

**Contact Officer:**

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## **Planning Control Committee**

### **UPDATE SHEET**

Wednesday 6 July 2022

**Application No:** CH/20/218

**Received:** 29-Jun-2020

**Location:** Timber Yard, Power Station Road, Rugeley, WS15 2WD

**Parish:** Rugeley

**Ward:** Western Springs Ward

**Description:** Demolition of existing buildings at the site of a Timber Yard and the erection of a Class E Food Retail Store, with associated access, car parking, servicing and landscaping

**Application Type:** Full Planning Application

## **PLANNING COMMITTEE UPDATE**

### **1. REPORT WORDING CHANGES**

- 1.1 Further to the issuing of the Planning Committee report relating to the above site, Officers have noting minor drafting errors that require correction. These include:
- 1.2 On Item 6.84 within the agenda pack, at Para 10.1 a) point (iii) should have read 'Regeneration of Rugeley Town Centre'. This header would then be consistent with the titling in the remainder of the report.
- 1.3 On Item 6.85 within the agenda pack, Para 12.1 of the report should have read:  
The first stage in the determination of the application is to determine whether the development is in accordance with the development plan which includes local planning policies and whether the application also aligns with national policy in the form of the NPPF.
- 1.4 At Item 6.108 (Para 15.7) and at Item 6.113 (Para 18.3) similar text relating to Policy CP11 is included in the report. Upon reviewing this text Officers consider additional clarity would be achieved by changes to the wording as follows:

At the same time the proposals would complement [comply with] the ambition within CP11 to promote [a sequential approach to the regeneration of the town centre, provide for new choice in convenience shopping,] the development of Rugeley town centre for retail, align with the ambition to [convey] improve[ments] to the attractiveness of the town centre and [seek to allow developments that] would complement or build upon the positive environmental enhancements and linkages to the Canal Corridor carried out as part of the Tesco development, and more latterly County Council on behalf of the Canal and Rivers Trust.

- 1.5 On Item 6.111 within the agenda pack, Para 17.2 the wording 'As relevant to Para' at the end of the paragraph should be deleted.
- 1.6 On Item 6.112 within the agenda pack, Para 17.4 contains an incorrect reference to Policy RTC1 which should be deleted for clarity.

## 2. **ADDITIONAL REPRESENTATION**

- 2.1 Officers have received a further representation from the representatives of Tesco Stores Ltd, Martin Robeson Planning Practice (MRRP). The representation in full is Appended to this report. Officers are aware that a summary email from MRRP was also sent to Planning Committee Members by email directly. The representation in summary raises the following points:
  - a) Concerns in relation to the manner which the availability and suitability of the sequential test sites have been assessed
  - b) The lack of adequate assessment of the impact on planned public and private investment that will likely arise if the application(s) are approved
  - c) The significance of the emerging Local Plan. That it would be premature to grant the application because a decision on this application would predetermine decisions on the town centre regeneration policy content in the emerging Local Plan
- 2.2 In relation to the availability of sites, the Officer Report at Section 13 (Item 6.86) onwards discusses the applicant's submissions, objections from Tesco and others and then specific analysis is reported by the Council's retail consultants Alder King. Of the available sites known, Alder King present their own analysis of the sites and reasoning as to whether or not these can be discounted in sequential test terms (Para 13.7 of the main report onwards). In particular criticism of 'what a reasonable time period is' is made in the recent MRRP objection. This is addressed in the May 2022 advice from Alder King and discussed at Para 13.16 and Item 6.97 of the Officer report pack. Officers will avoid repeating these points here.
- 2.3 In relation to suitability, MRRP highlight the Rugeley Market Hall / Bus Station (RTC6) and the Land at Wellington Drive (RTC7) sites and suggest the suitability of these sites should not be questioned owing to allocation by the Council in the Local Plan. Officers would comment it is not one aspect of these sites that leads to them to be considered

as unsuitable, it is a combination of factors. These include the size, configuration, land ownership position, extent of active uses/ need for vacant possession, townscape and heritage considerations, servicing needs, need for replacement town centre car parking provision or bus facilities. This is discussed at Item 6.95 in the Officer report pack.

- 2.4 In relation to impacts on planned investment, *the PPG guidance (Paragraph: 015 Reference ID: 2b-015-20190722) states that 'Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:*
- *the policy status of the investment (i.e. whether it is outlined in the Development Plan)*
  - *the progress made towards securing the investment (for example if contracts are established)*
  - *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence'*
- 2.5 In considering planned investment impacts or impacts on Allocated sites in the extant Local Plan, it is important to note there has been no progress with the main sites cited by MRRP. There is no land assembly, no developer for the site, the scheme is not being progressed through the planning process, we are not aware of any contracts or other interest from respective landowners since the S106 could not be signed in the early 2000's because all landowners would not participate. Whilst investment does not need to be at a very advanced stage to be relevant, it is reasonable to expect some progress since this time. Therefore despite being allocated, and linked to the above point about reasonable time frames, Officers in conjunction with Alder King assess that in the period of testing impact in this case (18 months or 3-4 years maximum) there is no indication development of the allocated sites (aka 'planned investment') is likely to come forward – and hence there is no relevant 'investment' to be impacted upon.
- 2.6 In relation to prematurity, Para 50 of the NPPF is clear that refusal of planning permission on the ground of prematurity will seldom be justified where a draft plan has yet to be submitted for examination – as is the case for the Council's Emerging Local Plan. The Council's Planning Policy Team is working to progress to Regulation 19 consultation in Autumn 2022. The draft local plan is anticipated for submission Spring 2023 but other factors could mean further adjustments to the timetable.
- 2.7 Accordingly whilst noting the content of the submissions from MRRP, Officers consider the majority of the points are already addressed in relevant paragraphs of the of the Officer report and would not otherwise result in changes to the Officer recommendation for the reasons stated.

### 3. AMENDED CONDITIONS

- 3.1 In relation to recommended condition 27, Officers consider a change to the wording is necessary to cover off future potential changes under the Use Classes Order. The revised condition 27 as recommended would therefore read:

27. Notwithstanding the provisions of the Town and Country Planning ( General Development ) ( England) Order 2015 ( as amended) [and/or the Town and Country Planning ( Use Classes ) Order 1987 ( as amended)] or any Orders revoking or re-enacting or amending those Orders with or without modification), the Class E(a) (retail) floorspace hereby permitted shall be used primarily for the sale of convenience goods with a maximum of 282sq m of the net sales are devoted to comparison goods. There will be no sale of tobacco and related products. In addition, no provision of the following in-store facilities/services:

Fresh meat counter

Fresh fish counter

Delicatessen counter

Hot food counter

Pharmacy

Dry cleaning service

Photography service

Post office counter

Café/restaurant

- 3.2 Finally for consistency Officers seek to amend the wording of recommended condition 30 on the basis that the condition should be consistent with conditions in the Lidl Planning Committee Report. The strikethrough text as shown should be omitted from the condition. The remaining conditions and reasons are unchanged.:

30. The development hereby approved shall only be used as a Class E(a) retail food store and shall be restricted to 'limited product line deep discount retailing' and shall be used for no other purpose falling within Class E of the Town and County Planning (Use Classes) (Amendment) Regulations 2020 (or any order revoking or re-enacting or amending that order with or without modification). 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 4,500 product lines, except for the Christmas period (~~November — December~~ Annually) where up to 5,000 products lines can be sold

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## **Planning Control Committee**

Wednesday 6 July 2022

**Application No:** CH/20/306  
**Received:** 03-Sep-2020  
**Location:** Land at Power Station Road, Rugeley  
**Parish:** Brereton and Ravenhill  
**Ward:** Brereton and Ravenhill Ward  
**Description:** Removal of existing hardstanding and erection of a retail foodstore with associated car parking, access, landscaping and associated engineering works  
**Application Type:** Full Planning Application Major

### **PLANNING COMMITTEE UPDATE**

#### **1. REPORT WORDING CHANGES**

- 1.1 Further to the issuing of the Planning Committee report relating to the above site, Officers have noting minor drafting errors that require correction. These include:
- 1.2 At Item 6.177 within the agenda pack, a letter dated 17<sup>th</sup> February 2022 from Martin Robeson Planning Practice representing Tesco is not referenced in the responses received. The planning considerations raised in the letter are addressed within the Officer's report as drafted, and represent the same considerations raised as part of the Aldi proposals also on this agenda. However for completeness Officers provide a text summary of this representation at Appendix 1 of this update report.
- 1.3 On Item 6.143 within the agenda pack, Para 2.5 of the report, the reference to red edge land at Local Plan Fig. 5 is incorrect and should be deleted:
  - (i) In the context of consideration against Policy RTC1 and the accompanying diagram, Officers recognise the environmental improvements to the prominent site that would result as well as the benefits to the setting of the

wider regeneration area that the proposals would bring through the removal of the existing vacant, scruffy and underutilised land. ~~In addition, it is noted there is overlap between the red area in Local Plan 'Fig. 5' and the site in question.~~

- 1.4 On Item 6.190 within the agenda pack, Para 12.1 of the report should have read:
- (i) The first stage in the determination of the application is to determine whether the development is in accordance with the development plan which includes local planning policies and whether the application also aligns with national policy in the form of the NPPF.
- 1.5 At Item 6.216 (Para 15.7) and at Item 6.113 (Para 18.3) similar text relating to Policy CP11 is included in the report. Upon reviewing this text Officers consider additional clarity would be achieved by changes to the wording as follows:
- (i) At the same time the proposals would ~~complement~~ [comply with] the ambition within CP11 to promote [a sequential approach to the regeneration of the town centre, provide for new choice in convenience shopping,] ~~the development of Rugeley town centre for retail, align with the ambition to~~ [convey] improve[ments] to the attractiveness of the town centre and [seek to allow developments that] would complement or build upon the positive environmental enhancements and linkages to the Canal Corridor carried out as part of the Tesco development, and more latterly County Council on behalf of the Canal and Rivers Trust.
- 1.6 On Item 6.219 within the agenda pack, Para 17.5 contains an incorrect reference to Policy RTC1 which should be deleted for clarity.

## 2. **ADDITIONAL REPRESENTATION**

- 2.1 Officers have received a further representation from the representatives of Tesco Stores Ltd, Martin Robeson Planning Practice (MRRP). The representation in full is Appended to this report. Officers are aware that a summary email from MRRP was also sent to Planning Committee Members by email directly. The representation in summary raises the following points:
- a) Concerns in relation to the manner which the availability and suitability of the sequential test sites have been assessed
  - b) The lack of adequate assessment of the impact on planned public and private investment that will likely arise if the application(s) are approved
  - c) The significance of the emerging Local Plan. That it would be premature to grant the application because a decision on this application would predetermine decisions on the town centre regeneration policy content in the emerging Local Plan
- 2.2 In relation to the availability of sites, the Officer Report at Section 13 (Item 6.191) onwards discusses the applicant's submissions, objections from Tesco Stores and others and then specific analysis is reported by the Council's retail consultants Alder King. Of the available sites known, Alder King present their analysis of the sites and

reasoning as to whether or not these can be discounted in sequential test terms (Para 13.7 of the main report onwards (Item 6.200)). In particular criticism of 'what a reasonable time period is' is made in the recent MRRP objection. This is addressed in the May 2022 advice from Alder King and discussed at Para 13.23 and Item 6.203 of the Officer report pack. Officers will avoid repeating these points here.

- 2.3 In relation to suitability, MRRP highlight the Rugeley Market Hall / Bus Station (RTC6) and the Land at Wellington Drive (RTC7) sites and suggest the suitability of these sites should not be questioned owing to allocation by the Council in the Local Plan. Officer's would comment it is not one aspect of these sites that leads to them to be considered as unsuitable, it is a combination of factors. These include the size, configuration, land ownership position, extent of active uses/ need for vacant possession, townscape and heritage consideration, servicing needs, need for replacement town centre car parking provision or bus facilities. This is discussed at Item 6.95 in the Officer report pack.
- 2.4 In relation to impacts on planned investment, the PPG guidance (Paragraph: 015 Reference ID: 2b-015-20190722) states that 'Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:
- *the policy status of the investment (i.e. whether it is outlined in the Development Plan)*
  - *the progress made towards securing the investment (for example if contracts are established)*
  - *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence'*
- 2.5 In considering planned investment impacts or impacts on Allocated sites in the extant Local Plan, it is important to note there has been no progress with the main sites cited by MRRP. There is no land assembly, no developer for the site, the scheme is not being progressed through the planning process, we are not aware of any contracts or other interest from respective landowners since the S106 could not be signed in the early 2000's because all landowners would not participate. Whilst investment does not need to be at a very advanced stage to be relevant, it is reasonable to expect some progress since this time. Therefore despite being allocated, and linked to the above point about reasonable time frames, Officers in conjunction with Alder King assess that in the period of testing impact in this case (18 months or 3-4 years maximum) there is no indication development of the allocated sites (aka 'planned investment') is likely to come forward – and hence there is no relevant 'investment' to be impacted upon.
- 2.6 In relation to prematurity, Para 50 of the NPPF is clear that refusal of planning permission on the ground of prematurity will seldom be justified where a draft plan has yet to be submitted for examination – as is the case for the Council's Emerging Local Plan. The Council's Planning Policy Team is working to progress to Regulation 19

consultation in Autumn 2022. The draft local plan is anticipated for submission Spring 2023 but other factors could mean further adjustments to the timetable.

- 2.7 Accordingly whilst noting the content of the submissions from MRRP, Officers consider the majority of the points are already addressed in relevant paragraphs of the of the Officer report and would not otherwise result in changes to the Officer recommendation for the reasons stated.

### **3. CHANGES TO CONDITIONS**

- 3.1 In relation to recommended condition 25, Officers consider a change to the wording is necessary to cover off future potential changes under the Use Classes Order. The revised condition 25 as recommended would therefore read:

- (i) 25. Notwithstanding the provisions of the Town and Country Planning ( General Development ) ( England) Order 2015 ( as amended) [and/or the Town and Country Planning ( Use Classes ) Order 1987 ( as amended)] or any Orders revoking or re-enacting or amending those Orders with or without modification), the Class E(a) (retail) floorspace hereby permitted shall be used primarily for the sale of convenience goods with a maximum of 282sq m of the net sales are devoted to comparison goods. There will be no sale of tobacco and related products. In addition, no provision of the following in-store facilities/services:
  - (ii) Fresh meat counter
  - (iii) Fresh fish counter
  - (iv) Delicatessen counter
  - (v) Hot food counter
  - (vi) Pharmacy
  - (vii) Dry cleaning service
  - (viii) Photography service
  - (ix) Post office counter
  - (x) Café/restaurant

## APPENDIX 1:

### EXTRACT FROM LETTER DATED 17<sup>TH</sup> FEBRUARY 2022 FROM MARTIN ROBESON PLANNING PRACTICE REPRESENTING TESCO

#### 3.2 Further Letter of Representation dated 17 February 2022

On behalf of our client Tesco Stores Limited we submit further representations of objection to the above planning application. Tesco opened a town centre store in Rugeley in 2013 and as such have historically invested in the town and continue to invest today. Their store plays an important role in supporting the vitality and viability of the wider town centre.

Through opening this facility and providing a series of contributions towards town centre regeneration initiatives, Tesco also continue to support the delivery of the Rugeley Town Centre Area Action Plan.

We previously made objections to the application on 9th December 2020 and 12th January 2021 which are appended to this letter and remain valid. This representation updates our previous comments upon considering the content of the applicant's July 2021 Planning Statement Addendum and advice provided by the Council's retail assessor, Alder King. We comment on the matters arising, as follows:

The need to have regard to worst-case cumulative retail impacts

Our previous objections raised the need for cumulative assessment of both proposals together bearing in mind the exceedance over the NPPF threshold. The Council consented to judgement on this matter. The respective applicants' consultants have now provided their individual assessments of cumulative impact. Unfortunately, they do not provide a consensus as to what this impact would be on the town centre. Surprisingly that cumulative impact on town centre convenience goods trade ranges from -11.8% (on behalf of Aldi) to -6.7% (on behalf of Lidl). It appears that the Council's consultant has suggested that the level of impact on the town centre will be around the "mid-point" of those assessments (see paragraph 4.10 of their latest December 2021 advice). However in exercising its judgement, the local planning authority ought to have regard to the worst case likelihood of cumulative impact on the town centre i.e. -11.8%. Bearing in mind the town centre is only displaying "reasonably good levels of vitality and viability" (as reported in the Council's 2021 Retail Study) and that Aldi's updated health check has more recently observed a worsening town centre vacancy rate, this level of trade diversion is likely representative of a 'significant adverse impact' which is the level at which planning permission should be refused.

Inappropriate rejection of a sequentially preferable town centre opportunity Paragraph 87 of the 2021 NPPF requires that "...Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be

considered” (our emphasis). Whilst the term ‘reasonable period’ is not explicitly defined in the Framework, the NPPG offers useful guidance that “When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be taken into account” (our emphasis).

However, in the above Framework context the applicant fails to appropriately assess whether alternative sites, could, with appropriate intervention, be ‘expected to become available within a reasonable period’. In particular, we maintain that Site RTC7 in the Rugeley Town Centre Area Action Plan: (‘Land at Wellington Drive’) has not been robustly assessed for such ‘availability’. The site is inappropriately dismissed by Aldi’s agent (Turleys) as ‘unavailable’ on the basis that “the prospects of successful CPO of the land and property required to deliver any scheme at this site currently are vanishingly small, particularly if it involves acquisition of land and property outside the allocation site” (paragraph 7.44). The site, however, is already of a suitable size to accommodate the broad type of development proposed, thus there would be no obvious need to acquire additional land beyond the allocated site boundary (despite the agents attempts to assert this through providing an inappropriate overlay of the exact same size and configuration of store as that proposed superimposed onto the site’s area). Furthermore, the Inspector’s Report to the Plan’s examination (paragraph 94) notes the scope for effective land assembly through the “possible use of CPO powers for specific sites, if necessary” that is “confirmed” in the RTCAAP policies. The RTCAAP recognises this in connection with the RTC7 site and when stated within a statutory development plan this provides a clear message of the site’s likely availability. Turleys’ assertion of the alleged “vanishingly small” prospects of CPO are without justification or evidential basis. In any event, it is necessary to consider sites that are expected to become available within a ‘reasonable period’ in order to achieve the development of sustainable town centre sites to place them at the ‘heart of local communities’ (see NPPF chapter 2). Moreover, the RTC7 site is allocated in the RTCAAP for retail use. In particular, its suitability to provide for an “additional town centre foodstore” had been noted by officers in their responses to the Rugeley TCAAP Preferred Options

### 3.3 Consultation

Failure to consider edge of centre and well connected and accessible out of centre potential opportunities . Despite the applicant’s agent’s best attempts to assert otherwise, the application site for the proposed Aldi foodstore occupies an out of centre location. The site’s out of centre policy status is noted by the Council’s retail advisor and by Lidl’s agent in respect of their out of centre proposal at Power Station Road (see paragraphs 1.8 and 1.9 of Alder King’s October 2021 advice). This has implications for sequential testing since Turleys’ (incorrect) assertion that the proposal is edge of centre, leads them to have only considered in-centre opportunities to accommodate their proposal (see paragraph 7.1 of their July 2021 Statement). However in line with the sequential approach, other edge and out of centre of centre opportunities need to be reviewed for their ‘suitability’ and ‘availability’.

Notwithstanding that, even if town centre or edge of centre sites are considered 'unsuitable' or 'unavailable', the NPPF requires that preference will then be given to out of centre sites that are 'accessible' and 'well connected' to the town centre (paragraph 88). Not all out of centre sites are equal and decision-makers are entitled to consider the question of 'sequential superiority' on the basis that an alternative site is considered to be a 'potential opportunity' (this approach taken by an Inspector was endorsed in the leading case of *Telford and Wrekin v SOS* [2014] EWCA1).

Failure to consider the Lidl site as an out of centre opportunity The site at Power Station Road subject to an application by Lidl is a 'potential opportunity' to accommodate the type of development proposed, and yet has not been considered in the sequential assessment undertaken on behalf of Aldi. If, it is considered that the Lidl site is 'sequentially superior', then it is a requirement of the sequential test that the Aldi and Lidl sites must come forward in the sequentially preferred order. Indeed, this temporal sequence to the sequential approach is fundamental to the delivery of the Town Centre First principle that underpins policy CP11 of the Local Plan. That the site at Power Station Road is subject to an application by another retailer is demonstrative of its 'availability' for retailing. That the site may only be available to Lidl is not relevant as decided case law confirms that 'available' does not mean available to a particular retailer<sup>2</sup>. Indeed, that the site is subject to an application for discount retailing of a similar size, type and range of goods as that sought by Aldi confirms its 'suitability' for the 'broad type of development proposed'.

#### 3.4 The need for an independent review of the sequential assessment

We maintain our concerns that sites have not been robustly assessed and that reasons for rejecting sites do not appear valid. We are therefore surprised to see that the retail advice provided on the Council's behalf by Alder King is confined solely to the matter of retail impact. Demonstrating compliance with the sequential test, the other significant plank of national and local planning policy on town centres, is undoubtedly critical to the determination of both applications. The sequential assessments undertaken by Lidl and Aldi ought to therefore be independently reviewed.

#### 3.5 Failure to consider all relevant Strategic Town Centre policies

We maintain our position in previous representations that the application proposal is likely to conflict with policies CP11, RTC1 and RTC2. These policies are of central importance to both the Lidl and Aldi proposals. In respect of policy RTC2, whilst it is asserted by Aldi's agent that the AAP policies do not "...seek to prevent retail development from being permitted within either Rugeley town centre outside the PCA, or outside the town centre, in 1 Sullivan LJ confirmed in *Telford and Wrekin & Another v SOS* [2014] EWCA Civ 507 in that "... (the Inspector) was entitled to consider the question of sequential superiority on the basis that Station Road was a potential opportunity.

Only if she had come to the conclusion that this potential opportunity was sequentially superior would she have had to reach firm conclusions as to the extent to which that potential was a reality in terms of the availability and suitability of Station Road". 2 The reasoning for this was explained in the judgment of Aldergate Properties v Mansfield D.C [2016]: "[...] A town centre site may be owned by a retailer already, to use itself for retailing, who is not going to make it available to another retailer. It is plainly available for retailing, though only to one retailer. That does not mean that another retailer can thus satisfy the sequential test and so go straight to sites outside the town centre. "Available" cannot mean available to a particular retailer but must mean available for the type of retail use for which permission is sought". principle" (paragraph 4.31) and that therefore the "policy is not engaged" (paragraph 8.75),

it is still pertinent to demonstrate that the proposal could come forward without undermining the RTC2 objectives. The thrust of the policy seeks to protect the vitality and viability of the town centre and the PSA specifically. Whilst the policy does not set specific criteria for out of centre proposals to accommodate main town centre uses, it is nonetheless relevant, as an important consideration, to consider (with appropriate supporting evidence) the effect of two out of centre proposals coming forward on the policy's objectives.

Failure to appropriately consider impacts on existing investment and the likely significant adverse effects arising from the proposal

Notwithstanding the primacy of the development plan, the NPPF is also material to the determination of the application. Paragraph 90 of the Framework requires that in undertaking a retail impact assessment, "this should include an 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" (our emphasis).

As noted in our previous representations, Tesco invested heavily in the town centre through regenerating a key town centre site identified in the RTCAAP and in providing a series of contributions towards town centre infrastructure enhancements, including upgrades to the Trent and Mersey canal environment. The RTCAAP specifically describes "the canal corridor acting as a catalyst to link with the new Tesco superstore at Leathermill Lane". This is essential to deliver on the objectives of the AAP by opening a pedestrian throughfare, generating higher levels of footfall between the Tesco regeneration site and the wider town centre. The effects of Tesco's investment in these respects are still ongoing.

However, the applicant's agent, whilst having considered (albeit superficially) impacts on planned investment of other identified sites in the RTCAAP, has failed to consider, in the appropriate policy context, impacts of their proposal on existing investment in which Tesco has played a major part in delivering. We are also concerned that this has been overlooked by the Council's retail advisor, Alder King. Any risk of undermining a town centre strategy in a statutory development plan must not be taken lightly.

This out of centre proposal undoubtedly runs counter to the RTCAAP objectives, not least because the Aldi proposal involves the closure of an edge of centre store. The RTCAAP in this respect specifically seeks to “promote edge of centre retail development balanced by a strengthened core town centre” (see the reasoned justification for the RTCAAP at paragraph 4.1 of the development plan). Moreover, the effect of two out of centre retail proposals using up available market spend is likely to reduce rather than enhance prospects of other regeneration sites in the RTCAAP coming forward, leading to associated losses in investor confidence and thereby deterring future planned investment.

Whilst Turleys’ July 2021 Statement considers effects on existing investment, their analysis (see paragraphs 8.71 to 8.73) has not been carried out in the appropriate development plan policy context. The agent asserts that effects of the existing investment in respect of Tesco’s contributions towards the RTCAAP objectives had “already been addressed in detail in the above retail impact assessment”. However, impacts on town centre vitality and viability and on town centre investment are separate considerations, as set out in paragraphs 90 a) and 90 b) of the NPPF, respectively. Given that the existing town centre investment in Rugeley has policy status in the development plan, it is appropriate to assess impacts on investment first and foremost in this policy context, and whether the effect of two out of centre proposals coming forward would undermine those improvements. Turleys’ attempts to downplay the existing investment on the basis that the “improvements, associated with the Tesco store development, have been delivered” (paragraph 8.71) fails to properly assess matters. That the investment has been ‘delivered’ is quite literally what ‘existing’ investment means. It is real and impacts on it can therefore have identifiable effects.

### 3.6 Lack of clarity of, and the need to disclose Heads of Terms relating to, the planned closure of Aldi’s existing premises

The applicant is proposing to “cease trading” from their existing edge of centre store on Market Street (paragraph 5.16 of the July 2021 Planning and Retail Statement) following the grant of consent for the out of centre application proposal. The future of Aldi’s existing store, and how it is controlled, is of significant importance to the consideration of this application, as accepted by the applicant.

Whether there will be a mechanism to regulate the situation, what it might be, and how it will operate, are matters about which there must be clarity now. Whilst the applicant’s agent’s (Turleys’) Statement proposes an approach via a planning obligation to regulating the future use of Aldi’s existing store, we are not aware of any draft Heads of Terms for any mechanism having been made available in the public domain. Only once they have been made publicly available can interested parties take relevant considerations into account in their representations, officer’s in their advice and any recommendation, and members in their decision making.

It should be stressed that different mechanisms could lead to very different controls on the future of Aldi’s Market Street store. Whilst a planning obligation may be able to

regulate the activities on the land being developed or restrict the use, the wording of any such obligation is key to understanding the 'strength' of any such restriction. For example, a 'soft' planning obligation that only requires a temporary period of marketing may not provide a permanent restriction against continued retail use. A 'revocation', or 'modification', on the other hand, is a more certain mechanism that goes to the heart of the matter. It is that approach that the Council is asked to adopt, i.e. to remove the lawful use of the existing premises.

### 3.7 The resulting unevidenced approach to retail impact assessment

The applicant's impact assessment assumes that the operator's existing store will cease trading, and that therefore it is only the floorspace 'uplift' that needs to be assessed<sup>3</sup>. That approach has largely been justified by Turleys' on the basis of their erroneous contention that Aldi's existing store has an edge of centre policy status.

Notwithstanding that, were the local authority to accept the applicant's approach to retail impact assessment in this regard, it would be necessary that the Heads of Terms offered provide the permanent restriction against continued food retail use. Since what is proposed is a wholly new out of centre store, with (at present) no clarity of a restriction against continued retail use, it would seem necessary for the impact assessment to be carried out on the basis that both (edge and out of centre) stores will continue to trade at 3 Paragraph 8.34 of the applicant's July 2021 Planning Statement Addendum states, "The trade draw model assumes that the existing Aldi store at Market Street (£10.98 million at 2024) will be absorbed into the turnover of the replacement store at Power Station Road..." and that "The impact modelling therefore measures the net increase in the turnover of the replacement store above that of the existing store..." their full potential (and in this regard, the identity of the specific retailer is not a material consideration).

However, even if there is clarity on a restriction against continued retail use, the approach to only assessing the floorspace 'uplift' would not seem appropriate in the context that the existing store is edge of centre whereas the proposed is out of centre. The loss and uplift should therefore be taken into account, since both have effects on the town centre.

Turleys' assertion that both edge and out of centre stores are equally as well connected to the town centre and that therefore effects on the town centre would be merely de minimis, is entirely unevidenced, and is premised on their flawed contention that the application site is edge of centre. It would seem necessary, at the very least, to provide sensitivity testing that accounts for both the loss and uplift in floorspace to ensure a robust approach is taken and so that all likely impacts are accounted for.

Thereafter, in making a complete assessment of the likely impacts, the Council should seek independent retail planning advice in order to ensure that matters are thoroughly reviewed.

### 3.8 Conclusions

There is no consensus between Lidl's and Aldi's agents as to what the cumulative impact of their proposals would be on the town centre. The approach of the Council's retail advisor to apparently select the "mid-point" of this range is not robust. In exercising its judgement, the local planning authority should have regard to the worst case likelihood of cumulative impact on the town centre.

A town centre site at Wellington Drive has not been robustly assessed for its 'availability'. The possible use of CPO powers in site assembly cannot be relied upon as a reasonable basis to reject the site in sequential testing.

The applicant has failed to consider the site at Power Station Road subject to an application for a similar foodstore development as a potential opportunity to accommodate the broad type of development proposed. It would be reasonable, and indeed appropriate, for the Council to consider which of the Aldi or Lidl sites is 'sequentially superior'. Policy CP11 also requires sites to come forward in a temporal sequence i.e. in the sequentially preferred order.

Paragraph 90 of the NPPF requires an assessment of the impact of the proposal on existing town centre investment. The applicant has not appropriately considered the impacts of their proposal on existing investment in which Tesco has played a major part in delivering to help realise the objectives of the Town Centre Area Action Plan.

There is conflicting information in the applicant's Planning and Retail Statement as to the suggested approach of regulating the future use of Aldi's existing premises. Draft Heads of Terms do not exist in the public domain and should be made available at the earliest opportunity. There is no certainty of a continued restriction against food retailing use.

Consequent to the lack of clarity on the above, it is wholly appropriate that trading impacts are assessed on the basis that both out of centre stores are trading at their full potential.

Even if that clarity can be provided, the applicant's approach of only assessing the 'uplift' in floorspace is not appropriate or reasonable in the circumstances that the proposed store is out of centre, whereas the existing store is edge of centre. It should not be assumed, without supporting evidence, that there would be no further effects on the town centre from this loss and uplift in floorspace.

For reasons set out above and in our earlier representations, planning permission should be refused.

Our Ref: 2995/MR/LT20220704

4<sup>th</sup> July 2022

Richard Sunter  
Development Control Manager  
Cannock Chase Council  
Civic Centre  
Cannock  
WS11 1BG

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**Via Email:** [RichardSunter@cannockchasedc.gov.uk](mailto:RichardSunter@cannockchasedc.gov.uk)

Dear Richard,

## **PLANNING APPLICATION CH/20/218 - APPLICATION BY ALDI: LAND AT POWER STATION ROAD, RUGELEY**

As you will be aware we act for Tesco Stores Ltd with regard to objections to the above planning application. We have made several representations with regard to this application. With the exception of that relating to the need to assess the cumulative impact of this application with the Lidl application (on which ground the Council 'consented to judgment'), all remain relevant to decision making on this application.

Having now read the Officer's Report we raise three main issues. All are seen as fundamental to decision making. They relate to the manner in which the availability and suitability of sequential test opportunities have been assessed, the lack of adequate assessment of the impact on planned public and private investment that will likely arise if the application is granted, and that it would be premature to grant the application bearing in mind the substantial and cumulative effects that it would have in predetermining decisions on the town centre regeneration policy content of the emerging local plan which are central to its strategy.

### Sequential Assessment Failings

Our letter 5th May 2022 provides a response to why it is inappropriate to see a "*reasonable period of time*" in the context of the "*availability*" test as extending to no more than 12 to 18 months. The Council's consultant has 'borrowed' a time period that informs retail impact assessment and is, as our letter explains, wholly inappropriate. Alternatively the same timeline for the application proposal itself has been adopted. But to do so ignores the NPPG's advice on the correct approach. It advises that in arriving at an appropriate judgement of what is a "*reasonable period*" it is "... *the scale and complexity of the... potentially suitable town or edge of centre sites (that) should be taken into account*". Thus, in respect of the Land at Wellington Drive (site RTC7) that there would need be the acquisition of a number of interests and a possible process to achieve, this not something that the Council has not contemplated or foreseen. The site is allocated in the Town Centre Area Action Plan for retail and related development. As a development plan allocation, there is an expectation that the Council would seek to assist in delivering it. Whilst an extended period of some "*three to four years*" has subsequently been put forward (top of

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page 76) seemingly as being “*a reasonable period*”, this is then almost summarily dismissed as still not being adequate. But no cogent evidence of realistic timelines relating to this specific site has been put forward by the applicant or the Council’s consultant (with whom the Officer has agreed, see at paragraph 13.20). An informed assessment should be undertaken to demonstrate how a competent developer working with a local planning authority interested in implementing its local plan policies, would be able to address the delivery of this site.

In terms of these sites being “*suitable*”, the Area Action Plan includes provision of “*an anchor store to meet the needs of modern operators*” (site RTC6) and for “*a medium-sized retail food or non-food store*” (site RTC7). Suitability should not therefore be in doubt. Regard should be had to the recent Inspector’s decision on a Lidl proposal in Altrincham town centre (as reported by the Officer at paragraphs 13.14 and 15 of the Lidl application), and to take full account of the Council’s consultant’s advice that, “*...Looking at flexibility, given the discussion presented by Turley (Aldi’s agent)...this does not appear to provide any flexibility in terms of store size nor multi-level/decked car parking solutions. Given that limited assortment discounters are now looking at these types of formats, it would be necessary for consideration to be given to this in looking at available sequential sites*” (paragraph 13.15).

In respect of both the Rugeley Market Hall/Bus Station and surrounding area site (RTC6) and the land at Wellington Drive (RTC7) the Officer’s Report sets out the applicant’s assertions on “*viability*”. It is stated of the former site, “*...that many of the individual required elements of the allocation proposal would create unsurmountable issues in terms of the operational efficiency of the food store...*” and as a result, “*None of those development options would be viable...*”. In respect of the latter site, the Council’s consultant reports that Aldi assert that, “*...a store and level car park scheme would not be viable...*” (reported at paragraph 13.17). However, we can find no thorough assessment of the viability of the development of either site in accommodating a supermarket component as encouraged by the allocations as part of a comprehensive redevelopment proposal.

It is then relevant in respect of the issues referred to above, to note that the emerging Local Plan, now post it’s Preferred Options stage, proposes to continue to allocate these opportunities. The current Regulation 18 version of the Plan explains that both sites “*... will be carried forward*” into the new Local Plan. Objections to the emerging Local Plan were reported to the Council’s Cabinet on 16th December 2021. No adverse objections are recorded as being made to these sites continuing to form part of the critical town centre, retail provision strategy for Rugeley. Heritage England expressed cogent reasons to support them.

The Council’s position does not seem to be ‘consistent’. In its Plan-Making role it is charged with the requirement to “*allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead*” (NPPF paragraph 86d). In choosing to continue to allocate the RTC 6 and 7 sites, the Council will have considered the “*scale and type of development likely to be needed*”. The Council will have been fully aware of the application proposal (and that by Lidl) and that they represent needs expressed by those retailers. The continued allocation of these sites to accommodate an ‘anchor retailer’ or ‘a medium-sized retail food store’ confirms that these opportunities will have been reviewed and found appropriate to meet proposed operator’s identified needs.

However, the Officer appears to have been side-tracked by Alder King advising that recent work in respect of the Council's Strategic Housing Land Availability Assessment identified that the alternative housing use of the RTC7 site could provide 30 houses by 2038 (pages 76 and 77). Alder King then mistakenly assert that it was on "*... this basis, the site was included in the preferred option stage of the local plan review*". The testing of this alternate option is not the complete position.

It is therefore important that the sequential assessment is thoroughly and effectively undertaken. It is one of the key operating tests that facilitate the Government's *town centre first principle*.

### Failure to Adequately Assess Impact on Planned Public and Private Investment in the Town Centre

However, should the sequential test be met, there is then a direct consequential effect from the proposal on the Regeneration Strategy for the town centre which, through Policy RTC1 and other related policies, seeks to focus public and private investment on the "*development of key sites within the core town centre and improvements to its urban fabric, aided by the current Tesco Store development to the east of the canal*". This approach is thus consistent with the NPPF's test relating to "*...planned public and private investment in the town centre*" (NPPF paragraph 90a) but here sits firmly within a development plan policy context. This is our second issue.

The Officer's Report recognises the importance of Policy CP 11 and the Town Centre Area Action Plan in terms of their setting out "*...a strategy for regenerating and growing the town centre via the development of key sites - namely those explored as part of the sequential test approach...*" (paragraph 15.5). The Report explains that "*This, amongst other ambitions is in order to provide a balanced mix of town centre uses and to help deliver up to 10,000 m<sup>2</sup> (gross) comparison and 4,900 m<sup>2</sup> (gross) convenience retail floor space by 2028*".

Rather than seeing the application proposal as being in conflict with the development plan's strategy to develop key sites by, for example, serving to limit or remove interest from other future potential operators or investors in the key town centre opportunities that might then otherwise have come forward to deliver the planned town centre regeneration, the Officer advises that the application (together with the Aldi proposal) would "*...exceed the 4,900 m<sup>2</sup> set out in the Local Plan (see above) and in this respect would be contrary to policy CP 11 and the AAP of the Local Plan. For this reason, it is technically considered that the proposal constitutes a departure from the Cannock Chase Local Plan and has been advertised as such*" (paragraph 15.6). In no other respect is there any consideration of a breach to these policies arising from the risk of planned investment being frustrated by the application proposal coming forward. This seems to be a fundamental failing in the relevant analysis.

That the issue has not been examined as part of the application, notwithstanding that it is central to the development plan's approach to the regeneration of Rugeley town centre and key sites there (and a critical aspect of the NPPF's impact test). It should not be confused with assessment under the sequential test. Were the sequential test passed, it is then important for the authority to consider whether this development would potentially prejudice the delivery of investment into the identified key, Town Centre Area Action Plan

sites. That work has not been carried out. The Officer's Report asserts that, "*Officers have been presented with no substantive evidence to suggest that there would be significant adverse impacts on existing investments within the catchment area*" (paragraph 14.13). Such objections have been previously made on behalf of our client (see in particular our letter of 9<sup>th</sup> December 2020).

Instead of addressing this matter, the Officer's Report asserts that Policy RTC1 and its related Figure 5 (Figure 1 of his report) can be read to "*... convey at least at some strategic level that additional retail development around the main allocated sites could potentially come forward to complement the main allocations – albeit in line with the sequentially focus on the town centre and edge of centre first in accordance with other policies, and only then would less central sites be considered. Accordingly officers assess there is consistency between the development proposals within this application and the wider strategic Regeneration Policy RTC1*" (paragraph 15.9)

That assessment of consistency is either exaggerated or incorrect. The 'overlap' is at best partial in extent (from an illustrative plan) and tenuous in nature. That causes 'compliance' with the key strategy policy to be minimised or lost. That then serves to impact on how the balance is weighed in terms of development plan policy compliance (at paragraph 2.10). The balance is currently said to "*weigh modestly in favour of the development in principle on the basis of the policies alone, and it is concluded the application would comply with the overall emphasis of the Development Plan more than not*".

The policy weighing exercise therefore needs to be recast not only to reflect the overstated nature of this balancing act but, much more significantly, to address the likely impacts on planned, public and private investment and thus breach of development plan policy for the key allocated town centre sites.

#### Prematurity vis a vis the Emerging Local Plan

The third issue relates to the significance of relevant content in the emerging Local Plan. It will shortly be at submission (Regulation 19) stage. Indeed the Council's Local Development Scheme identifies that this is to be published in Summer 2022. Together with the application by Lidl, the issues that arise for Rugeley town centre are substantial in nature and have cumulative effects (both in terms of there being two proposals but also for the risk to subsequent investment opportunities on key town centre sites. Decisions on these applications will predetermine decisions that the local plan process should be charged with. It has already been decided to "*carry forward*" the two important and relevant town centre allocations. Thus, this is a circumstance where the provisions set out at paragraph 49 of the NPPF should apply, i.e.

*"a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant planning permission would undermine the plan-making process by predetermined decisions about the scale, location or phasing of new development that are central to an emerging plan, and  
b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."*

National policy advice is therefore such as "*...to justify a refusal of planning permission...*" on this ground (NPPF paragraph 49).

## Conclusions

That the proposal can be accommodated in a “*suitable*” format within one or other Town Centre Action Area Plan allocations with the flexibility inherent in the NPPF, as exemplified by the Altrincham appeal decision relating to a Lidl proposal there; with the application of a “*reasonable period*” in terms of “*availability*” reflecting the complexities of the Local Plan allocations but noting their support for a retail proposal such as this; that the now advanced emerging Local Plan is proposing to “*carry forward*” these allocations “*to meet the scale and type of development likely to be needed*” which, ought embrace these proposals (in light of the knowledge of them since summer 2020; that the applicant has produced no evidence to support the claimed lack of ‘viability’ to justify their negative position with respect of both sites, all firmly serve to support refusal (in accordance with development plan policy which specifically identifies the Area Action Plan opportunities) on grounds that the sequential test is not met.

That there has been no adequate, let alone robust, assessment of the significance of the risk to future public and private investment in the key Area Action Plan town centre sites being frustrated by the grant of permission for this out of centre proposal, and on the basis that this harm is seriously in conflict with relevant development plan policies, justifies refusal of planning permission.

That progress on the emerging Local Plan is now at an advanced stage; it carries forward the two relevant key town centre regeneration sites, that there are two similar major retail applications before the Council; there is real risk in the consequential frustration of planned public and private investment in the town centre, the application should be refused on grounds that it is premature vis a vis the outcome of the local plan’s strategy for continuing town centre regeneration.

Yours sincerely,



**Martin Robeson**

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Our Ref: 2995/MR/LT20220407

4<sup>th</sup> July 2022

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**Via Email:** [RichardSunter@cannockchasedc.gov.uk](mailto:RichardSunter@cannockchasedc.gov.uk)

Dear Richard,

**PLANNING APPLICATION CH/20/306 - APPLICATION BY LIDL: LAND AT POWER STATION ROAD, RUGELEY**

As you will be aware we act for Tesco Stores Ltd with regard to objections to the above planning application. We have made several representations with regard to this application. With the exception of that relating to the need to assess the cumulative impact of this application with the Aldi application (on which ground the Council 'consented to judgment'), all remain relevant to decision making on this application.

Having now read the Officer's Report we raise three main issues. All are seen as fundamental to decision making. They relate to the manner in which the availability and suitability of sequential test opportunities have been assessed, the lack of adequate assessment of the impact on planned public and private investment that will likely arise if the application is granted, and that it would be premature to grant the application bearing in mind the substantial and cumulative effects that it would have in predetermining decisions on the town centre regeneration policy content of the emerging local plan which are central to its strategy.

Sequential Assessment Failings

Our letter 5th May 2022 provides a response to why it is inappropriate to see a "*reasonable period of time*" in the context of the "*availability*" test as extending to no more than 12 to 18 months. The Council's consultant has 'borrowed' a time period that informs retail impact assessment and is, as our letter explains, wholly inappropriate. Alternatively the same timeline for the application proposal itself has been adopted. But to do so ignores the NPPG's advice on the correct approach. It advises that in arriving at an appropriate judgement of what is a "*reasonable period*" it is "... *the scale and complexity of the... potentially suitable town or edge of centre sites (that) should be taken into account*". Thus, in respect of the Land at Wellington Drive (site RTC7) that there would need be the acquisition of a number of interests and a possible process to achieve, this not something that the Council has not contemplated or foreseen. The site is allocated in the Town Centre Area Action Plan for retail and related development. As a development plan allocation, there is an expectation that the Council would seek to assist in delivering it. Whilst an extended period of some "*three to four years*" has subsequently been put forward (bottom

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of page 65) seemingly as being “*a reasonable period*”, this is then almost summarily dismissed as still not being adequate. But no cogent evidence of realistic timelines relating to this specific site has been put forward by the applicant or the Council’s consultant (with whom the Officer has agreed, see at paragraph 13.27). An informed assessment should be undertaken to demonstrate how a competent developer working with a local planning authority interested in implementing its local plan policies, would be able to address the delivery of this site.

In terms of these sites being “*suitable*”, the Area Action Plan includes provision of “*an anchor store to meet the needs of modern operators*” (site RTC6) and for “*a medium-sized retail food or non-food store*” (site RTC7). Suitability should not therefore be in doubt. Regard should be had to the recent Inspector’s decision on the Lidl proposal in Altrincham town centre (as reported by the Officer at paragraphs 13.14 and 15), and to take full account of the Council’s consultant’s advice that, “*...it is important that Lidl show appropriate level of flexibility when considering whether a site might be able to accommodate the broad type of development proposed, including consideration of multi-level/decked solutions reflecting the variety of formats Lidl now promote. This includes the ability to use the Metropolitan format raised by MRPP*” (paragraph 13.19).

In respect of both the Rugeley Market Hall/Bus Station and surrounding area site (RTC6) and the land at Wellington Drive (RTC7) the Officer’s Report sets out the applicant’s assertions on “*viability*”. It is stated that the former site, in needing to “*... re-provide these (existing car parking, bus station, market and taxi rank) uses, which would not be viable in relation to the application scheme*”, and that in respect of the latter site that it would be “*...unviable for the proposed retail scheme*” (reported at paragraph 13.11). However, we can find no assessment of the viability of the development of either site in accommodating a supermarket component as encouraged by the allocations as part of a comprehensive redevelopment proposal.

It is then relevant in respect of the issues referred to above, to note that the emerging Local Plan, now post it’s Preferred Options stage, proposes to continue to allocate these opportunities. The current Regulation 18 version of the Plan explains that both sites “*... will be carried forward*” into the new Local Plan. Objections to the emerging Local Plan were reported to the Council’s Cabinet on 16th December 2021. No adverse objections are recorded as being made to these sites continuing to form part of the critical town centre, retail provision strategy for Rugeley. Heritage England expressed cogent reasons to support them.

The Council’s position does not seem to be ‘consistent’. In its Plan-Making role it is charged with the requirement to “*allocate a range of suitable sites in town centres to meet the scale and type of development likely to be needed, looking at least ten years ahead*” (NPPF paragraph 86d). In choosing to continue to allocate the RTC 6 and 7 sites, the Council will have considered the “*scale and type of development likely to be needed*”. The Council will have been fully aware of the application proposal (and that by Aldi) and that they represent needs expressed by those retailers. The continued allocation of these sites to accommodate an ‘anchor retailer’ or ‘a medium-sized retail food store’ confirms that these opportunities will have been reviewed and found appropriate to meet proposed operator’s identified needs.

However, the Officer appears to have been side-tracked by Alder King advising that recent work in respect of the Council's Strategic Housing Land Availability Assessment identified that the alternative housing use of the RTC7 site could provide 30 houses by 2038 (pages 66 and 67). Alder King then mistakenly assert that it was on "*... this basis, the site was included in the preferred option stage of the local plan review*". The testing of the alternate option is not the complete position.

It is therefore important that the sequential assessment is thoroughly and effectively undertaken. It is one of the key operating tests that facilitate the Government's *town centre first principle*.

### Failure to Adequately Assess Impact on Planned Public and Private Investment in the Town Centre

However, should the sequential test be met, there is then a direct consequential effect from the proposal on the Regeneration Strategy for the town centre which, through Policy RTC1 and other related policies, seeks to focus public and private investment on the "*development of key sites within the core town centre and improvements to its urban fabric, aided by the current Tesco Store development to the east of the canal*". This approach is thus consistent with the NPPF's test relating to "*...planned public and private investment in the town centre*" (NPPF paragraph 90a) but here sits firmly within a development plan policy context. This is our second issue.

The Officer's Report recognises the importance of Policy CP 11 and the Town Centre Area Action Plan in terms of their setting out "*...a strategy for regenerating and growing the town centre via the development of key sites - namely those explored as part of the sequential test approach...*" (paragraph 15.5). The Report explains that "*This, amongst other ambitions is in order to provide a balanced mix of town centre uses and to help deliver up to 10,000 m<sup>2</sup> (gross) comparison and 4,900 m<sup>2</sup> (gross) convenience retail floor space by 2028*".

Rather than seeing the application proposal as being in conflict with the development plan's strategy to develop key sites by, for example, serving to limit or remove interest from other future potential operators or investors in the key town centre opportunities that might then otherwise have come forward to deliver the planned town centre regeneration, the Officer advises that the application (together with the Aldi proposal) would "*...exceed the 4,900 m<sup>2</sup> set out in the Local Plan (see above) and in this respect would be contrary to policy CP 11 and the AAP of the Local Plan. For this reason, it is technically considered that the proposal constitutes a departure from the Cannock Chase Local Plan and has been advertised as such*" (paragraph 15.6). In no other respect is there any consideration of a breach to these policies arising from the risk of planned investment being frustrated by the application proposal coming forward. This seems to be a fundamental failing in the relevant analysis.

That the issue has not been examined as part of the application, notwithstanding that it is central to the development plan's approach to the regeneration of Rugeley town centre and key sites there (and a critical aspect of the NPPF's impact test). It should not be confused with assessment under the sequential test. Were the sequential test passed, it is then important for the authority to consider whether this development would potentially prejudice the delivery of investment into the identified key, Town Centre Area Action Plan sites. That work has not been carried out. The Officer's Report asserts that, "*Officers have*

*been presented with no substantive evidence to suggest that there would be significant adverse impacts on existing investments within the catchment area” (paragraph 14.15). Such objections have been previously made on behalf of our client (see in particular our letter of 4<sup>th</sup> December 2020).*

Instead of addressing this matter, the Officer’s Report asserts that Policy RTC1 and its related Figure 5 (Figure 1 of his report) can be read to “... convey at least at some strategic level that additional retail development around the main allocated sites could potentially come forward to complement the main allocations – albeit in line with the sequentially focus on the town centre and edge of centre first in accordance with other policies, and only then would less central sites be considered. Accordingly officers assess there is consistency between the development proposals within this application and the wider strategic Regeneration Policy RTC1” (paragraph 15.9)

That assessment of consistency is either exaggerated or incorrect. The ‘overlap’ is at best partial in extent (from an illustrative plan) and tenuous in nature. That causes ‘compliance’ with the key strategy policy to be minimised or lost. That then serves to impact on how the balance is weighed in terms of development plan policy compliance (at paragraph 2.9). The balance is currently said to “weigh modestly in favour of the development in principle on the basis of the policies alone, and it is concluded the application would comply with the overall emphasis of the Development Plan more than not”.

The policy weighing exercise therefore needs to be recast not only to reflect the overstated nature of this balancing act but, much more significantly, to address the likely impacts on planned, public and private investment and thus breach of development plan policy for the key allocated town centre sites.

#### Prematurity vis a vis the Emerging Local Plan

The third issue relates to the significance of relevant content in the emerging Local Plan. It will shortly be at submission (Regulation 19) stage. Indeed the Council’s Local Development Scheme identifies that this is to be published in Summer 2022. Together with the application by Aldi, the issues that arise for Rugeley town centre are substantial in nature and have cumulative effects (both in terms of there being two proposals but also for the risk to subsequent investment opportunities on key town centre sites. Decisions on these applications will predetermine decisions that the local plan process should be charged with. It has already been decided to “carry forward” the two important and relevant town centre allocations. Thus, this is a circumstance where the provisions set out at paragraph 49 of the NPPF should apply, i.e.

*“a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant planning permission would undermine the plan-making process by predetermined decisions about the scale, location or phasing of new development that are central to an emerging plan, and  
b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”*

National policy advice is therefore such as “...to justify a refusal of planning permission...” on this ground (NPPF paragraph 49).

## Conclusions

That the proposal can be accommodated in a “*suitable*” format within one or other Town Centre Action Area Plan allocations with the flexibility inherent in the NPPF, as exemplified by the Altrincham appeal decision relating to a Lidl proposal there; with the application of a “*reasonable period*” in terms of “*availability*” reflecting the complexities of the Local Plan allocations but noting their support for a retail proposal such as this; that the now advanced emerging Local Plan is proposing to “*carry forward*” these allocations “*to meet the scale and type of development likely to be needed*” which, ought embrace these proposals (in light of the knowledge of them since summer 2020 (notwithstanding that the applicant has expressed no view on the emerging Local Plan)); that the applicant has produced no evidence to support the claimed lack of ‘viability’ to justify their negative position with respect of both sites, all firmly serve to support refusal (in accordance with development plan policy - which specifically identifies the Area Action Plan opportunities) on grounds that the sequential test is not met.

That there has been no adequate, let alone robust, assessment of the significance of the risk to future public and private investment in the key Area Action Plan town centre sites being frustrated by the grant of permission for this out of centre proposal, and on the basis that this harm is seriously in conflict with relevant development plan policies, justifies refusal of planning permission.

That progress on the emerging Local Plan is now at an advanced stage; it carries forward the two relevant key town centre regeneration sites, that there are two similar major retail applications before the Council; there is real risk in the consequential frustration of planned public and private investment in the town centre, the application should be refused on grounds that it is premature vis a vis the outcome of the local plan’s strategy for continuing town centre regeneration.

Yours sincerely,



**Martin Robeson**

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