

# **Cannock Chase District Council**

## **Planning Control Committee**

**13<sup>th</sup> January 2021**

### **Officer Update Sheet**

#### **CH/20/311: Erection of detached dwelling adj. 2 Davy Place Rugeley**

##### Planning History

Since the publication of the agenda Officers have received comments from the Agent stating: -

“The planning history section of the report on the above application contains two inaccuracies -

CH/04/0383 related to residential development on various garage courts across the Pear Tree estate and the subsequent appeal was allowed in part, There are no plans on the web site so I was unable to check whether the current application site was one of the sites included in the earlier proposal or, if it was, whether the appeal was allowed in relation to it. If I recall correctly, the issue at the time was that the sewers on the Pear Tree Estate were unadopted and the Council refused permission on the basis of unsatisfactory foul drainage. This reason was not supported on appeal and the sewers are now adopted by Severn Trent.

CH/14/0260 relates to land at 25 Hardie Avenue and not the application site.

Officers would comment that in respect to the appeal against refusal of CH/04/0383, it is noted that this related to various sites dotted throughout the Pear Tree Estate. These were granted approval with the exception of Pot 16 (which relates to the current application site) which was dismissed on the grounds that a proposed dwelling was considered to be visually dominant and detrimental to the streetscene and by virtue of the removal of the .parking area would be detrimental to highway safety.

Officers would also point out that since the appeal planning policy has undergone substantial changes with the introduction of the NPPF and the Planning Practice Guide and consequent introduction of the presumption in favour of sustainable

development. Has such the proposal has to be considered within the context of current national and local policy.

In addition to the above the applicant has submitted an amended plan to deal with an inconsistency between the details of the windows shown on the floor plan and as shown on the side elevation. The amended plan is provided below and the amended detail does not alter the overall assessment of the proposal.



The schedule of conditions should be amended accordingly to reference the revised drawing.

## CH/20/218: Proposed Aldi

Further to the publication of the report the applicant has advised that: -

“There are two examples of stores that have closed mainly due to poor car parking provision/arrangements that we can recall in the Midlands region- Overend Street, West Bromwich and Coventry Rd, Small Heath, Birmingham. There are likely to be more examples in other ALDI UK regions.”

## Additional Letters of Representation

Since the publication of the Agenda Tesco's has submitted a further representation that states: -

"The Council's advisor deals with a number of matters that I, on my behalf of my client Tesco Stores Ltd, do not think are central to decision-making here. That we have not addressed every single point raised should not be taken as applying agreement to any of them.

It is important to note that the adviser does not provide the Council with an assessment of the health of the town centre, the likely significance of the impact of either, or both, of the proposals together on the vitality and viability of the town centre, the impact on the continuing regenerative initiatives set out in the Action Area Plan or undertake a sequential test assessment. The advice given primarily relates to an attempt at interpretation of part of paragraph 89 on the NPPF.

Significantly, the advisor confirms that *"the NPPF does not address situations where there are multiple simultaneous proposals which, collectively, have more than 2500m<sup>2</sup> of gross floorspace"*. That is critical to the determinations to be made by the Local Planning Authority

But the advisor having stated that the NPPF does not *"address situations where there are multiple simultaneous proposals"* then either misinterprets his own statement or promotes a different (erroneous) meaning asserting that there is *"no requirement in the NPPF to require an impact assessment in those situations"*. To advise that policy does *"not address"* a matter is quite clearly different from an assertion that it provides *"no requirement"*. There is a real risk, therefore, that decision makers could be misled by the advice given.

Notwithstanding this, the Council's advisor does not assist the local planning authority to consider whether, in their decision-making, it should exercise discretion and require a full Retail Impact Assessment since there is nothing in the Development Plan or National Policy that presents such an appropriate and effective mechanism to assist decision-making in the current situation.

Finally, it is fundamentally incorrect for the adviser to assert that there is no *"retail impact policies that could be used to resist the proposed applications"*. The NPPF makes it very clear that when there are no relevant Development Plan policies, or the policies which are most important to determining the application are out-of-date, planning permission cannot be granted if *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF..."* (see its

paragraph 11). As a result, paragraph 90 of the NPPF kicks in requiring that, *“Where an application... is likely to have significant adverse impact on one or more of the considerations in paragraph 89 ie:*

*“a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*

*b) the impact of the proposal in town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment...” “It should be refused”.*

The dilemma for the decision-maker here, is therefore, that without full Retail Impact Assessments the Council is at risk of being unable to come to adequate and informed decisions.”

Morrisons have also commented: -

“I think the agents for the application are misleading in their response to the objections by Morrisons and Tesco when they say ‘Indeed a number of stores have closed’ due to a compromised layout. 2 stores from a portfolio of almost 900 stores is not a large number. This is a point that I think should be mentioned in your report to Members.”

A further letter of representation was received from Peacocks on behalf of Morrisons on 12 January 2021, which states: -

“We refer to the above planning application currently being determined under ref: CH/20/218 for a proposed new Aldi store in advance of tomorrow afternoon’s planning committee meeting.

We act on behalf of our client, Wm Morrison Supermarkets plc (Morrisons), to uphold the strong objections set out in our letters dated 14 October 2020 and 18 November 2020. Having now read and carefully considered the conclusions in the report to committee, we have the final comments to make.

- The committee report at page 39 states that the future use of the existing Aldi store on Market Street is assumed to remain as an A1 foodstore. This point was not made clear in the planning application submission. The existing use should be extinguished through a S.106 Agreement if Members are minded to approve the planning application – otherwise the grant of this planning permission is effectively for an existing Aldi (or other A1 retailer) in addition to the 1,881 sq.m new out of centre store.

- The cumulative impact of this Aldi proposal and the proposed Lidl store (LPA ref: CH/20/306) has been raised in our previous letters of objection and despite planning policy offers requiring a 'policy justification for the quantum of floorspace proposed'; such justification has not been forthcoming. We note that advice has been taken on this matter from Santec [sic] but we disagree with their conclusion. The NPPF seeks to ensure the vitality of town centres and given the uncertain times and economic struggles retailers and town centres are currently facing, 4,160 sq.m of new out of centre floorspace could have a significantly adverse impact. If a retail assessment was provided; a more informed decision could be made. It is worth remembering that the policy threshold set nationally by the NPPF is 2,500 sq.m if a local planning authority does not have their own locally set threshold.
- The Agents for the application have confirmed that they have considered an extension to the existing site given its good physical relationship to the town centre and its proximity to the main pedestrianised [sic] area, the bus station and nearby residential area. They also confirm that they have considered other sites identified in the Rugeley Town Centre Area Action Plan. However, they conclude that the existing site and the available town centre sites would result in a compromised Aldi store and that in the past a 'number of compromised stores have had to close'. When asked for examples of these stores; just two (from an estate of almost 900 stores) were provided. At the time of writing, we are still awaiting the information on these store closures. The Agents for Aldi claim repeatedly that they have explored flexibility in the format and scale, but they have not provided any evidence. In line with the NPPF, flexibility needs to be 'fully' explored and demonstrated.
- Finally. if Members are minded to approve the application, we respectfully request that the planning conditions are reconsidered. There are no conditions restricting and controlling the quantum of floorspace, the hours of trading, or the hours and number of deliveries to the store.

We maintain that the justification put forward for the application is weak and that the applicant s should seek to address the concerns highlighted, so that a more informed decision can be made – fully understanding the impacts of the proposal. In its present form the application fails to satisfy the sequential and impact tests, and accordingly planning permission should be refused in accordance with Para. 90 of the NPPF.

We should be grateful if you would acknowledge receipt of this letter and forward it on to Committee Members and / or report it in full in tomorrow's meeting."

### **Stantec's Response**

Furthermore, Tesco's planning agent can't have it both ways, i.e. on the one hand try to rely on policies in the Local Plan which in his view support Tesco's objection, and on the other hand suggest that the Council could or should apply para 11 of the NPPF on the basis that those same Local Plan policies are out-of-date! Either Tesco wishes to rely on policies in the Local Plan, or not. If Tesco has now decided that the policies in the Local Plan are out-of-date, then your assessment is correct – namely, para 89 does not require an impact assessment.

Whichever way I look at, my view remains that Tesco's objection is weak.

### **Additional Stantec Response dated 12<sup>th</sup> January 2021**

I have reviewed the two letters from Peacock & Smith on behalf of Morrisons. My view is that the letters do not raise any new issues that have not already been addressed in our earlier advice.

I don't agree with Peacock & Smith's interpretation of the NPPF impact test. Paragraph 89 of the NPPF is very clear that the 2,500 sq.m impact threshold relates to individual proposals, using the singular terms *'the development'* and *'the proposal'*. To refuse either or both applications on the basis of a policy test that does not exist would not be advisable.

I have commented previously regarding the potential to formally extinguish the permission relating to the existing Aldi store, and also in relation to the sequential test. In my view, the letters from Peacock & Smith don't raise any new points in those regards.

Taking account of all factors, my overall view remains that the applicants' submissions are proportionate insofar as retail impact is concerned and there is no requirement for either applicant to submit a more formal retail impact assessment. My professional judgment also remains that there are no retail need/capacity or retail impact policies in the Local Plan that could be used to resist the proposed applications.

### **Officer Comment**

As to the suggested conditions in respect to hours of delivery and restriction in retail floor area members are advised that conditions should only be used where they are necessary. Given the location of the store it is not located adjacent to any noise sensitive receptors and as such there is no need to place a restriction on delivery hours. Furthermore given that the building has a gross external area of the building

which would be well under the 2,500m for an impact for a retail assessment it is not considered necessary to restrict the internal retail floor space by condition.

**The above information does not alter the assessment in the original officer and the recommendation still stands.**

## **CH/20/306: Proposed Lidl**

### **Errata**

Since publication of the Agenda it has come to the attention of officers that the draft conditions are duplicated after condition no.23. As such Councillors are requested to disregard conditions 23 to 44 as they merely replicate those stated in 1 -22.

At para 4.4.6 the report refers to the lighting impacts and notes the comments from your EHO who confirms that the submitted lighting scheme is acceptable and that this should be secured by condition. However, due to subsequent changes to the proposal to accommodate the safeguarded land a new lighting scheme will need to come forward. As such condition 6 has been amended requesting an amended lighting scheme rather than approval of the one already submitted with the application.

Such a condition was added but we did amend the wording slightly to change it from compliance to a condition requiring the submission of a lighting strategy (see draft condition no.6). This was because the submitted lighting proposal was based on the original site layout and so does not account for the wider strip of safeguarded land. I'm not sure whether this point needs to be confirmed but just wanted to flag.

Paragraph 6.5 on page 6.192 should be amended to read

“As such it is recommended that the application be approved subject to a Section 106 agreement and the attached conditions.”

### **Additional Letters of Representation**

Since the publication of the Agenda Tesco's have submitted a further representation that states: -

“The Council's advisor deals with a number of matters that I, on my behalf of my client Tesco Stores Ltd, do not think are central to decision-making here. That we have not addressed every single point raised should not be taken as applying agreement to any of them.

It is important to note that the adviser does not provide the Council with an assessment of the health of the town centre, the likely significance of the impact of either, or both, of the proposals together on the vitality and viability of the town centre, the impact on the continuing regenerative initiatives set out in the Action Area Plan or undertake a sequential test assessment. The advice given primarily relates to an attempt at interpretation of part of paragraph 89 on the NPPF.

Significantly, the advisor confirms that *“the NPPF does not address situations where there are multiple simultaneous proposals which, collectively, have more than 2500m<sup>2</sup> of gross floorspace”*. That is critical to the determinations to be made by the Local Planning Authority

But the advisor having stated that the NPPF does not *“address situations where there are multiple simultaneous proposals”* then either misinterprets his own statement or promotes a different (erroneous) meaning asserting that there is *“no requirement in the NPPF to require an impact assessment in those situations”*. To advise that policy does *“not address”* a matter is quite clearly different from an assertion that it provides *“no requirement”*. There is a real risk, therefore, that decision makers could be misled by the advice given.

Notwithstanding this, the Council's advisor does not assist the local planning authority to consider whether, in their decision-making, it should exercise discretion and require a full Retail Impact Assessment since there is nothing in the Development Plan or National Policy that presents such an appropriate and effective mechanism to assist decision-making in the current situation.

Finally, it is fundamentally incorrect for the adviser to assert that there is no *“retail impact policies that could be used to resist the proposed applications”*. The NPPF makes it very clear that when there are no relevant Development Plan policies, or the policies which are most important to determining the application are out-of-date, planning permission cannot be granted if *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF...”* (see its paragraph 11). As a result, paragraph 90 of the NPPF kicks in requiring that, *“Where an application... is likely to have significant adverse impact on one or more of the considerations in paragraph 89 ie:*

*“a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*

*b) the impact of the proposal in town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment...”*

*“It should be refused”*.



The dilemma for the decision-maker here, is therefore, that without full Retail Impact Assessments the Council is at risk of being unable to come to adequate and informed decisions.”

On 11<sup>th</sup> January 2021 a further representation has been received on behalf of Tesco, which States: -

“Having now read the officer’s Report to Planning Committee, I have instructions on behalf of my client, Tesco Stores Ltd, to provide additional explanation to an aspect of our objection. This arises from the officer’s misinterpretation of paragraph 89 of the NPPF as set out in the Report.

As you are aware paragraph 89 of the NPPF states:

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

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme)”.*

The combination of the two proposals (Aldi and Lidl) before Planning Committee total 3,460 sqm gross. Thus, ordinarily, any out of centre retail development of this scale in a location where both will have an effect on the same town centre ie, Rugeley, would be subject to the need for impact assessment. However, The Report at paragraph at 4.2.16 explains that:

*“... as the scale of the proposed development falls below the threshold of the requirement to submit a retail impact assessment of 2,500sqm set out in the NPPF and the Cannock Chase Local Plan (2014) does not contain a locally defined threshold there is no policy requirement for a retail impact assessment to be submitted. Nor is there any such requirement should the combined floorspace of this proposal and the Aldi proposal taken cumulatively exceed 2,500sqm”.*

The Council has taken advice from Stantec on this matter. That advice sets out the wording of paragraph 89. The advice then explains that the individual floorspace of each store falls below the 2,500 sqm threshold. It then continues by stating *“The NPPF does not address situations where there are multiple simultaneous proposals which, collectively, have more than 2,500 sqm of gross floorspace”*.

Subsequently, the advice explains that *“Whilst the two proposed foodstores have an aggregate gross floorspace that is above the 2,500 sqm threshold, there is, as noted above, no requirement in the NPPF to require an impact assessment in those situations. It is clear that paragraph 89 of the NPPF applies to individual proposals”*. There is, of course, a difference between the NPPF ‘not addressing’ or being silent, to a finding that the NPPF provides ‘no requirement’ in the sense that there is clarity that such assessment should not be undertaken. Indeed, Stantec’s advice is that the NPPF *“applies to individual proposals”* because it *“does not address situations where there are multiple simultaneous proposals which, collectively, have more than 2,500 sqm of gross floorspace”*.

This is a fundamental matter which, with the availability of an impact assessment might well be shown to *“have significant adverse impact on one or more of the considerations in paragraph 89, (such that) it should be refused”* (see paragraph 90 of the NPPF). It is therefore, a matter that is *“determinative of the outcome”* (see for instance at paragraph 25 of the Suffolk Coastal judgment referred below).

As you may be aware principles relating to the interpretation of planning policy have been the subject of clarification in recent judgments, notably in *Tesco v Dundee* and *Suffolk Coastal v Hopkins Homes Ltd*. In the latter (more recent) judgment it was confirmed that *“... policies in the Framework should be approached in the same way as those in a development plan”* (paragraph 23).

As Lord Carnwath made clear in *Suffolk Coastal*, it is important to distinguish, *“...between issues of interpretation of policy, appropriate for judicial analysis and issues of judgment in the application of that policy; and not to elide the two”* (paragraph 26). More recently Lindblom LJ confirmed in *Samuel Smith Old Brewery v North Yorkshire* that none of *“... those familiar principles detracts from the need for the Court to intervene where a planning decision has been made by a local planning authority on the basis of a misunderstanding and misapplication of national planning policy”*.

Notwithstanding the justification thus set out above for requiring the applicant to submit an appropriate retail assessment that addresses the risk of cumulative impacts from the grant of 3,460 sqm gross floorspace, the officer’s

Reports on both applications demonstrate that there is now a more realistic prospect of this occurring bearing in mind both the Lidl and Aldi applications are currently recommended for approval. It is therefore a matter that is fundamentally determinative to decision making.

On behalf of our client we must therefore urge that the local planning authority require an assessment of cumulative retail impact be undertaken in order to support this application or that it be refused due to the lack of this information.”

A further letter of objection was received from Peacock on behalf of Morrisons on 12 January 2021. This states

“We refer to the above planning application currently being determined under ref: CH/20/306 for a proposed new Lidl store in advance of tomorrow afternoon’s planning committee meeting.

We act on behalf of our client, Wm Morrison Supermarkets plc (Morrisons), to uphold the strong objections set out in our letter dated 17 December 2020.

As you are aware, we have also objected to the Aldi proposal and have said how important it is that both the Lidl and Aldi applications are considered at the same committee meeting but it is disappointing that the cumulative impact both proposals will have on the town centre is not understood at this time.

The cumulative impact of both proposals has been raised in our previous letters of objection and despite planning policy offers requiring a ‘policy justification for the quantum of floorspace proposed’; such justification has not been forthcoming. We note that advice has been taken on this matter from Santec but we disagree with their conclusion. The NPPF seeks to ensure the vitality of town centres and given the uncertain times and economic struggles retailers and town centres are currently facing, 4,160 sq.m of new out of centre floorspace could have a significantly adverse impact. If a retail assessment was provided; a more informed decision could be made.

It is worth remembering that the policy threshold set nationally by the NPPF is 2,500 sq.m if a local planning authority does not have their own locally set threshold.

The Rugeley Town Centre Area Action Plan encourages investment and regeneration within and on parts of the periphery of the town centre. Land at Wellington Drive (ref: RTC.7) is a town centre site that is seeking a medium sized foodstore. The applicants [sic] have dismissed this site as not being suitable or available. Given its location in the town centre it is agreed that a

comprehensive redevelopment would be required. It is also accepted that the land is in more than one ownership. However, these are not, alone, justification that the site is not available or suitable. Many town centre sites are complex but they can be delivered. We respectfully request that more consideration and justification is given to this site given it is an identified and planned town centre site in need of development.

In our view, the sequential test has not been satisfied at this point as there is a more centrally located site that could potentially accommodate the proposed development.

Finally, if Members are minded to approve the application, we respectfully request that the planning conditions are reconsidered. There are no conditions restricting and controlling the quantum of floorspace, the hours of trading, or the hours and number of deliveries to the store.

We maintain that the justification put forward for the application is weak and that the applicants should seek to address the concerns highlighted, so that a more informed decision can be made – fully understanding the impacts of the proposal and the quantum of new retail floorspace that would come forward. In its present form the application fails to satisfy the sequential and impact tests, and accordingly planning permission should be refused in accordance with Para. 90 of the NPPF.

We should be grateful if you would acknowledge receipt of this letter and forward it on to Committee Members and / or report it in full in tomorrow's meeting."

### **Stantec's Response**

Furthermore, Tesco's planning agent can't have it both ways, i.e. on the one hand try to rely on policies in the Local Plan which in his view support Tesco's objection, and on the other hand suggest that the Council could or should apply para 11 of the NPPF on the basis that those same Local Plan policies are out-of-date! Either Tesco wishes to rely on policies in the Local Plan, or not. If Tesco has now decided that the policies in the Local Plan are out-of-date, then your assessment is correct – namely, para 89 does not require an impact assessment.

Whichever way I look at, my view remains that Tesco's objection is weak.

### **Stantec's Additional Response (12 January 2021)**

I have reviewed the latest correspondence from MRPP on behalf of Tesco, which appears to reiterate the same arguments that have been raised previously. I

maintain that the advice in the NPPF is clear and unambiguous and that our original advice is robust.

### **Additional Stantec Response dated 12<sup>th</sup> January 2021**

I have reviewed the two letters from Peacock & Smith on behalf of Morrisons. My view is that the letters do not raise any new issues that have not already been addressed in our earlier advice.

I don't agree with Peacock & Smith's interpretation of the NPPF impact test. Paragraph 89 of the NPPF is very clear that the 2,500 sq.m impact threshold relates to individual proposals, using the singular terms '*the development*' and '*the proposal*'. To refuse either or both applications on the basis of a policy test that does not exist would not be advisable.

I have commented previously regarding the potential to formally extinguish the permission relating to the existing Aldi store, and also in relation to the sequential test. In my view, the letters from Peacock & Smith don't raise any new points in those regards.

Taking account of all factors, my overall view remains that the applicants' submissions are proportionate insofar as retail impact is concerned and there is no requirement for either applicant to submit a more formal retail impact assessment. My professional judgment also remains that there are no retail need/capacity or retail impact policies in the Local Plan that could be used to resist the proposed applications.

### **Officer Comment**

As to the suggested conditions in respect to hours of delivery and restriction in retail floor area members are advised that conditions should only be used where they are necessary. Given the location of the store it is not located adjacent to any noise sensitive receptors and as such there is no need to place a restriction on delivery hours. Furthermore given that the building has a gross external area of the building which would be well under the 2,500m for an impact for a retail assessment it is not considered necessary to restrict the internal retail floor space by condition.

**The above information does not alter the assessment in the original officer and the recommendation still stands.**

**CH/20/435: Minor Material Amendment to alter Condition 35 (Q) of Planning Permission CH/17/279 to allow for click & collect services for Unit 36 at West Midland Designer Outlet**

### **Point of Clarification**

The last paragraph on Page 6.218 should be amended to read as follows: -

“was subsequently approved by Planning Control Committee and issued on 11 October 2017 following completion of a Supplemental Agreement under Section 111 of the Local Government Act 1972 which required the completion of an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) when the applicant acquired the freehold in the application site from the Council. That Section 106 Agreement was completed on 29 June 2018.”

Further to the compilation of the committee agenda the following comments have been received.

#### Heath Hayes and Wimblebury Parish Council

No objections.

#### Staffordshire County Council

No objections.

#### East Staffordshire Borough Council

No objections.

### **CH/17/279: West Midlands Designer Outlet**

### **Point of Clarification**

The second paragraph on Page 6.230 should be amended to read as follows: -

“was subsequently approved by Planning Control Committee and issued on 11 October 2017 following completion of a Supplemental Agreement under Section 111 of the Local Government Act 1972 which required the completion of an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) when the applicant acquired the freehold in the application site from the Council. That Section 106 Agreement was completed on 29 June 2018.”