



Date: Tuesday, 9 January 2018

Time: 2.00 pm

Venue: Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND

Contact: Emily Marshall, Committee Officer  
Tel: 01743 257717  
Email: [emily.marshall@shropshire.gov.uk](mailto:emily.marshall@shropshire.gov.uk)

## **NORTH PLANNING COMMITTEE**

### **SCHEDULE OF ADDITIONAL LETTERS**

NOTE: This schedule reports only additional letters received before 5pm on the day before committee. Any items received on the day of Committee will be reported verbally to the meeting

**This page is intentionally left blank**

<b>NORTH PLANNING COMMITTEE</b>
<b>SCHEDULE OF ADDITIONAL LETTERS</b>
<b>Date: 9<sup>th</sup> January 2018</b>

NOTE: This schedule reports only additional letters received before 5pm on the day before committee.  
Any items received on the day of Committee will be reported verbally to the meeting

Item No.	Application No.	Originator:
5	17/04401/FUL - Maesbrook	Parish Council

We note that paragraph 4.1.5 of your Development Management Report states that Kinnerley Parish Council provided no comments in its support of this application. The full application was considered at the KPC meeting on 23 October 2017, and it is true that the minute of that meeting recorded a resolution only to support the application, with no further comments. However, Councillors were aware of a resolution from an earlier meeting on 23 February 2015, when a pre-application consultation submission was considered. The resolution from that meeting records:

***"Following a discussion it was RESOLVED that the Parish Council supports in principle a suitably sited single-plot self-build affordable dwelling for a qualified local person (John Davies) and agreed that Llwyn-y-Go is a recognisable settlement for the proposed dwelling. The Parish Council supports the applicant's preference for site B over site A because Llwyn-y-Go has a scattered settlement pattern and plot A would restrict existing views."***

We attach a copy of the plan submitted for that meeting which shows the positions of sites A and B.

Item No.	Application No.	Originator:
5	17/04401/FUL - Maesbrook	Agent

Amended plan has been submitted, showing revisions made to the proposed garage outbuilding – a reduction in scale, by removing the southern log store. Amended plan has been uploaded to the planning file.

Item No.	Application No.	Originator:
5	17/04401/FUL - Maesbrook	Officer

Further to para 1.2 of the Officers Report, it should be made clear that the Pre-application advice given stated that “Officers would, however, raise concern regarding the proposed location of the affordable dwelling and would consider the location to be more acceptable should it be sited close to other built up development, rather than be read as an isolated unit” (planning ref: PREAPP/14/00615).

Please see amended site location plan, following the applicant’s revising their site layout post validation.



<b>Item No.</b>	<b>Application No.</b>	<b>Originator:</b>
7	17/03775/OUT - Prees	Agent
<p>Further to notification that the aforementioned application is going to committee on the 9<sup>th</sup> January, I write attaching a document containing photos and plans to help illustrate the situation relating to the access serving the proposed development and in turn the wider allocation.</p> <p>As detailed in the submission and subsequent correspondence, the subject outline application utilises the land available to the applicants (Messrs Nash) without the involvement of third party landowners. However there is every possibility that subsequent to the subject application being approved a suitable, mutually beneficial, commercial arrangement can be reached with neighbouring landowners to allow the access to be widen / improved to serve the wider allocation.</p> <p>In addition, a recently submitted application for 13no. dwellings on land to the south also affords an alternative access option.</p> <p>I am confident the committee will get a firm understanding of the situation surrounding this proposal during the site visit on Tuesday morning, but I would be grateful if you could circulate the attachment. Photos attached.</p>		
<b>Item No.</b>	<b>Application No.</b>	<b>Originator:</b>
8	17/01152/FUL – Aldi, Whitchurch	Tree Officer
<p>The use of Cell Web has been proposed to allow parking under the Oak trees which encroach onto the site (crown and roots). Whilst there is an argument that this is a satisfactory solution would prefer the parking to be moved away from the root protection areas from an aesthetic point of view and the problem of twigs and tree debris damaging cars parked underneath them. An area of shrubs would be another solution.</p>		
<b>Item No.</b>	<b>Application No.</b>	<b>Originator:</b>
8	17/01152/FUL – Aldi, Whitchurch	Applicant
<p>The applicant has commented on parts of the report noting the following (officer notes follow each comment in italics):</p> <ul style="list-style-type: none"> <li>• Para 1.2 - The building height stated is incorrect. The correct building height is 5.14m at its lowest and 7.7m at its highest. – <i>these have been checked and the agent is correct, the report is incorrect</i></li> <li>• Para 4.2.1 – the number of public comments of support is incorrect. From reviewing the number of representations of support shown on the Council's website, the Council has received 128 comments in support of the proposals. – <i>checked by officers, the agent is correct, however, a significant number of</i></li> </ul>		

*these are anonyms and submitted on postcards provided by Aldi.*

- Typo throughout report – NMES should read NEMS
- Para 6.7.14 – the number of car parking spaces is incorrect. The correct number of car parking spaces proposed is 120. – *the original submitted plans showed 117*
- As referred to in Para 6.9.7, we would be grateful for the Tree Officer’s response to the additional information that was submitted to the Council on 30<sup>th</sup> November 2017 regarding proposed Geosynthetics CellWeb Tree Root Protection. We would be grateful for an update ahead of the committee meeting rather than wait for an update at the committee meeting. – *commented provided above*
- As referred to in Para 6.3.20, Aldi will review the success of the shopper bus at the end of the period and take a decision on whether or not to extend it beyond then. – *as noted in the report, uncertainty remains*
- As referred to in Paragraphs 6.7.17 – 6.7.19, Aldi has already rolled out a programme of ECPs on new sites. Aldi confirm that they will provide one charging point serving two parking spaces with a fast charge unit, as this is considered to be the most appropriate and compatible method for Aldi customer vehicles. – *acknowledged that provision of charging points can be provided*

Item No.	Application No.	Originator:
8	17/01152/FUL – Aldi, Whitchurch	Applicant

The attached letter has been received from Aaron & Partners on behalf of Aldi offering to financially support the Council should members approve the application and judicial review proceedings be commenced.

Item No.	Application No.	Originator:
8	17/01152/FUL – Aldi, Whitchurch	Lidl

The second attachment to this document is a letter received from Plan A on behalf of Lidl. The letter includes legal advice from Mr Choongh, of No 5 Chambers, which comments on the legal advice from Mr Crean previously provided on behalf of Aldi.

Item No.	Application No.	Originator:
8	17/01152/FUL – Aldi, Whitchurch	Local residents

Two further local objections have been received commenting:

- many of the support comments are duplicates.
- will take trade from town centre
- impact on tourism

Item No.	Application No.	Originator:
8	17/01152/FUL – Aldi, Whitchurch	Case officer

In addition to the corrections noted above by the agent it has also been noted that the report refers to access to the site being off Chester Road (para 1.1 and 6.12.8) and that this is incorrect. The access is off Wrexham Road.

Item No.	Application No.	Originator:
9	16/05336/REM – West Felton	Objectors

2 further objections have been received on the amended plans raising the following

concerns:

- Lack of information
- Consultation over Christmas not acceptable
- Relocation of open space will impact on amenities of neighbouring residents and too close to summerhouse
- Developer should be providing allotments or bowling green rather than a play area
- Impact on views of Welsh Hills
- Lack of landscaping details

<b>Item No.</b>	<b>Application No.</b>	<b>Originator:</b>
9	16/05336/REM – West Felton	Officer

Conditions 3 and 4 are not correct on the above report and refer to another site.

Conditions 3 and 4 should be worded as follows:

*3. Prior to the commencement of the development, including any works of demolition, a Construction Method Statement shall have been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.*

*Reason: This detail is required prior to commencement to avoid congestion in the surrounding area and to protect the amenities of the area.*

*4. Prior to the above ground works commencing samples and/or details of the roofing materials and the materials to be used in the construction of the external walls shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.*

*Reason: To ensure that the external appearance of the development is satisfactory.*

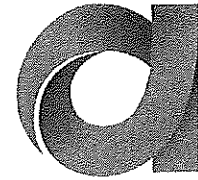
<b>Item No.</b>	<b>Application No.</b>	<b>Originator:</b>
10	17/05626/VAR – West Felton	Officer

The recommendation should also reflect the requirement for this consent, if granted, to be issued subject to the applicant entering into a S106 agreement to secure affordable housing as per the S106 on the original consent issued by the Planning Inspector.



**This page is intentionally left blank**





Aaron & Partners  
Solicitors

FAO: Mr Clive Wright  
Chief Executive  
Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
Shropshire  
SY2 6ND

Our Ref: DFD.BG.ALD4.112

Your Ref:

Date: 4 January 2018

By Post and Email: [clive.wright@shropshire.gov.uk](mailto:clive.wright@shropshire.gov.uk)  
[ian.kilby@shropshire.gov.uk](mailto:ian.kilby@shropshire.gov.uk)

Dear Mr Wright

**The Town and Country Planning Act 1990 (as amended)**  
**Planning Application No. 17/01152/FUL – Erection of New Food Store, Wrexham Road, Whitchurch**

We act on behalf of Aldi Stores Ltd in regard to the above Application which is to be considered at the Northern Planning Committee which meets on the 9<sup>th</sup> January with an Officer's recommendation to refuse for the reasons summarised in section 7.0 – Conclusion – of the Officer's Report.

Our client, as would be expected, is disappointed that the officers on having considered the evidence submitted by the client's Planning and other consultants and the advice from Leading Counsel which was provided with the purpose of avoiding the LPA having to become involved in a costly and time consuming Appeal reached the Recommendation to refuse as set out in the Report.

The advice of Mr Crean QC, a highly respected and one of the top ranking Silks in the country specialising in Planning Law whom has been instructed by the LPA on a number of its own high profile Appeals and legal challenges, is that on an Appeal the client will be successful with the possibility of a costs award against the Authority.

Mr Crean QC will be speaking at the Meeting next week and as the allotted slot in which he has to speak is short being only three minutes, the purpose of him speaking is not to address policy issues in detail

Grosvenor Court, Foregate Street, Chester CH1 1HG  
Tel: 01244 405555 Fax: 01244 405566 DX: 19990 Chester  
Web: [aaronandpartners.com](http://aaronandpartners.com)

Offices also at Shrewsbury and Manchester



Work done by this firm (including consumer credit matters) is authorised and regulated by the Solicitors Regulation Authority, except for work done as Insolvency Practitioner (regulated by the Insolvency Practitioners Association), and notarial work (regulated by the Faculty Office of the Archbishop of Canterbury)

A full list of members is available at the registered office. Aaron & Partners LLP is a limited liability partnership registered in England & Wales under Registration Number OC307122. Registered office: Grosvenor Court, Foregate Street, Chester CH1 1HG. Service by fax and email not accepted.

other than in very broad terms emphasising that the conclusion reached by the officers as to the planning balance is incorrect in terms of national planning policy.

In addition Mr Crean will address a concern the LPA will have, though not referred to in the Officer's Report, but raised by the Planning Consultants representing Lidl, which is the "threat" that their client will commence judicial review proceedings against the LPA were the Members to approve the Aldi Application. Such a "threat" in our opinion may be a factor that is taken into consideration by Members when considering the Application and the substantial costs that would then be incurred defending such proceedings.

Our client would want to remove concerns on the cost to the LPA arising from court proceedings brought by Lidl to challenge a decision to approve the Application and is prepared to provide an undertaking to the Authority to underwrite the costs that will be incurred by the Authority in defending a judicial review challenge.

The "undertaking" the client is prepared to offer to the Authority to be limited to £50,000 plus VAT, which is considered as a sufficient enough amount to cover all the Authority's legal costs in defending such a claim.

We trust that such an offer/undertaking will enable the LPA to determine the Application in accordance with the relevant NPPF policies as advised by Leading Counsel, thereby avoiding a costly Appeal and with the assurance of having in place the necessary financial resources to defend a judicial review challenge without having to draw upon its limited financial resources.

### Conclusion

We trust the Authority will take the offer set out above as a genuine offer and request that this letter be circulated to the relevant officers and all members of the Planning Committee as a Late Item prior the meeting next Tuesday.

Yours faithfully

~~Aaron & Partners LLP~~

~~Email: [david.delaney@aaronandpartners.com](mailto:david.delaney@aaronandpartners.com)~~

~~Direct Dial: 01244 405538~~

Member of North Planning Committee  
Shropshire Council  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND



05 January 2018

Ref: 002092/L009

Dear Councillor,

**PROPOSED ALDI STORE, WREXHAM ROAD, WHITCHURCH – 17/01152/FUL**

The above application is due to be considered by Committee on 9 January 2018. Whilst it has been recommended for refusal by your officers, my client (Lidl UK GmbH) continues to have concerns with the lawfulness of the case presented by the applicant and has, therefore, sought legal advice on the matter, which is enclosed for your attention. We trust that the Opinion will assist your consideration of matters and provide further confidence to follow the officer recommendation and refuse planning permission.

The Opinion does, however, question the strength of the proposed grounds for refusal with regard to the impact on the vitality and viability of Whitchurch Town Centre. Officers recommend that permission be refused on the basis that *'the proposed development will have an adverse impact on the vitality and viability of the town centre, albeit not a significant adverse impact, there remains an impact'*. We contend that officers have under-estimated the potential impact on the town centre in drawing this conclusion and it is also inconsistent with officers previous conclusions on the matter.

Aldi expects the proposed store to draw half of its turnover away from town centre stores, which it estimates could result in an impact of approximately -15% on the town centre. However, this is a best-case scenario and it is highly likely that the actual impact could be significantly higher. Aldi's own evidence demonstrates that a number of shops in the town centre are performing below average expectations, with evidence presented by my client confirming that the Lidl store also performs below the company average. The loss of trade from several under-performing stores is likely to result in a greater impact on their viability and the town centre as a whole. It is not just Lidl that is under threat.

Whilst it is a matter of judgement whether an impact of at least -15% will be significantly adverse upon the town centre as a whole, granting planning approval for a new foodstore located outside the town with a forecast turnover in excess of £12m presents a significant risk to Whitchurch Town Centre. In light of this risk, paragraph 27 of the NPPF advises:

*'Where an application... is likely to have significant adverse impact... it should be refused'* [emphasis added].

Plan A (North West) Limited  
32 Aughton Road  
Southport  
PR8 2AG

We trust that you will agree that there is a reasonable likelihood that the proposed Aldi store could very well have a significant adverse impact on Whitchurch Town Centre and, therefore, a '*significant adverse impact*' should be stated in the grounds for refusing planning permission.

Yours faithfully,

Chris Smith  
[chris@planalimited.co.uk](mailto:chris@planalimited.co.uk)

Enc: Legal Opinion dated 3 January 2018  
Cc: All Members of North Planning Committee – Shropshire Council  
Ms K Townend – Shropshire Council

Plan A (North West) Limited  
32 Aughton Road  
Southport  
PR8 2AG

IN THE MATTER OF:

**PROPOSED ALDI STORE, WREXHAM ROAD, WHITCHURCH,  
SHROPSHIRE**

---

**OPINION**

---

**Introduction**

1. I am instructed on behalf of Lidl UK GmbH ("Lidl").
2. Lidl operates a store located on Bridgewater Street in Whitchurch Town Centre. Aldi, a rival discount food operator, has submitted an application to Shropshire Council to develop a new-out-of-town store on land off Wrexham Road. Lidl, together with others, has objected to this proposal on various grounds, including conflict with Policy CS5 of the development plan (which prohibits this type of development outside the defined settlement limits of the town) and conflict with the sequential and impact tests as set out in the National Planning Policy Framework ("NPPF") and reflected in the development plan (SAMDev Policy MD10b).
3. In support of its application Aldi has submitted to Shropshire Council two opinions from Mr Anthony Crean QC in which he urges the council to take a particular approach to the determination of the application. I am asked to advise whether the approach advised by Mr Crean would be lawful, and/or whether it is a balanced approach.

4. In commenting upon Mr Crean's opinion I restrict myself to matters of law only. Questions concerning the weight to be attached to the benefits and adverse impacts of the proposal; whether competing sites are available and/or sequentially preferable, and whether the proposal will have a significant adverse impact on the vitality and viability of the town centre all require the exercise of planning judgment, and it is for the planning authority as the decision-taker to exercise that judgment.
5. I am of the opinion that the approach suggested by Mr Crean is flawed as a matter of law, and is so for two reasons. The first relates to the correct legal and policy test for determining the application and the second concerns Mr Crean's misinterpretation of the government's policy on ensuring the vitality of town centres.

#### **The Relevant "Test" for Determining the Application**

6. In his first opinion (dated 27 October 2017) Mr Crean states (at para. 5) that if the application is refused an appeal against that refusal would be determined applying the test set out in NPPF14, thereby implying that the Council too ought to apply that test. The opinion criticises Ms Townend (the council's planning officer) for proceeding on the basis that "it is simply a question of comparing harm against benefit as though each were accorded equal weight in that balance." The NPPF14 test that Mr Crean states should be applied is a "tilted balance" because it tilts the scales in favour of the grant of planning permission (permission can be refused only if the adverse impacts "significantly and demonstrably" outweigh the benefits). It is this which leads Mr Crean to argue (at para.9) that landscape harm cannot be a legitimate reason for refusal unless it "significantly and demonstrably" outweighs the benefits of the scheme. It also explains para. 19 of his second opinion (dated 12 December 2017) in which Mr Crean states that "Where NPPF14 moves the balance in favour of Aldi the balance becomes overwhelming in favour of permission."
7. The starting point for the determination of all planning applications is s.38(6) of the Planning and Compulsory Purchase Act 2004. This provides that planning applications must be determined in accordance with the development plan unless

material considerations indicate otherwise. The courts have interpreted this to mean that there is a presumption in favour of refusal if the proposal would contravene the development plan (see in this regard *Barwood Strategic Land II LLP v East Staffs BC and SSCLG* [2017] EWCA Civ 893, at paras. 10-12, and also para. 16 in which the Court endorses NPPF 12's interpretation of s.38(6), namely that a proposal that conflicts with the development plan "should be refused" unless material considerations indicate otherwise).

8. Even if one leaves aside disputes relating to landscape, heritage and the sequential and impact tests, this is a proposal that is clearly contrary to the development plan because it is in breach of Policy CS5. Aldi's Planning and Retail Statement accepts as much – the proposal is put forward not on the basis that it accords with the development plan, but on the basis that although there is breach of the development plan other material considerations justify approval. There is therefore both a statutory and policy presumption in favour of refusal, and Ms Townend is therefore correct to ask herself the question whether there are material considerations of sufficient importance and weight that would justify taking a decision contrary to the development plan.
  
9. The tilted balance contained with NPPF 14, which Mr Crean suggests should be applied here, cannot as a matter of law be applied unless and until it is demonstrated that the development plan is absent, silent or that relevant policies are out of date. As the Court of Appeal made clear in *Barwood* (above) there is no "free-standing" presumption in favour of sustainable development (see judgment para. 35). In the present case, neither Mr Crean nor Aldi's planning consultants in their Planning and Retail Statement assert (let alone demonstrate) that the development plan is absent, silent or that relevant policies are out of date. No reason is provided by them as to why the tilted balance is engaged in this case. In fact, there can be no doubt at all that the development plan in the present case is up to date as regards retail policy, and its policies in this regard are fully consistent with the NPPF for determining such applications. It follows that application of the NPPF 14 tilted balance in this case would amount to a clear error of law.

## **The Government's Policy on Ensuring the Vitality of Town Centres**

10. In both opinions, but particularly in his second Opinion, Mr Crean QC puts forward a free-standing public interest test that he suggests should be applied in determining this application. Mr Crean states "improving the shopping experience" is aligned with the public interest (para.3); that such improvement (as a benefit) "would require a matter of great significance to outweigh" it (para. 4); that the relevant question is whether closure of Lidl would "harm the public interest" (para. 12); and that the loss of a "tired, old and unsatisfactory" location would not be contrary to the public interest (para. 17).
11. This approach is wrong because it fails to appreciate that the government's view of what is in the public interest is set out in section 2 of the NPPF and the relevant sections of the PPG. The "public interest" is furthered by correctly interpreting and applying that policy, not by formulating and applying an ill-defined public interest test outwith that policy.
12. The dangers of the latter approach are evident from the way in which Mr Crean's approach leads him to assume that government policy is to "improve the shopping experience", and that closure of Lidl would not contravene government policy because it would lead to the closure of an unsatisfactory store and the provision of a "modern store with proper and adequate facilities". A proper understanding of government retail policy (as set out in the NPPF) demonstrates that neither of these matters are relevant considerations in the application of the guidance as set out in section 2 of the NPPF. The government has decided that the public interest is best served by protecting town centres, and that they are best protected by applying a strict rule that out of centre proposals "should be refused" if a sequentially preferable site is available and/or the proposal is likely to have a significant adverse impact on the vitality and viability of the town centre (NPPF27).
13. If this proposal fails either the sequential or impacts tests, it must be refused regardless of whether it improves the shopping experience. If closure of the Lidl store is likely to have or contribute to an overall impact on the town centre that is



judged to be significantly adverse, the proposal must be refused regardless of how “tired, old or unsatisfactory” Aldi and Mr Crean believe the Lidl store to be.

### **Other Matters**

14. I note that Mr Crean QC suggests that it would be unlawful for the Council to have regard to the information submitted by Lidl to support its claim that its town centre store is trading below benchmark levels. The information has been submitted in confidence, and Mr Crean argues that for the Council to have regard to this without sharing it with Aldi would be unfair. He goes onto equate unfairness with irrationality.
15. I do not agree with Mr Crean's analysis of the situation.
16. Whether Lidl is trading below or above benchmark is clearly highly relevant to whether it is likely to be able to withstand the impact of the new Aldi store. The Council is obliged to have regard to all of the information that it has on this issue, and this includes Lidl's turnover figures for the last trading year which demonstrate that it is trading below benchmark. Aldi not having access to the precise turnover cannot change a mathematical fact, and there is no suggestion by either the Council or Aldi that Lidl has misreported its turnover. The actual trading figures for that particular store represent the best evidence of whether it is trading above or below benchmark, and the Council has those figures.
17. I note that in its Report to Committee the officers of the council have proceeded upon the basis of assuming benchmark turnover for the Lidl store. On this basis they accept that the new Aldi store could lead to the closure of the Lidl store (RTC para. 6.3.17), but that Lidl does not operate as a “key part” of the town centre. It is this which appears to support their conclusion (at paras. 6.3.21) that whilst there will be an adverse impact on the town centre, this impact will not be significant.
18. Although the question of whether the likely impact on the town centre will be adverse or significantly adverse requires the exercise of judgment on the part of the

council, it must exercise that judgment in a logical and consistent manner. In their first response to the consultation, its policy officers also assumed benchmark turnover for Lidl, and on this basis came to the conclusion that the impact on the town centre would be high and “potentially significant”. The RTC leaves it unclear as to why this potentially significant impact on the town centre has been downgraded to a non-significant impact. The only reason provided is that Lidl does not operate as a key part of the town centre, yet Aldi’s own planning consultants in their letter dated 15 June 2017 accept that Lidl “is an important part of the offer within Whitchurch.”

**SATNAM CHOONGH**  
Number 5 Chambers

3 JANUARY 2018

IN THE MATTER OF:

**PROPOSED ALDI STORE, WREXHAM ROAD,  
WHITCHURCH, SHROPSHIRE**

---

**OPINION**

---

Counsel: Satnam Choongh

YOUR REF:

Plan A (North West) Limited  
32 Aughton Road  
Southport  
PR8 2AG

**This page is intentionally left blank**