medium	Medium
Overall classification	Poor – poor current condition, poor access, low levels of demand.	Poor – limited access and low levels of demand.

Source: DTZ Merton Employment Land Study (October 2005)

112. In light of this qualitative assessment, the DTZ Study recommends that the application site be considered for other uses, whilst 170 Rowan Road is to be developed for mixed-use purposes, including some small/flexible B1 units. The application site is therefore clearly not suited to modern employment users and this is the conclusion that LB Merton's own consultants have reached.
113. Further to the above, the Proof of John Stephenson (Document 11) confirms that there is more than an adequate supply of employment sites and buildings in the Borough, both in quantitative and qualitative terms, to meet future demand for B1 development. This is based upon realistic take-up rates of land and buildings. Again, this is borne out by the conclusions of the DTZ Study. This confirms that there is a significant amount of vacant employment floorspace within the Borough, of which around 40% is B1/B2 industrial floorspace. The DTZ Study also highlights that there will be a continuing reduction in demand within the Borough for B1/B2 industrial accommodation. The overall conclusion of the study is that there is an adequate supply of employment land and floorspace to meet requirements up to 2016 and that any marginal shortage in some employment sectors, for example office use, will be addressed by the large surpluses in industrial land and buildings.

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114. The application site is not therefore required to meet employment needs within the Borough. Neither is the site viable for employment or community use. There is as such no conflict with policy. In any event, the removal of the site from the supply of land and buildings is clearly outweighed by the substantial benefits of the application proposals in terms of bringing a brownfield site back into use, improving the provision of local shopping facilities, enhancing the environment and delivering much needed sheltered housing.

### Retail Matters

#### Study Area

115. The study area (or catchment) that has been adopted for the proposed Lidl foodstore is broadly equivalent to a 0-5 minute drive time isochrone. This has been adopted on the basis that Lidl stores typically serve a compact catchment area of between 20,000 to 40,000 people. This is consistent with the function that Lidl stores perform, that is, providing a local shopping facility. This is supported by the survey data at Appendix 6 to Document 10.
116. The locational strategy of Lidl is to position stores so that their respective catchments slightly overlap. This is illustrated by the plan contained at Appendix 13 to Document 10, showing how the catchment of the proposed store will relate to those of existing Lidl stores in the surrounding area. It should also be noted that Lidl seek to avoid positioning stores where they would compete significantly with each other. The size of the catchment that has been adopted for the revised assessments is therefore considered to be robust.

#### Study Period

117. The revised quantitative need assessment assumes a base year of 2005 to reflect the existing trading position. The design year has been taken as 2008. This is considered to be reasonable in terms of allowing sufficient time for the store to receive planning consent, be constructed and settle into an established trading pattern.

#### Projected Population and Convenience Expenditure Data

118. Up-to-date population and convenience expenditure data (based on the 2001 census) has been obtained from MapInfo. The information provided for 2005 (base year) has been projected forward to 2008 (design year). The figures for 2010 have also been calculated to present a medium-term view. In accordance with national guidance goods based expenditure estimates have been used.
119. Table 1 contained at Appendix 14 to Document 10 calculates the total available convenience goods expenditure in the catchment area at 2005, 2008 and also at 2010. It is notable that the growth in convenience goods expenditure between 2005 and 2008 (£3.98M) alone is more than sufficient to support the turnover of the proposed Lidl store.

#### Turnover of Existing Convenience Floorspace

120. Consideration has been given to the turnover of existing convenience floorspace within the catchment area. The floorspace figures have been obtained from a variety of sources, including the Institute of Grocers Directory (IGD) and local authority sources, but have been updated by recent (December 2005) RPS field surveys. Despite being

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located at the edge of the catchment area the convenience facilities in and around Norbury district centre (Somerfield and Iceland) and also the out-of-centre Sainsbury's foodstore at Streatham Common have been included within the calculations. The Tesco foodstore commitment relating to the existing bus garage at Streatham Common (resolution to grant), which falls just outside the catchment, has also been included. The location of these stores is shown on the plan at Appendix 15 to Document 10.

121. The convenience floorspace figure for each store has been applied against the relevant company average turnover per m<sup>2</sup> (sales density). The average turnovers are entirely consistent with those in the most recent publication of the Verdict Grocers Report and Retail Rankings and have been adjusted to 2001 prices. For the purposes of this assessment it has also been assumed that the stores are trading at company average levels. In reality, some stores may be over-trading, others under-performing. However, recent visits to the various stores do not suggest that any are trading substantially above or below company average. Adopting company average figures is therefore considered to provide a balanced assessment. The assessment also assumes no inflow of expenditure to the study area.
122. The floorspace of other smaller convenience facilities within the catchment area has also been identified through local authority sources and field surveys. This other convenience floorspace has also been applied against an average turnover per m<sup>2</sup> dependent upon the location. In the case of other convenience floorspace within Norbury district centre an average turnover of £3,500 per m<sup>2</sup> has been applied. In the case of Streatham Vale local centre a company average turnover of £3,250 per m<sup>2</sup> has been used. For all other floorspace, an average turnover £2,500 per m<sup>2</sup> is applied. These figures are consistent with those being used in other retail assessments at the present time, in particular, they are similar to those applied to district and local centres and shopping parades in the LB Croydon Retail Needs Study (April 2003). They are also consistent with rates used in the LB Merton Town Centre Study (September 2005). The figures are therefore considered to be robust.
123. A judgement has also been made with regard to the percentage of turnover that the existing convenience facilities derive from the catchment area. This judgement has been influenced by the location of the facility within the catchment area and also the type of retailer.
124. Table 2 (Appendix 14: Document 10) calculates the turnover that these existing convenience retail facilities derive from the catchment area. The table provides a figure for 2005 (£35.27M) and also a figure for 2008 (£36.88M). The figure for 2008 has been based upon the assumption that the turnover of all the convenience floorspace within the catchment will increase by 1.5% per annum, based upon increasing efficiencies in the use of floorspace. This is considered to provide a robust assessment of future turnover.

#### Convenience Turnover of the Proposed Lidl Store

125. The turnover of the proposed Lidl foodstore is based upon a net sales area of 1,286m<sup>2</sup> applied against an average turnover of £2,808 per m<sup>2</sup>. This is a figure that Mintel has recently published. A letter from Mintel confirming the average Lidl turnover is contained at Appendix 16 to Document 10. It has been assumed that the store would derive 90% of its turnover from within the catchment area.

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126. Table 3 (Appendix 14: Document 10) confirms the convenience turnover of the proposed store from the catchment at both 2005 (£2.75M) and also 2008 (£2.88M) again assuming a floorspace efficiency of 1.5% per annum. Some 15% of the total store turnover will relate to non-food goods (0.43M).

#### Convenience Goods Capacity

127. Table 4 (Appendix 14) confirms that even allowing for all of the existing floorspace within and on the edge of the catchment and proposed Lidl store trading at company average levels, in addition to achieving floorspace efficiencies of 1.5% per annum, there is still a large surplus of convenience goods expenditure (£44.9M) in 2008.
128. In reality, much of this surplus is currently being drawn to a number of other convenience retail facilities beyond the catchment area. This is clearly evidenced by a doorstep survey undertaken in the catchment area in April 2004, which is contained at Appendix 17 to Document 10. This reveals that very few people actually undertake their main grocery shop within the main part of the catchment area. Indeed, nearly 50% of the those undertaking a main grocery shop do so at the large out-of-centre Sainsbury's at Streatham Common, right on the edge of the catchment area. A further 19% do so at the out-of-centre Asda at Beddington Lane in Croydon and 13% at other Lidl stores. The survey also revealed that very few people visit Streatham Vale local centre, Mitcham town centre or Norbury district centre to undertake a main grocery shop. The vast majority of people (75%) also undertake their main food shop by car.

#### Comparison Goods Capacity

129. Table 5 (Appendix 14: Document 10) calculates the growth in comparison expenditure within the catchment area between 2005 and 2008. The comparison turnover of the proposed store derived from the catchment (£0.43M) will account for only 22.4% of this growth. The proposed store will therefore clearly have no impact upon available capacity for comparison goods floorspace within the catchment area. There is therefore a quantitative need for the application proposals both in convenience and comparison terms.

#### LB Merton Town Centre Study (September 2005)

130. The LPA has recently made available (December 2005) an updated Merton Town Centre Study that has been prepared by Nathaniel Lichfield & Partners (Document 18: B6). The Town Centre Study is of relevance in that it provides an assessment of the quantitative need for further convenience and comparison floorspace within the Borough up to 2016.
131. On the basis of this Study, even allowing for the proposed store, there is still a need for some 3,746m<sup>2</sup> of convenience goods floorspace over the period 2005 to 2008. This would be 8,415m<sup>2</sup> for the period 2005 to 2016. There is as such a clear quantitative need for further convenience floorspace in the Borough as a whole. There is also more than sufficient comparison good expenditure to support the small element of non-food sales.

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## Qualitative Need

132. Although national policy now emphasises that quantitative need is the prime consideration in assessing new retail developments, qualitative need is still an important consideration. In this respect, PPS6 emphasises the need to increase choice and competition and provide for a range of local shopping facilities.
133. There are currently no deep discount stores within the catchment area and the range of local convenience shopping provision is limited. As has already been described, the Lidl offer is materially different to that provided by the mainstream food retailers. The proposed store will therefore meet a qualitative need in that it will extend consumer choice and aid competition within the catchment area.
134. The benefits of deep discount operators such as Lidl in meeting qualitative needs have been recognised in relation to a number of appeals and called in applications. A recent case concerning a proposed Lidl store at Newhaven is of particular relevance. The decision is contained at Appendix 18 to Document 10. In this case the Secretary of State had called in the application for his own determination. In considering the issue of qualitative need the Inspector at paragraph 11.11 accepted that the Lidl store would meet a qualitative need by extending consumer choice and serving the "value for money" sector of the retail market.
135. The Secretary of State agreed with his Inspector's conclusion that it was appropriate to regard the application as meeting a qualitative need (paragraph 12), in that it would extend consumer choice, aid competition and provide premises that meet the needs of a retailer operating in the "value for money" sector of the market place. The Secretary of State also stressed that as one of the key objectives of PPS6 is to support an efficient, competitive and innovative retail sector, with improving productivity, his Inspector was correct to conclude that the proposed store would contribute to this objective by extending consumer choice and aiding competition.
136. Another relevant issue to emerge during the Newhaven inquiry was the potential of the proposed Lidl store to later be occupied by one of the mainstream food retailers, effectively removing the qualitative benefits of the proposal. The Secretary of State agreed with his Inspector's conclusion, in so far as it was likely that the proposed store would remain as a convenience goods store, but did not accept that the store would necessarily remain as one that would sell goods at a discount. However, there are a number of factors that indicate it is unlikely the proposed Lidl store would be occupied by one of the mainstream retailers. In the first instance, the site is not large enough to accommodate any of the mainstream retailer's larger format stores. Furthermore, it is not in the right location for one of their smaller formats (i.e. Tesco Express or Sainsbury's Local), which generally require town centre sites. The store will also have a much more limited amount of storage than would be required by one of the mainstream food retailers.
137. In order to address any concerns the Secretary of State may have on this point, the applicant offers as part of a unilateral undertaking a restriction on the number of product lines that can be sold. This includes an obligation to undertake an annual check on the number of product lines sold and the average prices charged.
138. In assessing qualitative need, it is also important to take account of allowing genuine choice to meet the needs of the whole community, particularly the needs of those living in deprived areas. It has already been explained how the area is poorly served in terms

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of local convenience retailing. The proposed store will therefore improve provision for those sections of the local population, for instance the elderly, who do not have access to a car and are more reliant on walking and public transport. The proposal will also make an important contribution to tackling social exclusion by providing lower income households with access to value-for-money products. In this respect, it should be noted that 40% of respondents in the doorstep survey cited value for money as a key consideration in choosing where to shop.

139. There is also a qualitative need for the proposed store in terms of clawing back a proportion of the expenditure, which is currently being spent outside the catchment. This will also have sustainability benefits in terms of reducing the length and number of journeys by private car. The desirability of arresting expenditure leakage has been accepted as a valid qualitative need by the Secretary of State and Planning Inspectors on a number of occasions. These decisions are contained at Appendix 19 to Document 10.

#### Scale

140. In terms of scale, it is notable that the proposed Lidl store is of a relatively modest size and would add only a further 1,286m<sup>2</sup> net of convenience floorspace to the catchment area. The modest scale of Lidl stores has been recognised by Inspectors on a number of occasions (Appendix 19: Document 10).
141. The proposed Lidl store would result in less than a 20% increase in net convenience floorspace within the catchment area. In light of this and also the absence of any deep discount the scale of development is entirely appropriate to the catchment it will serve.

#### Sequential Approach

142. In applying the sequential approach to site selection, Lidl has sought to adopt a flexible approach to their business model in terms of scale, format, potential for disaggregation and car parking provision. There are, however, inherent characteristics of the Lidl business model that limit the scope for flexibility. The particular factors that impact upon the degree of flexibility are identified below:
1. The Lidl stores range from between 640m<sup>2</sup> and 1,407m<sup>2</sup> net sales. However, the smaller "first generation" stores do not perform well and all are either subject to proposals for extension or relocation. The minimum store size that is required to enable Lidl to operate their retail business in an efficient manner is 1,063m<sup>2</sup>. This is critical to the company's ability to deliver the benefits of deep discount retailing.
  2. Lidl stores have a high proportion of sales area to storage and ancillary space. Storage, back-up and staff areas are kept to a minimum and typically equate to only around 25% of gross floor area. This is in contrast to the mainstream food retailers who generally require at least 40% of gross floorspace to be devoted to storage and back-up areas. There is as such limited scope to further reduce this ancillary floorspace. Furthermore, Lidl stores only have a single service bay and unlike the mainstream retailers do not have dedicated service yards. Reducing the area required for efficient servicing is not therefore feasible.

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3. Lidl stores also need to adhere to a particular format, principally based upon a single level store, so as to allow for the efficient movement of pallet loads of goods from the delivery bay to the sales area. A more labour intensive arrangement would not only increase the storage required (as goods can not be transferred to shop floor as quickly) but also increase costs (more staff required and specially designed displays needed), undermining the ability to sell goods at low prices.
  4. The fact that Lidl stores concentrate on selling a limited range of primarily convenience goods, with only a small proportion of non-food, also means that there is no realistic scope for disaggregation. That Lidl stores cannot feasibly be broken down into constituent parts has been accepted by Inspectors in a number of appeals.
143. In relation to the issue of flexibility, it is also notable that in the Newhaven case, both the Secretary of State and Planning Inspector (Document 10: Appendix 18: paragraph 11.17) agreed that the potential for this in relation to Lidl is limited. Neither was the issue of disaggregation raised.
  144. In light of these factors, the sequential analysis has been undertaken with regard to the need for a minimum store sales area of 1,063m<sup>2</sup> net (gross), and a single storey retail operation with no disaggregation. It has also been assumed that the store would be served by 75 car parking spaces. The resulting minimum site requirement of approximately 0.48 hectares is illustrated by the plan contained at Appendix 20 to Document 10.
  145. The area of search for the sequential analysis should be confined primarily to the catchment that the proposed retail floorspace is intended to serve, otherwise this becomes an artificial exercise. There is clearly no logic in planning terms to considering sites outside the defined catchment as these will not satisfy the identified quantitative and qualitative need for further convenience floorspace. However, in order to provide a robust approach any sites within or on the edge of the nearby centres of Mitcham and Norbury have also been considered.
  146. Sites have been identified through a variety of measures, including examining the UDPs and other planning documents, most notably the LB Merton Town Centre Study (Document 18: B6), but also RPS surveys undertaken in December 2005. Planning Officers of the LPA were also questioned as to whether they are aware of any other sites that should be considered. However, Officers have not identified any such sites.
  147. A total of eighteen sites were identified, either within the catchment area, or in the vicinity of Norbury and Mitcham. These sites are shown on the plan contained at Appendix 21 to Document 10. The sites are assessed in detail at paragraphs 9.50 to 9.94 of Document 7. In light of this above analysis, there are no sequentially preferable sites in the relevant search area that are suitable, viable or available to accommodate the proposed store.
  148. PPS6 confirms that detailed impact assessments should generally only be undertaken for retail developments in excess of 2,500m<sup>2</sup>. The proposed foodstore falls below this threshold. The impact assessment that has been undertaken therefore focuses upon the Lidl retail offer and how this differs to other retailers, the health of

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relevant centres in and around the catchment area, in addition to the potential of the store to draw trade from existing convenience retail facilities.

#### The Lidl Offer

149. Lidl are a deep discounter and provide a distinctly different offer to other convenience retailers. As described above, stores stock a limited range of product lines, largely focused on basic everyday food and household items, of which 95% are own brand goods. These are offered at very low prices. Many of those who visit Lidl tend to purchase part of their main grocery shop in store, taking advantage of the low prices, but then visit one of the main retailers to purchase other items. Lidl therefore provide a complementary role to the main food retailers and this is reflected by the fact that they often trade alongside such stores.
150. Neither do Lidl compete to any significant degree with smaller convenience retailers. In this respect, it is important to note that Lidl do not sell tobacco, newspapers and magazines, fresh sandwiches or snack foods. In addition, stores do not include fresh meat or fish counters, in-house bakeries or delicatessens. Neither do stores offer pharmacies, dry cleaners, photo-shops, post office services, cash machines or sell lottery tickets. There is as such a very clear difference between Lidl and these smaller retailers, for example Co-op, Londis or Spar, which means that there is room for both to operate successfully in the retail sector. This is borne out by the fact that Lidl customers will still visit small convenience retailers close to their homes to undertake top-up shopping (i.e. buying a pint of milk or loaf of bread) or to make use of the services that Lidl do not offer, such as lottery tickets.
151. The ability of Lidl and smaller convenience retailers to be able to operate successfully alongside each other is of particular relevance given the proximity of the Coop store in Streatham Vale local centre to the application site. That Lidl will not have any material impact upon the Coop or other small local convenience retailers in Streatham Vale is supported by the numerous examples within the UK, where both trade successfully side by side. These examples are contained in the evidence of Jonathan Watkins (Documents 5 and 6). Those of most relevance in Greater London are detailed at Table 2 of Document 7. In a number of these cases, smaller convenience retail outlets have actually opened following Lidl opening for trade. This further underlines that Lidl and smaller retailers do successfully co-exist in close proximity to each other.
152. Further to the above, the Lidl stores only sell a limited range of non-food goods, most of which are related to health and beauty and household cleaning. Whilst the store will sell a selection of seasonal non-food special items each week, the limited and constantly changing nature of the offer means that any impact upon comparison retailers will be minimal, if not negligible.
153. Health checks of the existing centres within and on the edge of the catchment area have been undertaken with reference to the vitality and viability indicators set out in PPS6. The health checks are based on visits to each of the centres made in December 2005 and also draw upon data in the LB Merton Town Centre Study. The main centres that have been considered include Mitcham town centre, Norbury district centre and Streatham Vale local centre. A detailed health check report is contained at Appendix 22 to Document 10. The findings are summarised below.

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*Mitcham town centre*

154. Mitcham serves an important shopping function within the south east part of the Borough. The town centre is anchored by a Somerfield supermarket and there are also Tesco Express, Iceland, Farm Foods and Netto stores. The centre is as such well represented in terms of convenience shopping with this equating to 32.4% of floorspace compared to a national average of 16.76%. The town centre study highlights this as one of the strengths of the centre. The centre does not though benefit from a large foodstore operated by one of the main food retailers. However, it is understood that Asda have acquired a major stake in the centre and that a large foodstore will come forward in the medium term as part of wider redevelopment proposals.
155. The centre is significantly under represented in terms of comparison retailing, with this representing only 32% of floorspace, significantly below the national average of 52.9%. There are few national multiples (these include Boots, Superdrug and Peacocks) with the bulk of comparison outlets being occupied by independent retailers. The limited number of national multiples and comparison retailers generally is cited by the town centre study as being one of the main weaknesses of the centre. The emerging redevelopment proposals will aim to address this by including a significant element of comparison retailing.
156. Vacancies in the town centre are broadly in line with the national average, although the town centre study indicates that the current vacancy level is only 7.2%, which is below the national average of 10.2%. The centre is accessible by bus and car and has a reasonable level of environmental quality, although improvements could be made.
157. In overall terms, Mitcham town centre appears to be a reasonably healthy centre, with good convenience provision, although it could be improved by a new large foodstore. The relatively strong convenience provision, and the presence of Netto, suggests that the proposed Lidl will not compete to any significant degree with the town centre. Indeed, the doorstep survey (Appendix 16: Document 10) shows that relatively few people from the catchment currently shop in Mitcham.
158. The fact that Asda has recently acquired a stake also reveals that the town centre is attracting investments and that a major new anchor foodstore will come forward in the relatively near future. The proposed Lidl store would clearly not undermine the potential for an Asda store to come forward.

*Norbury district centre*

159. Norbury provides an important local convenience shopping role and includes Somerfield and Iceland stores. The centre also contains a large number of more specialist convenience retailers, reflecting the role it plays in serving the surrounding Asian communities. The level of convenience floorspace at 18% is slightly above the national average.
160. The centre has a relatively limited comparison offer, equating to only 29% of floorspace, well below the national average. There are very few national multiples (Superdrug). The bulk of comparison outlets are independent retailers, many of which provide a more specialist offer, consistent with the role the centre performs in acting as a focus for the surrounding ethnic communities.

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161. The amount of vacant floorspace within Norbury, at 6.17%, is below the national average. The centre is accessible by bus and rail (with Norbury train station) and reasonably accessible by car. The centre provides a reasonably pleasant shopping environment, but suffers from a lack of pedestrianisation and the high levels of through traffic that occur.
162. In overall terms, Norbury district centre is a vital and viable centre, with a good range of convenience provision, including more specialist retailers. The relatively strong convenience provision and the more specialist nature of this, suggests that the proposed Lidl will not compete to any significant degree with the centre. Indeed, as with Mitcham, the doorstep survey shows that relatively few people from the catchment currently shop in Norbury.

#### *Streatham Vale local centre*

163. Streatham Vale local centre provides a local convenience and service role to the immediately surrounding residential areas. The centre includes a small Coop (300m<sup>2</sup>), which appears to be busy. There are also a number of small independent convenience retailers, including a butchers, pharmacy, off licence and newsagent.
164. The centre also has a betting shop and two veterinary surgeries, underlining its service function. The centre contains only one vacant property and appears to be relatively healthy, very much performing a top-up function.
165. The local centre performs a very different function to the proposed Lidl store. As described above, the Lidl store will be used primarily by people for a component of their main food and grocery shop. In addition, the store will not provide many of the products and services that these smaller retailers do. To conclude, the store will not therefore undermine the vitality and viability of this centre and this is borne out by the numerous locations where Lidl trade alongside smaller retailers without causing any harm.
166. All of the main centres in and around the catchment are reasonably healthy. Lidl will not have any material impact upon the centres.

#### *Trade Draw Analysis*

167. A trade draw analysis has been undertaken to provide an indication of the extent to which the proposed foodstore will derive trade from the existing retail facilities within and on the edge of the catchment area. However, in undertaking this analysis, it should be recognised that it has already been demonstrated that the growth in convenience goods expenditure alone between 2005 and 2008 is sufficient to accommodate the turnover of the proposed store. This in itself, in addition to the materially different retail offer provided by Lidl suggests that any impact upon existing retail facilities will be minimal.
168. In order to provide a robust assessment of potential impact, the trade draw analysis contained at Appendix 23 to Document 10 assumes that the store would derive 80% of its turnover from existing retail facilities within and on the edge of the study area. This represents very much a worse case scenario, which is unlikely to happen on the ground.
169. The percentage of trade that is drawn from a particular retail facility has been based upon professional judgement, taking account of the type of retailer and the location in relation to the application site.

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170. The previous trade draw analysis contained in the original retail assessment assumed that the proposed store would take only 50% of its trade from existing facilities. In addition, the original analysis did not take account of the large out-of-centre Sainsbury's right on the edge of the catchment area. In light of the absence of Sainsbury's from the original analysis, it is considered that the proportion of trade that the store would take from the other stores in the catchment, in particular the Co-op at Streatham Vale, was an over-estimate. The revised figures are considered to be more realistic.
171. Appendix 23 (Document 10) indicates that the impacts upon existing retail facilities will range between around 4% and 8.5%. Of note is that the impact upon the Co-op in Streatham Vale is only 7.8%. These levels of impact are considered to be within acceptable limits. Indeed, it has been accepted by the Secretary of State and Planning Inspectors that impact levels of around 10% will not result in adverse effects on other retailers.
172. The only circumstance where 10% is breached is in the case of other shops within Streatham Vale local centre (10.1%). However, this is marginal and is placed in perspective by the fact that it has been assumed that the store will take 80% of its trade from existing facilities in the catchment.
173. In reality this figure is likely to be much lower, with a greater amount of trade coming from clawback from Asda, Beddington Lane and surrounding stores. This would reduce the impact percentages significantly below the figures in Appendix 23.
174. Another factor to be considered is that of linked trips. The Council believes that the proposed store would complement the existing stores along Rowan Road by encouraging shoppers to come to the Lidl store and then go on to the local shops to purchase their specific requirements that are sold there. The Lidl parking system of allowing 1.5 hours free parking would encourage this kind of linkage. The impact of the proposed store upon existing retailers and centres will therefore be minimal and would be of an acceptable level.

#### Housing Supply/Need

175. The application proposals are clearly in accordance with the objectives of PPG3 in that they will make use of surplus employment land to provide additional housing. This is also consistent with the objectives of both the London Plan and the UDP to contribute toward increasing housing supply within Greater London as a whole and also the Borough.
176. Further to the above, the proposals will respond to a specific housing need by providing sheltered accommodation for the elderly. PPG3 recognises the importance of providing housing for all those within the community, whilst the London Plan and UDP contain specific policies aimed at meeting the housing needs of the elderly population. There is a very clear need for sheltered accommodation for the elderly within the Borough. This is evidenced at Appendix 24 to Document 10. The site is well located to respond to this need.
177. PPG3 states (as do the London Plan and UDP) that all new housing development should make effective use of land. In this respect, the application proposals will achieve a density of approximately 62 units per hectare. The proposals therefore make effective use of an urban site.

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## Design

178. In terms of design, the application proposals will result in a significant improvement in the appearance of the site, which currently contains a number of derelict unsightly and incongruous buildings, which in terms of their bulk and scale bear no relationship to the surrounding residential properties. The development will see the removal of these buildings and will therefore enhance the appearance of the surrounding area.
179. The layout of the proposed foodstore has been the subject of liaison with the local Police Crime Reduction Unit and implements the principles of "Secure by Design". In this respect, it is notable that a letter from the Metropolitan Police confirms that the design and layout are acceptable. (Appendix 12: Document 10).
180. The foodstore building is set back from Rowan Road and also the north eastern and south western boundaries of the site. The car park is located to the front and north eastern elevation of the store building. This facilitates maximum natural surveillance of the car parking areas.
181. The set backs of the building from the boundaries with the adjoining residential properties has the advantage of preventing any overshadowing of their rear garden areas. This is clearly a significant improvement upon the current situation whereby the derelict industrial buildings are located right up against the rear boundaries of these properties.
182. The applicant now proposes to construct a low wall, using London stock brickwork, to reinforce the Rowan Road frontage. This will ensure that the building line along Rowan Road is maintained. The front boundary will also be softened by the introduction of some tree planting.
183. The remaining boundaries of the foodstore site will consist of a 2.1 metre high close boarded timber fence, which will screen the adjoining residential properties from activity and noise within the car park area. The rear boundary with the sheltered housing will also be formed by a close boarded timber fence, which will be reinforced by shrub and tree planting.
184. The foodstore will consist of a low rise building, incorporating a pitched roof. In terms of scale and massing, the building will respect the 2-storey terraced properties in Hassocks Road to the north east and also the 3-storey flats in Stirling Close to the south west.
185. The store will incorporate a pitched roof, which is in keeping with the roofscape exhibited in the surrounding area. The roof will be covered in a riven slate to match surrounding buildings. The roof will overhang the front elevation of the store in order to provide a covered area for the storage of trolleys and also secure cycle parking. The gable end of the roof will front Rowan Road and will be clad in zinc and incorporate the Lidl corporate logo.
186. The front elevation of the store will incorporate glazing with the flank and rear elevations treated primarily in brick and painted render. The south west elevation will incorporate a single loading bay. The building in terms of its design and materials will therefore be in keeping with the predominantly brick-built residential buildings which surround the site.

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187. The residential element of the application proposals will be located on the east/rear part of the site, adjacent to Byards Croft. As with the foodstore building, the Police have raised no objections to the siting and layout of the development in terms of crime prevention.
188. This element of the proposals will be based upon a U-shaped layout set around a central courtyard to allow sunlight and daylight to penetrate the central core and encourage natural ventilation. Communal amenity areas will also be provided consisting of grassed areas and decking. The 8-car parking spaces will be located at the north eastern side of the residential site and be accessed from Byards Croft.
189. The residential buildings will consist of part single and part 2-storey structures to respect the height of the surrounding residential buildings. The orientation of the sheltered housing, combined with a degree of separation from the surrounding dwellings will ensure that the amenities of surrounding residents will be maintained. In addition, the residential site will be surrounded by close-boarded timber fencing to provide additional screening.
190. The residential buildings will incorporate a pitched roof, clad in riven slate, with the elevations being treated in a combination of brick, painted render and timber cladding. In terms of design and materials and layout the buildings will therefore respect the surrounding development.
191. The proposed development in terms of its design, layout and relationship with adjoining buildings and surrounding areas is entirely acceptable.

#### **Transport Matters**

192. The site is currently accessed via Rowan Road and it is proposed that the foodstore development will use an improved access in a similar location. Rowan Road is primarily a residential road approximately 9m wide in the vicinity of the site and has a 30mph speed limit, street lighting and footways on both sides of the road
193. North of the development site Rowan Road turns to the left and has a junction with Greyhound Terrace. Greyhound Terrace is also a primarily residential road approximately 9m wide.

#### **Pedestrian Facilities**

194. All the roads within reasonable walking distance of the site have good provisions for pedestrians. The residential area to the north of Hassocks Road and east of Streatham Vale is a 20mph zone.
195. There are pedestrian refuges on Rowan Road adjacent to the southern boundary of the site and a zebra crossing near the junction with Rowan Crescent. There are also dropped kerbs along Rowan Road. It is also important to note that the terrain is flat in the vicinity of the site.
196. In general, the residential roads in the vicinity of Rowan Road have footways on either side of the roads, streetlights, dropped kerbs and the terrain is flat. Walking is therefore an attractive mode of travel for people in the surrounding residential areas to visit the proposed foodstore.

## Cycle Facilities

197. Although there are no existing cycle facilities along Rowan Road there is a London Cycling Campaign (LCC) advisory route along the eastern section of Hassocks Road within 500m of the development site. This route links into a large network of LCC advisory routes via Stockport Road and Chilmark Road, which link into larger signposted cycle routes. The existing cycle network in the area is shown on Figure 2 to Document 13. The terrain is flat in the vicinity of the site and therefore attractive for cycling.

## Public Transport

198. There are four existing bus services which currently operate along Rowan Road. These are summarised in Table 1 and the routes are illustrated in Figure 3 to Document 13.

Table 2: Local Bus Services (Approximate number per hour)

No.	Route	Monday - Friday				Sat	Sun
		AM Peak	Inter Peak	PM Peak	Eve		
60	Streatham - Thornton Heath - West Croydon - Croydon High Street - South Croydon - Purley - Coulsdon - Old Coulsdon	6-7	5-8	5-7	3	4-6	3
118	Brixton - Streatham - Mitcham - Mitcham Common - Morden	3-7	3-7	3-5	3	3-4	3
152	New Malden - Merton Park - South Wimbledon - Colliers Wood - Mitcham - Pollards Hill	4-5	4-5	3-4	3	3-5	3
463	Mitcham - Beddington - Woodcote - Coulsdon	3	3	3	3	3	-

199. There are existing bus stops on both sides of Rowan Road adjacent to the site. The nearest bus stop on Rowan Road is immediately outside the site. Service numbers 60 and 118 going towards Coulsdon and Morden respectively, stop at this bus stop. For the reverse direction the bus stop is on the opposite side of Rowan Road and within less than 100m of the site. The bus shelter immediately outside the site may have to be relocated to provide the visibility splays required for the store access. The locations of the bus stops are also shown on Figure 3 to Document 13.

200. The location and the frequency of the local bus services show that the proposed development is readily accessible for those travelling by bus from the surrounding residential catchment, and from the residential areas of Streatham, Thornton Heath, Croydon, Purley and Coulsdon.

201. There are train stations at Streatham Common, within about 1km of the site, and Norbury, within about 1.5km of the site. The locations of the stations are shown on Figure 1 to Document 13. Streatham Common and Norbury Station are both on the London Victoria and London Bridge mainline routes. There are 2 trains per hour, in each direction, from either London Victoria or London Bridge to Epsom, Sutton and Caterham.

202. Public Transport Accessibility Levels (PTALs) have been adopted by Transport for London (TfL) to produce a consistent London-wide public transport access mapping facility to assist Boroughs with locational planning and assessment of appropriate parking provision by measuring broad public transport accessibility levels. The PTAL rating for the application site is 2, in a range of 1 to 6.

#### Road Safety

203. Details of personal injury accidents which have taken place on the local road network in the most recent three year period for which the information is available (July 2002 to June 2005) are summarised on Figure 4 to Document 13 with the data being included in Appendix 1 to Document 13.

204. The information shows that there has been a limited number of reported accidents on Rowan Road during the 3 year period with none in the immediate vicinity of the site access. The majority of the accidents are slight in nature. The details show that there are no particular locations on the network which cause concern from a road safety point of view, the main contributory factor to most of the accidents being aggressive driving and/or driver behaviour.

#### Existing Traffic Flows

205. The base level of traffic on Rowan Road was surveyed for the week beginning Monday 8 March 2004 by K&M Traffic Surveys, a specialist traffic survey company, using Automatic Traffic Counter (ATC) equipment placed adjacent to the site frontage. The results of the ATC are reproduced in Appendix 2 to Document 13 and summarised for the peak periods in Table 3 below. Details are also shown on Figure 5 to Document 13.

Table 3: Traffic Flows

2004		Northbound	Southbound	Two Way
Weekday (5 day average)	17:00 – 18:00	380	505	885
Saturday	14:00 – 15:00	446	472	878
2005		Northbound	Southbound	Two Way
Weekday	17:00 – 18:00	377	489	866
Saturday	14:00 – 15:00	412	389	801

Source: 2004 - K & M Traffic Surveys, 2005 - RPS Transport

206. In order to confirm that the traffic flow information for Rowan Road was still up to date, hourly counts were carried out on Tuesday 13 December 2005 between 5pm and 6pm and on Saturday 17 December 2005 between 2pm and 3pm. These figures are also included in Table 3 and show no significant variations when compared to the 2004 figures.

207. An indication of the carrying capacities of urban roads can be obtained from Document 4. Reference to Tables 1 and 2 shows that a road with the characteristics of Rowan Road has a two way capacity of about 1530 vehicles per hour. It is therefore operating with substantial spare capacity, even during the busier peak hours.

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## Proposed Development

208. The proposed foodstore will be accessed from the eastern side of Rowan Road via a new site access in a similar location as the existing access to the site, as indicated in Figure 6 of Document 13. The access junction will take the form of a simple priority layout and visibility splays will be defined by an 'x' distance of 4.5 metres and a 'y' distance of 90 metres. These criteria are appropriate for the volumes of traffic associated with the proposal and the speed limit on Rowan Road. These arrangements will cater for pedestrian, cycle and vehicular access for customers as well as service vehicle access.

## Development Generated Traffic

209. The likely trip generation and attraction of the proposed foodstore has been forecast with reference to similar developments at relevant locations elsewhere in the south of England using the TRICS database. The periods examined are those when the development generated traffic and the base traffic flows can be expected to combine and place the greatest demand on the surrounding highway network. In this instance these are considered to be the weekday evening (17.00 – 18.00) and Saturday (14.00 – 15.00) peak hours.

210. The resulting vehicular trip attraction is shown in Table 4 below:-

Table 4: Traffic Attraction: Discount Foodstore (per 100sqm GFA)

	PM Peak (17.00-18.00)			Saturday Midday Peak (14.00-15.00)		
	Arrivals	Departures	Total	Arrivals	Departures	Total
Trip Rates	3.47	4.51	7.98	6.80	7.65	14.45

211. The corresponding predicted traffic generation for the proposed foodstore is shown in Table 4 below:-

Table 5: Traffic Generation for the Proposed Foodstore

	PM Peak (17.00-18.00)			Saturday Midday Peak (14.00-15.00)		
	Arrivals	Departures	Total	Arrivals	Departures	Total
Trips	61	80	141	120	135	255

212. In this analysis no assessment has been made of the diverted or pass-by traffic attraction to this foodstore development. This represents an onerous analysis and creates a robust assessment of the adjacent highway network for available capacity.

213. The forecast traffic attraction to the proposed development has been assigned to Rowan Road in accordance with the existing traffic movements on Rowan Road. The existing traffic movements are shown on Figure 7 and the forecast traffic attraction is shown on Figure 8 (Document 13).

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Year of Opening and Assessment Years

214. The assumed year of opening for the proposed development is 2006. The forecast traffic flows for 2006 are shown on Figure 9 and the traffic flows for 2006 plus predicted traffic attraction are shown on Figure 10 (Document 13).

215. For the purpose of assessment the impact of the proposed foodstore has been assessed for the year of opening and five years after opening. National Road and Traffic Forecasts low growth factors have been applied to the base traffic flows, as follows:

2004 - 2006	1.028
2004 - 2011	1.089

216. The 2011 traffic flows for the weekday PM peak and the Saturday peak hours are shown on Figure 11. The 2011 plus predicted traffic attraction is shown on Figure 12 (Document 13).

**Residential: Proposed Access Arrangements**

217. The proposed residential development will be accessed from Byards Croft via a new access to the site, as indicated in Figure 6 to Document 13. A total of 8 parking spaces will be provided.

**Development Generated Traffic**

218. The likely trip generation and attraction of the proposed housing has been forecast with reference to similar developments at relevant locations elsewhere in the Greater London area, again using the TRICS database. The periods examined are those when the development generated traffic and the base traffic flows can be expected to combine and place the greatest demand on the surrounding highway network. In this instance these are considered to be the weekday AM Peak (08.00 - 0900) and PM Peak (17.00 - 18.00) hours.

219. The resulting trip generation is shown in Table 5 below:-

Table 6: Traffic Generation - Residential

	AM Peak (08.00-09.00)			PM Peak (17.00-18.00)		
	Arrivals	Departures	Total	Arrivals	Departures	Total
Trip Rates	0.06	0.15	0.21	0.14	0.11	0.25

220. From Table 6, above, the appropriate rates for the 12 residential units have been used to forecast attracted traffic flows. The predicted traffic generation is shown in Table 7 below:-

Table 7: Traffic Generation for the Proposed Residential Development

	AM Peak (08.00-09.00)			PM Peak (17.00-18.00)		
	Arrivals	Departures	Total	Arrivals	Departures	Total
Trips	1	2	3	2	2	4

221. The numbers of vehicle movements likely to be associated with the 12 sheltered housing units are so small that it can be concluded they will have no material impact on the safe and efficient operation of the road network in the vicinity of the site.

#### Assessing the proposed site

##### Pedestrian use.

222. Figure 14 to Document 13 shows the 5 and 10 minute walking isochrone in more detail. The roads, including Rowan Road, Hassocks Road, Windermere Road, Helmsdale Road, Greyhound Terrace, Stockport Road and Rowan Crescent have good footway provision, dropped kerbs in most locations, street lighting and are flat. The residential roads to the north of Hassocks Road and to the east of Streatham Vale are within a 20mph zone, which further enhances pedestrian safety.

223. Therefore, the site is well located within a comprehensive pedestrian network and a large population catchment is within a distance of the site where walking is a viable alternative to car use. All the roads in the vicinity have good footway provision. Attractive conditions exist for walking and the site therefore meets the aims of policy guidance to locate development to encourage walking and reduce the need to travel, especially by car.

##### Use by cyclists

224. A large proportion of the urban areas of Mitcham, Streatham and Norbury are within 5km of the site. 5km is the distance referred to in paragraph 78 of PPG 13 as representing an acceptable cycling distance. The cycling isochrones are illustrated on Figure 15 to Document 13 and demonstrate that all the residential areas of Mitcham are within a 10 minute cycle time. Many of the roads are lightly trafficked and therefore are attractive for cycling. The terrain is also flat, which further encourages cycling.

225. Cycling is therefore a realistic transport opportunity for a large part of the population catchment the site would serve. This meets the aims of national and local policy to locate development where cycling is a realistic alternative to car use.

##### Public transport

226. Bus routes in the local area are shown on Figure 3 to Document 13. The nearest bus stops on Rowan Road are also shown on Figure 3, being immediately outside the site and within 100m on the opposite side of the road. Both these bus stops have shelters and seats.

227. Bus services from the site provide frequent links to the residential areas of Mitcham and other local residential areas in the nearby Greater London area.

228. Therefore, the development proposals accord with the aims of transport policy to locate development in areas well served by public transport and to reduce the need to travel by car.

**Impact on the highway network**  
Foodstore

229. The effect of traffic generation of the proposed foodstore has been considered for the site access / Rowan Road junction. The site access / Rowan Road junction has been assessed using the PICADY4 computer programme, using the traffic flows given in Figures 10 and 12 for 2006 and 2011 respectively. The results of the assessments are reproduced in Appendix 3 to Document 13 and summarised in Table 8 below:

Table 8: PICADY Results

Arm	Weekday PM Peak (17:00-18:00)		Saturday Midday Peak (14:00-15:00)	
	Max RFC	Max Queue	Max RFC	Max Queue
<u>2006</u>				
Access Road - Left Turn	0.099	0	0.172	0
- Right Turn	0.149	0	0.265	0
Rowan Road (S)	0.067	0	0.130	0
<u>2011</u>				
Access Road - Left Turn	0.101	0	0.175	0
- Right Turn	0.154	0	0.274	0
Rowan Road (S)	0.068	0	0.132	0

230. This clearly demonstrates that there is significant spare operational capacity at this junction, with minimal queuing and delays expected. The layout of the junction is also in accordance with the appropriate design guidance, including visibility splays, and will therefore operate in a safe and efficient manner. The traffic flows on Rowan Road itself are still considerably within the theoretical carrying capacity detailed in paragraph 207. Rowan Road will also continue to operate safely and efficiently.

**Residential Development**

231. As previously set out in paragraph 221, the vehicle movements likely to be associated with the 12 sheltered housing units are so small that they will have no material implications for the operation of the road network.

**Foodstore Parking Provision**

232. In order to establish the level of car parking appropriate for this development, a review of national and local government standards has been undertaken to identify the levels of car parking recommended for these proposals in this location.

233. Table 9 sets out the maximum parking standards for new development as defined in PPG13 Annex D, standards from the Adopted Merton UDP and the London Plan:

Table 9: Car Parking Levels

		PPG13 (Annex D)	Merton Adopted Standards* Schedule 6	London Plan Standards (Table A4.3)
Customer / Staff Parking	Standard	1 space per 14m <sup>2</sup>	1 space per 30m <sup>2</sup>	1 space per 20m <sup>2</sup>
	Number of Spaces	126	59	88
Disabled Parking	Standard	3 or 6%	5%	Variable
	Number of Spaces	8	3	
<b>Total</b>		<b>126</b>	<b>59</b>	<b>88</b>

\*Note: These standards are for town centre sites

234. The proposed provision of 75 spaces is therefore consistent with the advice in PPG 13 and the London Plan. The Merton UDP has no appropriate standard for a residential area such as this. It is therefore considered that the provision of 75 spaces is correct for the site, being less than the maximum amounts given in both PPG13 and the London Plan.

#### Response to London Borough of Lambeth letter of 11 February 2005

235. The letter was written in the context of the Transport Assessment (TA) document dated May 2004 which supported the planning application. All the material points raised by Lambeth have been addressed in Document 13.
236. Relevant extracts from Planning Policy Guidance Note 13 – Transport, The London Plan and the London Borough of Merton UDP are included within Section 4 of Document 13. The evidence has demonstrated that the proposed development is readily accessible by walking and cycling and is well served by public transport services.
237. Reference is made within paragraph 4.5.3 of Document 13 to the encouragement of use of alternative modes by a Travel Plan. Details of existing facilities for pedestrians, cyclists and users of public transport are addressed in sub-sections 2.4, 2.5 and 2.6 of the Document as well as within section 5.
238. The amount of car parking being proposed for the food store has been reduced from the 109 spaces included within the application to 75 spaces. Such a reduction reflects the view on car parking of the London Borough of Lambeth and is consistent with the advice in PPG13 and The London Plan.
239. The likely traffic impact of the food store and residential development proposals has been addressed in sub-sections 3.2, 3.3 and 5.5 of Document 13. Officers of the London Borough of Merton have not queried the trip generation and distribution information which was included in the TA. The use of a wide selection of similar stores with site characteristics matched to those of the Rowan Road proposal i.e. located on the edge of town centre or neighbourhood centre with good standard of pedestrian, cycle, bus and rail accessibility ensures that the trip data is relevant to the site. The evidence demonstrates that the proposed junction between the site access and Rowan

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Road will work with substantial spare capacity during both the 2006 and 2011 assessment years. Rowan Road itself, both to the north and south of the site, will have substantial spare capacity following implementation of the appeal proposals.

240. In order to provide information on the likely impact of additional development related traffic at the junction between Streatham Vale and Greyhound Terrace, a vehicle survey was carried out between 11am and 1pm on Saturday 14 January 2006. Reference to the TA and document 13 shows that flows on the local network are very similar during these hours and a weekday evening peak hour (5pm to 6pm). Vehicle movements estimated to be associated with the foodstore are also greater between 11am and 12 noon on a Saturday.
241. The survey showed that the full junction was used by a total of 1345 vehicles during the hour (11am to 12 noon), with the two-way flow on Greyhound Terrace to the east of the junction being 942 vehicles. There are estimated to be a total of 128 vehicle movements two-way associated with the foodstore on Rowan Road to the north of the foodstore access. On the basis that 75% of the movements are to or from the Streatham Vale/Greyhound Terrace junction (96 movements), the increase would represent 7.1% of the existing movements. Such an increase would have no material implications either for the operation or safety of the junction. Greyhound Terrace to the east of the junction would also still be operating with substantial spare capacity.

#### **Other appearances at the Inquiry**

242. Other appearances at the inquiry in support of the Lidl / Council case were made by Councillors Austin, Caldara, Chung and Wilson and Siobhan McDonagh MP. Their contributions have been incorporated into the Lidl / Council case.

#### **The Case for the Longthornton and Tamworth Residents Association**

243. The application site is an eyesore which has lain vacant for 10 years at least. The proposal will replace this eyesore with a useful facility for local people, providing local shopping to reduce the reliance on the motor car. It would also provide up to 30 jobs for local people. The classification of the site for employment in the development plan is unrealistic. It is also unreasonable of the Council to ask for a large contribution towards the upkeep of Mitcham town centre, on which the proposal would have no effect.
244. The effect on local shops would be negligible due to the significant differences in the ranges of goods sold. The Lidl store would have no tobacco, newspapers or magazines for sale. Most produce is contained in tins, or other packages. There is hardly any fresh produce sold to compete with local shops.
245. Residents would like assurance that adequate perimeter fencing would be provided to secure residents rear gardens from unauthorised access. Assurance also that when the store is closed for business, that the site will be secured and not subject to unauthorised access by pedestrians/vehicles.
246. Residents would also like assurance that hours of site working will not exceed 8am to 6pm, Monday to Saturday with no Sunday working.

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247. In summary residents have no objection to approval of the scheme as the majority considered that the store will provide a welcome expansion of local retail facilities, together with employment and the utilisation of a site that has lain vacant for far too long.

### **Written Representations**

#### **London Borough of Lambeth**

248. The Borough objected to the proposed development on the grounds that through the provision of excessive parking and an out-of-centre location the development would encourage an unacceptable increase in car trips, contrary to transport policy to reduce reliance on the private car.

249. In the "Transport Assessment", there is no reference to PPG13 paragraphs 74, 76 and 79 which promote sustainable transport, nor to travel plans. Although existing public transport and other facilities are mentioned no measures are proposed that would actively encourage people to visit the site by means other than the private car. This site has a low public transport accessibility level and the statement that it has good accessibility for public transport is incorrect. No assessment has been made regarding pedestrian and cycle routes in the vicinity of the site. Therefore it is premature to state it has good accessibility by pedestrians and cycles.

250. The information on which many of the assumptions are made, is not applicable to this site and provides a false picture of the likely level of trips and the modal split.

251. No assessment has been made of the wider impact of the development, particularly in relation to the catchment area. There is the likelihood of an adverse impact on Streatham Vale through the introduction of additional car trips. No assessment has been made of the impact on the junction of Streatham Vale and Greyhound Terrace.

#### **Mr K Patel**

252. Mr Patel has a small shop (RS Newsagents) at 180 Rowan Road. He believes that the proposed store would affect his business very badly as would other shops on Rowan Road. At the moment all the small shopkeepers on the road are finding it difficult to survive. What is needed is not a big store but a sporting facility and community hall for the youngsters in the area.

### **Conditions and Obligations**

253. The schedule of recommended conditions and reasons for them is set out in Annex A.

#### **Inspector's comments on recommended conditions**

254. Conditions 2 to 4 are concerned with the submission of further details for approval by the LPA and are clearly necessary. Conditions 5 and 6, and Condition 7 similarly require further details of the refuse store and recycling facilities to be submitted for approval. Again, they are needed.

255. Condition 8 calls for slab levels to be agreed. Condition 9 specifies the hours of working for the construction phase of the development. This meets the request of the residents' association.

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256. Condition 10 requires car parking spaces to be provided before the retail use commences while the next condition specifies the number to be provided for the retail store. The total of 75 spaces specified in condition 11 meets the planning requirements for the site and accords with the revised layout submitted to the Inquiry.
257. Condition 12 limits the hours of operation to reasonable hours Monday to Saturday with an earlier closing on Sundays, and bank holidays. Condition 13 prevents storage of materials on the site (including the roof). Condition 14 is concerned with the protection of amenities of those local residents that live close to the store service yard. It requires details of noise attenuation measures to be submitted for approval. Condition 25 does a similar job for the car park and recycling facility. All of these conditions are clearly necessary to protect residential amenity.
258. Conditions 15 and 16 require details of facilities for persons with disabilities to be submitted for approval. Though strictly a building control rather than planning matter, the conditions serve as a useful reminder to the applicants of their responsibilities in this area.
259. Condition 17 requires a scheme to deal with the contamination of the site and is clearly essential.
260. Condition 18 protects the amenity of the area by preventing the addition of plant or structures to the roof or external walls of the store, without the prior approval of the LPA.
261. Condition 19 calls for a parking management scheme to be submitted. Although the condition refers to charging, it was stated at Inquiry that the applicants intend to allow a period of free parking (such as an hour and a half) to allow shoppers to visit other nearby shops if they wish. This arrangement operates at other sites where Lidl are close to a local shopping centre or other large store. A period of free parking would clearly facilitate linked trips between Lidl and local shops.
262. Condition 20 imposes control over the position of the entrance gate to the store car park. This is necessary for highway safety.
263. Condition 21 ensures that landscaping proposals will be implemented.
264. Condition 22 controls hours of servicing and deliveries to the site. The hours are reasonable and avoid for instance the very early morning or late evening, when residents might be disturbed.
265. Condition 23 requires the submission of a scheme for renewable energy production. This is in line with Policy PE13 of the UDP.
266. Condition 24 seeks to control the way in which the site is developed, by managing the parking of vehicles of site personnel, the storage of plant, wheel cleaning of lorries coming and going and control of dust, smell and other effluvia. This is all in the interests of the occupiers of surrounding properties, and of highway safety.
267. Condition 26 calls for a green travel plan, aimed at reducing car use by staff and shoppers. This is in accordance with Policy ST32 of the UDP.
268. Condition 27 requires a method statement dealing with demolition of the buildings, the removal of asbestos and prevention of dust and noise. This is clearly essential if residential amenity is to be protected during the construction period.

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269. The final condition (28) requires a drainage scheme to be submitted for approval, as required by the Environment Agency.

270. All of the suggested conditions are relevant to the application, and are necessary for its proper implementation.

#### Section 106 Unilateral Undertaking

271. The undertaking has three components.

- The operation of the discount foodstore element of the development will be subject to trading restrictions contained at Schedule 1.
- The payment of £50,000 to the Council for public transport improvements.
- The payment of £150,000 to the Council as compensation for loss of employment land.

272. The trading restrictions set out in the schedule are intended to maintain the distinctiveness of the store as a deep discounter. It contains a commitment not to supply many of the retail services typically found in local shops.

273. It also makes provision for an annual price check comparison to be undertaken at the request of the Council to ensure that a range of products are at least 15% cheaper than other selected stores.

274. The payment for public transport will allow for improvements to two bus stops opposite the site, for the provision of a pedestrian refuge on Rowan Road opposite the site and for support for other transport infrastructure or community or public transport facilities in the vicinity of the site.

275. The payment of compensation appears to be a token payment to acknowledge the status of the land as allocated employment land, and enable the Council to take other measures to encourage employment.

276. All in all, the undertaking seems relevant to the proposal, is of an appropriate scale and is directed towards matters that are in the public interest.

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## Inspector's Conclusions

277. My conclusions follow the order of the matters raised by the First Secretary of State in the call-in letter. Numbers in square brackets [] refer to preceding paragraphs.

- a) Whether the proposal is in accordance with the relevant policies and provisions of Merton's Unitary Development Plan, adopted in 2003, and the London Plan 2004.

### Shopping

278. The proposed development is in accordance with policies A5/3D.1 and 3D.3 of the London Plan by providing a shopping facility with a local catchment. [20, 72, 96, 115].

279. Policies TC2 and ST29 of the UDP allow for retail development outside the designated centres where six criteria are met:

- Need,
- a sequential search in Wimbledon, Mitcham and Morden,
- flexibility in the sequential search,
- accessibility by a choice of means of transport,
- no harm to the vitality and viability of the town centres of Wimbledon, Mitcham and Morden,
- not undermining the development plan strategy.

These criteria largely reflect the "key considerations" in PPS6 paragraph 3.4.

### Need

280. The retail study that has been undertaken establishes a very local catchment area, based on those typically served by existing Lidl stores. The catchment area is tailored to the expected pattern of trading of the store, serving between 20,000 to 40,000 people. PPS6 states at 3.10 that the catchment area should be realistic and well related to the size and function of the proposed development. In my view this local catchment area does just that.

281. The retail assessment demonstrates that the growth in convenience goods expenditure between 2005 and 2008 of £3.98m in the catchment area is more than enough to support the turnover of the proposed Lidl store. (£2.88m) [119]. Even allowing for all of the existing floorspace within and on the edge of the catchment and the proposed Lidl store trading at company average levels, in addition to achieving floorspace efficiencies of 1.5% per annum, there is still a large surplus of convenience goods expenditure (£44.9M) in 2008. Much of this surplus is currently being drawn to convenience shops beyond the catchment area, including the out-of-centre Sainsbury's at Streatham and the out-of-centre Asda at Beddington [120-128].

282. The updated Merton Town Centre Study provides an assessment of the quantitative need for further convenience and comparison floorspace within the Borough up to 2016. On the basis of this study, and allowing for the proposed store, there is still a

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need for some 3,746m<sup>2</sup> of convenience goods floorspace over the period 2005 to 2008. This would be 8,415m<sup>2</sup> for the period 2005 to 2016. There is as such a clear quantitative need for further convenience floorspace in the Borough as a whole. There is also more than sufficient comparison goods expenditure to support the small element of non-food sales [129-131].

283. In terms of qualitative need, PPS6 emphasises the need to increase choice and competition and provide for a range of local shopping facilities. There are currently no deep discount stores within the catchment area and the range of local convenience shopping provision is limited. The Lidl offer is materially different to that provided by the mainstream food retailers. The proposed store will therefore meet a qualitative need in that it will extend consumer choice and aid competition within the catchment area, and provide an accessible local shopping facility for households on lower incomes and in particular those who do not own a car and /or are elderly [132,133,138].

#### Sequential test

284. The sequential analysis has been undertaken with regard to the need for a minimum store sales area of 1,063m<sup>2</sup> net (gross), and a single storey retail operation with no disaggregation. It has also been assumed that the store would be served by 75 car parking spaces. This gives a minimum site requirement of approximately 0.48 hectares, as illustrated by the plan contained at Appendix 20 of Document 10. This area is considerably smaller than the application site (0.8 ha.) and demonstrates reasonable flexibility by the applicants in terms of the suggested approach in paragraph 3.16 of PPS6.
285. This PPS also gives advice on the size of the search area. "The relevant centres in which to search for sites will depend on...the nature and scale of the development and the catchment that the development seeks to serve" (PPS6, paragraph 3.13). Whilst sites outside the defined catchment will not satisfy the identified quantitative and qualitative need for further convenience floorspace, the search has been extended to include any sites within or on the edge of the nearby centres of Mitcham and Norbury to demonstrate robustness.
286. A total of eighteen sites were identified, either within the catchment area, or in the vicinity of Norbury and Mitcham. These sites are shown on the plan contained at Appendix 21 of Document 10. The sites are assessed in detail at paragraphs 9.50 to 9.94 of Document 7. Having visited them all after the Inquiry, I agree with the assessment of both the applicant and the Council that none of them are sequentially preferable to the application site.

#### Accessibility

287. Although the PTAL rating is only 2, the site has in fact a reasonable bus service, as Table 2 demonstrates [198]. There are around 18 buses passing the site every hour throughout the day with more during the peak hours. The four routes radiate from the site towards Streatham in the north, Mitcham and Morden to the south west and Croydon to the south east [199].
288. The site is well located within an area that is easily accessible on foot and a large population catchment is within a distance of the site where walking is a viable alternative to car use. All the roads in the vicinity have good footway provision,

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including dropped kerbs in most locations, street lighting and the terrain is flat. Attractive conditions therefore exist for walking [223].

289. A large proportion of the urban areas of Mitcham, Streatham and Norbury are within 5km of the site, the distance referred to in paragraph 78 of PPG 13 as representing an acceptable cycling distance. The 5 and 10 minute cycling isochrones are illustrated on Figure 15 of Document 13, and show that much of residential Mitcham is within a 10 minute cycle time. Many of the roads are lightly trafficked and therefore are attractive for cycling. The terrain is also flat, which further encourages cycling [224].

#### Impact on town and other centres

290. The relevant town centre is Mitcham, a reasonably healthy centre at present, and one which is very likely to receive significant investment in the form of a new Asda foodstore. The doorstep survey in the catchment area shows that only 4% of respondents use Mitcham for main shopping, and 3% for top-up. Any trade draw effects from the proposed Lidl would be insignificant [154-157].

291. The trade draw analysis shows impacts on existing retail facilities ranging between 2 and 10%. Norbury district centre is the only major centre in the catchment area. It is a vital and viable centre, with good convenience provision and specialist retailers. Impacts of 7 and 8% are unlikely to significantly harm the centre [162].

292. The only local centre in the catchment is Streatham Vale, a few hundred metres further up the main road towards Streatham. The centre includes a small Co-op (300m<sup>2</sup>), and a number of small independent convenience retailers, including a butchers, pharmacy, off licence and newsagent. The impact on the Co-op is estimated at just under 8%, with 10% collectively for the other shops. This is the highest of the revealed impact figures. It could be lower if the assumption that 80% of the Lidl trade is to come from shops within the catchment proves an over-estimate. If the presence of the Lidl store results in significant clawback from Asda, Beddington Lane and other surrounding stores there would be less impact on the smaller shops [164-5,171].

293. Other small shops and parades are shown to receive impacts of between 2 and 8%. These are relatively minor effects and may be compensated for by the generation of linked trips from Lidl to nearby shops [149-150, 172, 244].

#### Development Plan Strategy

294. Policies ST29 and ST30 set out the main elements of the UDP strategy regarding shopping. The first reserves town centres for what it calls "town centre uses" which includes shopping. Proposals for any such uses outside designated centres must be justified in need terms and through a sequential approach to site selection. In large developments a high level of public transport accessibility must be available. Policy ST30 seeks to maintain a widespread distribution of local shopping facilities, including appropriately sized local supermarkets. In my view the aims of the strategy are met by the need argument for the store, the lack of alternative sites and the local character of the proposal. The public transport accessibility point is met by virtue of the proposal being small scale [30, 101].

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## Housing Policies

295. The proposal is in accordance with policy 3A.1 of the London Plan as the development will contribute towards achieving the output of 30,000 additional homes. Policy 3A.10 states that UDP policies should provide for special needs housing, including sheltered housing with care support, staffed hostels and residential care homes, based on up-to-date estimates of need [22, 23].
296. The proposal is also in accordance with Policies HN.3 and HN.4 of the UDP, by helping to provide mixed communities and housing for older people. There is a requirement that 95% of additional housing in the borough should be provided on previously developed land, which this site of course is (ST.12) [23].

## Transport policies

297. The proposal is in accordance with transport related policies in the London plan which aim to achieve closer integration between land use and transport, by ensuring that development is situated in locations which are well served by public transport, walking and cycling, and which encourage less use of the motor car [25, 37]. It also meets the requirements of similar policies in the UDP relating to walking, cycling and the promotion of public transport [38].

## Employment Policy

298. The London Plan places a strong emphasis on economic development. It promotes Strategic Employment Locations but recognises that manufacturing jobs are forecast to fall by 25% between 2001 and 2016 and surplus land should help meet local requirements for other uses[19].
299. Policy ST14 of the UDP protects employment land and only permits its loss under certain circumstances. Policy E6 sets these out. It accepts the possibility of a community or cultural use, and exceptionally a housing use but only if financial unviability for other uses can be proven. The policy does not however countenance shopping as an alternative use to employment [29, 34].
300. The significant costs that would be incurred in clearing and remediating the site make B1 and community uses unviable. The site is not required to meet the Borough's needs for employment land, and it can be considered for other uses [113-114]. Use of the site for shopping however, is not envisaged in the UDP.
- b) **Whether the proposal is in accordance with national policy contained in PPG 1 (General Policies and Principles), in particular with guidance on design and urban design.**
301. The publication of Planning Policy Statement 1: Delivering Sustainable Development in February 2005 cancelled the advice contained in PPG1. Paragraphs 15-18 of PPS1 offers guidance on design issues stating that design can help promote sustainable development, improve the quality of the built environment and reinforce a sense of place.
302. In terms of design, the application proposals will result in a significant improvement in the appearance of the site, which currently contains a number of derelict unsightly and incongruous buildings, which in terms of their bulk and scale bear no relationship

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to the surrounding residential properties. The development will see the removal of these buildings and will therefore enhance the appearance of the surrounding area [176].

303. The layout of the proposed foodstore has been the subject of liaison with the local Police Crime Reduction Unit and implements the principles of Secure by Design [177].

304. The foodstore will consist of a low rise building, incorporating a pitched roof, respecting the surrounding 2-storey terraced properties in Hassocks Road to the north east and also the 3-storey flats in Stirling Close to the south west. The roof will be covered in a riven finish slate to match surrounding buildings [183].

305. The residential buildings will consist of part single and part 2-storey structures to respect the height of the surrounding residential buildings. The orientation of the sheltered housing, combined with a degree of separation from the surrounding dwellings will ensure that the amenities of surrounding residents will be maintained. In addition, the residential site will be surrounded by close boarded timber fencing to provide additional screening, as requested by the residents' association. The residential buildings will incorporate a pitched roof, clad also in riven slate, with the elevations being treated in a combination of brick, painted render and timber cladding. In terms of design and materials and layout the buildings will therefore respect the surrounding development [187-8].

306. In my judgement the requirements of PPS1 in this respect will be met.

c) **Whether the proposal is in accordance with national policy contained in PPG 3 (Housing) in particular with guidance on the reallocation of employment land for housing.**

307. The guidance in PPG3 is that where local planning authorities have allocations of land for employment which cannot realistically be taken up over the lifetime of the development plan they should consider whether some of this land might better be used for housing or mixed use developments. The redevelopment of the site to provide a mixed use development including housing is therefore clearly consistent with PPG3 [87-88].

d) **Whether the proposal is in accordance with national policy contained in PPG 4 (Industrial and Commercial Development & Small Firms) in particular with regard to the loss of employment land.**

308. Paragraph 6 of PPG4 states that in allocating land for industry and commerce, planning authorities should be realistic in their assessment of the needs of business. Paragraph 21 advises that authorities should ensure vacant and under-used sites are brought back into beneficial use to aid regeneration.

309. The application site is currently allocated for B1 business use within the adopted Merton UDP. The site represents an isolated allocation and does not lie within one of the main employment areas. It is also evident from the recent planning history of the site that any employment use would have to be limited to B1 use, primarily on the grounds of residential amenity and highway safety. The fact that the site is restricted to B1 use clearly reduces the number of businesses that might be interested in this location. The marketing that has been undertaken in relation to the application site

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clearly indicates that there is limited demand for B1 or community use within this part of the Borough [107, 110].

310. The DTZ Study classified the application site as being "Poor" in qualitative terms for future employment use and recommended that the site be considered for other uses, against a background of a more than adequate supply of land and buildings in the Borough to meet requirements up to 2016. Its re-use for a mixed use scheme therefore brings the proposal within the scope envisaged in paragraphs 6 and 21 of PPG4.

e) **Whether the proposal is in accordance with national policy contained in PPG 6 (Town Centres and Retail Developments) together with other related Government statements, in particular with guidance on need for retail development outside of centres, the sequential test, impacts on nearby centres and a choice of means of transport.**

311. PPG6 has been replaced by PPS6, which covers the matters listed above in paragraph 3.4 (Assessing Proposed Developments). The criteria have been addressed above, under the section dealing with the UDP (paragraphs 280 to 294).

f) **Whether the proposal is in accordance with national policy contained in PPG 13 (Transport) in particular in relation to the sustainable location of facilities and access by a choice of means of transport.**

312. One of the key objectives of PPG13 is to ensure that jobs, shopping, leisure facilities and services are accessible by public transport, walking and cycling, in order to reduce reliance upon the private car. The application site is well-related to existing public transport, with Rowan Road being served by four bus services. Of these, two stop immediately outside the site at the existing bus stops. The site is also surrounded by a dense residential area and the proposals also include secure cycle parking. There will thus be the opportunity for people to walk and cycle easily to the site [92].

313. The applicant has reduced the level of car parking for the retail floorspace to a maximum of 75 spaces, significantly below the maximum standards set out in PPG13 and in line with the London Plan. The applicant will also prepare a green travel plan to promote sustainable transport [93].

314. In terms of traffic impacts, the store is estimated to add between 141 and 255 trips to Rowan Road at the weekday pm and Saturday peak times. These compare with flows of 866 on weekdays and 878 on Saturday. The capacity of Rowan Road is assessed at 1530 vehicles per hour. It is therefore operating with substantial spare capacity, even during the busier peak periods [207, 211].

315. The effect of traffic generation of the store has been considered for the site access and Rowan Road junction and demonstrates there is significant spare operational capacity with minimal queuing and delays. The traffic flows on Rowan Road itself are still considerably within the carrying capacity of the road. The numbers of vehicle movements likely to be associated with the 12 sheltered housing units are so small that it can be concluded they will have no material impact on the safe and efficient operation of the road network in the vicinity of the site [221,230].

316. Comments from the London Borough of Lambeth criticised the choice of locations used to derive trip generation information in the transport assessment. They also called

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for an assessment of the impact of the proposal on the Streatham Vale/Greyhound Terrace junction [250-1].

317. With regard to trip generation, the use of a wide selection of similar stores with site characteristics matched to those of the Rowan Road proposal i.e. located on the edge of town centre or neighbourhood centre with good standard of pedestrian, cycle, bus and rail accessibility seems sensible [239].
318. Further survey work to assess impacts on Streatham Vale and Greyhound Terrace show that flows would increase by only 7% as a result of the proposal. This would hardly be noticeable at the junction or in Streatham Vale [241].
319. All in all, I judge the proposal to be not inconsistent with PPG13.

g) **Whether the proposed development is in accordance with national policy contained in PPG 25 (Flood Risk) in particular in terms of the implications of potential flood risk.**

320. This matter has since been clarified to refer to the methods of surface water drainage to be adopted. The site is already fully developed being almost entirely covered with buildings and hard surfacing and the application proposals will if anything lead to an improvement in the current situation for surface water run-off. The applicant has stated the intention to work with the Environment Agency, through an appropriate condition to secure sustainable means of drainage to the development [94].

h) **Whether any permission should be subject to conditions, and if so, the form they should take.**

321. Conditions are dealt with at paragraphs 254 to 270 above. The Section 106 Unilateral Undertaking is considered at paragraphs 271 to 276.

i) **Any other relevant material planning considerations.**

322. There are none.

### **Summary of Conclusions**

323. This scheme proposes a small retail store and some sheltered housing to replace former industrial buildings in a residential area. There is no need to retain the buildings or the site for employment uses as the Borough is well-supplied with land and buildings to accommodate such uses.

324. The site is not in a town centre, district centre or local centre, but the need for the convenience retail floorspace in the catchment area is established. There are no sequentially favourable sites in the catchment area or in centres close to it. The impact of the retail scheme on other shopping centres or local groups of shops would be relatively minor. The deep-discount nature of the retail offer of the Lidl store, excluding many of the standard lines sold in corner shops, is such that impacts on local stores should be minimised. The proposal therefore meets the policy requirements of PPS6, the London Plan and the UDP.

325. The location is accessible for a large catchment population on foot, by cycle and by bus. Providing this locally accessible shopping resource in this particular catchment

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area should significantly reduce the need for longer trips out of the area to larger grocery stores, thus reducing use of the car overall. The traffic that would be generated by the scheme can be coped with by the local road system, which has ample spare capacity.

326. This is a case where the provision of useful facilities, in the form of a local retail store and a sheltered housing unit, would replace some old industrial buildings that are semi-derelict, unattractive and a source of great anxiety for those who live in close proximity to them.

#### **Recommendation**

327. I recommend that planning permission is granted for a retail store and block of sheltered housing at 216-218 Rowan Road, Merton, subject to the conditions set out in Annex A and a unilateral undertaking.

Inspector



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Document	19	Bundle of letters from local residents
Document	20	Unilateral undertaking (2 copies)
Document	21	Letter from London Borough of Lambeth dated 11 February 2005
Document	22	Extracts from Merton UDP

PLANS

Plan	A	Set of plans for proposed Lidl store
Plan	B	Set of plans for sheltered housing scheme
Plan	C	Extract from UDP Proposals Map showing location of application site

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## Annex A – Recommended Conditions

1. The developments to which this permission relates shall be begun not later than the expiration of 5 years, beginning with the date of this permission.

*Reason for Condition: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.*

2. Notwithstanding any materials specified in the application form and/or approved drawings, particulars and samples of the materials to be used on all external faces of the retail store and residential development, including fenestration, shall be submitted to and approved in writing by the Local Planning Authority before any works are commenced. The development shall be carried out in full accordance with the approved details.

*Reason for Condition: to ensure a satisfactory appearance of the development.*

3. Details of those parts of the site to be occupied by the retail store not covered by buildings, including parking, service roads, sight lines, footpaths, hard and soft landscaping, surface treatment and boundary treatment shall be submitted to and approved in writing by the Local Planning Authority before development of the retail store hereby permitted commences. These works shall be carried out in accordance with the approved details.

*Reason for Condition: To ensure satisfactory treatment of the site and an appropriate setting to the buildings hereby approved.*

4. Details of those parts of the site for the residential development not covered by buildings including any parking, service roads, sight lines, footpaths hard and soft landscaping, surface treatment and boundary treatment shall be submitted to and approved in writing by the Local Planning Authority before development of the residential accommodation hereby permitted commences. These works shall be carried out in accordance with the approved details.

*Reason for Condition: To ensure satisfactory treatment of the site and an appropriate setting to the buildings hereby approved.*

5. Details of proposals for the storage of refuse for the retail store, including details of recycling facilities, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development of the retail store and shall be in place prior to the occupation of the buildings/commencement of the retail use hereby approved and permanently retained thereafter.

*Reason for Condition: To ensure the satisfactory provision of refuse storage and collection facilities, in order to protect the amenities of the area.*

6. Details of proposals for the storage of refuse for the residential units shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the residential part of the development and shall be in place prior to the occupation of the buildings/commencement of the residential use hereby approved and permanently retained thereafter.

*Reason for Condition: To ensure the satisfactory provision of refuse storage and collection facilities, in order to protect the amenities of the area.*

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7. Details of the proposed recycling facility, including the details and location of the recycling bins and measures for screening these, shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the retail store, and shall be in place prior to the occupation of the buildings/commencement of the retail use hereby approved.

*Reason for Condition: To protect the amenities of the area.*

8. Details of the proposed slab levels of the building and existing site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels and details.

*Reason for Condition: To ensure that the development relates satisfactorily to its surroundings.*

9. No demolition or construction work in connection with this permission shall be carried out outside the hours of 08.00 and 18.00 on Mondays to Fridays inclusive, 08.00 to 13.00 on Saturdays and there shall be no such work carried out on Sundays or Public Holidays.

*Reason for Condition: To protect the amenities of the occupiers of neighbouring properties.*

10. The car parking spaces (including disabled spaces) and cycle parking on drawing 0311 D 101 K shall be provided before commencement of the use of the respective part of the land or buildings hereby permitted, and thereafter shall be kept free from obstruction and shall be retained for parking purposes for users of the respective parts of the development and for no other purpose.

*Reason for Condition: To ensure the provision of adequate off-street parking and in order to prevent additional parking in surrounding streets which could be detrimental to amenity and prejudicial to highway safety.*

11. The number of car parking spaces (including disabled spaces) associated with the retail store shall not exceed 75 spaces, unless otherwise agreed with the Local Planning Authority in writing.

*Reason for Condition: To ensure that there is no over-provision of car parking at the site and to encourage sustainable transport choices.*

12. The retail use shall not operate other than between the hours of 08.00 to 20.00 Mondays to Saturdays and 10.00 to 17.00 on Sundays, Bank Holidays and Public Holidays without the prior approval in writing of the Local Planning Authority.

*Reason for Condition: To safeguard the amenities of occupiers of neighbouring properties.*

13. Unless otherwise agreed in writing by the Local Planning Authority, no goods, equipment or other materials shall be stacked/stored in any open area (including the roof) of the retail premises hereby permitted.

*Reason for Condition: To safeguard the amenities of the occupiers of neighbouring properties and the appearance of the area.*

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14. Details of measures to provide noise attenuation to the service yard, including any external plant and machinery, and the day to day management of unloading deliveries at the site shall be submitted to and approved in writing by the Local Planning Authority before the development hereby approved commences. The development shall be implemented and operated in accordance with such details as are approved.

*Reason for Condition: To safeguard the amenities of neighbouring residents from noise and disturbance.*

15. The use of the retail building hereby approved shall not take place until such time as details of facilities for persons with disabilities has been submitted to and approved in writing by the Local Planning Authority. Such facilities shall be installed prior to the occupation of the retail building/commencement of use and shall be permanently retained thereafter unless otherwise agreed in writing by the Local Planning Authority.

*Reason for Condition: To ensure that persons with disabilities can satisfactorily use the buildings.*

16. Suitable level access or an appropriate ramp at a gradient of not more than 1:12 and no less than 900mm door width at the threshold to the principal entrance to the retail premises (including shop fronts) shall be provided before the use commences and thereafter shall be retained to the satisfaction of the Local Planning Authority.

*Reason for Condition: To ensure suitable access to the premises for persons with disabilities.*

17. Prior to the commencement of development a scheme to deal with the contamination of the site, including potential contamination from the demolition of structures above and below ground, shall be submitted to and approved in writing by the Local Planning Authority. The above scheme shall include an investigation and assessment to identify the extent and nature of contamination and measures to be taken to avoid risk to the public, buildings and the environment, when the site is developed.

Development shall not commence until the measures approved in the scheme have been implemented. On completion of the development the applicant shall submit to the Local Planning Authority a validation report that verifies compliance with the approved remediation measures.

*Reason for Condition: In order to safeguard the health of future occupants of the site and neighbouring areas.*

18. No structure, plant, equipment or machinery shall be placed, erected or installed on or above the roof or on external walls of the retail building hereby approved without the prior written approval of the Local Planning Authority.

*Reason for Condition: In order to safeguard the visual amenities of the area and to protect the amenities of neighbouring occupiers from noise, disturbance and smells.*

19. Use of the retail unit hereby approved shall not commence until details of a parking management scheme, including details of any parking charges and their collection, have been submitted to and approved by the Local Planning Authority. The car park shall be

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operated in accordance with such details as are approved unless otherwise agreed in writing by the Local Planning Authority.

*Reason for Condition: To ensure that the operation of the car park does not give rise to additional parking on the highway, to the detriment of the general conditions of highway safety, or the amenities of neighbouring residential occupiers.*

20. Notwithstanding what is shown on the approved plans, details of the design, appearance, means of operation and position of the entrance gates to the retail store car park shall be submitted to and approved in writing by the Local Planning Authority before installation and shall be installed prior to commencement of the use of the retail store in accordance with those details.

*Reason for Condition: The gates by reason of their location as shown on the approved plans would be likely to result in vehicles queuing on the highway to the detriment of the general conditions of highway safety and the free flow of traffic. The condition seeks to ensure that the gates design, position and operation allows for the safe entry and exit to and from the site by vehicles.*

21. Landscaping approved under conditions 3 and 4 shall be implemented during the next planting season after the completion of the building operations on the retail part of the site, in respect of condition 3 and the residential part of the site, in respect of condition 4, or within any such longer period as may be agreed in writing with the Local Planning Authority. Such planting shall be maintained, including the replacement of dead, dying or defective trees, shrubs or ground cover plants for a period of 5 years.

*Reason for Condition: To preserve and maintain the visual amenities of the area.*

22. No servicing of (including waste service collections), or deliveries to, the retail premises shall take place other than between the hours of 07.00 and 19.00 Mondays to Saturdays and 10.00 to 13.00 on Sundays, Bank Holidays or Public Holidays.

*Reason for Condition: To safeguard the amenities of neighbouring residential occupiers.*

23. Before the development hereby approved commences the applicant shall have submitted to the Local Planning Authority and had approved in writing details of renewable energy production equipment to provide at least 10% of predicted energy requirements for the commercial (retail) development. The development shall be constructed in accordance with such details as are approved and shall be retained and maintained so as to meet this requirement for as long as the development remains.

*Reason for Condition: To ensure that the development provides an energy efficient design and to accord with adopted policy PE.13 of the Merton UDP.*

24. Before the development commences a working method statement to control the environmental effects of the development shall be submitted to and approved in writing by the Local Planning Authority to accommodate:

- a) parking of vehicles of site personnel, operatives and visitors;
- b) loading and unloading of plant and vehicles;
- c) storage of plant and equipment;
- d) wheel cleaning facilities;

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- e) transport of construction workers to and from the site;
  - f) control of dust, smell and other effluvia;
  - g) control of surface water runoff.

*Reason for Condition: In the interests of vehicular and pedestrian safety and to ensure construction vehicles do not cause nuisance to neighbouring occupiers in terms of accumulation of mud and other debris.*

25. Before the development of the retail building commences the applicant shall have submitted to the Local Planning Authority and had approved in writing details of acoustic boundary treatment and any other appropriate remedial measures, to minimise noise breakout from the car park and recycling facility. Such measures as are approved shall be installed prior to occupation/use of the retail building and shall be permanently retained.

*Reason for Condition: To safeguard the amenities of neighbouring residents.*

26. Before the use of the retail unit commences a green travel plan, including details of measures to reduce car use by those working at and shopping in the proposed retail unit, shall have been submitted to and approved in writing by the Local Planning Authority. The retail unit shall be operated in accordance with such details as are approved.

*Reason for Condition: To ensure that private car movements are restrained in connection with the operation of the unit in accordance with adopted policy ST.32 (Traffic restraint and reduction).*

27. Before demolition works commence a method statement detailing:

- 1) The method of demolition;
- 2) Measures to identify and remove asbestos;
- 3) Measures to prevent nuisance from dust and noise to surrounding properties,

shall be submitted to and approved in writing by the Local Planning Authority. Demolition of existing structures shall be carried out in accordance with such details as are approved.

*Reason for Condition: In order to safeguard the amenities of the occupiers of neighbouring residential properties.*

28. Prior to development commencing a drainage scheme shall have been submitted to and approved by the Local Planning Authority.

*Reason for Condition: In order to ensure that sustainable drainage methods are employed at the site.*



# Appeal Decision

Inquiry held on 15 and 16 January, 10 and 11 April 2008

Site visits made on 17 January and 11 April 2008

by **M Middleton** BA (Econ) DipTP Dip Mgmt MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date:  
2 June 2008

**Appeal Ref: APP/L5240/A/07/2052053**

**Land at 1 Parkway, New Addington, Croydon, London, CR0 0LJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by LIDL GmbH against the decision of the Council of the London Borough of Croydon.
- The application Ref 07/00918/P, dated 5 March 2007, was refused by notice dated 29 May 2007.
- The development proposed is erection of a Lidl foodstore, 19 residential units with car parking and associated works.

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

## Procedural matters

1. Whilst the appeal was being processed and at the Inquiry, amended plans and supporting documents were submitted by the Appellant. Additional consultation has been undertaken on these, to an extent that enables the drawings to be substituted without anyone's interest in the case being prejudiced. I have therefore used them as the basis for my consideration of this appeal. The relevant plans are itemised in the Plans section at the end of the decision.
2. An Agreement and a Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990 and signed by the Appellant and the Council in the former case and the Appellant only in the latter, were presented to the Inquiry. Under the terms of the Agreement, the Appellant agrees to provide affordable housing on the site and to pay sums of money to the Council as a contribution towards the provision and improvement of off-site facilities, in the vicinity of the site and where appropriate elsewhere in New Addington and Fieldway Wards. These include public open space, tree planting and maintenance, education, library and healthcare facilities, air quality, sustainable transport and footway enhancements.
3. Under the terms of the Unilateral Undertaking, the Appellant agrees to recruit staff resident in the area, only permit the store to be occupied by itself or another "deep discounter", limit the number of product lines available within the store at any one time to 2,000 and the proportion of net sales area used for the display of comparison goods to 20% and not to provide a specified range of fresh products or services.

4. I have considered the provisions of the Agreement and Undertaking against the policy tests set out in Circular 05/2005 and I am satisfied that they would comply with them. I have taken their existence into account when reaching my decision but other than in the context of the product range to be sold do not discuss them further.

### **Main issues**

5. I consider the main issues to be:-
  - (a) Whether the proposal would be in conflict with the objectives of national and local planning policies concerning the location of retail development, particularly in respect of:
    - The need for the development;
    - Its effect on the vitality and viability of the existing shopping hierarchy in New Addington;
    - The availability of sequentially preferable sites;
    - The accessibility of the site by a choice of means of transport and
    - The effect of the proposal on the overall distance travelled by car.
  - (b) Whether the proposal would have an adverse impact on the character and appearance of the area.

### **Reasons**

6. The proposal would build a food supermarket with nineteen residential units above, and provide customer and tenant car parking, on an out of centre site formerly occupied by a large public house.
7. In advocating the building of more shopping facilities to meet people's growing needs, Planning Policy Statement 6: *Planning for Town Centres* (PPS6) and Policy SH2 of *The Croydon Plan* (CP), which was adopted in 2006, promote vital and viable centres. This is to be achieved through the focusing of new retail development of an appropriate scale in existing centres, in order to strengthen their retail offer and to assist regeneration. In consequence, new out of centre development requires careful consideration and special justification.

### *Quantitative Need*

8. Three assessments of retail capacity in the New Addington area have been undertaken in the past five years. The first by Drivers Jonas (DJ) on behalf of the Borough Council informed the preparation of proposals for the regeneration and expansion of New Addington District Centre; the second by RPS Planning (RPS) on behalf of the Appellant, sought to demonstrate a need for the appeal scheme; and the third by Nathaniel Lichfield (NL) was prepared to support a planning application by Tesco Stores Ltd for an extension to New Addington District Centre.
9. Paragraph 3.10 of PPS6 says that the catchment area used to assess proposals should be realistic and well related to the size and function of the proposed development, taking account of competing centres. The RPS study uses a

primary catchment area that includes New Addington and limited areas of residential development to its north. This is based on a five minute travel time from the appeal site. Given the size and nature of the proposal, a discount supermarket extending to 1635 square metres (gross), I consider the catchment to be realistic.

10. All three analyses point to a leakage of convenience expenditure that is above 70% from New Addington, suggesting a justification for significant additional convenience retail floorspace. The Appellant's analysis says that there would be potential convenience expenditure of £34.57 million in 2011 to support new convenience floorspace, allowing for 15% leakage. Lidl is expected to draw 90% of its turnover (£2.68 million in 2011) from its catchment area. Assuming that Tesco would have a larger catchment area than Lidl, draw only 45% of its turnover from the Lidl catchment and using company average sales densities, that analysis suggests that there is capacity to comfortably support both Tesco and Lidl.
11. However, since the Appellant's retail assessment was undertaken, the Council has entered into a development agreement with Tesco, who have submitted a planning application for a redevelopment in New Addington District Centre. This would contain a superstore with a net convenience floorspace of 2,700 m<sup>2</sup>. It was accepted at the Inquiry that this should be regarded as a commitment. The Appellant's original assessment was based on the Tesco store having a net convenience floorspace of 2,275m<sup>2</sup>. Making adjustments for the larger floorspace and accepting NL's assessment that Tesco would take 60% of its turnover from its primary catchment and on this basis assuming 70% from the larger Lidl catchment area, the Appellant's revised analysis suggests that there is still capacity for both new stores, together with existing convenience shops. In fact it suggests that there would be a surplus of £1.27 million in 2011.
12. The Council disputes the Appellant's assumption concerning the proportion of Tesco convenience turnover that would be derived from the Lidl catchment area. It suggests that it would be nearer to 75%, rather than the 70% adopted by the Appellant. The Council's figure is derived from an extrapolation of the proportion of expenditure derived from Tesco's smaller primary catchment area (60%), assumed in the NL study. However, the parts of the Lidl primary catchment area excluded by NL in their Tesco assessment are not adjacent to New Addington but are separated by a part of the Green Belt. They would be further away, from the Tesco store, in both time and distance than all of its defined primary catchment area. In such circumstances, I consider that persons residing here would be less likely to shop at Tesco than persons residing in the Tesco Primary catchment area. I do not therefore consider the Council's assessment on this point to be valid.
13. Nevertheless, the Appellant's revised analysis excludes any allowance for leakage (originally assumed to be 15%). Whilst I could countenance a suggestion that it may not be as high as 15% (the NL study suggests 10%), I do not agree with the suggestion that there would be no leakage of convenience expenditure from New Addington. The geography of New Addington and the surrounding area and the fact that persons residing there mostly work elsewhere and are likely to do some shopping at higher order centres such as Bromley and Croydon, where there are opportunities to do top-up convenience shopping, points to this being an unrealistic assumption.

Adopting the NL 10% leakage there would be a deficit of £2.89 million (about 6.8%) in 2011. In consequence I conclude that a qualitative need for the proposal has not been demonstrated and that the proposal is contrary to criterion (i) of CP Policy SH2.

14. However, retail expenditure forecasting is far from an exact science and small variations in some of the assumptions can have major ramifications for the overall results. PPS6 does not say that the whole or any defined part of a store's turnover should be met by quantitative need. Thus, on its own, a deficit in terms of a quantitative requirement need not be a bar to development and as PPS6 suggests, qualitative need can be looked at to provide additional justification.

*Qualitative need*

15. Paragraph 1.4 of PPS6 sets out other objectives to be taken account of in the context of the key objective (promoting the vitality and viability of town centres). These include enhancing consumer choice and supporting competitive retail sectors. This is to be achieved by making provision for amongst other things, a range of shopping services, which allow genuine choice that meets the needs of the entire community. Paragraph 2.35 says that in assessing the qualitative need for additional development, a key consideration will be to provide for consumer choice by an appropriate distribution of locations. This is to be subject to the key objective of promoting the vitality and viability of town centres and the application of the sequential approach, to improve accessibility for the whole community.
16. The Competition Commission<sup>1</sup> recognises that being a Limited Assortment Discounter (LAD), Lidl provides a materially different retail offer to the main food retailers and is not a close substitute for the main chain supermarkets, even those of a similar size. New Addington is currently poorly served in terms of foodstore provision, a fact which is a major contributor to the unsustainable export of a large proportion of its convenience expenditure. The Lidl store surveys, undertaken at existing stores in south London, identified a significant number of persons from New Addington shopping there, whilst the household survey suggests that about 5% of New Addington households currently do their main food shopping at LADs. Whilst the development of a Tesco store would partly address the existing need to improve the range of convenience shopping provision in the area, it would be unlikely to address the need for a LAD.
17. The Lidl offer is materially different to that provided by the main food retailers and as a result a store in New Addington would meet a qualitative need by extending consumer choice. Furthermore, it would add a new dimension to competition within the area. In addition, PPS6 says that easily accessible shopping that particularly meets the needs of those living in deprived areas should be provided. People living on low incomes are particularly responsive to price and are likely to benefit from LAD's to a greater extent than the average consumer. Policy 2A.7 of the London Plan identifies New Addington as an area for regeneration, on the basis that its wards are among the 20% most deprived in London. Its population would therefore benefit from the

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<sup>1</sup> The Supply of Groceries in the UK: - Market Investigation, Competition Commission 2007

existence of a LAD such as Lidl in its mist and I conclude that there would be qualitative benefits from the appeal proposal that should weigh in its favour.

*Scale of development*

18. The Council accepts and I agree that in the context of Lidl's business as a discount food retailer, the scale and format of the proposal is appropriate and accords with criterion (ii) of CP policy SH2.

*Vitality and viability*

19. New Addington District Centre contains about fifty retail units. At the times of my site visits two and three units respectively were vacant, with indications that some of these were about to be reoccupied. There is a strong service offer, with a number of food takeaways as well as financial institutions. Like the majority of the shops, the twice weekly retail market is largely devoted to traders selling comparison goods. Given the size, status and location of the centre, the convenience representation is surprisingly low. In addition to a Co-op supermarket and an Iceland, other than takeaways, there were only about five food retailers.
20. Pedestrian flows were good at the times of my visits and the car parks were well used. In my opinion New Addington is a vital and vibrant centre at the present time, with the household survey suggesting that the existing Co-op and Iceland are trading significantly better than their company average.
21. To what extent this situation will be maintained following the Tesco development, which is proposed to be significantly larger than the capacity identified in the Council's retail assessment (DJ) and now predicted to attract over 60% of New Addington's convenience expenditure, remains to be seen.
22. Following the arrival of Tesco in the District Centre, the appeal development would only be a fraction of its critical mass. In such circumstances I do not consider that it would operate as an alternative attraction to the District Centre, detract from it or deter people from using it as discussed in paragraph 2.1.7 of *Central Parade, New Addington Regeneration Strategy and Planning Brief* (PGN2), planning guidance that the Council adopted in 2005, following extensive public consultation.
23. Lidl's agreement that its store would only be used by a "deep discounter", not selling fresh produce or undertaking a range of service functions and to restrict the product lines to 2,000 and the comparison floorspace to 20%, would limit its impact on most of the shops in New Addington District Centre, including the specialist food retailers. Nevertheless it would be in direct competition with Tesco, the Co-op and Iceland, selling a limited range of goods, common to all these stores, at discount prices.
24. However, because of the limited range of goods on offer and the inevitable need for customers to shop elsewhere for some grocery products, the Competition Commission concludes that LAD stores do not impact to a significant degree on the larger food retailers.
25. The store's size (1635 m<sup>2</sup>) is significantly below the threshold suggested in PPS6, where retail impact assessments should be required. Nevertheless, the Appellant has undertaken one, assuming a 30% trade draw to Lidl. Its revised

assessment suggests trade draws from Co-op and Iceland of 7.1% and 5.5% respectively. This is below the threshold usually used to suggest concern. The Council do not dispute this assessment.

26. The critical issue in the context of vitality and viability, in my view, is not whether car shoppers would park at Lidl and walk to the District Centre but whether they and non-car shoppers would use both the Lidl store and the facilities in the District Centre, regardless of whether the trips are linked. In my opinion, users of a Lidl store in New Addington would be much more likely to buy the products and use the facilities in the District Centre that are not available at a Lidl store, than if they were shopping at a LAD store elsewhere.
27. Lidl customers need to visit other shops for top up shopping, fresh food and services. The Lidl survey at existing stores in south London suggests that over 40% of their users visit other shops and that Lidl coexists with other stores. The Lidl household survey suggests that despite the need to travel a significant distance, over 10% of New Addington residents already use Lidl or other LADs to undertake some of their grocery shopping. In doing so, some probably also use other shops in the areas where these stores are located. A Lidl store in New Addington would be likely to capture much of this secondary leakage, for the benefit of other retailers in the area.
28. Given the separation between the offer of Lidl and that of Tesco, there is no guarantee that the significant number of New Addington customers who currently use Lidl and other LADs elsewhere would switch to Tesco in large numbers, whereas there is every likelihood that most would transfer their allegiance to a Lidl in New Addington. In this context the appeal proposal would be of benefit to the vitality and viability of the District Centre and provide sustainability benefits by reducing necessary journeys to shops, a further factor that weighs in favour of the appeal proposal.
29. Although the proposal would take some turnover from the District Centre, it would also facilitate the retention of expenditure in the area to the benefit of the District Centre. In this context and given its size in comparison to the existing District Centre and the Tesco proposal, I therefore conclude that on balance the proposal would not be harmful to the vitality and viability of New Addington District Centre or contrary to criterion (iv) of CP policy SH2.

*Sequentially preferable sites*

30. PPS6, at paragraph 3.13 says that a sequential approach to site selection should be applied to all retail development proposals for sites that are not in an existing centre.
31. The Council initially advanced a number of locations within New Addington and at other centres in the area that it considered to be sequentially preferable to the appeal site. During the course of the Inquiry it reduced these to four locations within New Addington Centre.
32. Site A4 in PGN2, is now the subject of a development agreement between the Council and Tesco and is no longer available. The Council has confirmed that the proposed development could not accommodate a Lidl store. Although Lidl did not tender to become the preferred developer, given that their standard retail offer is substantially smaller than the anticipated anchor store size and

another store that would meet their requirements is not on offer, this is not surprising and in my view is not a justification to dismiss this appeal.

33. PGN2 Site A1 would occupy land to the rear of existing units in Central Parade. Although a store of the size required by Lidl could be physically accommodated, its achievement would not be easy. It would involve the purchase of around twenty freeholds and a number of leaseholds, some of which are actively used for delivery, storage or parking in association with the adjacent shops. The resultant store would have no public visibility and customer and delivery access, without a more comprehensive scheme, would not be easy. The Council indicated that it would be prepared to assist land assembly through the use of compulsory purchase powers, although other than a general reference to the possibilities in PGN2 there is no specific proposal. Given the nature of the interests to be acquired, this is not a certainty, particularly as the proposal would run counter to an aspiration of PGN2, which is to improve the parking and servicing arrangements for the existing shops and some existing retailers affected by the scheme may not wish to cooperate.
34. A combination of PGN2 Site A1 with frontage properties would be faced with similar difficulties to the backland option, although it would be visible from Central Parade. However, this scheme would require further acquisitions, utilising floorspace that is currently occupied by established retail traders. It would also compound the problems in maintaining or establishing rear servicing for the existing shops at Central Parade.
35. At the time of the Inquiry there were limited vacancies in Central Parade and none of a size that Lidl could acquire and expand, in order to create a shop unit of a size that would adequately meet its requirements. The correspondence from the Co-op and Iceland confirms that these units are unlikely to become available in the foreseeable future.
36. I therefore conclude that there are no more central or sequentially preferable, available sites that are likely to become available for development within a reasonable period of time and that the proposal accords with criterion (iii) of CP Policy SH2.

#### *Accessibility*

37. PPS6, at paragraph 3.25 says that in taking account of customers' likely travel patterns, developments should be accessible by a choice of means of transport. When determining whether developments are or will become genuinely accessible the analysis should include an assessment of the distance of developments from existing or proposed public transport facilities, frequency and capacity and whether access is easy, safe and convenient for pedestrians, cyclists and the disabled.
38. The appeal site is located adjacent to the junction of Lodge Lane/Parkway, the main approach road into New Addington and King Henry's Drive, a local distributor road. It is close to a tram stop, from where there are frequent direct services to central Croydon as well as to New Addington District Centre, a little more than 500 metres to the south. There are also regular bus services that pass the site. Comparatively, this is a highly accessible location with good opportunities for potential customers to use public transport.

39. The site is also on the edge of a large residential area with high density housing close by. As a result, there is the opportunity for a significant number of potential customers to walk or cycle to the store. I therefore conclude that the site is very accessible from all areas by a choice of transport modes as required by criterion (v) of CP Policy SH2 and that this should weigh in favour of the proposal.

*Distance travelled by car*

40. To what extent there would be linked pedestrian trips between a Lidl store at the appeal site and the District Centre would depend upon a number of factors, among them the availability and cost of car parking at the extended District Centre. The pedestrian links between the two locations are good and the distance, although above the 300 metres defined as an easy walking distance in PPS6, is comfortably within the 800 metres that *Guidelines for Providing for Journeys on Foot*, published by the Institution of Highways and Transportation in 2000 suggests is the preferred maximum acceptable walking distance to town centres. 800 metres is also the distance beyond which *Places, Streets and Movement*, published in 1998 by the then Department of the Environment, Transport and the Regions suggests that most people will not walk to local shops.
41. The area's low vehicle ownership rates (about 67%), the significantly lower rates among households who said they would shop at a Lidl store<sup>2</sup> and who tend to be skewed towards ones on low incomes, together with the correlation between income and vehicle use, suggests that a significant proportion of the store's potential customers would walk, cycle or use public transport to access the store and that most of these would walk to the District Centre if undertaking joint shopping trips.
42. Additionally, a Lidl store in New Addington would encourage LAD shoppers from that area to shop locally, rather than at other LAD stores in south London (see paragraphs 16 and 26). This would reduce the overall distance travelled for shopping purposes, which is an objective of PPS6. I conclude that the proposal would have a positive impact on the overall distance travelled by car

*Character and appearance*

43. The appeal site is located on a prominent corner that is regarded as a part of the gateway into New Addington. To its east is an area of semi-detached housing with a layout that incorporates the principles of the Garden Village Movement. To its north is a more mixed area of flats and houses developed during the second half of the twentieth century, whilst to its north-west beyond a large roundabout is open countryside. Parkway, which is the southern arm of the roundabout and runs parallel to the appeal site, is a wide boulevard that carries the openness of the countryside to the north-west, southwards towards New Addington District Centre. The characteristics of these areas are markedly different and the urban design challenge for this development is to successfully overcome the transition between open countryside and the urban area, whilst at the same time respecting the visual importance of its corner location.

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<sup>2</sup> The Lidl household survey suggests that only half of households who said they would use a Lidl store on the appeal site owned a car.

44. Prior to the demolition of the Cunningham P.H., the three built quadrants around the roundabout all had different forms but all were set back from the carriageway, contributing to the area's sense of spaciousness and helping to extend openness from the countryside, across the roundabout and into Parkway. The appeal proposal would be set back to a greater degree than the Cunningham P.H. was but in my view this of itself would not be harmful, neither would its failure to directly address the roundabout. Whilst the flats at Lodge Lane are closer to the roundabout than the appeal building would be, those at North Downs Crescent are not and these buildings also do not attempt to address it in their layout.
45. The appeal building would be parallel to Parkway but would nevertheless be clearly visible in the street scene as one drove around the roundabout. Because of the elevated four storey height at its northern end, it would appear as a landmark building as required by CP Policy UD11, without competing with the dominance of the Lodge Lane flats or looking out of character when viewed in the context of the more domestic architecture further to the east. In my view, the proposal respects the height and proportions of the buildings around this junction as required by CP Policy UD3.
46. As in the development across King Henry's Drive and at Lodge Lane, the levels change across the area and have been used to sink parts of the ground floor into the site. Although most of the front of the site is to be used for car parking, the fall in levels also allows much of this to be submerged below the adjacent road level so that the upper part of the store, which addresses Parkway, would be seen over the cars from the roundabout. Views would be filtered by the semi mature trees, which it is proposed to plant in the landscaped arc that would be at road level, around the western boundary of the site.
47. I note that the landscaping proposals were developed after the siting and overall design concept had been determined but in my view it is the overall outcome, which from a landscape perspective I consider to be acceptable that is important, rather than the process. The level changes and landscaping, which I consider to meet the requirements of CP Policy UD14, would minimise the visual effect of the car park, which as required by CP Policy UD13, would not dominate the site. In my view, whilst the store was open and subject to the comings and goings of shoppers, there would be a very active frontage to the building, in accordance with CP Policy UD2. In these circumstances I also do not consider the proposal would have an adverse effect on the broad views from the north-west, a further requirement of CP Policy UD11.
48. Much of the petrol filling station is already screened by a high hedge that could be strengthened by further planting. Unless the store were to be located on the back of the pavement, which would be completely out of character, then it would not be possible to screen the remaining views of the petrol filling station from the roundabout.
49. The electricity sub-station is dominant, in south-eastern views, from the roundabout but given its elevation, I am not persuaded that it would have been screened by the Cunningham P.H., or that the construction of the appeal proposal in its former location would adequately hide it. The appeal landscaping proposals would undoubtedly filter the views from the roundabout

but in my opinion, a more effective way to screen the sub-station's dominance would be to approach the problem from within its site.

50. Although the proposal does not maintain the 8 metre building line along Montescute Road, I am not persuaded that this would be harmful. There is no building line on the other side of the road opposite the appeal site and the construction of out buildings, close to the pavement and the solid fencing along much of its back, gives this part of the road a much higher sense of enclosure than exists to the south of the sub-station. Because of the hill, the appeal site is not visible from most of Montescute Road and in my view, in the context of its immediate surroundings, the two metre set back would not be out of character.
51. A skilful use of levels would locate the ground floor of the appeal building below ground at the southern end of the site. Together with the location of the four storey element of the building close to King Henry's Drive, where the nature of development is much more diverse, this would remove any harmful impact from the built development on that part of Montescute Road whose character is influenced by a dominant building line. The successful establishment of the proposed landscaping, using shade tolerant plants, would screen much of the retail element of the building from Montescute Road, whilst the proposed new street tree planting would reintroduce some of the sylvan character originally intended by the Garden Village Movement but now lost.
52. Whilst the retail element does not actively address Montescute Road, this has never been a feature of development on this site. The fronting of flats, with a domestic scale achieved through their vertical rhythm and articulated facades at the higher levels, would be a notable improvement. I therefore consider that the appeal proposal would reinforce and respect the existing development pattern as required by CP Policy UD2.
53. Pedestrian and vehicular accesses are provided from Montescute Road to the residential accommodation but ground levels and operational requirements prevent access to the store from this side. The scheme includes a pedestrian link from Montescute Road to the front of the store and there is also access from King Henry's Drive. The main approach is from the west and along with the position of the store's entrance, is a response to the location of the tram stop to the south-west. In the context of the site's opportunities and constraints I consider the proposed pedestrian circulation to be a proper outcome.
54. The council have concerns about security in an area with a high incidence of vandalism. However, the flats and their parking are located behind gated accesses so that there is an obvious distinction between the public and private space and there is overlooking of the public realm in three directions from the flats and to a lesser extent of their private amenity space and car parking. Additionally the Appellant has offered to install CCTV cameras as a further deterrent. Their use, along with appropriate lighting on the pedestrian link along the southern boundary of the site would do much to encourage a sense of security at times when the store is closed and there is little activity in the car park.

55. London Plan Policies 3A.5 and 4b1, require new development to maximise the development potential of a site. In my opinion the appeal proposal achieves this, whilst at the same time achieving a high quality development that is inclusive and sustainable in design. I therefore conclude that the proposal is in accordance with CP Policy UD1 and would enhance the character and appearance of the area.

*Other matters*

56. Given the low frequency of deliveries to this site and their likely occurrence at off peak times, the suggested conflict between delivery vehicles and pedestrians seems to me to be more apparent than real.

57. Although there is no indication as to the advertising that is likely to come forward, that which requires consent can be adequately scrutinised by the Council and rejected if it would adversely impact upon the open character of Parkway, as can the scheme of lighting, which is to be the subject of a condition.

58. In the absence of any policy guidance, I consider the amenity space proposed for the private use of the flats to be appropriate in the circumstances.

**Conditions**

59. The Council's fourteen suggested conditions were discussed in detail at the Inquiry. To enable the development to meet development plan policies that seek to enhance the area's character and appearance, maintain the local hierarchy of retail centres and protect the living conditions at residential properties, they include the nature and range of products to be sold, delivery and opening hours, on-site renewable energy production, landscaping, external materials and plant, contamination and site security.

60. I have considered the need for these conditions in the light of the guidance contained in Circular 11/95: *The Use of Conditions in Planning Permissions*. It was agreed at the Inquiry that the four draft conditions that sought to control the nature and range of products to be sold would be difficult to effectively enforce and that it would be appropriate to include them in a Section 106 Agreement. The hour's restriction conditions are appropriate to protect the living conditions of the future occupants of the flats, but their timings should be synchronised. Being adjacent to a petrol filling station there is a risk that the adjacent part of the appeal site could be contaminated. The standard time limit for commencement should also be included.

**Conclusion**

61. Whilst the estimated convenience turnovers of the Tesco and Lidl stores do not match estimated available capacity, they are not significantly adrift. Given that retail assessments are not an exact science, this should not, on its own, be a reason to justify a refusal. There is a strong qualitative need for a LAD store in New Addington, to address the limited consumer choice that would continue to exist in this deprived area, even after the arrival of Tesco. The site is highly accessible by a choice of means of transport and a Lidl store in this locality would provide opportunities for linked trips to the nearby New Addington District Centre. The development would also contribute to a reduction in the

distance local people need to travel for convenience shopping purposes, resulting in a positive impact on car use, traffic and congestion.

62. I therefore conclude that although a quantitative need for the development has not been demonstrated, there is a qualitative need for additional convenience goods shopping to provide price competition and consumer choice in New Addington and the proposal would have sustainability benefits. In my view, these outweigh the conflict with criterion (i) of CP Policy SH2 and PPS6. Having regard to the guidance in PPS6, there are no sequentially preferable suitable, available or viable sites and the proposal would not have an unacceptable impact on the vitality and viability of New Addington District Centre or any other centres.
63. Furthermore I do not consider the proposal would have an adverse impact on the character and appearance of the area. In the light of these conclusions, on balance and given the likely benefits that would flow from the proposed development, I conclude that the proposal would not conflict with the objectives of national and local planning policies concerning the location of retail development or its design and layout.

### **Decision**

64. I allow the appeal, and grant planning permission for the erection of a Lidl foodstore, 19 residential units with car parking and associated works on Land at 1 Parkway, New Addington, Croydon, London in accordance with the terms of the application, Ref 07/00918/P, dated 5 March 2007, and the plans submitted with it, subject to the following conditions: .
- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The retail use hereby permitted shall not be open to customers, nor shall deliveries be made to the retail store outside the hours of 07:00 to 20:00 Monday to Saturday or 10:00 to 17:00 on Sundays, bank or public holidays, unless otherwise first agreed in writing with the Local Planning Authority.
  - 3) Prior to the commencement of development, details of renewable energy production equipment to provide at least 10% of the predicted energy requirements of the development shall be submitted to and approved in writing by the Local Planning Authority. The renewable energy production equipment must be provided on site and be operational prior to the occupation of the retail store, and unless otherwise agreed in writing by the Local Planning Authority maintained thereafter.
  - 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building, refuse and cycle stores, hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
  - 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include the following:-

- a) finished floor levels of the building together with levels of the hard and soft landscape within the site in relation to its surroundings
  - b) any means of enclosure around or within the site
  - c) car parking layout
  - d) vehicle and pedestrian access and circulation areas
  - e) hard surfacing materials
  - f) soft landscape (to include a schedule of plant species, plant sizes and proposed numbers/densities and an implementation programme)
  - g) any public art features
  - h) any external lighting
  - i) the siting of any signs and
  - j) the extent of sight lines and visibility splays.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or within such longer period or periods as the Local Planning Authority may previously agree in writing. All soft landscaping shall be maintained for a period of five years from the date of planting; any planting which dies or is severely damaged or becomes seriously diseased or is removed within that period shall be replaced by planting of a similar size and species to that originally provided.
- 7) Development shall not begin until a scheme to deal with possible contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an investigation and assessment to identify the extent of any contamination and the measures to be taken to avoid risk to the public and residents when the site is developed. Development shall not commence until the measures approved in the scheme have been implemented.
- 8) Prior to the commencement of the development, details of all external plant, machinery, mechanical ventilation, equipment and ducting, shall be submitted to, and approved in writing by the Local Planning Authority. No other plant, machinery, mechanical ventilation equipment, flues or ducting shall be placed outside of the building without the written permission of the Local Planning Authority.
- 9) Prior to the development being brought into use, details of the exterior system of CCTV shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall be implemented in accordance with the approved details prior to the first use of any part of the development and retained thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 10) No development shall take place until full details of the extent and form of the shopfront fenestration has been submitted to and approved in writing by the Local Planning Authority. Such details shall include the extent to which any

glazing would be obscured by shopfront fittings, advertisements and the like, and areas which would allow interaction between the inside and outside of the building. The approved details shall be implemented as agreed prior to the first opening of the retail use and maintained as such thereafter, unless otherwise agreed in writing by the Local Planning Authority.

*Mel Middleton*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams of Counsel	Instructed by London Borough of Croydon, Taberner House, Park Lane, Croydon, CR9 1JT
He called	
Warren J Pierson BA, PG Dip, MRTPI	London Borough of Croydon, Taberner House, Park Lane, Croydon, CR9 1JT
Brian Woods BA, MRTPI	W.S. Planning, 15 Bell Street, Reigate, Surrey, RH2 7AD

### FOR THE APPELLANT:

Michael Druce of Counsel	Instructed by RPS Planning, Cottons Centre, Cottons Lane, London SE1 2QG
He called	
Elizabeth Simes BA, Dip LA, Dip UD, MLI	Fabrik Ltd, 38a High Street, Alton, Hampshire, GU34 1BD
Colin J Pullan BA, Dip UD	RPS Planning, Cottons Centre, Cottons Lane, London SE1 2QG
Michael R Knowles, BSc, Dip TE, MICE, MIHT	RPS Transport, 3 London Road, Newbury, RG14 1JL
Jonathan Watkins	Lidl UK GmbH, Worples Road, Wimbledon, London SW19 4JS
Geoff R Bullock BA, MRTPI	RPS Planning, Cottons Centre, Cottons Lane, London SE1 2QG

### INTERESTED PERSONS:

Keith Harries	9 Salcot Crescent, New Addington, Croydon, CR0 0LS
Alan C Capel	94 Montacute Road, New Addington, Croydon, CR0 0JE
M Fuller	63 Overbury Crescent, New Addington, Croydon, CR0 0LS

### ADDITIONAL DOCUMENTS PRESENTED TO THE INQUIRY

- 1 Attendance Lists
- 2 Council's letter giving notice of the Inquiry
- 3 5 letters in response to the notice
- 4 Relevant drawings for the purposes of the Inquiry, submitted by the Appellant
- 5 Rebuttal to the Proof of Evidence of Mrs S Francis-Mullins
- 6 Rebuttal to the Proof of Evidence of Mr W J Pierson
- 7 Supplementary Proof of Evidence of Brian Woods
- 8 Appendices for the Supplementary Proof of Evidence of Brian Woods
- 9 Supplementary Proof of Evidence of Geoff Bullock
- 10 Appendices to the Supplementary Proof of Evidence of Geoff Bullock, (including Unilateral Undertaking concerning matters that relate to the proposed store)
- 11 Statement on the Saved Development Plan Provisions for the London Plan, submitted by the Appellant
- 12 Development of New Addington: - Pre-War Development, submitted by the Council
- 13 Plan showing development in the vicinity of the appeal site in 1942 supplied by

- the Council
- 14 Aerial photograph of pre war development in New Addington, supplied by the Council
- 15 Plan showing datum levels along Montacute Road in the vicinity of the appeal site, submitted by the Appellant
- 16 Extract from Urban Design Compendium, submitted by the Appellant
- 17 Extract from By Design: -Towards Better Practice, submitted by the Appellant
- 18 Letter from the Metropolitan Police to the Council (6 January 2008), expressing its concerns about surveillance at the appeal site, submitted by the Council
- 19 Crime Figures for Croydon and Fieldway and New Addington Wards 2005/6 and 2006/7 submitted by the Council
- 20 Guidelines for providing for Journeys on Foot, The Institution of Highways and Transportation 2000, submitted by the Appellant
- 21 Plan illustrating existing foodstore provision in the surrounding area, submitted by the Appellant
- 22 Locational details of Lidl store at 21-43 North Street Leatherhead, Surrey, submitted by the Appellant
- 23 Locational details of Lidl store at 309 Ruislip Road East, Greenford, London, submitted by the Appellant
- 24 Store Disposal Enquiries, Co-op and Iceland responses, submitted by the Appellant
- 25 Revised draft conditions, supplied by the Council
- 26 Amended conditions agreed by the Appellant and the Council
- 27 Deed of Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 and signed by the Appellant and Council, (Non store matters)

#### REVISED APPLICATION PLANS

- A 1/1250 Site plan
- B Ref 2892 PL 01 F, 1/200 Proposed site layout 1 of 2
- C Ref 2892 PL 02 J, 1/200 Proposed site layout 2 of 2
- D Ref 2892 PL 03 D, 1/200 Ground floor plan
- E Ref 2892 PL 04 G, 1/200 First floor plan
- F Ref 2892 PL 05 G, 1/200 Second floor plan
- G Ref 2892 PL 06 F, 1/200 Third floor plan
- H Ref 2892 PL 07 D, 1/200 Roof plan
- I Ref 2892 PL 08 G, 1/100 Proposed west and north elevations and section A-A
- J Ref 2892 PL 09 G, 1/100 Proposed east elevation and section B-B
- K Ref 2892 PL 010, 1/100 Proposed internal elevations
- L Ref 2892 PL 011 A, 1/200 Indicative site levels
- M Ref 06, 1/250 Swept path of delivery vehicle
- N Ref D1625.L.200 A, 1/250 Hard and soft general arrangement plan- ground floor
- O Ref D1625.L.201 A, 1/250 Hard and soft general arrangement plan- first floor

#### OTHER PLANS

- P Ref 2892 PL 08 G, 1/100 Proposed west and north elevations and section A-A, Comparison drawings
- Q Ref 2892 PL 09 G, 1/100 Proposed east elevation and section B-B, Comparison drawings



# Appeal Decisions

Public Inquiry held on 12-15 & 25 January 2010  
Site visits made on 15, 25 & 26 January 2010

by **Karen L Ridge LLB (Hons) MTPL**

**an Inspector appointed by the Secretary of State  
for Communities and Local Government**

The Planning Inspectorate  
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**Decision date:  
4 March 2010**

## **Appeal Ref: APP/V4630/A/09/2111779 (Appeal A-the LAD proposal) Broadwalk Retail Park, Bescot Crescent, Walsall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by ROM Capital Opportunities Fund Limited against Walsall Council.
- The application Ref. 08/1832/FL is dated 26 November 2008.
- The application sought planning permission for *a retail park (including diner and food retail units) with associated car parking, access road and works (including landscaping, a lake and demolition of nos. 135-157 Broadway West)* without complying with a condition attached to planning permission Ref. BC42920P, dated 13 January 1995.
- The condition in dispute is No. 5 (c) which states that:  
*There shall be no retail sales of food from the retail element, other than:-*
  - (i) *from a maximum gross floorspace of 1,858 square metres, in no more than 2 units;*
  - (ii) *food and drink from a restaurant, café, take-away or licensed establishment, and confectionary at point of sale.*
- The reason given for the condition is: *To control the nature of retailing on the site, and the impact of that retailing on the Borough and the appearance and functioning of the site if a garden centre is proposed.*

**Summary of decision: The appeal is allowed and planning permission is granted, subject to the conditions set out.**

## **Appeal Ref: APP/V4630/A/09/2111773 (Appeal B-the catalogue showroom)**

### **Broadwalk Retail Park, Bescot Crescent, Walsall**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by ROM Capital Opportunities Fund Limited against Walsall Council.
- The application Ref. 2008/1833/FL is dated 26 November 2008.
- The application sought planning permission for *a retail park (including diner and food retail units) with associated car parking, access road and works (including landscaping, a lake and demolition of nos. 135-157 Broadway West)* without complying with a condition attached to planning permission Ref. BC42920P, dated 13 January 1995.
- The condition in dispute is No. 5 which states that:
  - (a) *The retail floorspace of the site shall comprise no more than 12,132 square metres gross floorspace. No retail unit shall occupy less than 462 square metres of gross floorspace, provided that internal sub-divisions shall be permitted which do not create the external appearance of a unit in multiple occupation.*

- (b) *There shall be a maximum of 3700 square metres of the retail element occupied in units of less than 930 square metres.*
- (c) *There shall be no retail sales of food from the retail element, other than:-*
- (i) *from a maximum gross floorspace of 1,858 square metres, in no more than two units;*
  - (ii) *food and drink from a restaurant, café, take-away or licensed establishment, and confectionary at point of sale.*
- (d) *Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and other than as referred to in condition 5 (c), no goods shall be sold from the retail element, without the prior written approval of the local planning authority, except:-*
- DIY home and garden improvement products;*
  - hardware;*
  - furniture;*
  - soft furnishings;*
  - electrical goods;*
  - motor spares, accessories, and fuels;*
  - motor vehicles;*
  - floorcoverings;*
  - sports and leisure equipment;*
  - sports and leisure clothing;*
  - sports and leisure footwear;*
  - toys and children's wear;*
  - food and drink from a café, restaurant, take-away or licensed establishment.*

(e) *If any unit is proposed to include an external garden centre, no such facility shall be created until details have been submitted to and approved in writing by the local planning authority, and the approved details shall be implemented before the garden centre is brought into use. The approved details shall thereafter be retained.*

- *The reasons given for the condition are: To control:- the nature of the retailing on the site, and the impact of that retailing on the Borough and the appearance and functioning of the site if a garden centre is proposed.*

**Summary of decision: The appeal is allowed and planning permission is granted subject to the conditions set out.**

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### **Preliminary matters (both appeals)**

1. The appeal site in both cases comprises the Broadwalk Retail Park in Walsall. This is an out-of-centre retail park to the south of Walsall town centre, close to junction 9 of the M6 motorway. The planning history of the site is complex with a series of planning permissions granted and I shall refer to some of these later permissions further in my reasoning.
2. These appeals arise as the result of two separate planning applications to vary condition 5 on an existing planning permission<sup>1</sup> (the enabling permission). Condition 5 controls the amount and type of retailing from the retail park. Amongst other things, it limits the total amount of retail floorspace to 12,132m<sup>2</sup>, with a further limitation on the amount of food retail to a maximum gross floorspace of 1,858m<sup>2</sup>. The condition also limits the categories of goods which may be sold.

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<sup>1</sup> Reference BC42920P dated 13 January 1995.

3. Whilst the two appeals relate to the same retail park and both seek to vary the same condition, the applications seek distinct and separate variations to allow the inclusion of a limited assortment discount ('LAD') foodstore, in the case of appeal A, and a catalogue retailer ('the catalogue showroom'), in the case of appeal B, onto the retail park.
4. Both appeals are against non-determination of the applications and they were lodged on 1 September 2009. The Council's Development Control Committee considered both applications in October 2009. In relation to the LAD appeal (A), the Council resolved that, had it been able to, it would have refused to grant planning permission for the development for the following reasons<sup>2</sup>:
  - (i) *the application has not demonstrated that there is a quantitative need for the development as the submitted supporting retail assessment is not based on an appropriate catchment area or up to date assumptions on existing and committed floor space or expenditure growth rates. Nor has the appellant demonstrated any significant qualitative need.*
  - (ii) *The applicant has failed to demonstrate that there are no sequentially preferable sites or premises that could accommodate the development having regard to the requirement in PPS6 (paras 3.15 and 3.19) that applicants should demonstrate flexibility in relation to the proposed business model.*
  - (iii) *The applicant has not satisfied the local planning authority that the proposal would not lead to harmful impact on the vitality and viability of existing centres, including Walsall town centre, taking into account the broad range of impacts set out at paragraph 3.22 of PPS6, and the strategy for centres set out in the development plan.*
  - (iv) *The applicant has not demonstrated that the site is genuinely accessible by a choice of means of transport as required by paragraph 3.25 of PPS6.*
5. In relation to the catalogue showroom appeal (B), the Council resolved that, had it been able to, it would have refused to grant planning permission for the development for the following reasons<sup>3</sup>:
  - (i) *the application proposed to extend the range of goods that may be sold from an out-of-centre location. However, the applicant has failed to demonstrate that there are no sequentially preferable sites or premises that could accommodate the proposed range of goods and/or catalogue showroom format, having regard to the requirement in PPS6 (paras 3.15 and 3.19) that applicants should demonstrate flexibility in relation to the proposed business model.*
  - (ii) *The applicant has not satisfied the local planning authority that the proposal will not lead to harmful impact on the vitality and viability of existing centres, including Walsall town centre, taking into account the broad range of impacts set out at paragraph 3.22 of PPS6, and the strategy for centres set out in the development plan*
  - (iii) *The applicant has not demonstrated that the site is genuinely accessible by a choice of means of transport as required by paragraph 3.25 of PPS6.*
6. Between the submission of proofs of evidence and the opening of the Inquiry, new Government policy advice in the form of Planning Policy Statement 4-

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<sup>2</sup> Nick Hardy (LAD) poe 2.10 and appendix NH7.

<sup>3</sup> Nick Hardy (catalogue showroom) poe 2.10 and appendix NH7.

*Planning for Sustainable Economic Growth* (PPS 4) was published. This cancelled advice in other documents, including Planning Policy Statement 6-*Planning for Town Centres*. This new policy advice sets out important principles in assessing proposals for economic development which includes main town centre uses. It is a material consideration to which I must have regard in my determination of these appeals. During the course of the Inquiry each of the witnesses addressed the implications of PPS 4.

7. Following the publication of PPS4 the Council confirmed it would not pursue its first putative reason for refusal given that PPS4 removed the 'needs' test. It further confirmed that it accepted that there are no clear opportunities to accommodate the LAD store in either a town centre or an edge of centre location. Consequently it has not pursued the second putative reason for refusal.
8. I consider that the issues in relation to each case are generally separate and distinct and I therefore propose to examine each appeal in turn. In addition both parties agree that, in the event that either or both of the appeals is/are successful, one or two separate planning permissions should be issued in respect of each of the appeals. I shall proceed on this basis.

#### **Further preliminary matters Appeal A- The LAD proposal**

9. A Statement of Common Ground (SCG1) was submitted by the parties in relation to the LAD appeal. In addition I have also received an executed Unilateral Undertaking (the Undertaking), dated 20 January 2010, made pursuant to the provisions of section 106 of the Town and Country Planning Act 1990. This contains a commitment that the discount foodstore will only be operated by a 'Discounter'<sup>4</sup> in the event that planning permission is granted. I am satisfied that the Undertaking meets the policy tests in Circular 05/2005 and it is a material consideration to which I have had regard in reaching my decision.
10. There is a dispute between the parties surrounding the construction and effect of a particular condition on a planning permission which was granted after the enabling permission. This dispute is important in terms of the LAD appeal since it has implications for the description of development, the question of a fallback position and the manner in which the permission would have to be varied if the appeal were to be successful. For these reasons I propose to deal with it as a preliminary matter.

#### ***The interpretation of condition 17 on planning permission BC55142P***

11. Prior to the submission of the planning application leading to appeal A, discussions between the Council and the appellants resulted in the proposal being described as a variation of condition 5 (c) on the enabling permission which restricted food retail floorspace to a maximum of 1,858m<sup>2</sup>. The variation sought to increase the amount of food retail space to a new maximum of 1,941.75m<sup>2</sup>. The LAD store would have a floorspace of some 1,477m<sup>2</sup> and the increase is necessary due to the presence of an existing food retail outlet, the Farmfoods store, on the retail park taking up some 562m<sup>2</sup> of the allowance.

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<sup>4</sup> As defined within the Verdict Report 'European Retail: The Future of European Discounters 2008'.

12. A whole sequence of planning permissions, relating to applications to vary the enabling permission and for new operational development, have been granted since 1995. For the sake of brevity I shall only refer to the ones relevant to the dispute at hand. In 1997, by virtue of another planning application, condition 5(a) of the enabling permission was varied to increase the total permitted gross retail floorspace to 13,239m<sup>2</sup> but left the food retail limit untouched<sup>5</sup>. In 2000 a further planning permission<sup>6</sup> (which I shall refer to as the unit 10 permission) was granted. The application which led to the unit 10 permission was described as 'the erection of (562.5 sq metres) food retail unit, varying conditions 3 of BC48532P and 5(c) of BC42920P'. The parties are agreed that permission BC48532P was never implemented<sup>7</sup>.
13. The unit 10 permission permits operational development on the site whilst also varying condition 5(c) of the enabling permission. The parties dispute the effect of the unit 10 permission on two matters: firstly on the total permitted retail floorspace across the retail park and secondly on the total permitted food retail floorspace across the retail park. Condition 17 on the unit 10 permission reads as follows:
- 17. In relation to the new building proposed under this application:-*
- (i) notwithstanding the Town and Country Planning (Use Classes Order 1987), or succeeding orders, no goods shall be sold from the development, without the prior written approval of the Local Planning Authority, except:- DIY home and garden improvement products; hardware; furniture; soft furnishings; electrical goods; motor spares, accessories and fuels; motor vehicles; floorcoverings; sport and leisure equipment; sports and leisure clothing; sports and leisure footwear; toys and children's wear; animals, birds, insects, fish and reptiles; foodstuffs for the same; clothing accessories and other products relating to the care, well-being and maintenance and management thereof; food and drink from a café, restaurant, take away or licensed establishment and confectionary at point of sale.*
  - (ii) this permission also allows food sales in the retail park, including the new building proposed under this application to a maximum floorspace of 562.5 square metres. Condition 5 (c) of planning permission BC42920P is varied to that extent.*
14. The Council argue that condition 17(ii) varied condition 5(c) of the enabling permission such that the total food floorspace across the retail park was limited to 562.5m<sup>2</sup>. It further contends that the limit on the overall retail floorspace remained at 13,239m<sup>2</sup> in accordance with the earlier permission BC48542P. For various reasons the appellants argue that condition 17 relates solely to the new building and not to any other part of the retail park and therefore the total permitted food retail floorspace was increased by an additional 562.5m<sup>2</sup> and condition 5 (c) was amended to that extent. They further contend that the overall permitted retail floorspace was also increased by the additional 562.5m<sup>2</sup> and currently stands at some 13,801.5m<sup>2</sup>.
15. Whilst the proper construction of a planning permission is a matter of law for the courts, it is plain that I must come to a view on this matter in order to

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<sup>5</sup> Planning permission BC48542P dated 19 June 1997.

<sup>6</sup> Reference BC55142P, dated 3 March 2000.

<sup>7</sup> SoCG 1, paragraph 2.21.

make a determination for the reasons I set out earlier. Counsel on behalf of both main parties have helpfully set out in full their legal submissions<sup>8</sup> on this point and have provided copies of legal authorities<sup>9</sup> in relation to the construction of planning permissions.

16. Both parties agree on two points, firstly that the planning application and plans were incorporated within the permission and should be considered as part of it and secondly that the unit 10 permission should be read in conjunction with the enabling permission. I agree that the application and plans have been incorporated since the necessary reference to them is included within the operative paragraph.
17. I accept that, given the explicit references to the enabling permission both in the description of development and within condition 17, it may be sensible to read the unit 10 permission in conjunction with the enabling permission. However, I have reservations about this approach given that the unit 10 permission is a stand-alone permission and I do not consider that the enabling permission can be incorporated. The general rules in construing planning permissions have been established by the courts and were reiterated in the *Shepway*<sup>9</sup> case; where *'the permission..... is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself, including the conditions (if any) on it and the express reasons for those conditions'*<sup>10</sup>.
18. Insofar as the unit 10 planning application itself is concerned, it described the proposal as the *'erection of food retail unit (5000 sq ft) – varying condition 3 on BC48532P and condition 5(c) on BC42920P'*. This description of development was carried forward in essentially the same form on to the planning permission. The description records the nature of the operational development followed by a reference to the variations of two conditions on two different permissions.
19. Conditions 1 to 16 on the unit 10 permission relate to the new building, condition 17 purports to be a variation of the enabling permission and condition 18 purports to be a variation of permission BC48532P. Given that permission BC48532P was not implemented, I shall focus my efforts on the reference to a variation of the enabling permission and condition 17. At the end of the conditions are a set of numbered reasons relating to the "foregoing conditions". The reasons given for condition 17 are *'At the request of the applicant and in order to control the provision of retail outlets'*.
20. The appellants contend that the opening words to condition 17 limit the effect of the two sub-clauses to the new building only. I disagree with that contention, since it flies in the face of the express wording of sub-clause (ii) which clearly widens the effect to refer to 'food sales in the retail park' and specifies a maximum floorspace of 562.5m<sup>2</sup> and goes on to state that condition 5(c) of the enabling permission 'is varied to that extent'. I consider that any reasonable reader would interpret sub-clause (ii) as imposing a revised maximum on the amount of food retail floorspace permitted across the retail park.

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<sup>8</sup> Submitted documents 26 and 27.

<sup>9</sup> *Polhill Garden Centre Ltd v. Secretary of State for the Environment and Sevenoaks District Council* 1998 JPL 1070 and *R v. Ashford Borough Council, ex parte Shepway District Council* 1999 PLCR 12

<sup>10</sup> Page 19, paragraphs C-D.

21. The appellants point out that the Council's interpretation would require a second comma after the words *the new building proposed under this application* such that sub-clause (ii) reads ..... 'this permission also allows food sales in the retail park, including the new building proposed under this application, to a maximum floorspace of 562.5m<sup>2</sup>. However, I consider that sub-clause (ii) states "*this permission also allows food sales in the retail park*", it then goes on to clarify that this includes the new building and then specifies the maximum limit of 562.5m<sup>2</sup>. The use of the word 'maximum' clearly points to the proper construction of the sub-clause. This is confirmed by the reasons given for the condition and the reference to the need to control the provision of retail outlets (the use of the plural is significant). Whilst a second comma may have been desirable to aid the construction of sub-clause (ii), I nevertheless conclude that on a proper construction of condition 17 this is precisely what the sub-clause (ii) means.
22. The plans have also been incorporated into the permission and I note that the red line area on the plan accompanying the application only extended to the new building and the associated car parking around the building. However, I do not accept the appellants' contention that this means that the effect of the unit 10 permission did not extend to other units on the park. I have already set out that the unit 10 permission was for new operational development and for a variation of an existing permission. I consider that the red line area defines the application site in relation to new operational development. I further consider that the site in relation to an application to vary an existing permission has to be the original site as controlled by the enabling permission.
23. I further note that this contention appears at odds with the appellants' acceptance that the unit 10 permission has served to increase the overall permitted retail floorspace over the whole of the retail park site as controlled by the enabling permission. For all of the above reasons I do not consider that the red line plan is instructive in interpreting condition 17 and it does not change my view of the natural meaning of this condition. I have already expressed my reservations about interpreting condition 17 in light of the enabling permission. However, even if the condition were to be read in conjunction with the enabling permission there is nothing in it to change my views as to the proper construction of the condition.
24. Therefore whilst I consider that the condition could have been more elegantly drafted and that the grammar adopted leaves something to be desired, I consider that its meaning is sufficiently clear and unambiguous to enable me to conclude that the effect of the condition is in line with the Council's interpretation.
25. This leads me on to the second area of dispute, namely the effect of the unit 10 permission on the gross permitted retail floorspace in the retail park. It is established case law that a planning permission cannot substantially alter the development for which permission has been applied for. In this case the description of development clearly refers to a variation of condition 5 (c) of the enabling permission. This sub-clause of condition 5 only controlled the limit of food retail sales in the retail park. Condition 5(a) controlled the total permitted retail floorspace and established that at 12,132m<sup>2</sup>, as subsequently increased by a further permission. There was no application to vary 5(a) and I therefore

conclude that the unit 10 permission did not increase the total permitted retail floorspace across the retail park.

26. Given my findings on this matter, and as agreed with the main parties at the Inquiry, it is appropriate to amend the description of development in the LAD appeal to make explicit reference to a variation of condition 17 of permission BC55142P such that the proposal is more appropriately described as *'planning permission for a retail park (including diner and food retail units) with associated car parking, access road and works (including landscaping, a lake and demolition of nos. 135-157 Broadway West) without complying with condition 17 attached to planning permission Ref. BC55142P, dated 3 March 2000.* I shall proceed to determine the appeal on this basis. My conclusions on this matter also remove the consideration of a fallback position in terms of unused permitted food retail floorspace.

### **Main issues – LAD appeal A**

27. Having regard to the above, and to all that I have heard and read, I consider that the main issue in the LAD appeal is:-
- (i) The effect of varying the condition and increasing the amount of food retail floorspace, in terms of its impact, having regard to development plan policies, guidance in PPS 4 and Circular 11/95, and other material considerations.

### **Reasons**

28. Guidance at paragraphs 14 and 15 of Circular 11/95: *The Use of Conditions in Planning Permissions* provides that the original condition should only be retained if there are sound and clear-cut reasons for doing so. Paragraph 17 states that if the original condition is wider in scope than it needs to be, it should not be retained in that form. There must be a 'definite need' to retain the original condition and a condition which restricts changes which would normally be permitted within a use class needs particularly careful justification and will normally only be justified to prevent serious adverse effects (paragraph 87).
29. Circular 11/95 deals specifically with the circumstances in which retail conditions such as the one under consideration may be justified. Paragraph 107 states that *'retail parks can change their composition over time. If such a change would create a development that the planning authority would have refused on the grounds of impact on vitality and viability of an existing town centre, it may be sensible to consider the use of planning conditions to ensure that these developments do not subsequently change their character unacceptably'*. The question of whether the proposal would result in an unacceptable change in the character of the retail park appears to me to be at the heart of this case.

### **Development plan policies and PPS4**

30. The development plan for the area includes the West Midlands Regional Spatial Strategy (RSS), January 2008, and saved policies from the Walsall Unitary Development Plan (UDP), adopted in 2005. The proposal is for a variation to a town centre use in an out-of-centre location. RSS policy UR1A sets out Black

- Country regeneration priorities in terms of the four strategic centres and PA11 describes the network of town and city centres and provides that the 25 centres (including Walsall) will be the focus for major retail developments. Policy PA13 deals with out-of-centre retail development and provides that larger scale developments or extensions to existing developments are not envisaged during the plan period and that smaller proposals should be considered in light of development plans and government guidance.
31. Chapter 5 of the UDP contains a strategic policy statement aimed at sustaining and enhancing the vitality and viability of the town, district and local centres. Policy GP1 advocates a sustainable approach to the location of development setting out a priority order of town, district or local centre locations first, edge of centres second and thirdly other out-of-centre locations that have good accessibility by a choice of means of transport. Policy S1 confirms that town centre uses include retailing and S2 defines a hierarchy of centres and their respective functions. Policy S4 seeks to enhance town and district centres and safeguard the existing level of shopping whilst S5 sets out the Council's aspirations and approach to local centres.
32. UDP policy S7 sets out a number of tests for proposals for new out-of-centre and edge-of-centre developments or the expansion of existing facilities. To the extent that the first test in policy S7 is a needs test, this part of the policy is no longer compliant with PPS4. However the remaining tests are relevant and broadly in accordance with new national policy and therefore proper regard must be had to them. The proposal meets the test in part VIII of policy S7 which requires the proposal not to prejudice policies seeking to protect employment land. The substance of the remaining tests is contained within the new general impact and retail impact considerations and other tests set out in PPS4 which I shall come on to.
33. Therefore, whilst the policy impetus of directing new development to centres set out in the RSS and UDP predates the new PPS4, both documents remain broadly in line with the centres first principles enunciated in this new national guidance. The overarching objective of PPS4 is one of achieving sustainable economic growth by, amongst other things, delivering more sustainable patterns of development and by promoting the vitality and viability of town and other centres.
34. In terms of development management decisions policy EC10.2 of PPS4 sets out general impact considerations against which all planning applications for economic development must be assessed. Main town centre uses which are not in an existing centre and not in accordance with an up to date development plan will require a sequential assessment under policy EC14 and a retail impact assessment under policy EC16.1. Finally policy EC17 sets out the general approach as to the consideration of planning applications for main town centre uses in out-of-centre locations, contrary to development plan policies.

### ***General Impact considerations***

35. The starting point in policy EC10 is one of looking favourably upon planning applications which secure sustainable economic growth. Criteria (a) and (c) of policy EC10.2 seek to ascertain whether the proposal has been planned to limit carbon dioxide emissions and minimise vulnerability to climate change whilst

securing a high quality and inclusive design. Given that the proposal relates to a building which is already in existence I consider that these considerations are not highly relevant in the context of this appeal.

36. Accessibility issues: The second criterion in EC10.2(b) relates to the accessibility of the proposal and its effect on local traffic levels and congestion. The Council has already accepted that there would not be any detrimental impact on local traffic levels and congestion and, given the nature of the proposal, I see no reason to disagree. This satisfies the test in part VII of UDP policy S7.
37. The question of the accessibility of a development site by non-car modes is an overarching policy theme at national, regional and local levels. The test in part V of policy S7 requires out-of-centre proposals to offer genuine and realistic safe and easy access by public transport, walking and cycling. The Council asserts that the appeal site's poor accessibility is a reason 'in its own right' for refusing permission and points to an acceptance by one of the appellants' witnesses<sup>11</sup> that a finding that the site is not well served by alternative modes of transport other than the motor car would indicate that the site is not suitable for retail development and permission should be refused.
38. However, I do not accept such a narrow view. In this case accessibility considerations are somewhat complicated by virtue of the proposal being a variation to an existing permission. The units are already in existence and are capable of being used by customers (albeit for comparison goods shopping). The proposal is not for any additional retail floorspace but for an increase in food retail floorspace which, if allowed, would result in a corresponding reduction in the amount of comparison goods floorspace.
39. I note that the supporting text to policy S7 confirms that applications to vary conditions to broaden the range of goods or other activity should be considered against the relevant tests in part (a) which includes accessibility considerations. However, this is not strictly an application to broaden the range of goods given that food retail is already permitted on the site. Instead, I consider that the question of accessibility should not be viewed in isolation but as part of the whole range of impacts which need to be assessed under policy EC10.2 of PPS4 and included in the whole range of considerations under policy EC17.
40. In terms of the impact therefore it may be that the LAD proposal would generate fewer journeys by car or more journeys by car than the existing permitted use. This it seems to me would be the real impact in terms of accessibility considerations. In this regard I note the conclusions of the appellants' Transport Assessment which found that the occupation of an existing unit by a LAD retailer would not generate additional trips than if the retail park were fully occupied by the already permitted uses.
41. Be that as it may, it remains important to analyse the accessibility of the site by various transport modes in order to understand the potential impact of the proposal and its compliance or otherwise with development plan policies. In this regard UDP policies T11 and T12 set out various requirements. T11 requires direct, safe and attractive access for pedestrians, cyclist and

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<sup>11</sup> Ms Andrea Caplan.

wheelchair users from the building entrance to surrounding residential areas. There are no dedicated cycleways within the vicinity of the site but there are two footpaths through the green area to the residential area to the north. In addition there are footways along the highways linking into the residential areas. I note that the two footpaths are unlit and may not be attractive during hours of darkness but the footway along Bescot Crescent is on a busy road and not unlike many others in urban situations. I do not consider that pedestrians would be deterred from using it by the traffic passing along it. Whilst the development is not directly adjacent to housing, it is only a short distance away from a dense urban area which means that walking to the site is a real possibility for some residents.

42. There is no suggestion that disabled access to the units would not be available. The lack of wheelchair access to Bescot station some 700m from the units does not appear to me to be contrary to policy T11 since this policy is aimed directly at routes for pedestrians, cyclists and wheelchair users **from** their homes **to** the development and the text points to the policy being aimed at encouraging walking and cycling for short journeys. Longer journeys involving access by public transport are dealt with in policy T12 which sets out detailed criteria.
43. In terms of the LAD proposal a catchment area of 5 minutes drive-time is agreed between the main parties. I have been provided with an agreed plan of the catchment area, as well as detailed information regarding bus routes and bus stops within it. The standards in policy T12 are expressed in terms of bus service provision but make it clear that rail and metro services can also count towards the standards. There are three bus services from bus stops within 400m of the site which run at regular intervals and largely meet the frequency requirements in policy T12. They cover a large part of the catchment area to the north and west of the appeal site. A further limited service runs from a bus stop some 640m away to different parts of the catchment area to the north and north-west of the site. Whilst this is outside the 400m threshold set by policy T12(c) I consider that it would provide a possible, although less popular, option for bus travel to the site from other parts of the catchment area.
44. There is access to a rail service at the Bescot Stadium railway station and I have already noted that this would not be suitable for wheelchair users given the footbridge and walkway to the platforms. However, policy T12 makes it clear that rail services can supplement provision provided the station is not more than 800m to the building's entrance and it provides stops within the identified catchment at the required frequency. The station is located within the required parameters and I note that it is served by regular trains from Walsall as well as stations to the south with a service every 30minutes operating between Walsall and Wolverhampton. This would provide access to potential customers in areas outside the catchment area. However, it does not appear that there are other rail stops within the catchment area such that the rail service would provide a genuine alternative means of accessing the LAD proposal for residents within the catchment area.
45. It is clear that parts of the catchment area, including part of the area to the south of the M6, do not have easy access to public transport. However, given the coverage and frequency of bus services, I consider that a large proportion of the catchment area of the LAD is well served by means of transport other than the private motor car. Whilst the proposal is not fully in accordance with

- the requirements of policy T12, I do not consider it appropriate to apply those standards rigidly in the case of a variation to the terms controlling an existing facility.
46. I further note that criterion (b) of policy EC10 also requires the accessibility of the proposal to be assessed having regard to the car. In this regard it is notable that the appeal site is within one of the 11% most deprived areas in the country and that car ownership is low at just over 50%. Given the limited catchment area, the local road network and the dense residential areas within the catchment area, I consider that, for those households with a car, the site would be a short drive away and highly accessible. To this extent the proposal broadly meets the objectives in parts V and VI of policy S7.
47. Taking all of the above into account I conclude that the site performs well in terms of the accessibility of the proposal by a choice of means of transport. As such it falls within the third category of UDP policy GP1. In addition I am satisfied that the proposed variation would not have an unacceptable effect on local roads or traffic levels and would not result in significantly more traffic than would otherwise be generated by the permitted use.
48. Economic and physical regeneration: criterion (d) of policy EC10 of PPS4 requires regard to be had to the impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives. It is not disputed that the area surrounding the appeal site is amongst the most deprived areas on a number of the indices of multiple deprivation with the area being in the lowest 8% in terms of income levels. I consider that households on lower incomes are more responsive to price and are likely to benefit more than average households from accessibility to a LAD.
49. In assessing need at the plan making stage, PPS4 sets out that additional weight should be given to meeting qualitative deficiencies in deprived areas to enable genuine choice to meet the needs of the whole community<sup>12</sup>. The Secretary of State has recognised the complementary role of deep discount stores. I accept that the major food retailers have sought to respond to such retailers by the introduction of value ranges and that this may partially erode the price advantage of such stores. However, in Walsall the main supermarkets are in a significant majority and in the catchment area there is only one other LAD on the periphery of the area<sup>13</sup>.
50. I accept that it is likely that the main use of a LAD is for weekly bulk shopping and the Council contend that this is principally a car borne phenomenon. In particular I note the Council's assertion that large parts of the catchment area of the LAD are within short drive times of existing LADs in other areas. Whilst that may be so for those households with access to a car, the significant number of households without access to a car would have to find alternative means to do their weekly shopping. Taking these matters into account, I consider that a new LAD store in this location, close to a deprived area with limited financial means and lower car ownership, would aid competition and offer genuine customer choice to those households most in need. In this respect it would represent a positive benefit.

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<sup>12</sup> Policy EC1.4.

<sup>13</sup> As indicated on Council's submitted plan E and Mr Morley's map SM2b.

51. Given that the scheme is already built I do not consider there would be significant benefits in terms of physical regeneration. I note that four of the units are currently unoccupied and are somewhat neglected in appearance and I have seen references by existing tenants to a lack of investment in the retail park over recent years. Whilst the appellants argue that the proposal would result in the re-use of a building there is no evidence to persuade me that the building is redundant or that the units could not attract suitable tenants under the existing permission. The appellants contend that additional improvements which have already been granted permission could be required by any condition on a new permission but I consider that these limited improvements do not fall within the ambit of true physical regeneration.
52. The appellant also points to incidents of vandalism, anti-social behaviour and criminal activity. The security guard reports and letters from existing tenants refer to some criminal incidents during the daytime and some at night. There is nothing to suggest that occupation of the buildings would have any greater deterrent on criminal activity given that a number of the incidents appear to occur during the later evening and night-time hours when the stores would be likely to be closed and some of the incidents appear to have occurred within existing units which are trading.
53. Local employment: I recognise that this is a change to an existing permission which would not result in any additional retail floorspace. I accept the appellants' contention that the proposal would result in employment for around 20 people. However, I have not seen evidence to persuade me that the appeal proposal would result in employment over and above that which would be provided if the retail park operated at full capacity under the terms of the existing permission.
54. Whilst I accept that 20 new jobs in a deprived area is a significant benefit, I am not satisfied that that the letting of the vacant units under the existing permission is so unlikely that such jobs could not be created in any event. However, I do accept that the appeal proposal is a more certain prospect and more likely to lead to those jobs coming forward more quickly given that a tenant has been identified in the event of the appeal being successful. I therefore attach some limited weight to this benefit.

### ***Sequential Assessment***

55. Policy EC15 of PPS4 and part II of UDP policy S7 require appellants to demonstrate that there are no more centrally located sites, buildings or opportunities available to locate the development. The Council has accepted that there are no sequentially preferable sites than the appeal site and has withdrawn putative reason for refusal (ii). I accept that this is the position and shall not examine this matter any further.

### ***Impact Assessment***

56. Parts III and IV of policy S7 of the UDP requires proposals to demonstrate that they would not have an adverse economic impact on the vitality and viability of other centres. Policy EC16 of PPS4 requires an assessment of the impact of the proposal on centres. I have not seen any evidence to persuade me that the proposal would have any impact on existing, committed and planned investment in either the centres or the catchment area of the proposal

- (EC16.1a) or on allocated sites outside town centres (EC16.1c). I further note that the scale of the proposal is not a consideration given the out of centre location (EC16.1e).
57. Here the main issue between the parties is the extent to which the LAD would affect the vitality and viability of local centres. In principle, I consider that capacity considerations can be a useful indicator as to the likely vitality and viability of centres or at least of their likely vulnerability to increased competition. The impact will then depend on the nature of the proposal and its potential to divert trade away from the centres in question.
58. Any assessment must be based on the best evidence available. In this case the Black Country Centres Study (BCCS) represents the most up to date evidence as to the retail capacity across the Black Country. Evidence in the BCCS indicates that, at 2011, whilst there will be overcapacity in the town centre and out-of-centre, there will be a greater under-capacity in the district centres. This shortfall will be addressed by the permission granted in relation to a large Tesco superstore in the town centre which has a large catchment area and is anticipated to draw trade from across the Borough<sup>14</sup>. Table 8.4 in the BCCS takes into account existing and committed floorspace and points to a current underprovision of convenience floorspace across the Borough but an overprovision peaking in 2016 as committed development comes on stream and then falling in later years as demand rises.
59. The Council contends that the LAD store would represent a significant risk to four local centres, Pleck, Caldmore, Fullbrook and Palfrey, both in isolation and when considered with other planned and recent development. The best evidence as to the vitality of these centres is to be found in the Council's health check documents published in May 2009. All of the four centres are described as stable and have few vacant units and I consider that there is little evidence within the documents to suggest that the centres are vulnerable.
60. The four centres are within densely populated, and generally less affluent areas, largely surrounded by terraced housing. On my site visit I saw very few vacant units and whilst some of the shop frontages are old-fashioned and some in need of repair, the shops appear typical of many of the buildings in the area in which they are situated. Many of the shops, including the M&T supermarket in Caldmore, were well-stocked. At the time of my afternoon site visit, the main streets of the local centres were busy with people going about their daily business and the impression was generally one of vibrant communities.
61. Both the health check documents and my observations also provide a clear indication as to the function of the foodstores within these centres. Many of the stores are aimed at the ethnic communities in which they are located and their stock reflects this. In this regard I consider that many of the foodstores in the four local centres are likely to cater both for top-up shopping and also for specialised weekly shopping.
62. Whilst there is evidence of undertrading in some stores across the Borough, there is no direct evidence of undertrading in the convenience stores in the four local centres. Indeed the specialist foodstores within these centres do not have

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<sup>14</sup> A point reinforced in paragraph 8.69 of the BCCS which anticipates a significant redistribution of activity as a result of town centre commitments.

much competition from the main supermarkets in terms of the types of ethnic foodstuffs that they sell. It is noteworthy that in the Pleck centre health check the commentary records that the main threat is from the nearby Caldmore and Palfrey local centres, *'which also serve the Asian community'*. There is no mention of the competition from the large Morrisons store in close proximity to the centre.

63. Since the capacity for convenience goods in the area is fixed, it follows that a new LAD would inevitably draw some of its trade from other stores. In total there are some 8 supermarkets and large grocery stores in the four centres<sup>15</sup> with a large number of other smaller foodstores. Any impact on the local centres would be spread across these stores, although not necessarily evenly.
64. The impact of the LAD on these local centres would depend upon the extent to which it could attract shoppers away from these centres. LADs have a different business model to main grocery superstores. They are at a smaller scale with lower sales densities and with a more limited range beyond convenience goods. I accept that their primary aim is to provide bulk weekly shopping for those customers keen to realise savings. For this reason I consider it likely that the proposed store would divert weekly shoppers primarily from other LADs and supermarkets. Whilst it is also likely to attract some custom away from the local centres, I consider that the four local centres would be more resilient to trade draw than other centres without a strong ethnic make-up simply because they cater for specialised needs which the LAD would not meet.
65. In this regard I prefer the evidence of Mr Barnes as to the likely diversion of convenience goods shopping to the new LAD. He estimates that the main draw (25%) would be from the nearby Morrisons on the out-of-centre Fellows Park with 5% each from other LADs and other main superstores. He indicates that some 12.5% would be drawn from all other stores in assorted locations. The 'others' category would include not only foodstores in the local centres but also other convenience stores not specifically listed in Mr Barnes appendix 7. I agree that there would be some draw from these other sources and accept that a figure of up to £200,000 trade diversion from the local centres would be more realistic. This amount represents around one half of the trade draw from other sources.
66. There is no direct evidence as to average sales densities within the local centres and indeed, because of the specialist nature of many of the shops, I consider that a certain degree of caution needs to be exercised in using the same sales densities as those assumed for small shops operating in district centres. I am conscious that assessing levels of trade diversion is notoriously difficult. Given the specialised nature of many of the convenience stores in the four local centres and the numbers of stores across the centres, I do not consider that a diversion of sales of this magnitude would significantly affect the profitability of the vast majority of the stores or the vitality and viability of the local centres.
67. The BCCS concludes that there is no need for additional convenience goods floorspace in Walsall town centre above current commitments and that the

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<sup>15</sup> Appellant's main foodstores in the local centres of Plack, Caldmore, Fullbrook and Palfrey.

impact of further proposals should be carefully examined<sup>16</sup>. Whilst Mr Barnes accepted that up to 60% of the trade diversion to the new LAD would be from existing centres or edge of centre stores (not in the 4 local centres), the Council do not contend that this would have an adverse economic impact on the vitality and viability of the town centre or any other centres other than the 4 local centres named.

68. Taking all of the above into account, I conclude that, given the current health, size and function of the four local centres, the introduction of a LAD on the appeal site would not have a material economic impact on the vitality and viability of the local centres. There would therefore be no materially locally important impacts on centres (EC16.1f). In addition I have already concluded that it would aid competition with the main food superstores and would add to consumer choice in a deprived area (EC16.1b and d). In this regard the proposal would also satisfy the tests in parts III and IV of policy S7.

### **Overall conclusions**

69. I turn now to the overall balancing exercise contained within the tests in policy EC17. This application for a change to a main town centre use complies with the requirements of the sequential approach and I am satisfied that it would not be likely to lead to significant adverse impacts in terms of the considerations set out in EC10.2 and EC16.1 after taking into account the likely cumulative effect of recent permissions, completed developments and developments under construction. The test in policy EC17.1 is therefore met.
70. Moving on to policy EC17.2, regard must be had to all of the positive and negative impacts of the proposals which I have considered under EC10.2 and EC16.1 and other material considerations. I have concluded that the proposal would be located in an accessible location and would provide benefits insofar as it would aid competition and provide genuine consumer choice in a socially deprived area. I attach only limited weight to the prospect of jobs being delivered more quickly by the proposal.
71. I have concluded that there would be no harmful effect on the vitality and viability of nearby local centres either because of the proposed LAD. Even with other planned and recent developments, including the new town centre Tesco superstore, I consider that the combined effect of the appeal proposal and these commitments upon the local centres would be limited. This is primarily because of the nature and function of the local centres and the limited ability of the LAD and indeed other supermarkets to entice trade away. As such the proposal is also in conformity with development plan policies designed to protect such centres and passes the test in EC17.1(b).
72. For all of the above reasons I conclude that the effect of varying the condition as requested would be acceptable in terms of its impacts. I shall allow the appeal and grant planning permission in terms of the variation requested. My formal decision is at the end of this letter.

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<sup>16</sup> BCCS paragraph....

## Conditions

73. The parties submitted a schedule of suggested conditions at the Inquiry which was largely agreed. I have considered the conditions in light of the advice within Circular 11/95: *The Use of Conditions in Planning Permissions*. Since my determination will result in the grant of a new planning permission it is necessary to re-impose some of the original conditions from the enabling permission to the extent that they are still relevant and necessary to control the development.
74. I shall impose the usual time limit for commencement of development. I have already set out above my interpretation of the unit 10 permission and its effect. I shall re-impose condition 5 of the enabling permission but with an amended figure in relation to the total permitted retail sales and for the reasons set out earlier I consider this to be 13,239m<sup>2</sup>. I shall further amend condition 5 to allow food sales from a maximum floorspace of 1,942m<sup>2</sup> varying condition 17 of the Unit 10 permission<sup>17</sup> and shall impose a further condition preventing use of the food retail units as a pharmacy or post office given that these are uses more appropriate to centres.
75. Other conditions carried forward from the enabling permission include conditions controlling noise, outside storage, servicing of motor vehicle, floodlighting, service yard parking, oil storage, foul and surface water discharge and drainage and trade effluent. They are all necessary and relevant and I shall re-impose them.
76. I have already expressed my concerns to the parties regarding the precision and enforceability of condition 20 of the enabling permission. The condition requires 'suitable action' on market days to prevent vehicles parking on the access roadway into the site from Bescot Crescent. The reason behind the condition is to facilitate the free flow of traffic on market days and to ensure highway safety. Both parties accepted that the condition as drafted is imprecise and unenforceable and agreed that a new condition requiring a scheme to be submitted prior to the further occupation of the additional food retail floorspace hereby permitted.
77. The parties have put forward a condition requiring works subject to a previous planning permission shall be implemented. However I have not given much weight to this in my decision and I do not consider such works to be necessary.

## APPEAL B-THE CATALOGUE SHOWROOM

### **Further preliminary matters Appeal B- The catalogue store proposal**

78. The planning application which led to this appeal sought a variation to condition 5 of the enabling permission insofar as it restricted the nature of goods sold from the retail park. The appellants wish to vary the condition by the addition of another sub-clause to enable a catalogue showroom retailer to operate from the site. The sub-clause proposed is as follows:

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<sup>17</sup> Whilst the suggested conditions refer to 1,941.75m<sup>2</sup> both parties agreed that it was better to round this figure up to the nearest whole number and I agree.

*(f) Notwithstanding paragraph d) above, a single unit of no more than 1,855m<sup>2</sup> gross shall be authorised to be occupied by a catalogue showroom retailer with at least 60% of the floorspace devoted to storage with no public access or display of goods for sale.*

79. A Statement of Common Ground (SoCG2) was submitted by the parties in relation to the catalogue appeal.

### **Main issue**

80. Having regard to the above and to all that I have heard and read I consider that the main issue in the catalogue appeal is:-

- (ii) The effect of varying the condition, so as to enable a catalogue showroom, having regard to development plan policies, guidance in PPS4 and Circular 11/95.

### **Reasons**

81. I have set out the general approach relating to the variation of a condition in paragraphs 28 and 29 above and those considerations apply equally to this appeal. Also, consideration of the same development plan policies and national guidance in PPS4, which I have set out in paragraphs 30 to 34 above, apply equally to this appeal proposal. I shall therefore move straight on to a consideration of the impacts as required by development plan and national policy.

### **General impact considerations**

82. The appeal proposal concerns the use of no more than 1,855m<sup>2</sup> of floorspace by a catalogue retail operator with at least 60% of the floorspace devoted to storage with no public access. Both parties are agreed that the reference to a catalogue showroom retailer could only be Argos since they operate as a unique retail model in the UK retail sector. There is already an existing Argos store in Walsall town centre. In terms of the general impact considerations set out in policy EC10.2 of PPS4, I have already confirmed that I do not consider criteria (a) and (c) to be particularly relevant to these proposals given that they relate to a building which is already in existence.

83. Accessibility issues: in terms of the considerations at criterion (b) of EC10.2 I note that the proposal would not have any detrimental impact on the local highway network, nor would it materially increase traffic levels over and above those likely under the existing terms of the enabling permission. Again this would satisfy the test in part VII of policy S7 of the UDP. I have set out above what I consider to be the most appropriate approach to accessibility considerations in these appeals as well as factual information regarding the bus services and train services which serve the appeal site.

84. In terms of the Argos proposal I note that there would be a wider catchment area given the nature of the enterprise and I further note that the appellant accepts that the proposal would essentially be car served. Be that as it may, the tests in EC10.2 and policy S7 require an examination of the options of travel to the appeal site by means of transport other than the private car. As such my conclusions on this issue are largely the same as those in appeal A, save that given the larger catchment area, there will be more options in terms

- of travelling to the site by train given that there are train stops further afield which could be utilised to travel to the Bescot Stadium station and then onto the appeal site.
85. Policy EC10.2(b) also requires consideration to be given to the accessibility of the proposal by the car. Given the wider catchment area and the location of the site close to a dense urban area with good road connections and in close proximity to the M6 motorway, I conclude that the site would be highly accessible by car. As such it would be likely to attract car-borne trade from a wider area.
86. I have previously concluded that the site does not meet all of the strict requirements in policy T12 and that in these cases I do not consider it appropriate to apply those standards rigidly. For all of the above reasons I conclude that the site performs well in terms of the accessibility of the proposal by a choice of means of transport. As such it meets the objectives set out in parts V and VI of policy S7 and it falls within the third category of UDP policy GP1. I recognise that the proposal would not have an unacceptable effect on the local highway network or traffic levels and the variation would not result in significantly more traffic than that which would be generated by the permitted use.
87. Economic and physical regeneration and local employment: these matters fall to be considered under criteria (d) and (e) of EC10.2. The building which would house the Argos store is already in existence and for the reasons I have set out previously I do not accept that the proposal would result in any material benefits in terms of physical regeneration or any significant deterrent for acts of vandalism and criminal behaviour. Unlike the LAD proposal there is no suggestion that it would aid competition and assist consumer choice in a deprived area.
88. The Argos proposal would also result in the creation of 40 new jobs<sup>18</sup> but I have already expressed the view that I am not satisfied that this level of new employment would not come forward if the units were fully occupied. There is no persuasive evidence to suggest that the units are redundant and unlikely to be occupied under the terms of the existing permission. As before I do however accept that there would be more certainty of the jobs being created more quickly in a deprived area and I attach some weight to this benefit.

### ***Sequential assessment***

89. Whilst it is generally accepted that some 90% of the turnover of the Argos Extra range could be sold from the retail park under the terms of the existing permission, the Council also accepts that, when looking for sequentially preferable sites, the business model of Argos Extra is such that it is not practicable to disaggregate specific parts of the enterprise. Part of the Argos strategy is to expand their representation by operating second stores in locations which give them access to a wider market. To this end I have been provided with information detailing such developments, typically with a second store in a retail park operating with an Argos store in a nearby town centre.

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<sup>18</sup> These would be in addition to those created by the LAD proposal.

90. Irrespective of the appellants' commercial strategy, the proposal must be assessed having regard to the sequential test in policy EC15 of PPS4 and part II of UDP policy S7. These policies require proposals to demonstrate that all in-centre options have been thoroughly assessed before less central sites are considered.
91. The appellants do not accept that a town centre location would be appropriate given the existing store but they agree that the ring of district centres could in principle be appropriate locations. Evidence from agents acting on behalf of Argos explains that the town centre store is trading to its maximum potential and is unable to serve the whole of the Walsall catchment area. They are looking to downsize the current store which has floorspace far in excess of the business model which operates across most of their stores. On visiting the town store there appeared to be a lot of floorspace which was underutilised and the store had the appearance of items being arranged in an attempt to fill the available space. I can see that downsizing the existing store would make commercial sense to the appellants in terms of divesting itself of underutilised floorspace and increasing sales densities. I accept that the appellants' stated intention in this regard is independent of the appeal proposal.
92. Given the assertions regarding the Walsall store's trading position I also accept that if a second store were to be opened it would not make sense to close the town centre store which is trading well. The proposal would not therefore be contrary to paragraph 5.7 of part 1 of chapter 5 to the UDP also seeks to resist proposals for the movement of existing retailing to out-of-centre locations. I further accept that a second store within the town centre would not be viable given that it would compete directly with the existing store and cater for the same market. I therefore rule out sites within the town centre, including the Shannon's Mill site.
93. The Council further contends that there are two other sites in sequentially preferable locations in the district centres of Aldridge and Bloxwich. In Aldridge they point to a vacant Magistrates Court building which is within the District Centre boundary but just outside the primary shopping area (PSA) as defined on the Proposals Map. The *Practice Guidance on Need, Impact and the Sequential Approach* accompanies PPS4 and it sets out definitions for 'in centre' and 'edge of centre' developments<sup>19</sup>. For retail purposes edge of centre locations are defined as locations which are well connected to and within easy walking distance (up to 300m) of the PSA.
94. Paragraph 6.6 of the guide provides more detailed guidance on the matters to take into account when determining whether a site falls within the definition of edge of centre. The Magistrates Building is located a short distance to the south of the primary shopping area, to the rear of the precinct where many of the shops are located. There is space for parking on site and a car park nearby. Whilst a covered walkway leads from the precinct to the service road which runs in front of the court building, I do not consider that the building has any significant functional linkage with the PSA given that it is very much at the back of the PSA with no main road frontage.

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<sup>19</sup> Paragraphs 6.4 and 6.5.

95. Whilst there is a Morrisons supermarket to the west of the building, this is accessed off the main road which runs around the district centre and visitors to this superstore would not pass by the court building. There was some suggestion that the building could be seen from the main road to Sutton Coldfield but this is at a distance, across The Croft. In my view an Argos Extra store within the court building would not be very visible within the District centre and would be somewhat divorced from the PSA. It would have a low profile, irrespective of the signage applied, and I do not consider that there would be a sufficient functional link in relation to the appeal proposal to render an Argos Extra store a viable proposition in this location. I conclude that this site would not be suitable or viable.
96. The Jewson's store in Bloxwich is within the district centre and is identified as a development opportunity on the Proposals Map. Whilst it is outside the PSA it is within a reasonable walking distance. Whilst the appellant has not made enquiries of the current occupants, I accept that the current business has continued to trade for some time following the site's allocation as a development opportunity. As such I consider it unlikely that the site will become available in the near to medium term. This site does have a main road frontage with a functional linkage to the shopping area, but whilst it might be a viable prospect it is not available and I discount it for this reason.
97. Taking all of the above matters into account I conclude that there are no sequentially preferable sites to the appeal site which are available, suitable and viable. I am satisfied that all options have been thoroughly assessed and the proposal is in conformity with the tests in EC15 and part II of policy S7.

### ***Impact assessment***

98. Policy EC16 of PPS4 and part II of policy S7 require assessments to be made as to the effect of the proposed Argos Extra store on the vitality and viability of other centres. This appeal relates to an attempt to extend the range of goods permitted to be sold under the enabling permission, albeit by a limited amount. As such I also accept that the proposal would not give rise to additional comparison goods floor space but would give rise to a potentially different impact.
99. The Council contends that the proposal would lead to downsizing of the existing store and vacant floorspace in the town centre primary shopping area. For reasons set out earlier I have indicated that I accept that the decision to downsize is independent of the appeal proposal and therefore this could happen at any time convenient to the appellants in terms of the arrangements under their lease.
100. I have also accepted that the appellants' desire to retain a town centre presence appears to be genuine and that a second store in the town centre is unlikely to be suitable or viable. For these reasons I conclude that if the appeal were to be allowed, it would not undermine the successful redevelopment of allocated sites in the town centre since it is unlikely that a catalogue showroom retailer, of which Argos is the only one in the UK, would require a second presence in the town centre. There would be no adverse impact under policy EC16.1(a).

101. The Council contends that the Argos store would lead to or contribute to a reduction in trade in the town centre store with trade being redirected to the new store since it would be a more attractive proposition because of the free parking it would provide. This would in turn reduce the opportunity for linked trips to other town centre stores with a consequent affect on those stores.
102. The appellants accept that a substantial part of the trade diversion to the new Argos Extra store would come from the existing store in Walsall town centre. They contend that the goods within the Argos store which are not currently under the terms of the enabling permission equate to some 10% of the total Argos offer or around £0.7 million in annual sales. I consider that the 90% of the Argos offer which is currently permitted comprises quite a wide range of categories of goods and any trade draw from other sources would be spread across a wide range of comparison goods shops.
103. Turning to the loss of trade at the town centre store and any loss of linked trips and spin-off trade. The BCCS records that Walsall town centre has experienced decline since 2004 and identified significant capacity in the comparison goods sector arising up to 2016 and beyond. However, it goes on to conclude that the new Tesco will benefit the centre. Other evidence contained within a report on the proposed relocation of Walsall market refers to a health check of the town centre which reports declining vitality and viability and points to a weakened town centre.
104. Argos would retain its town centre presence and a trade diversion of one third of this stores sales would still only equate to a small fraction of the total comparison goods sales in the town centre. Even taking account spending associated with linked trips I consider that the total impact on the vitality and viability of the town centre would be imperceptible and that there would be no locally important impacts on centres (EC16.1(b) and (f)). For thee reasons the proposal would also satisfy the tests in UDP policy S7 parts III and IV.
105. The question of the impact of the proposal on allocated sites outside town centres being developed in accordance with the development plan is not relevant to the appeal proposal (EC16.1(c)). Also the question of the scale of the proposal is not relevant given its location (EC16.1(e)).

### ***Overall conclusions***

106. I now move on to policy EC17 and the overall balancing exercise. I have concluded that this proposal has complied with the requirements of the sequential approach and I am satisfied that it would not lead to significant adverse impacts in terms of the impacts described in policies EC10.1 and 16.1. I therefore turn to the considerations set out in policy EC17.2.
107. I have concluded that the proposal would be in an accessible location and would provide some limited benefits in terms of the prospect of jobs being created more quickly in a deprived area. I have concluded that there would be no material negative impacts in terms of all of the other considerations under policies EC10.2 and 16.1. I remain conscious that this is an application to vary an existing condition by increasing the range of comparison goods. The comparison goods floorspace already exists in this location. I do not consider that the proposal together with recent and planned developments would have any materially harmful impact on comparison goods retailing in other centres.

The proposal is also in accordance with development plan policies designed to protect such centres from harmful impacts.

108. For all of the above reasons I conclude that the effect of varying the condition as requested would be acceptable in all respects. I shall allow the appeal and grant planning permission as requested.

### **Conditions**

109. The parties have submitted a schedule of conditions which are largely agreed and were discussed at the Inquiry. I have set out at paragraphs 74 to 77 above my approach to the re-imposition of conditions which remain relevant to the development and the same applies here. I shall vary condition 5 of the enabling permission by adding the clause requested. I have previously set out my views on the position of the current maximum limits on both total retail floorspace and food retail floorspace and I shall re-impose those limits. My interpretation of condition 17 of the unit 10 permission means that, in the context of this appeal, the maximum food retail floorspace remains at 562.5m<sup>2</sup> since the parties requested, and I agreed to, separate permissions in the event that both appeals were allowed. I have amended condition 20 of the enabling permission in the context of this appeal.

110. Finally the parties also requested a new condition requiring the removal of all of the mezzanine floors in the retail park before the catalogue retailer begins trading. I agree that such a condition is necessary and reasonable and I shall impose it.

### **Formal Decisions**

#### **Appeal reference: APP/V4630/A/09/2111779**

##### **Appeal A- the LAD appeal**

111. I allow the appeal and grant planning permission for a retail park (including diner and food retail units) with associated car parking, access road and works (including landscaping, a lake and demolition of nos. 135-157 Broadway West) at Broadwalk Retail Park, Bescot Crescent, Walsall in accordance with the application Ref. 08/1832/FL dated 26 November 2008 subject to the conditions set out in Annex A attached hereto.

#### **Appeal reference: APP/V4630/A/09/2111773**

##### **Appeal B- the catalogue showroom appeal**

112. I allow the appeal and grant planning permission for a retail park (including diner and food retail units) with associated car parking, access road and works (including landscaping, a lake and demolition of nos. 135-157 Broadway West) at Broadwalk Retail Park, Bescot Crescent, Walsall in accordance with the application Ref. 2008/1833/FL dated 26 November 2008 subject to the conditions set out in Annex B attached hereto.

*Karen L Ridge*

INSPECTOR

Annex A- Schedule of conditions attached to appeal permission reference  
APP/V4630/A/09/2111779

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) (a) The retail floorspace of the site shall comprise no more than 13,239 square metres gross floorspace. No retail unit shall occupy less than 462 square metres of gross floorspace, provided that internal sub-divisions shall be permitted which do not create the external appearance of a unit in multiple occupation.
  - (b) There shall be a maximum of 3,700 square metres of the retail element occupied in units of less than 930 square metres.
  - (c) There shall be no retail sales of food from the retail element, other than:-
    - (i) from a maximum gross floorspace of 1,942 square metres in no more than two units. Condition 17 of permission BC55142P is varied accordingly.
    - (ii) food and drink from a restaurant, café, takeaway or licensed establishment and confectionary at point of sale.
  - (d) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and other than as referred to in condition 2 (c), no goods shall be sold from the retail element, without the prior written approval of the local planning authority, except:-
    - DIY home and garden improvement products;
    - hardware;
    - furniture;
    - soft furnishings;
    - electrical goods;
    - motor spares, accessories, and fuels;
    - motor vehicles;
    - floorcoverings;
    - sports and leisure equipment;
    - sports and leisure clothing;
    - sports and leisure footwear;
    - toys and children's wear;
    - food and drink from a café, restaurant, take-away or licensed establishment.
  - (e) If any unit is proposed to include an external garden centre, no such facility shall be created until details have been submitted to and approved in writing by the local planning authority, and the approved details shall be implemented before the garden centre is brought into use. The approved details shall be retained thereafter.

- 3) At no time shall the food retail unit(s) be used, in whole or in part, as a pharmacy or post office.
- 4) (a) For the purpose of conducting sound measurements to assess compliance with this condition, instrumentation shall conform to BS6698 and BS5969 Type 2.  
(b) (i) Noise levels emitted from within any building (including external fixed plant and machinery) and as measured one metre from a façade of any building adjacent to the site boundary shall not exceed:-
  - (A) between the hours of 0700 and 1900, an  $L_{eq(1 \text{ hour})}$  of 55 dBA with an A weighted slow maximum of 60 dBA at any one time;
  - (B) between the hours of 1900 and 2300, an  $L_{eq(1 \text{ hour})}$  of 50 dBA with an A weighted slow maximum of 55 dBA at any one time;
  - (C) between the hours of 2300 and 0700, an  $L_{eq(1 \text{ hour})}$  of 45 dBA with an A weighted slow maximum of 50 dBA at any one time;Or such other levels or times as may be agreed in writing by the local planning authority, from time to time.
- 5) No amplification equipment shall be installed at any time in the premises until details of the equipment and any necessary soundproofing have been submitted to and approved in writing by the local planning authority, and the soundproofing works shall be carried out before the amplification is brought into use.
- 6) No materials, goods or refuse shall be stored or deposited in the open on any part of the site other than a refuse container as approved under condition 13 of planning permission BC42490P, and goods sold in a garden centre.
- 7) The servicing of motor vehicles shall be permitted in premises used primarily for the sale of motor spares and accessories.
- 8) No floodlighting or other external lighting shall be installed on the site until details have been submitted to and approved in writing by the local planning authority. The lights shall be installed and thereafter retained in accordance with the approved details.
- 9) There shall be no parking of cars or any other vehicles not delivering goods to, or collecting from, the retail units, in any of the service yards of the retail park.
- 10) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tank (or the largest tank, in the case of multiple tanks) plus 10%. All filling points, vents and sight glasses must be located within the bund floor or walls. There must be no drain through the bund walls or floor. BS799 Part 5 1987 refers to these matters.

- 11) There shall be no discharge of foul or contaminated surface water from the site into either the groundwater system or any surface water system. Foul water should be directed into the main sewerage system.
- 12) All surface water drainage shall be passed through an oil interceptor designed and constructed in accordance with BS8301:1985 and of a capacity compatible with the site being drained, prior to being discharged into any watercourse, surface water sewer or soakaway system. Roof water shall not be passed through the interceptor.
- 13) There shall be no discharge of trade effluent, sewerage effluent or contaminated drainage from the site into any ditch or watercourse.
- 14) Prior to the occupation of any food retail floorspace other than that already permitted in unit 10, a scheme for the control of parking on the site on Market days shall be implemented in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 15) At no time shall the food retail unit(s) be used, in whole or in part, as a pharmacy or post office.

Annex B- Schedule of conditions attached to appeal permission reference  
APP/V4630/A/09/2111773- The Catalogue Showroom Appeal

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2)
  - (a) The retail floorspace of the site shall comprise no more than 13,239 square metres gross floorspace. No retail unit shall occupy less than 462 square metres of gross floorspace, provided that internal sub-divisions shall be permitted which do not create the external appearance of a unit in multiple occupation.
  - (b) There shall be a maximum of 3,700 square metres of the retail element occupied in units of less than 930 square metres.
  - (c) There shall be no retail sales of food from the retail element, other than:-
    - (i) from a maximum gross floorspace of 562.5m<sup>2</sup> square metres in no more than two units.
    - (ii) food and drink from a restaurant, café, takeaway or licensed establishment and confectionary at point of sale.
  - (d) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and other than as referred to in condition 2 (c), no goods shall be sold from the retail element, without the prior written approval of the local planning authority, except:-
    - DIY home and garden improvement products;
    - hardware;
    - furniture;
    - soft furnishings;
    - electrical goods;
    - motor spares, accessories, and fuels;
    - motor vehicles;
    - floorcoverings;
    - sports and leisure equipment;
    - sports and leisure clothing;
    - sports and leisure footwear;
    - toys and children's wear;
    - food and drink from a café, restaurant, take-away or licensed establishment.
  - (e) If any unit is proposed to include an external garden centre, no such facility shall be created until details have been submitted to and approved in writing by the local planning authority, and the approved details shall be implemented before the garden centre is brought into use. The approved details shall be retained thereafter.
  - (f) Notwithstanding paragraph d) above, a single unit of no more than 1,855m<sup>2</sup> gross shall be authorised to be occupied by a catalogue showroom retailer with at least 60% of the floorspace devoted to storage with no public access or display of goods for sale.

- 3) At no time shall the food retail unit(s) be used, in whole or in part, as a pharmacy or post office.
- 4) (a) For the purpose of conducting sound measurements to assess compliance with this condition, instrumentation shall conform to BS6698 and BS5969 Type 2.  
(b) (i) Noise levels emitted from within any building (including external fixed plant and machinery) and as measured one metre from a façade of any building adjacent to the site boundary shall not exceed:-
  - (A) between the hours of 0700 and 1900, an  $L_{eq(1 \text{ hour})}$  of 55 dBA with an A weighted slow maximum of 60 dBA at any one time;
  - (B) between the hours of 1900 and 2300, an  $L_{eq(1 \text{ hour})}$  of 50 dBA with an A weighted slow maximum of 55 dBA at any one time;
  - (C) between the hours of 2300 and 0700, an  $L_{eq(1 \text{ hour})}$  of 45 dBA with an A weighted slow maximum of 50 dBA at any one time;or such other levels or times as may be agreed in writing by the local planning authority, from time to time.
- 5) No amplification equipment shall be installed at any time in the premises until details of the equipment and any necessary soundproofing have been submitted to and approved in writing by the local planning authority, and the soundproofing works shall be carried out before the amplification is brought into use.
- 6) No materials, goods or refuse shall be stored or deposited in the open on any part of the site other than a refuse container as approved under condition 13 of planning permission BC42490P, and goods sold in a garden centre.
- 7) The servicing of motor vehicles shall be permitted in premises used primarily for the sale of motor spares and accessories.
- 8) No floodlighting or other external lighting shall be installed on the site until details have been submitted to and approved in writing by the local planning authority. The lights shall be installed and thereafter retained in accordance with the approved details.
- 9) There shall be no parking of cars or any other vehicles not delivering goods to, or collecting from, the retail units, in any of the service yards of the retail park.
- 10) Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The size of the bunded compound shall be at least equivalent to the capacity of the tank (or the largest tank, in the case of multiple tanks) plus 10%. All filling points, vents and sight glasses must be located within the bund floor or walls. There must be no drain through the bund walls or floor. BS799 Part 5 1987 refers to these matters.
- 11) There shall be no discharge of foul or contaminated surface water from the site into either the groundwater system or any surface water system. Foul water should be directed into the main sewerage system.

- 12) All surface water drainage shall be passed through an oil interceptor designed and constructed in accordance with BS8301:1985 and of a capacity compatible with the site being drained, prior to being discharged into any watercourse, surface water sewer or soakaway system. Roof water shall not be passed through the interceptor.
- 13) There shall be no discharge of trade effluent, sewerage effluent or contaminated drainage from the site into any ditch or watercourse.
- 14) Prior to the occupation of the catalogue showroom hereby permitted, a scheme for the control of parking on the site on Market days shall be implemented in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 15) All of the existing mezzanine floors in the retail park shall be removed before the catalogue retailer hereby approved begins trading.



## DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Letter of notification and list of persons notified, submitted by the Council.
- 2 Opening submissions on behalf of the Local Planning Authority.
- 3 Proof of evidence (LAD appeal) of Andrea Caplan, submitted on behalf of the appellants.
- 4 Appendices to proof of evidence (LAD) appeal of Andrea Caplan, submitted on behalf of the appellants.
- 5 Summary proof of evidence (LAD) appeal of Andrea Caplan, submitted on behalf of the appellants.
- 6 Proof of evidence (CAT) appeal of Andrea Caplan, submitted on behalf of the appellants.
- 7 Appendices to proof of evidence (CAT) appeal of Andrea Caplan, submitted on behalf of the appellants.
- 8 Summary proof of evidence (CAT) appeal of Andrea Caplan, submitted on behalf of the appellants.
- 9 Price comparison list (Morrisons v Aldi), submitted by the Council.
- 10 Suggested conditions, submitted by the Council.
- 11 Appeal Decision, reference APP/C4615/A/09/2098891: Former Royal Brierley Crystal Site, Tipton Road, Dudley, submitted on behalf of the appellants.
- 12 Walsall Unitary Development Plan Proposals Map, submitted by the Council.
- 13 Walsall Unitary Development Plan Inset Maps, submitted by the Council.
- 14 Draft Unilateral Undertaking, submitted on behalf of the appellants.
- 15 Copy appendix 7 to MVA retail assessments: GOAD town centre report and plan for Walsall, submitted on behalf of the appellants.
- 16 Outline of legal submission on behalf of the appellants.
- 17 Rebuttal evidence of Nick Hardy, submitted on behalf of the Council.
- 18 Rebuttal evidence of Stuart Morley, submitted on behalf of the Council.
- 19 Copy of R. v Ashford Borough Council, ex parte Shepway District Council [1999] P.L.C.R 12, submitted on behalf of the appellants.
- 20 Copy of Polhill Garden Centre Ltd v. Secretary of State for the Environment and Sevenoaks District Council [1998] JPL 1070, submitted on behalf of the appellants.
- 21 List of main foodstores in the local centres of Pleck, Caldmore, Fullbrook and Palfrey, submitted on behalf of the appellants.
- 22 List of stores in local centres (Caldmore, Park Hall, Fullbrook, Palfrey and Pleck), submitted by the Council.
- 23 Copy planning permission and site plan BC42920P dated 13 January 1995, submitted by the Council.
- 24 Copy planning permission reference BC55142P dated 3 March 2000, submitted by the Council.
- 25 Copy planning application BC55142P dated 12 October 1999, submitted by the Council.
- 26 Copy planning permission BC55142P dated 3 March 2000 and site plan, submitted by the Council.
- 27 Bus timetable for bus routes 305 and 405, submitted on behalf of the appellants.
- 28 Legal submissions on behalf of the appellants.
- 29 Legal submissions on behalf of the Council.
- 30 Executed unilateral undertaking dated 20 January 2010, submitted on behalf of the appellants.

- 31 List of bus timetables for closest stop to the appeal site, submitted on behalf of the appellants.
- 32 Council's note on Bus Access, submitted by the Council.
- 33 List of suggested conditions and amended floor space figures submitted by Council and appellants.
- 34 Closing submissions on behalf of the Council.
- 35 Closing submissions on behalf of the appellants.

#### PLANS SUBMITTED DURING THE INQUIRY

- A Plan showing locations of Argos shops, submitted by the Council.
- B Plan showing routes of bus services 305, 405, 401E and 637, submitted by the Council.
- C Plan of Bus routes serving the Broadwalk Retail Park, submitted on behalf of the appellants.
- D Plan showing route from retail units to train station, submitted on behalf of the appellants.
- E Plan showing closest LADs to the appeal site, submitted on behalf of the appellants.
- F Car park and landscaping plan submitted on application 08/1834/FL, submitted on behalf of the appellants.
- G 400m Isochrone map for bus services, submitted on behalf of the appellants.
- H Scaled map of Bus routes and 5 minute drive time isochrone, submitted by the Council.

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## Appeal Decision

Hearing held on 5 November 2013

Site visit made on 5 November 2013

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 November 2013**

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**Appeal Ref: APP/H0520/A/13/2198872**

**Land south of Fern Court, Stukeley Road, Huntingdon, Cambridgeshire PE29 6HG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for part full and part outline planning permission.
  - The appeal is made by Lidl UK GmbH against Huntingdonshire District Council.
  - The application Ref 1200633OUT, is dated 6 June 2012.
  - The development proposed is a hybrid application comprising full planning permission for the demolition of existing buildings and erection of a Lidl foodstore with associated parking, servicing and construction of both access points; and outline application for the erection of 14 apartments (for social rent) which will be developed as Phase 2 of the construction works.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a hybrid application comprising full planning permission for the demolition of existing buildings and erection of a Lidl foodstore with associated parking, servicing and construction of both access points; and outline application for the erection of 14 apartments (for social rent) which will be developed as Phase 2 of the construction works on land south of Fern Court, Stukeley Road, Huntingdon, Cambridgeshire PE29 6HG in accordance with the terms of the application, Ref 1200633OUT, dated 6 June 2012, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The part of the application for the erection of 14 apartments was submitted in outline form with all matters of detail, except access, reserved for later consideration.
3. Following the submission of this appeal, the Council's Development Management Panel (DMP) resolved on 17 June 2013 that it would have refused planning permission for the following reason: *'The applicant has failed to provide an adequate and robust sequential assessment and as such has failed to demonstrate that the proposal could not be located within Huntingdon Town Centre. The scheme benefits do not add sufficient weight to outweigh this conflict. The development is therefore contrary to the National Planning Policy Framework, Core Strategy Policies CS1 and CS8, Policy S2 of the Local Plan and draft Policies LP1 and LP8 of the Draft Huntingdonshire Local Plan to 2036: Stage 3'.*

4. Following the close of the hearing, the appellant has submitted a certified copy of a Section 106 unilateral undertaking to secure the provision of affordable housing. It consists of 4 documents that are identical except for the signatures, which represent the different parties. An e-mail from the appellant's legal adviser, dated 4 November 2013, suggests that this does not affect the enforceability. I have been given no reason to doubt that the planning obligation in the submitted documents would be enforceable, particularly as the Council has confirmed that it is content with the wording. I am satisfied that it meets the tests in Community Infrastructure Levy Regulation 122, as it is necessary to make the development accord with that applied for. I have therefore taken account of the affordable housing provision in my determination of this appeal.

### **Main Issue**

5. The main issue is the effect of the proposal on the vitality and viability of Huntingdon Town Centre, with particular regard to the sequential test given in the National Planning Policy Framework (Framework).

### **Reasons**

6. The appeal site consists of a triangular shaped area of land that is about 0.77 hectares in size. It includes 3 bungalows, 2 semi-detached houses, a single storey retail unit, which I understand was used by a florist, and a garage. The appellant has suggested that parts of the site were formerly occupied by a nursery. It fronts onto the B1044 Stukeley Road, which is one of the main routes from the north west into Huntingdon Town Centre.
7. The appeal proposal would include a Lidl foodstore together with 78 car parking spaces and residential development consisting of 14 units that would be for affordable housing, to be secured by a S106 unilateral undertaking. The proposed foodstore and associated car parking would be designed to meet the requirements of the Lidl business model.
8. The Council has referred to policies in its Draft Huntingdonshire Local Plan to 2036: Stage 3. However, this document is at a relatively early stage in its progress towards adoption. As such, I have attached limited weight to these emerging policies but I have used the Town Centre Designations Map in Appendix C to provide an indication of the Primary Shopping Area (PSA), as the Council has suggested at the hearing that there is no adopted map that shows this area. The appellant has not contested the use of this map to define the PSA.
9. The Framework, in paragraph 24, requires new development that is a main town centre use to be located in town centres, then edge of centre locations and, only if suitable sites are not available, out of centre sites should be considered. This is to ensure the vitality of town centres. Paragraph 27 of the Framework states that, if this sequential test is not satisfied, an application for a development for a town centre use should be refused. The sequential test is further explained in Part 6 of the government's *Practice Guidance on Need, Impact and The Sequential Approach* (Practice Guide).
10. The appellant has not disputed that the Lidl foodstore would represent a main town centre use and that the appeal site would not be at a town centre or edge of centre location. At the hearing, the Council indicated that it would consider

it to be acceptable for Lidl to move onto the site, subject to the required bus provision, if no suitable town centre or edge of centre sites would be available. The report to the Council's DMP indicates that the Council considers the existing Waitrose Store at St Benedict's Court to be a suitable town centre site and that, in making its decision that it would have refused planning permission, it has not considered any other sites as being suitable and available.

11. The Practice Guide requires those promoting development to demonstrate why other sequentially preferable sites are not appropriate in terms of their availability, suitability and viability. The appellant has argued that the existing Waitrose site is not appropriate in terms of its availability and suitability for the proposed Lidl foodstore.
12. In looking at the availability, I have noted that Waitrose are currently operating its foodstore at the St Benedict's Court site. The Council has suggested in its DMP report that Waitrose are one of the intended occupiers of the Chequers Court redevelopment. This redevelopment has been granted planning permission and demolition has commenced on the site. However, I understand that its construction is dependent upon the completion of a multi-storey car park which would enable part of the existing ground level car park to be used for the redevelopment. The Council has indicated that this redevelopment is sequentially dependent upon Sainsburys vacating its existing store, allowing it to be sub-divided under planning permission granted in April 2012, and moving to a new development to the west of the existing site, for which planning permission has been granted in May 2013.
13. The Council has informed me that Manormaker are the owners of the Chequers Court development and Churchmanor Estates are a joint venture partner of this company, and they have provided an indication of the expected timescales for this redevelopment. This anticipates the development to be available in Spring 2015. I have been provided with very little substantive evidence, such as a programme, to support this date. Taking account of the significant number of pre-commencement planning conditions that still need to be discharged and the possible linkages with other new development, I find that there is a high degree of uncertainty about the date of availability of the Chequers Court development.
14. Whilst the existing Waitrose store could be vacated within the next 3 years, there is very limited evidence to show that this would be the case, particularly as there is nothing before me from Waitrose to confirm that they are intending to relocate to the Chequers Court development. The Council has referred to paragraph 6.39 of the Practice Guide to support its stance that a 3 to 5 year period to assess availability would be appropriate. However, the Practice Guide also suggests that this will depend upon local circumstances, and paragraph 6.37 of the document defines availability as being whether the sites are available now or are likely to become available for development within a reasonable period of time. It further suggests that this should be determined, having regard to the urgency of the need.
15. With respect to the urgency of the need, the Lidl foodstore would be what is described as a 'Limited Assortment Discount' (LAD) foodstore, and planning conditions would ensure that its use would meet this definition. The Council has not contested the appellant's claim that the need for an LAD foodstore in Huntingdon has been identified for about 8 years, including in the retail reports

and studies by Roger Tym & Partners in March 2010 and Deloitte in 2013. As such, I find that an urgent need for such a foodstore has been demonstrated. Therefore, it is unreasonable to delay the provision of the Lidl foodstore in Huntingdon for what could be an uncertain period of time to wait for the Waitrose store to become available. In his respect, I do not consider the Waitrose store to be available for the appeal development.

16. I have considered the representations received on 18 July 2013 on behalf of Manormaker and Churchmanor Estates which suggest that, in the event that Waitrose do not relocate, the Chequers Court scheme would itself represent a sequentially preferable site to the appeal site. This indicates to me further uncertainty about the availability of the Waitrose site. All the previous reports and correspondence have suggested that the Chequers Court development has been designed with Waitrose as the main occupier, and the appellant has indicated at the hearing that its enquiries about this development have not been answered. Also, the Council confirmed at the hearing that, if Waitrose did occupy part of the Chequers Court redevelopment, Lidl would not be able to be accommodated in that development. Therefore, I have not taken this site as being available for the appeal development.
17. Turning to the suitability of the existing Waitrose store for use as a LAD foodstore, Lidl has referred to its requirements in its business model. It has suggested that it is critical to its working arrangement that the store is rectangular with wide enough aisles to be able to control the sales floor, move palettes and keep costs to a minimum. Also, it has indicated that it is not able to function without surface level car parking. It has supported this by reference to its approximately 600 stores, most of which it has suggested conform to its business model requirements. It has indicated that those stores that do not conform do not operate efficiently and the majority are in the process of being extended or replaced with larger stores.
18. The Council has referred to examples of Lidl stores that it considers do not conform to the stated requirements of the business mode. However, I have been given very limited details of these stores to make any direct comparisons with the Waitrose store. The appellant has explained that the Waitrose store does not provide the required surface level car parking or allow a rectangular shaped store of a suitable size and has columns that are too close together to enable the required aisle widths to satisfy the Lidl business model. At my site inspection I observed that it has 2 lifts to roof top car parking, but these are a limited size, and that there are a significant number of columns within the store that would restrict its layout.
19. In this respect, I have noted that the Practice Guide expects an operator to be flexible about its chosen business model. However, in the absence of sufficient expert evidence to demonstrate that the requirements of Lidl's business model are not essential to ensure that its stores are viable, I find that the Waitrose store would be unsuitable for use by Lidl as a LAD foodstore, particularly as there appears to me to be limited scope or space to make significant changes to the layout or size of the building.
20. With regard to the relative location of the appeal site, I noticed that it is about a 10 minute walk from the edge of the Huntingdon Town Centre PSA. Whilst it is separated from the PSA by the ring road, the new Sainsburys store would

also be located outside the ring road, albeit within the Town Centre Boundary shown on the Town Centre Designations Map in the Draft Local Plan.

21. At my site visit, I observed that there are bus stops near to the site that provide access to regular services into Huntingdon Town Centre. Although Cambridgeshire County Council, as the Highway Authority, has requested contributions to be made towards improvements to the bus stops to the south of the site, I am satisfied that any necessary improvements would be secured by a planning condition. Also, planning conditions would secure a Travel Plan and improvements for access by bicycles. As such, in the absence of a suitable and available site that is within or on the edge of Huntingdon Town Centre, I find that the appeal site would be an acceptable location for the proposed Lidl foodstore, having regard to its accessibility by car, foot, cycle and public transport.
22. In considering the objections to the proposal, I am satisfied that the concerns about highway safety and traffic congestion would be adequately addressed by suitable planning conditions. The Council has not raised these matters as a reason why it would have refused planning permission and the Highway Authority has not objected, subject to securing a number of measures. Furthermore, the Framework indicates in paragraph 32 that development should only be prevented or refused on transport grounds where its residual cumulative impacts are severe. I have no evidence to show that the appeal proposal would result in a severe impact on highway safety or traffic congestion.
23. The appellant has referred to the following benefits of the proposed development, which the Council has accepted. It would help to deliver 14 much needed affordable homes, by way of a S106 unilateral undertaking, even though it is not a requirement for this scale of residential development to provide affordable housing. It would employ the equivalent of 20 full time employees, which would represent a significant increase in employment from that which would be lost due to the development. It would also result in visual improvements to the site and surrounding area. These matters all contribute towards the proposal being a sustainable development in accordance with the Framework.
24. I have considered the Council's objectives to improve Huntingdon Town Centre, which includes as one of its top priorities the improvements of retail facilities of Chequers Court. In this respect, an LAD foodstore, such as the one proposed, has been identified as being urgently needed in Huntingdon. As I have found that there are no suitable or available sites for the proposed foodstore within or on the edge of Huntingdon Town Centre, the appeal site offers the most sustainable location for it that is available within Huntingdon.
25. The proposal would result in a new foodstore that would increase employment and bring economic benefits to the area. I accept that the relative location of the appeal site would make it unlikely to directly contribute to the vitality and viability of Huntingdon Town Centre, including to the Chequers Court development. However, as it would represent a specialist discount foodstore, I find that there is insufficient evidence to show that it would cause any significant harm to this vitality and viability, particularly as it would not compete directly with the retail premises and would be complementary to the activities within the Town Centre.

26. For the reasons given above, I have found that the proposal would not have an unacceptable harmful effect on the vitality and viability of Huntingdon Town Centre and would accord with the sequential test given in the Framework. As such, it would accord with Huntingdonshire Local Plan 1995 Policy S2, in terms of its accessibility; and Huntingdonshire District Council Core Strategy 2009 Policy CS1, with regard to representing sustainable development; and Policy CS8 in terms of its effect on the vitality and viability of Huntingdonshire's town centres. It would also represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should succeed.

### **Conditions**

27. I have considered the conditions suggested by the Council should the appeal be allowed, including the standard time for commencement of development for Phase 1 and the submission of reserved matters details and the standard timescales for Phase 2. A condition to ensure compliance with the plans, including the phasing, is necessary for the avoidance of doubt and in the interests of proper planning.

28. Based on the past use of the site and information provided in reports, conditions regarding the investigation and remediation of contamination of the site are necessary for health and safety reasons. A condition to ensure the implementation of flood risk management measures is necessary to reduce the risks from flooding. A condition enabling archaeological work on the site is necessary for heritage interests, based on the history of the area. Conditions regarding the protection of trees, materials and landscaping are necessary to protect the character and appearance of the surrounding area. A condition regarding the provision of fire hydrants is necessary in the interests of safety. A condition to control the use of the store to ensure that it would be used for an LAD is necessary to ensure that it would comply with the terms of the application and to protect the vitality and viability of Huntingdon Town Centre.

29. Conditions to ensure the provision of cycle parking for both phases of the development, improvements to cycling and walking facilities and bus stops and the provision of a Travel Plan are necessary to ensure that the development would be sustainable in providing for alternative forms of transport to the private motor car. A condition regarding the provision of car parking for disabled users is necessary to provide equal access for all and to comply with guidance. Conditions regarding car parking and manoeuvring space, including the drainage, for both phases of development, and loading and unloading space and the provision and closure of vehicular accesses, including off site highway and access works, are necessary in the interests of highway safety and convenience.

30. A condition to control the hours of deliveries to and from the store is necessary to protect the living conditions of local residents. A condition to control the scale of the apartment building is necessary to protect the character and appearance of the area. Conditions regarding landscaping measures to screen the amenity area of the apartments and to provide noise mitigation measures are necessary in the interests of the living conditions of the future residents.

31. A condition regarding energy efficiency/sustainability measures is necessary in the interests of sustainable development. I am satisfied that all these conditions are reasonable and necessary. I have combined some of the

suggested conditions and worded them to reflect the advice in Circular 11/95:  
*The Use of Conditions in Planning Permissions.*

*M J Whitehead*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Nick Hardy BA(Hons) DipTP MRTPI	Director, GVA
Miles Drew BA(Hons) MPlan MRTPI	Planner, GVA
Robert Beaumont	Property Director, Appellant Company

### FOR THE LOCAL PLANNING AUTHORITY:

Andy Brand BSc(Hons) MA	Team Leader, Development Management, Huntingdonshire District Council
Paul Mumford	Planning Officer, Huntingdonshire District Council

### INTERESTED PERSONS:

Beryl Stewart	Local Resident
O J Day	Local Resident

## **DOCUMENTS SUBMITTED AFTER OPENING THE HEARING**

- 1 Signed Section 106 unilateral undertaking, submitted by the appellant.
- 2 Letter from Huntingdonshire District Council, dated 10 October 2013, regarding the discharge of planning conditions for new foodstore and filling station on land between St Johns Street and George Street, submitted by the appellant.
- 3 Statement of Beryl Stewart, submitted by Beryl Stewart.
- 4 Planning Consultation Response from Cambridgeshire County Council Highways Development Control, dated 14/9/12, submitted by the Council after the close of the hearing.
- 5 Letter, dated 5 November 2012 from Cambridgeshire County Council, submitted by the Council after the close of the hearing.
- 6 Signed Section 106 unilateral undertaking, submitted by the appellant after the close of the hearing.
- 7 Certified Section 106 unilateral undertaking, submitted by the appellant after the close of the hearing.
- 8 E-mail, dated 25 November 2013, from Huntingdonshire District Council regarding the Section 106 unilateral undertaking, submitted by the Council after the close of the hearing.

## **PLAN SUBMITTED AT THE HEARING**

- A Copy of 1:13,500 Scale plan of Huntingdon, submitted by the Council.

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans, other than those details to be approved under reserved matters: 1:1250 Location Plan and Drawing Nos 952/25 Rev Y, 952/27 Rev D, 952/28 Rev F, 952/29 Rev B and 952/30 Rev A and, unless otherwise agreed in writing by the local planning authority, the development shall be implemented and undertaken in accordance with the phasing details on approved plans Drawing Nos 952/32 Rev C and 952/33 Rev C.
- 2) No development shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority:
  - (a) A preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination at the site.
  - (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - (c) The results of the site investigation and the detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented as approved.
- 3) No part of the development hereby permitted shall be occupied until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan ('long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 4) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until written approval has been obtained from the local planning authority of a remediation strategy detailing how this contamination shall be dealt with. The remediation strategy shall be implemented as approved.
- 5) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which

- may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.
- 6) The development hereby permitted shall include the implementation of flood risk management measures in accordance with Section 6.0 of the site specific flood risk assessment by Richard Jackson, dated January 2012.
  - 7) No development shall take place until the implementation of a programme (including timetable) of archaeological work has been secured in accordance with a written scheme of investigation that has been submitted to and approved in writing by the local planning authority.
  - 8) No development or other operations shall commence on site until the existing trees and/or hedgerows to be retained have been protected in accordance with details that have been submitted to and approved in writing by the local planning authority. The erection of fencing for the protection of any retained tree or hedge shall be carried out before any equipment, machinery, or materials are brought on to the site for the purposes of development or other operations. The fencing shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered nor shall any excavations be made without the written approval of the local planning authority.
  - 9) The Phase 1 development hereby permitted shall begin not later than three years from the date of this decision.
  - 10) The Phase 1 development shall not take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted in that Phase of the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 11) The Phase 1 development shall not take place until the hard and soft landscape details for the area of public realm to the west of the store along Stukeley Road and those areas within the store car park (including the fence to the north-western boundary of the site) have been submitted to and approved in writing by the local planning authority. The landscaping shall be implemented in accordance with the approved details and the hard landscaping shall be provided prior to the opening of the store and the soft landscaping shall be provided during the first planting season after the first use of the store. The fence to the north-western boundary of the site shall be retained thereafter. Should any of the landscaping trees, shrubs or plants be removed, damaged or die within 5 years of being planted then they shall be replaced with others of similar age and species unless otherwise agreed in writing by the local planning authority.
  - 12) The Phase 1 development shall not take place until details of the type and location of fire hydrants have been submitted to and approved in writing by the local planning authority. The fire hydrants shall be installed in accordance with the approved details and made available for use prior to the first use of the store.

- 13) The building permitted under the Phase 1 development shall be used only for A1 retail use and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class revoking or enacting that Order). No more than 20% of the permitted retail floor area shall be used for the sale of comparison goods; the number of lines that shall be for sale in the store at any one time shall be limited to a maximum of 1,800; and the store shall not include any post office, pharmacy, butchers or bakery, other than the heating of pre-prepared products. For the purposes of this condition, comparison goods are items not obtained on a frequent basis, including clothing, footwear, household and recreational goods.
- 14) Notwithstanding the details shown on the approved plans, cycle parking shall be provided prior to the first use of the store hereby permitted in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The cycle parking shall be retained for these purposes thereafter.
- 15) Notwithstanding the details shown on the approved plans, car parking for disabled users shall be provided prior to the first use of the store hereby permitted in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The parking spaces shall be retained for car parking for disabled users thereafter.
- 16) Prior to the first occupation of the store hereby permitted, space for vehicles to park, wait and turn and for servicing, loading and unloading shall be laid out, demarcated, levelled, surfaced and drained in accordance with details that shall have been submitted to and approved in writing by the local planning authority. The space shall be retained for these purposes thereafter.
- 17) The existing accesses to the site shall be permanently and effectively closed and the footway shall be reinstated in accordance with a scheme to be submitted to and approved in writing by the local planning authority within 28 days of the commencement of the first use of either of the new accesses hereby permitted. The new accesses shall be laid out and constructed with drainage measures to prevent surface water run-off onto the adjacent public highway in accordance with a scheme that shall have been submitted to and approved in writing by the local planning authority.
- 18) The Phase 1 development shall not commence until a detailed engineering scheme for the off site highway and access works in accordance with Drawing No SCP/10038/001 in Appendix 6 of the Transport Assessment by SCP Transport Planning, dated October 2012, have been submitted to and approved in writing by the local planning authority. The store hereby permitted shall not be occupied until the works have been constructed in accordance with the approved details.
- 19) The store hereby permitted shall not be occupied until a footway/cycleway of minimum width 2.5 metres has been laid out and constructed along the length of the site frontage to Stukeley Road and extended to link with the existing footway network to the north and south and the 2 bus stops on Stukeley Road immediately to the south of the site have been improved in accordance with a detailed engineering scheme that shall have been submitted to and approved in writing by local planning authority.

- 20) Prior to the first use of the store hereby permitted, a detailed Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan, which shall include measures to promote the use of public transport, cycles and pedestrian trips for staff and customers, shall be implemented in accordance with the approved details.
- 21) No deliveries shall be taken at or despatched from the store hereby permitted outside 0700 hours to 2300 hours on any day.
- 22) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') of the Phase 2 development shall be submitted to and approved in writing by the local planning authority before any of the Phase 2 development begins and the Phase 2 development shall be carried out as approved.
- 23) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 24) The Phase 2 development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 25) The Phase 2 building hereby permitted shall not exceed the limits of the height, width and length shown on Drawing No 952/30 Rev A.
- 26) The landscaping details submitted pursuant to condition 22 shall include details of measures to screen the service yard of the store hereby permitted from the amenity area of the apartments hereby permitted.
- 27) Prior to the commencement of the Phase 2 development, noise mitigation measures for the residential development (in terms of glazing, acoustic ventilation and sound reduction within the roof) shall be submitted to and approved in writing by the local planning authority. The approved measures shall be provided prior to the first occupation of any apartment and retained thereafter.
- 28) Prior to the first occupation of any apartment hereby permitted, parking and turning areas shall be provided for the Phase 2 development in accordance with details that shall have been submitted to and approved in writing by the local planning authority and shall thereafter be retained for these purposes.
- 29) Prior to the commencement of the Phase 2 development, details of the site drainage for that Phase of the development (including within the car park) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 30) Prior to the commencement of the Phase 2 development, details of energy efficiency/sustainability measures shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated within the development and shall be available for use prior to the first occupation of any apartment hereby permitted.
- 31) Prior to the commencement of the Phase 2 development, details of cycle storage for that Phase of the development shall be submitted to and approved in writing by the local planning authority. The approved cycle storage areas shall be provided prior to the first occupation of any apartment hereby permitted and thereafter retained for these purposes.



## Appeal Decision

Inquiry held on 14 -17 February, 29 - 30 March, 24 - 25 April 2006

Site visits made on 13 & 17 February, 29 & 30 March, 24 & 25 April

by **David Bushby** BA [Hons] MCD MRTPI

an Inspector appointed by the First Secretary of State

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Date 16 MAY 2006

**File Ref: APP/G3110//A/04/1171310**

**Former Hartwells, Watlington Road, Cowley, Oxford OX4 6NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lidl UK GmbH & Oakhill Group Ltd against the decision of Oxford City Council.
- The application Ref 04/01052/FUL dated 21/5/04 was refused by notice dated 13/12/04.
- The development proposed is demolition of existing buildings and erection of single storey building for use as discount food store (1,837m<sup>2</sup>) plus provision of 102 parking spaces, cycle store (36 spaces), 11 external cycle spaces and compactor.

**Summary of Recommendation: Appeal A is dismissed.**

**File Ref: APP/G3110//A/05/1195688**

**Former Hartwells, Watlington Road, Cowley, Oxford OX4 6NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lidl UK GmbH & Oakhill Group Ltd against the decision of Oxford City Council.
- The application Ref 05/01551/FUL dated 26/7/05 was refused by notice dated 20/12/05.
- The development proposed is demolition of existing buildings, and erection of 2 storey building for use as Class A1 discount food store (1,871m<sup>2</sup>) at ground floor level and Class B1 offices (840m<sup>2</sup>) at first floor plus provision of 102 car parking spaces, cycle store (36 spaces) cycle stands (9 spaces), revised vehicular access, compactor, public art and landscaping.

**Summary of Recommendation: Appeal B is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

### Site and Surroundings

1. The site and surroundings are described in paragraphs 3.1 and 3.2 of the Statement of Common Ground [CD1]. In short the site covers some 0.7ha. A vacant car showroom – “Yes Car Credit” – and petrol filling station occupies the site. The immediate surroundings are commercial and industrial. The northern boundary of the nearby residential area, known as Blackbird Leys, is just over 100m south of the site.
2. The site is about 5km to the south east of Oxford City Centre, and about 1.7km from Cowley Centre which includes Templars Square.

### **Planning Policy**

3. The most relevant development plan policies are TC2 of the 2005 Oxfordshire Structure Plan and EC.2, RC.2 and CP.3 of the 2005 Oxford Local Plan [OLP]. A more detailed list of policies is given in paragraph 7.1 of the Statement of Common Ground [CD1]. Policy guidance in PPS6 is an important material consideration.

### **Planning History**

4. Planning history is described in section 1 of the Statement of Common Ground [CD1].

### **The Proposals**

5. The two appeal proposals – appeal A: discount food store of 1,837m<sup>2</sup>, 102 parking spaces, 36 space cycle store, 11 cycle spaces and compactor; and appeal B: discount food store of 1,871m<sup>2</sup>, Class B1 offices at first floor, 102 parking spaces, 36 space cycle store, 9 cycle stands, revised vehicular access, compactor, public art and landscaping - are described in paragraphs 2.1-2.14 of the Statement of Common Ground [CD1]

### **Other Agreed Facts**

6. Progress of the two applications, as appeal A and appeal B, is set out in paragraphs 4.1-4.13 of the Statement of Common Ground [CD1].
7. Plans and accompanying documents for both appeals are listed in paragraphs 5.1-5.3 of the Statement of Common Ground [CD1].
8. Sequential sites considered in the inquiry were: (a) Blackbird Leys Regeneration Zone, (b) Templars Square, Cowley, (c) Crowell Road car park, Cowley, (d) John Allen Retail Centre, Cowley, (e) BMW garage, Banbury Road, Summertown, (f) Suffolk House, 263 Banbury Road, Summertown, (g) Diamond Place car park, 220 Banbury Road, Summertown.
9. Agreed highway and transport matters are set out in paragraphs 1-14 of the second Statement of Common Ground [CD2]. These matters include trip rates, traffic generation, generated traffic flows, proposed highway improvements, proposed access arrangements, current bus routes and timetables, car ownership levels in Oxford, cycle routes and cycle usage.

### **Main Issues**

10. There was agreement that the main issues are:
  - (a) whether the proposals accord with relevant development plan policies;
  - (b) whether proposals comply with PPS6 policy in respect of (i) the need for the development, (ii) the sequential approach to site selection, (iii) the impact on existing centres and (iv) accessibility in terms of a choice of means of transport and changes in travel patterns;
  - (c) whether the proposals would have an adverse impact on employment and regeneration in Oxford.

## **The Case for Oxford City Council**

### **Development plan policies**

11. The Lidl proposal is not in accordance with the statutory development plan. The Planning and Compulsory Purchase Act 2004 imposes a legal duty on decision makers to give primacy to development plan provisions when making decisions on planning applications. Paragraph 8 of PPS1 says "This plan-led system and the certainty and predictability which it aims to provide, is central to planning and plays a key role in integrating sustainable development objectives." There should be a commitment to the plan led system.
12. No challenges were made by Lidl to the recent adoption of the Oxford OLP; the 6 week period for such challenges expired early in 2006. Lidl could have taken part in the plan making process. Lidl did not suggest the plan was in any way inconsistent with Government policy.
13. Great weight should be attached to the OLP. A decision to permit a substantial development in conflict with its recently adopted provisions would inevitably undermine confidence in Oxford's plan led system. This would be especially damaging in such a constrained district, which has so many competing demands for its limited supply of development sites.

### **Retail**

14. The proposal is retail. In terms of size, it would be more than 4 times the size of retail development defined as "large" [280m<sup>2</sup>] and subject to the 6 hour restriction under the 1994 Sunday Trading Act – Schedules 1.1, 2.1 and 4.1b. It would be almost double the size at which the maximum parking provision of PPG13 applies.
15. OLP Policy CP3 requires 3 conditions to be satisfied before permission can be granted for unallocated retail developments. First there must be a need for the development. Second, the location must be the most sustainable when assessed against the sequential test. For large developments, the purpose must be one which could not be served by several smaller developments in more sustainable locations. Third, the location must be realistically accessible by walking, cycling or public transport for the majority of people travelling to the site. The proposal fails all 3 conditions.
16. Lidl just about meets all of the 1,400m<sup>2</sup> convenience floorspace identified until 2011 in paragraph 12.4.4 of the OLP.

### *Quantitative Need*

17. There is no quantitative need for the development. Lidl has not shown a shortage of capacity in quantitative terms.
18. The OLP states in paragraph 12.4.4 that "There is no need to make specific allocations for convenience goods. This is partly because the scale of the future capacity for floorspace is low, amounting to only approximately 1,400m<sup>2</sup> net by 2011. In addition, most parts of Oxford are relatively well provided for in terms of existing food stores." Thus the OLP does not envisage any need for any new out-of-centre sites for developments that would require a large number of people to travel by private car. The OLP does not allocate any out-of-centre sites for convenience retail.

19. By 2011 ORNS identifies £12.3m of convenience goods expenditure growth in supermarket spending and £5.3m in local convenience store spending. This growth in spending would be directed towards retail provision on the OLP allocated mixed use sites and existing retail outlets within centres. This is where surplus expenditure should go.
20. The OLP does not identify a need for a “deep discount” store in Oxford. These stores had existed for many years. Lidl had been looking in Oxford for a site since 1994. Those involved in the plan making process – including the Council and Lidl – knew about deep discount stores. This is not a case of the OLP not making provision for a type of store that did not exist when the plan was prepared. The social circumstances of Blackbird Leys were well known to Council members. The OLP makes provision for the enhancement of Blackbird Leys centre. The OLP does not identify a need for a deep discount store in Blackbird Leys.
21. Need and capacity should be distinguished. Capacity is the amount of floorspace for which sufficient expenditure exists. Need is the amount of floorspace which must be provided in the public interest.
22. Lidl suggests that analysis of quantitative need is focussed on an arbitrarily defined 5 minute drive time. This RPS/Lidl Primary Catchment Area [PCA] is unrealistic. Lidl argue that it demonstrates a need for about 1,300m<sup>2</sup> net of convenience floorspace in this PCA. This suggestion is bizarre.
23. First, there is no support in the OLP or PPS6 that a 5 minute drive time area should be self sufficient in shopping. If that was so, there would be 5 such areas in Oxford – all needing a substantial increase in facilities. Second, the assessment demonstrates that shops in the area, and immediately to it, receive a high proportion of the expenditure calculated to arise in it. Paragraph 5.11 in the RPS Shopping Survey [CD6] showed that more than 75% of main food shopping was done in 4 stores alone in the PCA and the immediately adjacent Sainsbury’s Heyford Hill. Third, and most importantly, this area is very well provided with convenience shopping. Within it, and immediately adjacent to it, are two major competing superstores –Tesco, Oxford Retail Park and Sainsbury’s, Heyford Hill. Within the PCA is the Cowley Templars Square Centre, with supermarket stores such as Iceland and the Co-op plus a number of independents. This Centre is well provided with car parking and is a public transport node. Also within the PCA are 8 neighbourhood centres. The area has excellent frequent [5 minute] bus services both to Cowley Road District Centre, to the Tesco Metro and to the City Centre, with its many stores and 2 markets. Fourth, it would be astonishing if this one area of Oxford had a need for the whole amount of additional floorspace envisaged in the OLP for the whole of Oxford.
24. For a quantitative needs assessment, first, the whole City would be assessed as in ORNS; then second, a more localised area such as the SE sector would be assessed. The £10.77m convenience goods expenditure growth for Oxford at 2008 Lidl calculated from ORNS is not a measure of need. This growth would be likely to be taken up by other sequentially preferable development.
25. Lidl’s evidence shows there is no quantitative need for additional convenience floorspace. The survey of stores shows no overtrading and no problems calling for additional floorspace – Appendix 3 of Mr M. Krassowski’s Rebuttal gives no indication of overtrading in terms of fullness of car park, closed tills or queues. Overtrading is an excessive level of trade

harmful to the public interest. There is no basis for claiming that for Tesco, Oxford Retail Park, Sainsbury's Heyford Hill or Tesco Metro. Lidl should not suggest that above average turnover means overtrading. With a normal distribution, half the stores of a company would be above the average and overtrading. From Lidl's evidence it would appear that Tesco, Oxford Retail Park and Sainsbury's Heyford Hill are undertrading; they appear to have less turnover than their expected average turnover. Lidl try to suggest Tesco and Sainsbury's are overtrading on the basis of the RPS household survey. However the sample size is too small, and the methodology exaggerates the trade of large stores and underestimates the trade of small stores – this can be seen by comparing Tables 5 and 9 in Appendix 12 of Mr Krassowski's Rebuttal for Iceland, Somerfield and Blackbird Leys stores. These show the trading figures are way out. It can also be seen that the survey only allows one answer to the question as to where people do main food shopping and only one place for top-up shopping. This is a fundamental flaw in the methodology.

26. According to paragraph 3.10 of PPS6, the quantitative need assessment should have been based on the development plan. This has not been done by Lidl

*Qualitative need*

27. As for qualitative need, PPS6 paragraph 2.33 says that greater weight should be given to quantitative need rather than qualitative need. Paragraph 2.35 of PPS6 explains that a key consideration is to provide for consumer choice. Oxford has a good range and choice of supermarkets. In the south east of Oxford residents have good access to a range of food stores. If there is a gap, it is within Blackbird Leys. There is no reason why Oxford residents are disadvantaged by the absence of a "deep discounter".
28. The Newhaven Secretary of State appeal decision is relevant. This decision made it clear in paragraph 12 [M Krassowski Appendix 11] that he did not accept that "deep discounters" should be assessed as distinct types of retail development in their own right. This makes clear what is implied in the Government's policy in relation to quantitative considerations in paragraph 2.34 of PPS6 and its policy on qualitative considerations set out at paragraph 2.35. Lidl claim a price advantage as a "deep discounter". This is not accepted.
29. There is no policy justification for a qualitative "deep discounter" need in Oxford.
30. As for the proposed s.106 obligation, this mechanism would present insurmountable practical difficulties. It is also questionable whether such an obligation could lawfully control the pricing policy of a shop. The wording of the Act does not lend itself to a pricing structure. This agreement should not influence the decision.

*Sequential approach*

31. The appeal site does not satisfy the sequential test on the basis of the OLP's hierarchy of centres. The national and local policy of focussing investment in centres is not disputed. The OLP has made provision for retail development, often as mixed use schemes in existing centres. These are difficult to get off the ground compared with an employment site conversion. As for the guidance in paragraph 3.19 of PPS6, the "reasonable period of time" means at least up to 2011. The OLP and ORNS have used this period of time.
32. Closing submissions refer only to the Crowell Road car park site. The Crowell Road car park at Cowley Centre is a development opportunity. There is a real chance of development

going ahead at this site. The Montagu Evans letter dated 21 March 2006 gives a clear indication of an intention to redevelop the site. The owners, Zurich Assurance, must be in the best position to judge the site's prospects. But this development is not certain; therefore the appeal should not put this scheme at risk. The Lidl proposal would divert retailer interest, investment and energy away from Cowley Centre and the Crowell Road car park site.

33. The VSL/Lidl viability study of the Crowell Road site should not be relied on. No witness was called to the inquiry to support it. The scheme examined is different to the Threadneedle scheme. There is no residential, and there are only 4 floors in the Lidl scheme. The Ridge/Lidl report was too inflexible in the way it rejected the option to extend and convert.
34. The appeal site location is not appropriate for additional development to serve Blackbird Leys. The isochrones shown in Mr Staley's Figures 2 and 3 show its unsuitability. First, it is neither within, nor on the edge of the neighbourhood centres of Blackbird Leys. It would provide extremely limited scope for linked trips. Second, it is not central. It is on the outer edge of the residential area. It is more than 0.8km from the majority of the residential area; a large part of the residential area is more than 1.2km from it. Only 65 properties are within 300m; only 215 properties are within 400m. In short, not many houses would be close.
35. Other sites examined in the inquiry are Diamond Place and the BMW garage in Summertown and Blackbird Leys.
36. At Diamond Place, Summertown there have been very recent discussions between the University and Council officers. A food store retailer had expressed interest in the site. At the former BMW garage, Summertown, the owners apparently wish to develop the site themselves. This site would not be large enough for a Lidl food store. At Blackbird Leys, there are 2 potential development sites: the garages site and the Community Centre site. The 4,000m<sup>2</sup> Community Centre could be relocated. The 2,560m<sup>2</sup> garages site could be developed.
37. The sequential test has not been met by Lidl. Lidl has been looking for a site in Oxford since 1994 and had the opportunity to go to Cowley Centre. This was rejected for commercial reasons. Instead of Cowley Centre, Lidl are proposing an out-of-centre site. This means Lidl fail the sequential test.

### *Impact*

38. The key point is the diversion of investment and retailer energy away from centres. Allowing Lidl to develop out-of-centre food store could pre-empt investment interest in Cowley Centre and the Blackbird Leys Regeneration Area.
39. Lidl/RPS based its impact assessment on a small household telephone survey of people in the PCA. Lidl/RPS have downplayed the impact on the Cowley Centre. It is likely that Lidl would have impacts of over 10% on 3 Cowley stores: 11.6% for Co-op, Cowley, 10.5% for Somerfield, Cowley and 11.7% for Iceland, Cowley. This impact could direct investment away from Cowley Centre. Lidl/RPS say the proposal would have zero impact on Blackbird Leys. This shows intransigence rather than common sense. The Lidl/RPS impact assessment should be viewed with suspicion.

40. Lidl have not been flexible. In the recent past [CD18] Lidl have opened smaller stores – less than the 1,063m<sup>2</sup> considered at this inquiry.
41. A key difference between the Council assessment and the Lidl impact assessment is that the Council believe proportionally more trade would be diverted from smaller stores within the PCA, rather than Tesco at Oxford Retail Park and the Sainsbury's store.

#### **Accessibility**

42. The Lidl proposal would not satisfy the 3<sup>rd</sup> condition of OLP policy CP3. It would not be realistically accessible by walking, cycling or public transport for the majority of people travelling to the site.
43. First, it would not be realistically accessible by walking other than for less than half of the population of Blackbird Leys. A 400-800m walking distance is acceptable. The 1.2km walking distance claimed by Lidl is not realistic. The acceptable distance for carrying shopping is quite different from that for walking to work. The walk from Cowley would be unattractive.
44. Second, Lidl's research shows that cycling is a realistic mode of transport for Lidl food shopping for only a very small proportion of people – 3%. Only 1.2% use their cycle for this purpose in this area of Oxford.
45. Third, the site has limited bus services connecting it with a small part of its catchment area. These areas are also connected by bus to the City Centre, Templars Square and Cowley Road District Centres and Blackbird Leys neighbourhood centre. Bus services to the Lidl site are infrequent by the standards of this area. A good bus service would be every 15-20 minutes. It is unrealistic therefore for more than a small proportion of Lidl customers to come by bus. This is so, because no linked trips can in practice be made, as every one would involve waiting for and getting on a bus again, for the next activity.
46. In this case, very few people would walk to the site, cycling can be ignored, and buses do not serve much of the catchment area. The appeal site is not accessible for the majority of people.
47. The store would be a predominantly car borne store. Lidl customers who use cars are some 61% for London, and by car or taxi 69%. In this part of Oxford, the propensity to do food shopping is even higher – more than 75% use car/van or taxi.

#### **Employment**

48. The appeal site is allocated for employment use and designated as part of an area of "key employment generating sites and premises" for B1, B2 and B8 under policy EC2 in the OLP. Under this policy, the recently adopted OLP expressly protects sui generis uses such as the motor showroom use of the existing buildings, and the development permitted by the almost expired 2003 permission.
49. The proposal should therefore be rejected because of its conflict with this part of the plan. Oxford needs to retain a variety of opportunities both in existing and modernised premises for the uses protected by EC2.

50. There should be little confidence in the suggestion that refusal of permission for the Lidl development would lead to its development for the permitted combination of fast food and motor showroom use, rather than for B1, B2 and B8 uses. No analysis of relative site values as between the permitted development and the most lucrative EC2 uses was presented to the inquiry. The reserved matters submission was made at the very last minute. No prospective tenants were identified.
51. Even if the permission were implemented on the basis of the submitted reserved matters scheme, the majority of the site would be in sui generis use as required by EC2. The remainder would be performing a hot food and drink service of value to the larger industrial area. By contrast, Lidl do not offer food services.
52. Even if the site were lost to employment uses the OLP is clear that the appropriate uses would not be retail. It would be residential or mixed use employment and residential.

### **The Case for Lidl UK GmbH & Oakhill Group Ltd**

#### **Ambit of Council's case**

53. Article 22(1)(c) of the Town and Country Planning (General Development Procedure) Order 1995 provides that, when planning permission is refused, the decision notice "shall state clearly and precisely [the Council's] full reasons for the refusal". Mrs Byrne, the Council Case officer confirms that this legal duty was complied with in both cases.
54. This means the Council do not object to appeal B on grounds of need or scale. This was confirmed in cross-examination. It is clear that appeal A raises the question as to whether there is a need for the development. It is also clear that appeal B raises the question as to whether the development would direct investment away from existing centres.

#### **Events leading up the determination of the applications**

55. With the first application, the Officer's report in August 2004 gave no explanation as to why Lidl's need assessment in CD5 was inadequate and also asserted that the sequential test had not been complied with, but gave no explanation for this assertion. These matters were not properly addressed by the Council in reports to its Committees. Lidl asked the Council for information on sequential sites, but this only led to inadequate responses.
56. With the second application, a Supplementary Report was prepared in October 2005. The only new points related to the Competition Commission report and a basket of goods comparison. These new points came from Mr B Brisbane. Neither members, nor Lidl/RPS were told the source of these new points. In fact both points were misleading and defective, but members were not informed. While Mr Brisbane was appointed in mid-2005, Lidl/RPS was not told and no meetings were initiated to discuss retail matters. This was a catalogue of misfortune.

#### **Retail**

##### *Quantitative need*

57. Paragraph 3.10 of PPS6 advises that the catchment area used to assess future need "should be realistic and well related to the size and function of the proposed development and take account of competing centres". Mr Brisbane for the Council, contends that the assessment

should be conducted city-wide, in accord with ORNS. Mr Krassowski for Lidl adopts a 5 minute drive time isochrone, in accordance with the RPS study. The 5 minute drive time isochrone is reasonable for a deep discount food store assessment. These stores do not provide a one stop shop and so shoppers are unlikely to travel significant distances. Lidl look for a catchment of about 20-40,000.

58. On either basis a quantitative need for more convenience floorspace can be demonstrated, which is unlikely to be met on sequentially preferable sites.
59. Using ORNS [CD15 Table 10], it is clear there would be £10.77m of surplus convenience expenditure available in 2008. ORNS Table 11 then splits expenditure growth into convenience expenditure for supermarkets [70%] and for small local convenience stores [30%]. Normally a 70:30 split is used to split bulk food and top-up shopping expenditure available to all stores. ORNS would underestimate turnover of stores such as Tesco, Oxford Retail Park if its turnover was only assumed to derive from the 70% of available expenditure; this is because Tesco acts as both a main food and top-up shopping store. Lidl would also derive expenditure from both the 70% supermarket and 30% small store expenditure.
60. ORNS then in Table 12 takes the 70% of expenditure available for supermarkets from Table 11 and converts it to a floorspace requirement. This conversion assumes sales density or turnover per square metre of £8,500/m<sup>2</sup> [CD15 paragraph 5.16]. From this a notional floorspace requirement of 483m<sup>2</sup> is identified in 2006, and 1,360m<sup>2</sup> in 2011. ORNS concluded that as the figures were small, the OLP should not make any specific allocations.
61. In fact Lidl's sales density is much lower. The correct Mintel sales density for Lidl adjusted to 2000 prices, and applying a 5.81% Vat figure, is £2,802m<sup>2</sup>. When this figure is used to calculate the estimated turnover of the appeal proposals, the total convenience goods turnover is £3.1m.
62. The total convenience goods turnover of £3.1m for the appeal proposal can be compared against the City-wide figure of £10.77m surplus convenience expenditure. Thus based on ORNS figures, there is a quantitative need for further convenience floorspace in Oxford by the store design year of 2008.
63. This surplus is not likely to be taken up by sequentially preferable development opportunities. Some of it can therefore be taken up by the appeal proposal. Redevelopment of the Westgate Sainsbury's store is unlikely before 2011. Replacement or extension of the Tesco, Oxford Retail Park is also unlikely given its out-of-centre location. Other sites will be considered under the sequential test.
64. The surplus is also not likely to be used by potential growth in existing store turnover. ORNS did not allow for such growth. All stores do not increase turnover year on year – some increase some decrease.
65. Using the RPS catchment – the 5 minute drive time isochrone, adjusted to reflect post code boundaries – gives a population of about 23,250, plus a further 8,000 working within that isochrone. In the Household Survey, 57% of residents identified proximity to home as the main reason for shopping where they do, the figures for resident and working population are highly significant. The Survey also shows that over 55% of residents undertake main food shopping at stores within the catchment. This response shows people do not travel far to

shop – discount stores tend to cater for local shopping needs. The fact that 18% of customers in store door surveys undertook Lidl shopping by foot reinforces the choice of a localised catchment for the quantitative need assessment. And the very low car ownership in Blackbird Leys makes walking to the Lidl proposal more likely.

66. The RPS assessment indicates there is £15.5m more expenditure available than floorspace [trading at company averages] within the catchment area at the 2008 design year. Mr Krassowski's Appendices Document 9 Table 6 shows total available expenditure on convenience goods in catchment area to be £31.7m in 2005; turnover of existing and committed convenience floorspace would be £17.6m. Thus notional surplus of convenience goods expenditure is £14.2m in 2005 and £16.0m in 2009.
67. This means that some stores could overtrade above company averages and some expenditure would leave the catchment. Overtrading can be derived from surveys of food stores and calculations of stores trading above company averages. Even if overtrading is not accepted, it is clear that surplus expenditure leaves the catchment. This is contrary to sustainability principles. Locating Lidl in the PCA would reduce the necessity for people to travel further afield.
68. There is clearly a quantitative need for further convenience floorspace in the PCA by 2008. The surplus of £15.5m is not likely to be taken up by other sequentially preferable development opportunities. Thus some of it could justifiably be taken up by the Lidl proposal.
69. There is no basis for defining "large" by reference to the Sunday Trading Act or PPG13 parking standards. The OLP does not suggest this, nor does any Council witness.

#### *Qualitative Need*

70. Paragraph 3.11 of PPS6 recognises that qualitative considerations can provide additional justification for a proposal. Paragraph 2.33 says development which serves communities in deprived areas provides "clear and demonstrable benefits"; and paragraph 2.35 says a key consideration would be to provide for consumer choice by ensuring that (a) an appropriate distribution of locations is achieved, and (b) provision is made to allow genuine choice to meet the needs of those living in deprived areas. What drives this part of Government policy is the need to address social exclusion.
71. Deep discounters are now well-represented in the UK, with a total of 861 stores at March 2006. Virtually every city has at least one deep discounter and many towns – far smaller than Oxford – have representation. For example Banbury and Newbury have discounter representation. While Oxford is reasonably well-served with mainstream supermarkets, there is no deep discount food store in the City or in any of the surrounding towns. Mr Brisbane tried to argue that Tesco, Iceland and the Co-op operate inside the RPS catchment "within the value for money" sector. Iceland is different to Lidl, and Tesco and the Co-op were found to be much more expensive than Lidl when compared on a like for like basis. Lidl goods are 15% or more cheaper than other convenience stores in the area. The Council shopping basket is flawed; Mr Brisbane chose products of lower quality in the Tesco shopping basket. The PCCE of 20 products at Lidl, Wembley, and 2 local Tesco stores and the Cowley Co-op show Lidl prices to be significantly cheaper.

72. There is no dispute that Blackbird Leys is one of the most socially deprived wards within Oxford and the UK. 41% of households have no car, against a County average of 16.5%. The Council acknowledges Blackbird Leys falls within the worst 10% in England in terms of multiple deprivation. 98% of local respondents are supportive of the Lidl proposal.
73. In the Newhaven case, the Inspector found the Lidl proposal met a qualitative need. The Secretary of State agreed the proposal would extend consumer choice and aid competition. But the Secretary of State was not persuaded that the proposal would lead to clear and demonstrable benefits to deprived communities. This was because the site was poorly located in relation to deprived areas in Newhaven.
74. The evidence shows first, the proposal would extend consumer choice, aid competition and provide premises that meet the needs of a retailer operating in the "value for money" sector. Second, deep discount food stores provide a level of choice that can be reasonably expected in every town. This market niche is not provided for in the PCA or in Oxford. Third, this part of Oxford shows high indices of multiple deprivation. Fourth, the proposal would provide genuine choice to meet the needs of those living in this deprived area. Fifth, the site is well located to serve the deprived area. In these circumstances, the proposal would provide the "clear and demonstrable benefits" described in paragraph 2.33 of PPS6. These qualitative considerations provide additional justification for the proposal in line with paragraph 3.11 of PPS6.
75. The late evidence about City markets adds nothing to the debate on prices.
76. The Newhaven case raises the issue about how the Lidl store could remain as one selling goods at a discount. In paragraph 14 of his decision the Secretary of State did not accept the Newhaven store would continue to sell goods at a discount, because another retailer could implement any permission granted. Lidl responded to this concern by introducing the Unilateral Undertaking. This promotes a mechanism to ensure Lidl goods are at least 15% cheaper than comparable goods from other convenience stores in the area. With the proposed Unilateral Undertaking, these price benefits could be guaranteed.
77. The principle that underpins the executed Undertaking cannot be criticised. It is Government policy that retail provision be made which allows genuine choice to meet the particular needs of those living in deprived areas. It is for the market to devise a mechanism to deliver this part of Government policy. The Undertaking would enable the store to remain as one which sells goods at a discount.
78. The Council argues that s.106 of the Act does not refer to prices. However s.106 allows restriction on the use of land. A s.106 can lawfully restrict the use of land – uses can include sale of goods. A restriction on how a company may trade is a restriction on how the company sells goods and is therefore a restriction on the use of land. A restriction on the pricing of goods is plainly a restriction on the use of land.
79. The Costco "membership warehouse" is classed as a sui generis use. These warehouses rely on a certain proportion of turnover being derived from individual members, rather than trade members. Every Costco warehouse has a s.106 Agreement in place which seeks to control this trading feature. This approach has been accepted by the Secretary of State on 5 occasions. This is an example of a s.106 restricting trading.

*Sequential approach*

80. From PPS6 and paragraph 3.19, local planning authorities should be realistic in considering whether sites are suitable, viable and available. Local planning authorities should take account of genuine difficulties, which the applicant can demonstrate are likely to occur in operating the applicant's business model from sequentially preferable sites in terms of scale, format, car parking provision and scope for disaggregation. As to availability, suitability and viability, the guidance in paragraph 3.19 of PPS6 should be followed.
81. Lidl's approach to opening a new store is to follow the sequential search advocated in PPS6. CD17 shows Lidl occupy many town and district centre sites [45%], as well as edge-of-centre sites [27%].
82. As for flexibility – PPS6 paragraphs 3.15-3.18 – Lidl's business model has a number of inherent characteristics critical to the ability to deliver the benefits of deep discount retailing. A minimum store size of about 1,063m<sup>2</sup> is necessary both to deliver the Lidl product range, with sufficient product facing, and to facilitate the placing of full pallet items direct from the delivery warehouse onto the sales floor. Lidl already keep storage and staff areas to a minimum – typically about 25% of gross floor area – compared with 40% for mainstream retailers. Lidl also have a minimum area required for servicing. The fact that Lidl only sell a limited range of goods means there is no realistic scope for disaggregation. Lidl stores cannot be broken down into constituent parts. These points are not challenged by the Council.
83. The sequential analysis should be undertaken with regard to the need for a minimum store sales area of 1,063m<sup>2</sup>, a single storey operation with no disaggregation, and a 75 space car park.
84. As to availability, PPS6 advises that “a reasonable period of time” should be “determined on the merits of a particular case”. The Council are wrong therefore to argue for a time frame based on the 5 years needs assessment in paragraph 3.10 or the time frame of a development plan. If the Government had intended that the assessment of sequential sites' availability should conform to either the assessment of need or with the duration of the development plan, it would have said so. Instead PPS6 says the reasonable period of time will be determined on the particular facts of the case.
85. In this case, it cannot be considered reasonable to wait for 5 years – or more, until 2011 or 2016 to meet development plan requirements – for sites to be assembled or otherwise come forward for new convenience floorspace. This must be so when there is a clearly identified need to provide more floorspace now. In any event, none of the sites relied on by Mr Brisbane could accommodate a Lidl store, or address the identified need, whether now or in 5 years time.
86. Mr Brisbane for the Council began with 7 sequentially preferable sites claimed to be suitable, viable and available. Following cross-examination this list was reduced to 4. Then in the cross-examination of Mr Krassowski, only one site – Crowell Road car park – was put as being suitable, viable and available.
87. Templars Square is no longer relied on by the Council. There are no opportunities of accommodating a Lidl in 5 years. John Allen Retail Park is no longer relied on by the Council. Again there is no development that could be reasonably be contemplated. Suffolk

House, Summertown is no longer relied on by the Council. The site is far too small. The BMW garage, Summertown is not viable. It is not available for a Lidl store. The owners wish to develop this site with small retail units. The Diamond Place car park, Summertown has been allocated for development since 1997. There are far too many questions about its availability and suitability, particularly with the mixed ownership. Council evidence on the site is contrived and implausible. The Blackbird Leys Community Centre site is not available. The Community Centre would not be relocated. Access from this site would be unacceptable. The Blackbird Leys garages site of 24 lock-up garages is not suitable or available. It is too small and would have unacceptable access problems.

88. The Crowell Road car park site has new evidence in the form of the Montagu Evans letter dated 21 March 2006. This letter is plainly an exercise in defensive planning. It is quite normal that new owners should investigate potential redevelopment opportunities at Templars Square. That is what Zurich Assurance's predecessor in title – Fairacre - did, and their conclusion was that redevelopment options were not worth pursuing for the car park. In these circumstances, Montagu Evans' assertion that "there is a very real chance of the project going ahead" can elicit no surprise. This optimism should be tempered by the fact that the results of the feasibility studies are not known.
89. The Council said the plans given to Lidl for its feasibility study were wrong. But the Council was unable to say how the plans now being considered differed from those given to Lidl. The work by VSL and Ridge & Partners only gives a broad indication of viability. But the disparity of between redevelopment costs [£9.5m] and investment value [£7.6m] of the completed development is so great that there are reasonable prospects Zurich's feasibility study will show the proposed development is not viable. This conclusion was reached by Fairacre – the predecessors in title. Thus this site is not a viable alternative for meeting the retail need identified.

*Impact on existing centres*

90. There is no suggestion in either Council decision on the Lidl proposals that retail impact per se is unacceptable. It had always been understood that the Council objection related to divergence of potential investment away from existing centres.
91. However Mr Brisbane takes matters further and says that there would be a divergence of trade from Cowley Centre; he suggests a convenience goods impact of some 10-11%. His view on the divergence of trade from Cowley Centre is based on 3 assumptions. First, he says the turnover of the Lidl store is understated. Second, he says the supermarkets are trading at company averages. Third, he says the distribution of trade diversion is excessively focussed on Tesco, Oxford Retail Park and Sainsbury's Heyford Hill.
92. In response first, the correct figure for Lidl's turnover is £3.1m. This is based on the average sales density of £2,802/m<sup>2</sup>. This figure is not challenged. Second, Mr Brisbane fails to take into account whether the 2 stores are trading above or below company averages. Lidl/RPS use the Household Survey to calculate actual turnovers and % trade draw to the Lidl proposal is calculated on this basis. Third, the trade diversion patterns are based on actual shopping patterns disclosed in the Household Survey. Thus 39% of the population within the catchment undertake their food shopping at Tesco, Oxford Retail Park; from this 39% of Lidl's turnover is assumed to be drawn from that store. By contrast the trade draw rates of Mr Brisbane are purely judgemental.

93. In fact, Mr Brisbane explained that the Council's concern about investment diversion related to the potential effect on investment decisions for the Crowell Road car park. He said that if Lidl went to the appeal site, this might diminish competition. He thought that there needed to be competition from retailers to keep the level of rents up and thus justify redevelopment of the Crowell Road site. However there is no suggestion from the owners or managers of this site that Lidl could jeopardise potential redevelopment of the site.

#### *Accessibility*

94. OLP policy CP3(c) requires the location for development to be "realistically accessible by walking, cycling or public transport for the majority of people travelling to the site". The Council's highway proof did not identify conflict with that policy. The wording of CP3(c) is noted. The location is required to be "realistically accessible....for the majority". The development is not required to be accessed by walking, cycling or public transport by the majority. The distinction is important. It echoes Government recognition that all that can be required of developers is the provision of a realistic choice of non-car modes.
95. PPG13 paragraph 3 gives advice on land use planning. "Consistent application of the policy in PPG13 will "help to reduce some of the need for car journeys (by reducing the physical separation of key land uses) and enable people to make sustainable transport choices". The realism should be noted. First, government recognises that PPG13 can only help to reduce some of the need for car journeys. This acknowledges that many forms of development will inevitably involve some need for car journeys. In this case locating retail development close to residential and employment development would reduce the necessity for a large population to travel further afield using unsustainable methods of transport. Second, Government recognises that all that can be done is give people a choice – inevitably many people will choose to travel by car even when their destination is realistically accessible by walking, cycling or public transport, for the majority of people travelling to the site. In these circumstances there is no conflict with policy.
96. It is worth noting that when granting consent for the drive through restaurant and car dealership in 2003, the Council and Highway Authority did not view this location as being inaccessible by public transport, walking and cycling. The report said the location was within reasonable walking and cycling distance of nearby residential and industrial areas. Nothing has changed since then. The Council should not change its mind on this matter.

#### *Walking*

97. Paragraph 75 of PPG13 provides that walking "offers the greatest potential to replace short car trips, particularly under 2km". While the Council's advocate suggested this was irrelevant, the Council's highway witness did not. The Institution of Highways and Transportation guidance in CD 8 "Providing for Journeys on Foot" shows the preferred maximum walking distance is generally 1.2km – or 15 minutes walking time. With Lidl stores there are a high proportion of customers travelling on foot. For example at the Reading Lidl some 24% of customers travel on foot to the store. At 4 stores, including Reading, an average of 18% of customers travels by foot to shop.
98. The area surrounding the appeal site is generally flat and therefore attractive for walking. Pedestrian facilities in the area are of a high standard. Segregated footways with crossing points are located near to the site. Footway links through Blackbird Leys are along lightly trafficked residential roads and traffic free footway links. The area is good for pedestrians,

with many connections to the highway network, so walking distances can be minimised. Routes are well lit. In summary, all the circumstances are in place to make walking a realistic choice.

99. For Lidl workers, the residential areas of Blackbird Leys, Cowley, Temple Cowley, and Littlemore are all within convenient walking distance. For those walking to shop at Lidl, about 85% of Blackbird Leys lies within 1.2km of the site. Thus 85% of this residential area of about 2,500 households would have walking as a realistic choice. It should be noted that 41% of households in Blackbird Leys do not have a car – this is important.
100. The appeal site is close to employment sites – about 8,000 people work to the north of the site. This would encourage trips by foot during lunch breaks or after work.

#### *Cycling*

101. There are cycle routes in the vicinity. There are cycle lanes adjacent to the site in Watlington Road. There are 2 major cycle routes through the Blackbird Leys estate. A 5km contour shows that a very large part of Oxford lies within the distance Government recognises as making cycling a realistic choice. Paragraph 78 of PPG13 says cycling has the potential to substitute for short car trips, particularly those less than 5km. Oxford is renowned for its cycling facilities. CD2 shows that cycling accounts for 15% of journeys to work in Oxford, compared with 3% in the UK. Cyclists cannot fill up a car boot once a week, but they can fill up panniers two or three times a week instead.

#### *Public transport*

102. Routes 5A, 5B and 101 use the Watlington Road bus stops, immediately adjacent to the site. They provide an hourly service as shown in Figure 5 of C McKay's Appendices. They link the site with Templars Square and the City Centre. During peak hours these services provide a service 3 times an hour. Routes 1 and 5 stop at the bus stops some 400m away on Balfour Road. These services operate around Blackbird Leys and provide a 5 minute service to Templars Square and the City Centre.
103. The Council's Mr Staley considers that bus stops should be within 400m of properties if they are to be well used. Applying this point to the appeal means that as all 5 bus services are within 400m of the site, shoppers could reasonably be expected to walk from all these bus stops to the site. All 5 services must have thousands of people within 400m of bus stops and again shoppers could be expected to walk to these stops and then take a bus to the site.
104. In summary, the development is well located to offer a realistic choice of access by public transport. The combined coverage of the routes serving the site provides a genuine level of bus accessibility for those who chose this mode of travel.

#### **Employment**

105. The 2003 consent is important. Planning permission was granted on 7 March 2003 for a drive through restaurant and new car dealership. This 2003 remains extant. No problems are anticipated with the reserved matters application, recently submitted.
106. OLP policy EC2 represents a significant change in policy since the 2003 consent. The question arises as to how this policy should be applied to mixed use applications such as

appeal B. Mrs Byrne for the Council takes a clear and correct position when she says in her report that the OLP would permit mixed use developments which involve the larger part of a site in employment use with small elements of other types of land uses [Mrs Byrne Proof Appendix 18 paragraph 17]. Policy EC3 erects a presumption in favour of "development that modernises existing employment-generating sites." such as the appeal site. Paragraph 8.4.1 of the OLP confirms that modernising employment sites may involve the larger part of a site in employment use along with small elements of other types of land uses to create a mixed-use development.

107. Appeal B was found to be in conflict with policy EC2 because the retail element was not small. The Committee Report concluded that this scheme would "result in the loss of a key protected employment site". Were the 2003 scheme to be determined today against the changed policy, then – by parity of reasoning with the Committee Report approach – the Council would have to conclude that the Class 3 use is not small. Thus the 2003 scheme would be refused as it would lead to the loss of a key protected employment site.
108. It follows that implementation of the 2003 consent would lead to the loss of a site protected by policy EC2.
109. However when appeal B was considered, members were not advised about the fall-back position in the event that permission was refused. This is a flaw in process of fundamental importance. The Planning Encyclopaedia on page 2-3285 paragraph 8 in CD4 makes this clear. The planning authority must have regard to the fall-back position. In this case the Council – in breach of the legal duty to have regard to all material considerations – failed to take into account the fall-back position.
110. VSL's letter dated 26 January 2006 shows there is a demand for both a drive through restaurant and car showroom [Mr Krassowski Proof Appendix 18]. In fact the original application was made following an expression of interest from Kentucky Fried Chicken. McDonalds are now interested in the site. The letter from the owners, Oakhill, confirms that if the appeal fails, the 2003 consent will be implemented. The Council have called no market evidence to dispute the VSL conclusions on demand, and no Council witnesses have attempted to challenge that evidence.
111. Given the consent will be implemented, the fall-back position entails the loss of a site protected by policy EC2. It is planning orthodoxy that permission can only be refused if a proposal causes harm to an interest of acknowledge importance when compared with the fall-back position. Given that the loss of a site protected by EC2 will arise in the fall-back position, permission cannot be refused for the appeal schemes on the grounds that they would lead to the loss of a site protected by EC2. That loss would occur in any event so that, compared with the fall-back position, no harm arises to the Council's employment policies.
112. The Council tried to distinguish between the 2003 scheme and appeal B on the one hand, from appeal A on the other, on the grounds that the former would only involve the partial loss of a key protected employment site, while the latter would involve the complete loss of such a site. This was wrong. In the Committee Report it was said that appeal B would "result in the loss of a key protected employment site" [Mrs Byrne Proof Appendix 18 paragraph 6.20]. This does not say partial loss. In fact, both the 2003 scheme and appeal B, no less than appeal A would result in the loss of a key protected employment site. A

- mixed use development which did not have a truly “small” element of non-employment generating use is regarded as resulting in the total loss [not partial loss] of a key protected employment site. “Small” is matter of fact and degree – both the retail component to appeal B and the drive through restaurant in the 2003 scheme are not small.
113. Assessment of the employment issue can also be made without regard to the fall-back position. Article 22(1)(c) of the Town and Country Planning (General Development Procedure) Order 1995 provides that, when planning permission is refused, the notice shall specify all policies in the Development Plan relevant to the decision. The only 2 employment policies in the then emerging local plan were EC2 and EC3. There is no objection on grounds of precedent.
114. Paragraph 8.2.1 of the OLP confirms the context for the Council’s employment policies to be one of “restraint”. Against this background, the ethos which underpins the employment policies is stated in paragraph 8.2.2 to be: to encourage and support a variety of businesses; to strengthen and diversify the local economy; and to maximise employment opportunities for local people.
115. Lidl has a strong policy of social inclusion. Lidl employs local people. Blackbird Leys and Temple Cowley areas would be targeted for the recruitment of staff. The store would provide employment for approximately 40 staff, of which 30 would be full time equivalent. The offices in appeal B would provide employment for approximately 40 people. The previous use of the site generated 19 full time staff. The uses permitted by the 2003 consent are expected to provide 30 jobs – 15 each in the car dealership and drive through restaurant.
116. It follows that: appeal A would generate more jobs [30] than the previous use [19]; appeal B would generate more jobs [70] than the previous use [19]; and the 2003 consent would generate more jobs [30] than the previous use [19].
117. Given the ethos underpinning the Council’s employment policies is to encourage and support a variety of businesses, to strengthen and diversify the local economy, and to maximise employment opportunities for local people, it cannot be said that the grant of consent for appeals A and B would be in conflict with that ethos. If there is no conflict with the ethos underpinning the employment policies, there cannot be substantive conflict with the policies themselves.
118. To try to overcome the employment refusal reason for appeal A, Lidl included the office floorspace in the revised application – appeal B. OCC claim the proposal would result in a net loss of the present designated employment use and would reduce the limited supply of employment land available for modernisation.

### **Conclusion**

119. Both appeals should be allowed.

### **The Case for Third Parties**

120. Mr M Holt supports the Lidl proposals. The merchandise is interesting and cheaper than in the larger superstores, such as Tesco and Sainsbury’s. The nearest similar stores are at

Cirencester and Reading. There is a need for a Lidl at Oxford, and particularly close to the Blackbird Leys housing estate.

121. Mr N Toms supports the Lidl proposals. Oxford needs a Lidl store. The location would benefit residents in Blackbird Leys.

122. Mrs Bishton considers that Blackbird Leys and Great Leys are very poorly served by shops. The Lidl store would be within walking distance.

### **Conditions and Obligations**

123. Proposed conditions are in CD13A. Draft condition 6 was not acceptable to Lidl. Lidl argues that the proposed restriction of vehicular access to Transport Way is not justified in any Council highway or traffic evidence given to the inquiry. The Council explain that the safety problems of using the Watlington Road access were set out in the Council Committee report [LPA9 in F Byrne proof].

124. The Unilateral Undertaking is in CD12.

125. The proposed Obligation [CD12 & CD12a] was disputed. The Council says this type of approach had not been supported by the Secretary of State, endorsed by an Inspector and was not suggested in PPS6. The Council says there are questions about the price check comparison exercise [PCCE] such as: who chooses the independent assessor for (b)? how will the 20 product lines in (c) be chosen? why are markets not mentioned in (d)? why should special offers be excluded in (e)? how could price manipulation be avoided in the 2 week period after the PCCE is set up? The Council adds that it would be absurd that a Lidl employee should go to Court if Tesco had lower prices on 3 occasions in any year.

126. Lidl explains that the reason for the obligation comes from the Secretary of State's decision and comments on the Newhaven Lidl proposal. The s.106 would ensure the material benefits of the proposed Lidl provision for this deprived area of Oxford. The s.106 would be a novel and imaginative solution for a decision letter. The Council's questions about the independent assessor and 20 product lines do not raise matters of difficulty. A fair comparison of items requires a comparison of items that are comparable. Special offers should not be included. Prices could not be manipulated as other operators would not be known to Lidl and so Lidl could not know what prices to alter and Lidl prices are nationally determined.

### **Conclusions**

127. The main issues will be addressed in the following order:

(a) whether the proposals accord with relevant development plan policies;

(b) whether proposals comply with PPS6 policy in respect of (i) the need for the development, (ii) the sequential approach to site selection, (iii) the impact on existing centres and (iv) accessibility in terms of a choice of means of transport and changes in travel patterns;

(c) whether the proposals would have an adverse impact on employment and regeneration in Oxford.

### *Development plan*

128. As for the Oxfordshire Structure Plan, policy TC2 or TC4 addresses the sequential approach to site selection. This subject will be addressed under the same heading in relation to PPS6. To address this matter here would simply lead to repetition.
129. As for the Oxford OLP, policy EC2 is concerned with protecting key employment sites. This matter will be better addressed under main issue (c). Policy RC2 is concerned with maintaining and enhancing district centres; this matter will be better addressed under main issue (b) (iv). Policy CP3 is concerned with the need for the development, the sequential approach and accessibility; these matters are best addressed under the main issues (b) (i), (b) (ii) and (b) (iv).
130. It is clear that where the development plan has relevant policies, applications for planning permission should be determined in line with this plan, unless material considerations indicate otherwise. The weight to be attached to the material considerations in this case is important.

### *Need for the development*

#### *Quantitative need*

131. Need should be demonstrated for the two proposals as they are in out-of-centre locations. Dealing first with quantitative need, this should be assessed using the guidance in paragraph 3.10 of PPS6. This guidance calls for the catchment area used to assess future need to be realistic and well related to the size and function of the proposed development.
132. The PCA selected by Lidl is based on a 5 minute drive time. Such a catchment appears realistic and reasonable. Applying the Lidl PCA with its 5 minute drive time, there appears to be surplus convenience goods expenditure available in the PCA in 2008 to accommodate the Lidl proposal. From the evidence, even if the £15.5m surplus is reduced to take account of some expenditure generated in the PCA but spent outside it and other "leakage", there is still enough surplus convenience expenditure available to represent a quantitative need. In any event the Council's criticisms on this matter were not convincing. The estimated Lidl turnover of £3.1m would be well within the estimated available surplus convenience goods expenditure.
133. A different way of estimating quantitative need is to use aggregate growth in convenience goods expenditure in Oxford in 2008 as calculated by ORNS. This is agreed to be £10.77m [CD15 Table 10]. This can be compared with the estimated Lidl turnover of £3.1m. The Lidl turnover assumes a Lidl sales density of £2,802/m<sup>2</sup>.
134. The 2008 £10.77m figure is taken from the ORNS calculation that by 2011 there would be £12.3m of supermarket convenience goods expenditure growth and some £5.3m of more localized convenience shopping growth. These 2011 figures are based on a supermarket sales density assumption and a 70:30 split between supermarket: local shopping growth. Neither factor is explained at all in the OLP. The OLP simply concludes, without any explicit justification, that there is capacity for 1,400m<sup>2</sup> of additional supermarket floorspace.

135. The 1,400m<sup>2</sup> of additional convenience floorspace identified in paragraph 12.4.4 of the OLP requires a clear explanation and justification. Without a clear explanation and justification the figure is meaningless. In fact, the inquiry was told the figures and calculations that the 1,400m<sup>2</sup> figure is based on are in another document. This floorspace figure is derived from Table 12 of ORNS. The assumed sales density used is £8,500/m<sup>2</sup>. But this higher sales density figure is relevant for main supermarket operators, and not for a limited range discount operator such as Lidl. A reasonable sales density for Lidl would be about £2,802/m<sup>2</sup>. If the lower sales density is used it gives an overall floorspace requirement of about 3,800m<sup>2</sup>. Similarly if the somewhat arbitrary 70:30 supermarket: local shopping split is not used, there is more available convenience expenditure available for an operator such as Lidl.
136. In the inquiry it was found that paragraph 12.4.4 of the OLP fails to explain how the floorspace requirement is derived and provides no explanation on the limitations of this figure. It is thus insufficiently precise to lead to clear implementation. It is also misleading in this particular case. This is a serious flaw in the OLP in relation to the Retail Developments section of this plan. Development plan policies should be clearly presented and justified. Development plan policies or important guidance should not rely on other documents for essential clarification, which are not part of the development plan. Thus this defect in the OLP on convenience floorspace requirements becomes an important material consideration in this case. Given the obvious inadequacies of the OLP written statement paragraph 12.4.4, it would be unreasonable to insist that quantitative need assessment should be entirely based on this particular OLP statement. This amounts to a serious material consideration in relation to the development plan.
137. In short, the evidence suggests that there is a quantitative need for the Lidl proposals. This need does not conflict with the OLP statement in paragraph 12.4.4, as that statement is misleading and not properly justified. This need also indicates that the Lidl proposal does not conflict with OLP policy CP3(a).
138. As for overtrading, this is difficult to assess – either visually or theoretically. To assess whether a store is overtrading by till queues, car park use, till closures or customer congestion seems subjective. For example the Sainsbury's store had 23 check outs closed on 24/4/06 at 20.00; this led to queues of 3 and more. At a similar time Tesco had 5 check outs closed; not surprisingly there were minimal queues at the tills. On 25/4/06 Sainsbury's at 16.25 had 22 check outs closed with a 75% capacity car park and again queues of 3-4 people at each till. At a similar time with a similarly full car park, Tesco by contrast had 12 tills closed and again minimal queues at the check outs. Consistently longer till queue lengths at Sainsbury's suggests a different Management approach to customers compared to Tesco, rather than this representing a symptom of overtrading.
139. Arguments about assessing overtrading in relation to stores apparently trading above company averages were not made out. Arguments about allowances for a growth rate of 1% per annum in floorspace efficiency were not made out. In short, overtrading was not a factor that could be taken into account in the need assessment. The Council's arguments on this matter are preferred.
140. It would seem that there is sufficient growth in convenience expenditure in Oxford by 2008 [store opening] to accommodate the Lidl proposal. Thus in an Oxford wide catchment there

is a need for more convenience floorspace, which could be met by Lidl. It follows that significant weight should be given to the quantitative need that has been demonstrated.

*Qualitative need*

141. As for qualitative need, PPS6 and paragraph 2.35 describes 2 factors which provide for consumer choice. First, an appropriate distribution of locations of development, and second, a range of sites to meet the needs of the whole community, particularly the needs of those in deprived areas. This latter point is also addressed in paragraph 2.33 of PPS6; here it is said that additional weight should be given to any benefits from serving deprived areas. However quantitative need should be given greater weight in assessing need.
142. Lidl argues that there is no “deep discounter” in Oxford or the surrounding towns. Thus Lidl says Oxford residents are deprived of this type of shopping. Lidl argues that its products are significantly cheaper than other supermarkets and that this is shown by the PCCE on 20 product lines. The Council dispute all these arguments.
143. Although the PCCEs by Lidl and OCC came to different conclusions, it seems that on the evidence Lidl does offer many products at significantly cheaper prices, compared with mainstream supermarkets. The evidence of Lidl on this matter is preferred. Although there are markets in Oxford City Centre, there is no clear evidence that they would compete directly with Lidl. Additionally Lidl, as a limited range discount store, occupies a relatively new form of food retailing according to the 2000 Competition Commission Report on Supermarkets [CD3]. This Report states that Lidl, Aldi and Netto are the only new entry in the last 10 years and it says they are “niche players at the discount end of the market” [paragraph 2.205]. It adds that they aim to “attract lower income customers” [2.205] and “put the emphasis on low prices” [2.225], and they “seek to occupy the lowest position in the price range”. Then in paragraph 2.260 it says the “average price of the limited range discount stores are significantly below those of Kwik Save and Asda”. It is therefore fair to say that as there is no limited range discount food store in Oxford; this represents a gap in retail provision in a qualitative sense. It follows that consumer choice in Oxford would benefit from the introduction of a limited range discount store. The fact that there is a reasonable choice of supermarkets in the SE Oxford area does not diminish this point.
144. Thus it seems reasonable to conclude that a Lidl in Oxford would extend consumer choice [PPS6 para 2.35]. Additionally a Lidl store would be likely to aid competition with other food retailers. It also seems reasonable to conclude that a Lidl in the location proposed would offer particular benefits to Blackbird Leys residents. Convenience shops serving this housing area would include both the Tesco and Sainsbury’s stores [not sequentially preferable sites], the Cowley Centre supermarkets and the very small convenience stores in the housing area. A Lidl store would significantly improve provision for local residents from Blackbird Leys. Significantly, this housing area is classified as a deprived area. The Lidl on Watlington Road would be reasonably well located to Blackbird Leys residents, as it is some 200m from the northern edge of the nearest housing. The Lidl proposal would therefore provide increased consumer choice for these residents. For all these reasons there is thus a reasonable qualitative need for the proposed Lidl. This amounts to an additional justification for the proposal.

145. The Newhaven case seems to raise two relevant points for this inquiry. The first is that a Lidl food store would extend consumer choice and aid competition. This point is expressly made in paragraph 12 of the decision letter. The second point is that the Secretary of State was concerned about how the store, if permitted, would remain as a store that sold goods at a discount. This second point will be addressed when the s.106 Unilateral Undertaking is addressed.

*Sequential approach*

146. The proper sequential approach is set out in paragraphs 2.44-2.47 and 3.13-3.19 of PPS6. OLP policy CP3(b) is also relevant. Paragraph 2.44 of PPS6 explains that appropriate sites for allocation should be considered in order of first, locations in appropriate existing centres; second, edge-of-centre locations; and third, out-of-centre sites well served by a choice of means of transport. Paragraph 2.44 and 2.45 both say sites should be identified that are or are likely to become available for development during the development plan period. Paragraph 3.19 states that sites should be "available for development within a reasonable period of time".

147. Lidl's statement in the inquiry that the minimum site size is about 0.48ha, the ideal site size is about 0.6ha and the minimum gross sales store size is 1,063m<sup>2</sup> is reasonable for the purposes of the sequential assessment.

148. At the start of the inquiry 7 sequentially preferable sites were mentioned. After careful examination during the inquiry, this list was reduced to 4 locations: Crowell Road car park, Diamond Place, Summertown, Blackbird Leys sites and the former BMW garage, Summertown. The 7 original sites were examined in detail during the inquiry. Site inspections to each site were carried out. In closing submissions, the Council only proposed the Crowell Road site as a sequentially preferable site to the appeal site. Consequently I will carefully consider this site in more detail than the other 3 sites just mentioned.

149. With the Crowell Road multi-storey car park, there is no compelling evidence that any proposed redevelopment would take place in a reasonable period of time. Evidence of recent discussions or correspondence does not demonstrate this site is available, suitable and viable as a sequentially preferable site. This multi-storey car park site is clearly not an easy site to redevelop. The previous owners – Fairacre – decided that redevelopment was not worth pursuing. There is insufficient evidence that Lidl could be accommodated on the site in any redevelopment. There are serious unknowns or uncertainties about this site in terms of viability. Lidl's feasibility study questions the viability of redeveloping the site. While criticisms were made of this study by the Council, these were not entirely convincing and no alternative study was submitted to refute the Lidl study. The OLP identified this centre for improvement – DS15 – and so the previous and current site owners would have known for some years that the Council were encouraging development of the site. No obvious progress has been made in pursuit of redevelopment. Recent interest in the site in the form of correspondence and meetings may have been stimulated by the appeal proposals and this inquiry. In short, there do seem to be genuine difficulties in hoping to operate a Lidl store from some undefined redevelopment of this multi-storey car park site. Insufficiently convincing evidence was submitted on the availability of the site in a reasonable time and its viability. It cannot be right to prevent the Lidl proposal on the grounds that maybe in some time in the future, there might be a redevelopment of the multi-storey car park and there might be a possibility of accommodating the Lidl store in that

unknown scheme. It cannot be right to wait until 2011 – 5 years time – as the Council suggest, to see if the site might be developed. This approach would be unreasonable. For all these reasons, the Crowell Road car park cannot be considered as a sequentially preferable site. This site is not a practical alternative to the appeal site.

150. Diamond Place, Summertown is owned by the Council, the University and other parties. Evidence on its availability and likely development was not compelling. While there have been recent meetings and discussions between the Council and the University and a food retailer, there is no clear evidence that all the parties intend to co-operate to achieve a viable development in any reasonable time period. Whether the frontage users and retailers, including a Co-op supermarket, would help a rival food store to locate on the car park to the rear was also not clear. The effect of the proximity of the recent M&S food store was not assessed. The long period this site has been allocated for development [DS20 in current OLP – where it is suggested comparison floorspace should be provided] and the absence of any clear development proposals is a further indication of this site not being a practicable alternative site to the appeal site.
151. Blackbird Leys has no sites currently available of a suitable size to accommodate the Lidl store. The OLP identifies no sites for a new food store in DS7D. This location has no sites that would clearly be made available within a reasonable period of time. There is no compelling evidence about the Blackbird Leys Youth and Community Centre being relocated or demolished. There is no clear evidence that the garages would be made available for a retail scheme. A possibility that sites might become available in 3-5 years time is not convincing in this location. There is insufficient evidence to show this location could provide any sequentially preferable sites. Given this conclusion – the absence of suitable and available sites in Blackbird Leys – the fact that the Lidl store is just outside this residential area has much less weight than the Council suggest.
152. The Phoenix, the former BMW garage in Summertown would be too small for the proposed Lidl store. It is not suitable or viable. Again there are no clear plans or proposals for this site. It is DS8 in the OLP, where small retail units are proposed.
153. In conclusion, there is insufficient evidence to clearly show that there are sequentially preferable sites which are available, suitable and viable. It would be wrong to conclude that sequentially preferable sites at Crowell Road car park and Blackbird Leys Regeneration Zone would be satisfactory merely on grounds of recent discussions of possible intentions at Crowell Road, or relocating a community centre or garages at Blackbird Leys. There is insufficient reason to suppose that meetings between developers, retailers and the Council and intentions to pursue development constitute firm availability, suitability and viability. None of the sites examined in the inquiry had the benefit of completed feasibility studies or planning permissions. None of the sites examined were practical sequential alternatives in the terms of the relevant advice in PPS6.

*Impact on existing centres*

154. Retail impact on Cowley Centre [Templars Square] is not implied in either set of refusal reasons. The only reference to the effect of the Lidl proposals on existing shopping centres is in relation the refusal of appeal B. Here there is a reference to directing investment away from existing centres.

155. The evidence of RPS/Lidl is preferred on this issue. This shows a low impact on stores in Cowley Centre. As for the argument about divergence of trade away from Cowley Centre, there was insufficiently compelling evidence to show that the Lidl proposal would cause any adverse impact on this District Centre. For example, there was no compelling evidence to show that the Lidl store would prevent investment in Cowley Centre, or more particularly, in any scheme that might emerge on the Crowell Road multi storey car park site.

*Accessibility – Choice of means of transport*

156. PPS6 says in paragraph 3.25 that developments should be accessible by a choice of means of transport, including public transport, cycling, walking and the car. It adds that full account should be taken of customers' likely travel patterns. Paragraph 3.26 of PPG13 adds that development should offer a realistic choice of access by public transport, walking and cycling. OLP policy CP3(c) calls for sites to be realistically accessible.

157. There is no dispute that the appeal site is not as well related to existing public transport as the nearest shopping centres in Cowley and Blackbird Leys. Routes 5A, 5B and 101 would serve the food store. This would give 3 buses in an hour. Also workers returning from the City Centre by bus could call at Lidl on their way home. This level of service is not as frequent or convenient as the 5 minute service to the Cowley Centre. However a bus is not a particularly convenient form of transport for food shopping. On the basis of evidence only about 9% of people use public transport for shopping. It therefore could be construed that the Lidl store would be realistically accessible by public transport. The limited bus service provision would not change or prejudice this expected or "realistic" low proportion of people choosing public transport for food shopping.

158. As for walking, the nearest Blackbird Leys houses are about 120m away. The Blackbird Leys Neighbourhood Centre, with its Community Centre, is about 13 minutes away on foot. The maximum walking distance for shopping is likely to be about 1,200m. This would include people from Blackbird Leys and Cowley. However a walking distance for shopping of about 800m is more likely to be an acceptable choice than 1,200m, if a number of shopping bags were to be carried. The Council is right to doubt that a serious number of people would choose to walk from the northern area of Cowley to the store. On the basis of the evidence about normal travel patterns for Lidl stores, it could be assumed that about 15% of people might be expected to walk to the Lidl store.

159. As for cycling, this mode of transport has limited attraction for most shopping trips. It seems likely that between 1.2-3% may cycle to Lidl, based on experience of other Lidl stores and cycling in Oxford. The fact that more people cycle in Oxford than in the UK generally is a point in favour of cycling. It seems to be reasonable to conclude that the store would be realistically accessible for the small proportion of cyclists who might choose to cycle to carry out food shopping trips.

160. There is no doubt that the Lidl food store is not ideally located in relation to Government transport objectives in PPG13, or the guidance on location in PPS6. It is clear that with retail developments, the preferred order of locations is first, existing centres, second, edge-of-centre, and third, out-of-centre. And for out-of-centre locations, preference should be given to sites which are well served by a choice of means of transport and which are close to the centre.

161. This particular location is quite well served by a wide choice of means of transport. It is not close to any existing centre. However it must be noted that for much bulk food shopping, it is inevitable that the majority of people will use cars, rather than take buses, cycle or walk. Thus it can be concluded that the Lidl proposal does offer a realistic choice of access. The location in Watlington Road would be well served by a choice of means of transport, including public transport, walking, cycling, and the car – when account is taken of customers likely travel patterns.
162. As for changes in travel patterns caused by the proposed store, the Council do not submit evidence on this matter, other than a general statement that “the location would not meet the ambitions of PPG13” and the comment “that most customers would drive to the store” [paragraph 10.1 P Staley proof]. As there is no detailed evidence on travel pattern changes, it would be inappropriate to reach any conclusions on this matter.

163. It is also worth noting that the site is allocated as a part of a key employment site under policy EC2. The first criterion for identifying such sites is “good accessibility by walking, cycling or public transport for the majority of the workforce.” This OLP statement implies that the site is realistically accessible by walking, cycling and public transport, although it must be accepted that a walk or cycle to work may well be slightly longer than a walk or cycle to carry out food shopping.

### **Employment**

164. There is no dispute that the appeal site is within a protected employment site under OLP policy EC2. There is also no dispute that there is an existing 2003 planning permission for a drive through restaurant and car dealership.
165. The extant planning permission is a material consideration in assessing the effect of the appeal proposals on policy EC2 [CD9]. This part of the site’s planning history remains important. The “fall-back” position – what the landowner could do without a fresh planning permission – is relevant to both appeals. In this case the landowner has stated that he intends to implement that 2003 permission if the appeals are dismissed [Mr Krassowski Appendices Document 18]. The evidence submitted suggests that the prospect of implementation of the 2003 consent is high.
166. Thus if this consent is implemented it would lead to the partial loss of a key protected employment site. The drive through restaurant would not be an accepted use on this site in the terms of EC2. The 2003 consent is a mixed use scheme with a sui generis use and a Class A3 use. If appeal B is allowed, this too would lead to the partial loss of a key protected employment site. Appeal B is a mixed use scheme with 1,871m<sup>2</sup> Class A1 retail floorspace and 840m<sup>2</sup> Class B1 office floorspace. There is clearly a difference in floorspace between the 2 non-conforming uses – the A3 restaurant in the 2003 consent would be smaller than the A1 retail in appeal B. However when the actual jobs involved are considered the position is reversed. The 2003 consent would provide 15 full time equivalent jobs in the sui generis use compared with 40 full time equivalent jobs in the offices. It follows that appeal B provides significantly more employment than the 2003 consent. This is important in relation to Oxford’s OLP’s aims to maximise employment opportunities for local people and provide a diverse range of jobs across the City.
167. The arguments for both appeals are reasonably finely balanced on the retail issues. The evidence on retail issues is insufficient to justify refusal of either appeal. On employment

the situation is different. For appeal A there is no benefit from a mixed use scheme offering a significant number of jobs. Appeal A is not a mixed use scheme and therefore does not provide any jobs in Class B1, B2, B8 and sui generis uses. This means it does conflict with EC2. This employment policy conflict is enough to tip the scale against appeal A. By contrast, appeal B would provide a clear and significant benefit to employment opportunities in Oxford when compared to either the existing use or the 2003 consent. Consequently appeal B does not conflict with policy EC2 in a material way. Additionally, appeal B would not have an adverse impact on employment and regeneration in Oxford.

#### **Other matters**

168. The Council suggestion, that the 1994 Sunday Trading Act should be used to define "large shop", is novel. The 280m<sup>2</sup> floor area defined there has not been used before in any planning sense to my knowledge. I would have thought a more reasonable definition would come from the OLP. However large is not defined. Major is given as 2,000m<sup>2</sup>. This is a more popular definition, and is used in many development plans. In any event the precise need to adopt a definition for large was not made out.

#### **Conditions and Obligations**

169. Most of the draft conditions in Document 13a are generally reasonable. The only condition in dispute - Condition 6 - was not supported by sufficient evidence. During the inquiry no detailed and compelling evidence was submitted about alleged dangers from turning right into the site and turning right out of the site. Condition 6 should not be imposed.

170. Conditions should be imposed in relation to external materials and landscaping in the interest of visual amenity. Conditions should be imposed in relation to vehicular access to the store, provision of sightlines, highway works and traffic light improvements in the interests of highway safety. A condition on loading/unloading should be imposed to ensure adequate space is available for these activities. A condition dealing with car and cycle parking should be imposed to ensure these facilities are provided. A condition should be imposed to ensure the local planning authority can control any alternative use of the premises. A condition should be imposed to ensure that possible contamination and its treatment is properly addressed. Conditions should be imposed to control noise from mechanical plant and design of such plant, ventilation equipment and ducting in order to protect residential amenity. The draft condition in relation to a public work of art is questionable, as is a precise interpretation of the meaning of policy CP14 - and the direct relevance to planning and a particular development of public art is not entirely clear from the OLP. A condition will however be imposed on public art provision, as there were no objections to the draft condition and this inquiry is not the forum for revisiting unusual OLP policies, not the subject of debate at the inquiry. A condition about CCTV provision should be imposed to address safety and security. A condition addressing resource efficiency and renewable energy should be imposed.

171. The Unilateral Undertaking addresses the continued operation of the limited range discount food store, the submission of a Travel Plan and a financial contribution to the County Council's Transport Strategy. There is no dispute about the 2<sup>nd</sup> and 3<sup>rd</sup> matters.

172. The continued operation of the food store as a limited range discount food store is ensured by measures set down in Schedule 1. In short, Schedule 1 aims to ensure that Lidl, or another limited range discount food store occupies the appeal site and offers reduced prices

to customers. The disputed aspects of Schedule 1 are within restriction no 5. This concerns a PCCE to be undertaken by an independent assessor. The PCCE would ensure that Lidl, or some other store, offered a selected shopping basket of 20 product lines which were at least 15% cheaper in total price than any other non limited range discount food store within a 3 mile radius. As the independent assessor would be selected by the Council, this would resolve concerns expressed by the Council about the impartiality of this person. Although the Council said the PCCE and other matters would present insurmountable practical difficulties, these concerns were not made out in the inquiry by sufficient evidence.

173. As to whether a s.106 Unilateral Undertaking should control the pricing policy of a shop, it would seem to be reasonable in this case. First, the obligation requires the covenantor or successors in title to do a specified thing in, on, or under or over the land. This accords with s.106 of the 1990 Act. Second the obligation would make acceptable a development which would otherwise be unacceptable in planning terms. Without the obligation the Lidl limited range discount food store could change to another form of food retailing. Third, the obligation meets all the tests in B5 of ODPM Circular 05/2005.

174. The Unilateral Undertaking is reasonable. It should ensure that the appeal site is only occupied by Lidl, or a similar limited range discount food store.

### **Conclusions**

175. The arguments for both appeals were finely balanced. On the first issue there was insufficient conflict with development plan location or retail policies for either appeal A or appeal B to justify dismissal. As for employment policies, appeal A does conflict with policy EC2, whereas appeal B does not.

176. On the second issue, there is a quantitative and qualitative need for the proposed retail development. Turning to the sequential approach, insufficient evidence was submitted to clearly demonstrate that sequentially preferable sites would be available in a reasonable time period, and would be suitable and viable. The trading impact of the proposed store would be acceptable. The proposed store would be realistically accessible by walking, cycling, public transport and the car.

177. As for the third issue, appeal A would conflict with employment policies, appeal B would not materially conflict with the same policies and would not have an adverse impact on employment and regeneration in Oxford.

178. For the reasons given above and having regard to all other matters raised, I conclude that appeal A should be dismissed and appeal B should be allowed.

### **Formal Decision**

**File Ref: APP/G3110//A/04/1171310**

179. I dismiss appeal A.

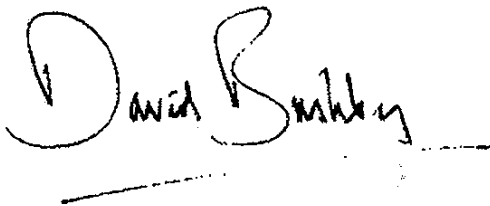
**File Ref: APP/G3110//A/05/1195688**

180. I allow appeal B, and grant planning permission for the demolition of existing buildings, and erection of 2 storey building for use as Class A1 discount food store (1,871m<sup>2</sup>) at ground floor level and Class B1 offices (840m<sup>2</sup>) at first floor plus provision of 102 car

parking spaces, cycle store (36 spaces), cycle stands (9 spaces) revised vehicular access, compactor, public art and landscaping at the former Hartwells, Watlington Road, Cowley, Oxford in accordance with the terms of the application, Ref 05/01551/FUL, dated 26/7/05, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and the work of public art.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 5) Deliveries to the retail store shall only be made via the access from Watlington Road and the access shall only be used outside the premises opening hours for deliveries.
- 6) Customers to the store and employees of the offices shall use both the Watlington Road access and the Transport Way access.
- 7) The area shown on the approved plans for loading and unloading for the retail store shall be marked out and kept clear at all times, and shall not be used for storage, car parking or any other purpose.
- 8) The building shall not be occupied until the areas and facilities shown on the approved plans have been drained and surfaced in accordance with details submitted to and approved by the local planning authority, and these areas and facilities shall not thereafter be used for any purpose other than the parking of cars and cycles. The car parking to the rear of the building shall be retained solely for use by the offices, except at weekends.
- 9) Details of sightlines shall be provided for both access junctions to Watlington Road and Transport Way and shall be implemented and maintained thereafter free of obstructions which exceed the height of the carriageway by more than 0.6m.
- 10) The ground floor of the building shall be used only for A1 retail use and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class revoking or enacting that Order). No more than 20% of the permitted retail floor area shall be used for the sale of comparison goods. The first floor shall be used for B1 office use only and for no other purpose (including any other purpose in Class B1 respectively of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class revoking or enacting that Order).

- 11) The development shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public, the building and the environment when the site is developed.
- 12) Development shall not begin until the measures approved in the scheme have been implemented.
- 13) The level of noise emitted from mechanical plant on the premises shall not exceed 45 dB(A) between 0800 and 2300 and 40 dB(A) at any other time, when measured at the boundary of the site.
- 14) Prior to commencement of the development, details of the work of public art to be provided on the site shall be submitted to, and approved in writing by, the local planning authority, and the public work of art shall be built in accordance with the details approved.
- 15) Prior to commencement of the development, details of all plant, machinery, mechanical ventilation, equipment and ducting, shall be submitted to, and approved by the local planning authority. No other plant, machinery, mechanical ventilation equipment, flues or ducting shall be placed on the outside of the building without the written permission of the local planning authority.
- 16) Prior to commencement of the development, details of improvement works to the highway, including phasing of the pedestrian Watlington Road/Transport Way traffic lights and yellow box markings on Watlington Road, shall be submitted to, and approved in writing by the local planning authority. These highway works shall be implemented in accordance with the approved details prior to the opening of the retail premises for trading.
- 17) Prior to the development being brought into use, details of the exterior/interior system of CCTV shall be submitted to and approved in writing by the local planning authority. These facilities shall be implemented in accordance with the approved details prior to the opening of the retail premises for trading.
- 18) The development shall be constructed in accordance with the details set out in the submitted and approved Natural Resource Impact Analysis, unless otherwise agreed in writing by the local planning authority.

  
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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

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He called

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Tom Morris Dip Tp MRTPI Principal Planning Officer,  
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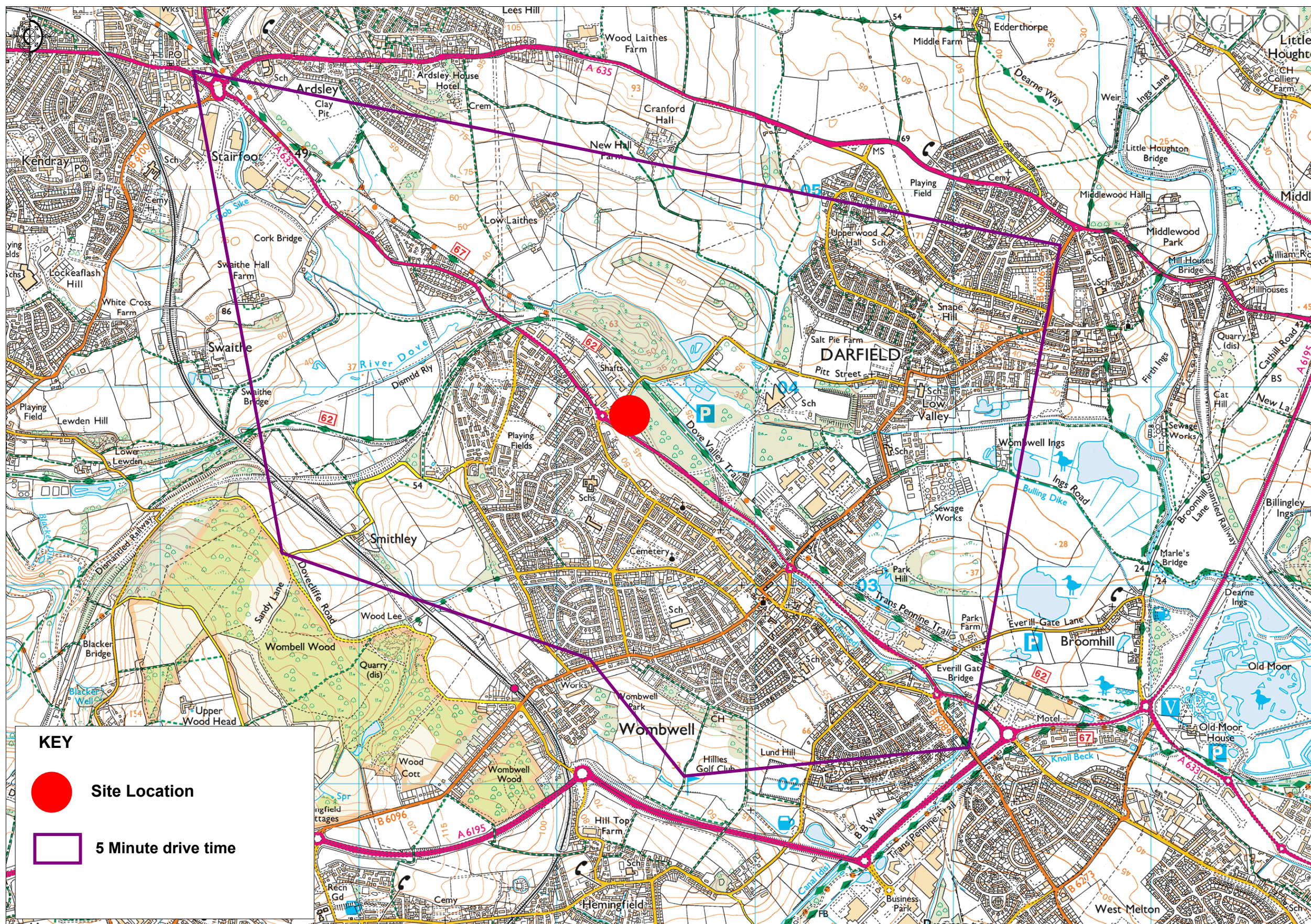
### CORE DOCUMENTS

- |                     |  |
|---------------------|--|
| Document 1          | Statement of Common Ground on Planning                                 |
| Document 2          | Statement of Common Ground on Transport                                |
| Document 3          | Extracts from sections 2 & 7 of Competition Commission Report 2000     |
| Document 4          | Extract from Encyclopaedia of Planning Law – page 2-3285               |
| Document 5          | RPS Planning and Retail Statement – May 2004                           |
| Document 6          | RPS Planning and Retail Statement – July 2005                          |
| Document 7          | Adopted Oxford Local Plan  |
| Document 8          | Extract for IHT report: “Providing for journeys on foot”               |
| Document 9          | Pre-application reserved matters site plan                             |
| Document 10         | Draft NLP Oxford Employment Sites Study                                |
| Document 11         | Plan of Blackbird Leys Regeneration Zone                               |
| Document 12/<br>12a | Second Draft Unilateral Undertaking/Final Draft Unilateral Undertaking |

Document	13/ 13a	Draft Conditions/Revised Draft Conditions
Document	14	Oxford Local Plan: Inspector's Report Section 8 Economy
Document	15	Oxford Retail Needs Study February 2004
Document	16	Sequential site location plans
Document	17	Locations of 400 UK Lidl stores
Document	18	Lidl stores of 1063m <sup>2</sup> or less opened since November 2003
Document	19	Community Centres Assessment - November 2005
Document	20	Lidl till receipts for prices in PCCE
Document	21	Council till receipts for prices in PCCE
Document	22	Competition Commission Report – extract page 147
Document	23	Lidl [Colin McKay] comments on conditions 5 & 6
Document	24	Council [Paul Staley] justification for conditions 5 & 6
Document	25	Lidl [Colin McKay] response to Document 24
Document	26	List of all Lidl stores opened since November 2003
Document	27	Inquiry attendance sheets
Document	28	Inquiry notification

## Appendix 3

**5 Minute Drive Time Plan  
Proposed Lidl Foodstore  
Land at Mitchells Way, Wombwell, Barnsley**



## Appendix 4

**TABLE 1: Floorspace and Turnover of Proposed Development**

	Sales Area (sq. m)	Convenience sales area (sq. m)	Sales Density 2015 (£/sq.m)	2015 (£m)	2019 (£m)
<b>Lidl Foodstore</b>	1,424	1139	£3,331	3.79	3.86
<b>TOTAL</b>	<b>1,424</b>	<b>1,139</b>		<b>3.79</b>	<b>3.86</b>

**Notes**

Lidl sales area split 80% convenience / 20% comparison.

Lidl sales density sourced from Lidl.

Rate of floorspace efficiency growth used is 0.4 % p.a. Source: Pitney Bowes Retail Expenditure Guide 2014/15  
2012 Price Base.

Lidl UK GmbH

Mitchells Way, Wombwell

TABLE 2: Floorspace and Turnover of Convenience Commitments

	Application Reference	Sales Area (sq. m)	Convenience sales area (sq. m)	Sales Density 2014 (£/sq.m)	Sales Density 2015 (£/sq.m)	2015 (£m)	2019 (£m)
Stairfoot: Sainsbury's	2014/0075	6,836	3997	£12,948	£13,000	51.96	52.80
Darfield: Foodstore	2014/1232	1,254	878	£3,749	£3,764	3.30	3.36
Darfield: Other Convenience Units	2014/1232	1,152	346	£1,500	£1,506	0.52	0.53
<b>TOTAL</b>		<b>9,242</b>	<b>5,221</b>			<b>55.79</b>	<b>56.68</b>

**Notes**

Sales floor area and 2014 sales density sourced from Darfield Planning and Retail Statement (DPP, 2014)

Sales density of Darfield other convenience units based on WP figures

Rate of floorspace efficiency growth used is 0.4 % p.a. Source: Pitney Bowes Retail Expenditure Guide 2014/15

2012 Price Base.

Lidl UK GmbH

Mitchells Way, Wombwell

TABLE 3: Solus Retail Impact Assessment

Location	2019 Pre-Impact Convenience Turnover	Trade Diversion to Lidl Foodstore		Residual Turnover at 2019	Solus Impact
	£m	%	£m	£m	%
<b>WITHIN CATCHMENT AREA</b>					
<b>Wombwell District Centre</b>					
Tesco Express	2.66	4%	0.15	2.51	5.8%
All other convenience shops	0.73	1%	0.02	0.71	2.7%
<b>TOTAL</b>	<b>3.39</b>	<b>5%</b>	<b>0.17</b>	<b>3.21</b>	<b>5.1%</b>
<b>Stairfoot Local Centre</b>					
Aldi	7.92	20%	0.77	7.15	9.7%
All other convenience shops	5.76	1%	0.02	5.74	0.3%
<b>TOTAL</b>	<b>13.68</b>	<b>21%</b>	<b>0.79</b>	<b>12.89</b>	<b>5.8%</b>
<b>Darfield Local Centre</b>					
All local convenience shops	2.35	1%	0.04	2.31	1.6%
<b>Out of Centre Foodstores</b>					
Tesco Extra, Wombwell Lane	28.61	20%	0.77	27.84	2.7%
Co-op, Barnsley Road, Darfield	6.10	3%	0.12	5.99	1.9%
Morrisons, Cortonwood, Brampton	34.88	12%	0.46	34.42	1.3%
All other out of centre foodstores	-	5%	0.19	-	-
<b>OUTSIDE CATCHMENT AREA</b>					
Barnsley Town Centre (Including Lidl at Peel Street)	26.39	10%	0.39	26.00	1.5%
Morrisons, Lower Thomas Street, Barnsley	46.93	6%	0.23	46.70	0.5%
Asda, Peel Centre, Barnsley	51.73	6%	0.23	51.50	0.4%
Goldthorpe District Centre	3.95	1%	0.04	3.91	1.0%
Thurnscoe (Shepherd lane/Houghton Road) Local Centre	7.22	1%	0.04	7.18	0.5%
All other convenience foodstores	-	10%	0.39	-	-
<b>TOTAL</b>		<b>100%</b>	<b>3.86</b>		

**Notes**

2019 Pre-Impact Convenience Turnover taken from DPP's Planning and Retail Statement accompanying Darfield application

2012 Price Base.

Lidl UK GmbH

Mitchells Way, Wombwell

TABLE 4: Cumulative Retail Impact Assessment

Location	2019 Pre-Impact Convenience Turnover	Diversion to Commitments				Impact after Commitments	Diversion to Lidl		Residual Turnover after Commitments and Lidl at 2019	Cumulative Impact
		Trade Diversion to Sainsbury's, Stairfoot	Residual Turnover after Sainsbury's	Trade Diversion to Darfield Site	Residual Turnover after Darfield Site		Trade Diversion to Lidl Foodstore			
		£m	£m	£m	£m		%	£m		
<b>WITHIN CATCHMENT AREA</b>										
<b>Wombwell District Centre</b>										
Tesco Express	2.66	-	-	-	-		2%			
All other convenience shops	0.73	-	-	-	-		0%			
<b>TOTAL</b>	<b>3.39</b>	<b>0.16</b>	<b>3.23</b>	<b>0.10</b>	<b>3.13</b>	<b>8%</b>	<b>2%</b>	<b>0.08</b>	<b>3.05</b>	<b>10.0%</b>
<b>Stairfoot Local Centre</b>										
Aldi	7.92	-	-	-	-		12%			
All other convenience shops	5.76	-	-	-	-		0%			
<b>TOTAL</b>	<b>13.68</b>	<b>1.19</b>	<b>12.49</b>	<b>0.46</b>	<b>12.03</b>	<b>12%</b>	<b>12%</b>	<b>0.46</b>	<b>11.57</b>	<b>15.4%</b>
<b>Darfield Local Centre</b>										
All local convenience shops	2.35	0.05	2.30	0.05	2.25	4%	1%	0.04	2.21	5.9%
<b>Edge and Out of Centre Foodstores</b>										
Tesco Extra, Wombwell Lane	28.61	9.52	19.09	0.80	18.29	36%	12%	0.46	17.83	37.7%
Co-op, Barnsley Road, Darfield	6.10	-	-	0.46	5.64	8%	2%	0.08	5.57	8.8%
Morrisons, Cortonwood, Brampton	34.88	8.28	26.60	1.60	25.00	28%	10%	0.39	24.62	29.4%
All other edge and out of centre foodstores	-	-	-	-	-	-	5%	0.19	-	-
<i>Sainsbury's, Stairfoot</i>	<i>52.80</i>	-	-	-	-	-	12%	<i>0.46</i>	<i>52.33</i>	<i>0.9%</i>
<i>Proposed foodstore and retail units, Darfield</i>	<i>3.89</i>	-	-	-	-	-	12%	<i>0.46</i>	<i>3.42</i>	<i>11.9%</i>
<b>OUTSIDE CATCHMENT AREA</b>										
Barnsley Town Centre (Including Lidl at Peel Street)	26.39	2.28	24.11	0.23	23.88	10%	10%	0.39	23.49	11.0%
Morrisons, Lower Thomas Street, Barnsley	46.93	10.14	36.79	0.37	36.42	22%	5%	0.19	36.23	22.8%
Asda, Peel Centre, Barnsley	51.73	10.30	41.43	0.23	41.20	20%	6%	0.23	40.97	20.8%
Goldthorpe District Centre	3.95	0.16	3.79	0.09	3.70	6%	1%	0.02	3.68	6.8%
Thurnscoe (Shepherd lane/Houghton Road) Local Centre	7.22	0.57	6.65	-	6.65	8%	1%	0.02	6.63	8.2%
All other convenience foodstores	-	-	-	-	-		10%	0.39	-	-
<b>TOTAL</b>							<b>100%</b>	<b>3.86</b>		

**Notes**

2019 Pre-Impact Convenience Turnover taken from DPP's Planning and Retail Statement accompanying Darfield application.

Convenience trade diversion to Sainsbury's and Darfield taken directly from DPP's Planning and Retail Statement accompanying Darfield application. Note: Figures do not sum to 100% because some diversions is outside our catchment area.

Some trade diversion to the Lidl application scheme will be from the committed stores at Stairfoot and Darfield and this is shown in italics.

2012 Price Base.

## Appendix 5



UK GmbH

# The Impact of Lidl Supermarkets On Defined Retail Centres:

## A Case Study Update

### EXECUTIVE SUMMARY



November 2013

## EXECUTIVE SUMMARY

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Lidl commissioned Walsingham Planning (WP) to review and update its report 'The Impact of Lidl Supermarkets on Defined Retail Centres – A Case Study', which was produced by RPS Planning and Development, in association with Lidl, in February 2009.

Our report has sought to examine whether Lidl supermarkets trading in edge and out-of-centre locations have caused any noticeable impact on established retail centres. Lidl is classified as a 'deep' or 'hard discounter' and has very specific trading characteristics which make it distinct from the mainstream convenience operators such as Tesco, Asda, Sainsbury's and Morrisons. Lidl offers high quality products at low prices due to its extensive pan European bulk purchasing power, together with its approach to store format, staffing levels and management of its stores. In particular, there are a number of factors which distinguish Lidl stores from mainstream convenience retailers, and ensure that trading impacts on existing supermarkets and town centre shops are very limited, as follows:

- *"Small store size and localised catchment"* – Lidl stores do not draw customers from a wide area.
- *"Restricted number of product lines"* – Lidl customers tend to also shop at other stores to complement their day to day convenience needs.
- *"Not the full retail offer"* – Lidl is not a one stop shop and does not provide fresh food counters and services traditionally found on the high street.
- *"Changing comparison goods"* – Lidl's 'non-food specials' vary widely and change on a twice weekly basis, ensuring that impact on other retailers is not consistent.
- *"Shorter trading hours"* – Lidl stores are not open 24 hours, and so do not attempt to compete with mainstream food retailers and other local convenience stores.

### **Methodology**

In order to assess whether Lidl stores have a noticeable impact on centres in practice, six case studies have been undertaken from a variety of geographical locations and types of centre, across England and Wales. Using the 2009 impact study undertaken by RPS as a basis, we have updated the original four out-of-centre Lidl case studies, and undertaken two new case studies relating to edge-of-centre Lidl stores. One of our case studies – Norbury – has both an edge- and out-of-centre Lidl supermarket, and the impacts associated with both stores are taken into consideration. The six case studies are as follows:

- Whitby Town Centre, North Yorkshire (out of centre)
- Street Town Centre, Somerset (out of centre)
- Monmouth Town Centre, Monmouthshire (out of centre)
- Norbury District Centre, South London (edge and out of centre)
- Featherstone Town Centre, West Yorkshire (edge of centre)
- Clitheroe Town Centre, Lancashire (edge of centre)

The case studies have adopted a simple methodology of examining the vitality and viability of each centre – using standard ‘health check’ indicators – prior to the Lidl store opening, and comparing it to the vitality and viability of the centre at least 12 months after the opening of the Lidl store, when trading patterns have settled. In the case of the four out-of-centre stores, we have also been able to review the long-term impacts of the stores by considering the vitality and viability of the centres 5-6 years after the opening of the Lidl stores, using information set out in the 2009 RPS Study.

The standard indices of vitality and viability that we have applied are as set out in the PPS4 Practice Guidance (England) and TAN4 – Retailing and Town Centres (Wales). The indices include consideration of diversity of uses, the amount and type of floorspace, retailer representation, rental levels and commercial yields, the proportion of vacant street level property and the environmental quality of the centre.

In undertaking this exercise, we also reviewed whether there have been any external factors unrelated to the opening of the Lidl stores that could have affected the centres concerned. For example, given the current economic climate, it was particularly important to consider whether any changes observed were due to wider market conditions (such as: a rise in the vacancy rate due to high street stores entering administration).

Finally, a planning issue which is often raised in relation to edge-of-centre foodstore applications, is the extent to which linked trips will be generated between the new supermarket and the nearby centre. Therefore, for the three edge-of-centre case studies, we also collected additional empirical evidence through in-store customer surveys - to identify the existence and prevalence of linked shopping trips.

## Main Findings

Using the vitality and viability indicators, a detailed description of the health of each of the case study centres before and after the opening of the Lidl supermarket has been provided in the main body of our report, but the following six tables provide a summary of our findings using a 'traffic light' system. **Red** indicates where a particular indicator has shown deterioration, **amber** where an indicator remains constant, and **green** where any indicator has improved.

### Whitby Town Centre, North Yorkshire (out of centre Lidl supermarket)

Indicators	Short-Term Trend			Long-Term Trend		
	2006 - 2008			2006 - 2013		
	G	A	R	G	A	R
Diversity of Main Uses	G			G		
Convenience Provision		A				R
Comparison Provision		A		G		
Service Provision	G			G		
National Multiple Presence		A			A	
Vacant Properties	G			G		
Environmental Quality		A			A	

### Street Town Centre, Somerset (out of centre Lidl supermarket)

Indicators	Short-Term Trend			Long-Term Trend		
	2006 - 2008			2006 - 2013		
	G	A	R	G	A	R
Diversity of Main Uses	G			G		
Convenience Provision	G				A	
Comparison Provision	G			G		
Service Provision	G			G		
National Multiple Presence		A			A	
Vacant Properties	G				A	
Environmental Quality		A		G		

**Monmouth Town Centre, Monmouthshire (out of centre Lidl supermarket)**

	Short-Term Trend			Long-Term Trend		
	2006 - 2008			2008 - 2013		
Indicators	G	A	R	G	A	R
Diversity of Main Uses		A			A	
Convenience Provision		A		G		
Comparison Provision			R			R
Service Provision	G				A	
National Multiple Presence		A			A	
Vacant Properties		A			A	
Zone A Retail Rents	G			G		
Environmental Quality		A			A	

**Norbury District Centre, South London (edge and out of centre Lidl supermarkets)**

	Short-Term Trend			Long-Term Trend		
	2005 - 2008			2006 - 2013		
Indicators	G	A	R	G	A	R
Diversity of Main Uses	G				A	
Convenience Provision	G				A	
Comparison Provision			R		A	
Service Provision	G			G		
National Multiple Presence		A			A	
Vacant Properties	G				A	
Environmental Quality		A			A	

**Featherstone Town Centre, West Yorkshire (edge of centre Lidl supermarket)**

	2008 - 2013		
Indicators	G	A	R
Diversity of Main Uses	G		
Convenience Provision	G		
Comparison Provision	G		
Service Provision	G		
National Multiple Presence		A	
Vacant Properties	G		
Environmental Quality		A	

### Clitheroe Town Centre, Lancashire (edge of centre Lidl supermarket)

Indicators	2009 - 2013		
	G	A	R
Diversity of Main Uses		A	
Convenience Provision		A	
Comparison Provision	G		
Service Provision	N/A	N/A	N/A
National Multiple Presence		A	
Vacant Properties		A	
Environmental Quality		A	

It is evident that there has been no reduction in the convenience offer in any of the centres, with the exception of Whitby (where the Somerfield store closed down, as part of its merger with the Co-operative group). However, even in Whitby, there remains a strong local convenience offer and the proportion of units is above the national average. The remaining five case study centres have seen very little change in their convenience sectors, and in two instances (Monmouth and Featherstone) there has been an improvement in the local convenience offer, indicating continued investment in these centres by food retailers. If the opening of a Lidl supermarket was to divert a significant amount of trade away from existing stores, we would have expected to see this evidenced by the closure of comparable stores, or at least a reduction in their trading characteristics. This has not been the case.

In all of the case study centres, with the exception of Monmouth, there has been either no change in the comparison sector, or an improvement in the offer since the opening of Lidl. This suggests that the Lidl stores have had no discernible impact on the role and function of the comparison offer in these study centres. Even in Monmouth, the proportion of comparison units remains above the national average and the town continues to attract investment from high-end non-food retailers, suggesting that the sector remains healthy, despite the slight fall in unit numbers.

In all six centres, the vacancy rate has remained static or has improved over the study period. This is very positive, given that the national trend has been for the average vacancy rate to increase, over the same period of time. If the opening of a Lidl supermarket had the effect of diverting trade away from an established retail centre, we would have expected to see a decline in the number of retail units and an increase in the number of vacant properties, but this has not been the case.

Finally, taking all indicators into account - including the qualitative measures relating to environmental quality, crime and accessibility - none of the centres examined have seen any noticeable change in their overall vitality and viability in the period before the Lidl supermarket opened for trading and the current time. The health of all six centres has remained stable, with no discernible signs of adverse trade impact relating to the edge or out-of-centre Lidl stores.

For these reasons, we are able to conclude that there is no evidence to suggest that the opening of a Lidl foodstore in an edge or out-of-centre location has had any discernible detrimental impact on established retail centres, either in the short or the long-term.

Conversely, we have found that in the case of the three edge-of-centre Lidl supermarkets, there is evidence that linked trips are occurring between the Lidl stores and the nearby centres. Our in-store customer surveys identified a high proportion of customers that 'always or frequently' or 'occasionally' link trips between Lidl and the nearby centre, as follows:

- Norbury: 61%
- Featherstone: 62%
- Clitheroe: 83%

The occurrence of linked trips provides scope for the Lidl stores to have positive impacts on established centres, through generating increased footfall and spin-off trade for existing retailers and service providers. Moreover, the fact that linked trips are being made – with both non-food stores and other grocery stores – indicates that Lidl supermarkets complement rather than compete with the retail offer traditionally found in town centres, and that Lidl stores can trade alongside existing facilities.