



Date: Tuesday, 1 March 2022

Time: 2.00 pm

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

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## **NORTHERN 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

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<b>NORTHERN PLANNING COMMITTEE</b>		
<b>SCHEDULE OF ADDITIONAL LETTERS</b>		
<b>Date: 1<sup>st</sup> March 2022</b>		
<b>Item No.</b>	<b>Application No. 21/05804/FUL</b>	<b>Originator:</b>
6	<p>The officer recommendation should be changed to:</p> <p>That delegated authority is granted to the Assistant Director to grant planning permission subject to the conditions as set out in Appendix 1, and any amendments considered necessary to these conditions and the completion of a Section 106 obligation which will secure the exclusive marketing of the existing Arlington Way site for defined employment uses for a 10 year period.</p> <p>Condition 22 should be amended to state the following:                      The premises shall not be open for customers outside the following hours: -                      - [0800 - 2200], Mondays - Saturdays and                      - [0930 - 1630] Sundays</p> <p>Reason: To protect the amenities of occupiers of nearby properties from potential nuisance.</p>	Case Officer
<b>Item No.</b>	<b>Application No. 21/05804/FUL</b>	<b>Originator:</b>
6	<p>A letter on behalf of Tesco has been submitted. The letter makes the following points in relation to the officer report.</p> <p><u>1) Misrepresentation of the Impact from the Introduction of Class E.</u></p> <p>The Officer's Report makes an assertion concerning decision making implications arising from changes to the Use Classes Order in 2020. The Report states "...it is considered that it is likely to be much more difficult to control retail uses on employment land than in the past" (paragraph 6.1.19). The Officer clarifies that, "This is particularly true on existing developed sites which have a Class E use." That would apply should there be no condition on the existing building's permission, which in many situations is not the case. However, the relaxation should not necessarily apply to the initial development of "employment land" where conditions can properly be imposed to resist inappropriate uses. Indeed the Explanatory Note to the Order emphasises that the relaxation is aimed at providing flexibility within town centres rather than generally. That the officer recommends a condition on the proposed development restricting it, "solely to Use Class E(a) food store and shall not be used for any other use</p>	Representation from Tesco, with Case Officer comments.

within Use Class E” only serves to confirm the misrepresentation.

*Comment– The officer report comprehensively addresses Policy MD4 which promotes a flexible approach to employment allocations. The proposed site has been marketed for several years for employment use yet has failed to attract any serious interest. A planning application 20/02631/FUL was submitted in July 2020 for a speculative mixed commercial development consisting of coffee shop, hotel, pub/restaurant and trade counters this was subsequently withdrawn. Aldi then expressed an interest in the site and offered their existing Arlington Way store which now falls within Class E as part of an allocation swap. It is considered that the existing store location coupled with a 10 year exclusivity period for employment purposes is more likely to deliver traditional employment uses as opposed to this site.*

## 2) The Importance of Statute and Case Law on Heritage Decision Making

Members are not being adequately advised of the fundamental significance of relevant statute and case law to decision making on heritage assets. The tests set out in that material are not provided. They set very high hurdles for assessment and decision-making. Other than an unattributed reference to “great weight” (from the NPPF) being given to the asset’s conservation (at paragraph 6.7.7 of the Report), statute and case law requirements are not referred to and the only reference to statute is that “when assessing this application due consideration has been given section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990” (at fourth paragraph of 4.1.6), but there is no guidance given to Members regarding the significance of these legal tests. The Officer relies on advice from the Council’s Historic Environment Team in concluding that the proposed development would have, “...the potential to cause a very low level of less than substantial harm at the very bottom of the scale of harm”. The Report identifies that notwithstanding the position within the scale of harm that “...this harm needs to be weighed against the public interest benefits of the proposed development in order to determine whether it is acceptable in heritage policy terms”. Two matters arise. Firstly, in the Forge Field judgment it was held, “...as the Court of Appeal emphasised in Barnwell, (that) a finding of harm to the setting... gives rise to a strong presumption against planning permission being granted. The presumption is a rebuttable one.

It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.” The Officer’s Report fails to make clear the statutory presumption in favour of preservation and how it has demonstrably applied that proposal in its recommendation. Secondly, the asserted public benefits, set out at paragraph 6.7.8, either do not amount to public interest benefits, including in that they are matters that would normally be provided or expected to arise from the kind of development being proposed, or are so minor and inconsequential in nature that there must be considerable doubt as to whether even harm at the lower end of the scale can be put aside, bearing in mind the significant weight and presumption to refuse that has to be applied to harm in heritage decision-making. For instance that “there are no alternative sites to deliver a new fit for purpose store in the locality” cannot be a public benefit, it is an assessment test. Nor can the delivery of something other than the site’s allocated employment use i.e., for an “industrial or logistics scheme”, notwithstanding its low-density character, be a public benefit when such a use is directly in conflict with the development plan. The creation of 10 jobs (paragraph 6.8.3) (not 15, as asserted by the applicant) will inevitably, in part at least, result in displacement from other stores and thus the net overall new jobs figure will be lower. And that the existing Aldi store would be marketed for employment uses is not elsewhere described as a public benefit rather than as compensation even though any reasonable analysis would see that is not on an equal footing (see below).

*Comment– The impact on the significance of the heritage asset is considered to be at the very lowest end of less than substantial. Whilst, it is acknowledged that great weight needs to be given to any harm caused to a heritage asset, the very limited harm in this case that has been identified is to the setting rather than the asset itself. When the very limited harm is assessed against the benefits of the proposals these are considered to outweigh the impact and this is set out in the report at para 6.7.8.*

3) The Overstating of a ‘Land Swap’

The Officer's Report describes what is said to be a "land swap" in terms of a "direct trade off for this (application) site" through the marketing of the existing premises for employment purposes. Not only is the application site allocated as a Strategic Employment Site and has fundamentally different characteristics (to the existing Aldi site and premises) in its ability to accommodate high quality, high value inward investment to the town but is considerably larger in scale. In contrast the existing site accommodates a building constructed for retail rather than employment purposes and will be lacking in its attractiveness for new employment development or reuse for employment purposes. Indeed, there is a real risk that the existing Aldi premises may not appeal to any incoming occupier, or the appeal is for short-term purposes only. At best there is then the prospect of some secondary employment use on temporary bases. But at the end of the proposed ten-year period the building or site will likely be reused for retail purposes bearing in mind its configuration, car park and location. The only appropriate, solution would be for the applicant to offer a voluntary revocation of the existing planning permission and to secure a change of use of the existing premises to relevant B Class purposes prior to the grant of the application proposals.

*Comment - Policy MD4 is very clear about the need for flexibility and through the land swap officers are exercising a pragmatic judgement whilst securing a long term employment marketing strategy for the existing site. The proposed site is a long standing allocation which has failed to attract any substantive interest for employment uses and as such it is considered that the land swap proposed provides greater certainty in an area already characterised by employment uses of future employment development.*

#### 4) Adverse Highway Issues and Misapplication of the Highway Safety Test

The local highway authority recognise that "... Battlefield Road does suffer from congestion at peak times with queueing back from the Battlefield Road roundabout towards the Shillingstone Drive access". This informs "The position of the highway authority is that this development would have a negative impact at peak traffic periods" (4.1.4 on page 24). The highway authority recognise that in the context of the amended highway egress solution that there will be "... difficulty... at peak traffic periods along Battlefield Road when there is queueing traffic." However, in reliance is

placed on the prospect that it is "... likely...in practice that customers will adjust their shopping habits to the prevailing peak traffic periods..." It is not therefore surprising that the highway authority recognise that, "... there are negative aspects to this development", that the "... application... site areas are quite constrained" and thus find that, "... this development would have a negative traffic impact upon Battlefield Road at peak times." However, the conclusion is reached, that "it is not considered that a highway objection based upon the planning tests of "severe" is warranted". However, there are harmful safety issues associated with the proposed egress movements. Indeed, the highway authority's comments refer to the need for further Road Safety Audits to be undertaken. And importantly that it states that, "The 'severe' impact threshold would not be triggered to justify highway objection on capacity or safety grounds" (first full paragraph on page 24). The highway authority's overall conclusions are then repeated that "... It is not considered that the highway objection based upon the planning tests of 'severe' is warranted". (final paragraph on page 24). This is based upon the misunderstanding of the relevant test. The appropriate NPPF test dealing with safety issues is found within its paragraph 111. It clearly distinguishes the test relating to safety from that concerning network effects, "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." Furthermore, it is proposed that the proposed access works, "...will be dealt with under a section 278 agreement and subject therefore to technical review". However, the haste with which the planning authority intends to progress the issuing of the decision notice is at real risk of negating such detailed review and assessment. The relevant proposed condition (number 14) requires that before the access/egress onto Battlefield Road and egress onto the A49 is laid out and constructed, there will have been approval of plans "... in accordance with full engineering details to be first submitted to and approved in writing by the local planning authority". Paragraph 7.5 of the Report explains that the applicant has requested that there are no pre-commencement conditions attached to the planning permission. They are intending that material relating to pre-commencement conditions can be substituted for compliance conditions on the decision notice. However, that appears to overlook the necessity set out in the highway authority's comments that these "... access works will be dealt

with under a section 278 Agreement and subject therefore to technical review". Indeed, the first paragraph of 4.1.4 explains, "As part of the design process a further Stage 2 Road Safety Audit would be undertaken and indeed following construction then a Stage 3". With the relevant planning condition discharged, it might cause an inability to give effect to important safety requirements in terms of the Stage 2 Audit.

*Comment– The revised proposals represent an improvement with the exit onto the A49 which should reduce the need for right hand turns out of the site. The highway works and layout will need to be undertaken prior to first use and the necessary audits will be undertaken in advance of the use commencing.*

#### Conclusion

There are therefore deficiencies in the Officer's Report. Some of these reveal that planning permission should be refused and others indicate that a decision should not be made until appropriate information and clarification is provided.

*Comment– The issues raised in the letter from Tesco are considered to have been fully addressed in the officer report along with the commentary provided above.*

6.

A letter has also been submitted on behalf of Aldi in rebuttal to the letter received from Tesco. The contents of which are below.

#### 1) Impact from The Introduction of Class E

MRPP claims this is misrepresented in the Officer's Report. They state that the 'Explanatory Note to the Order emphasises that the relaxation is aimed at providing flexibility within town centres rather than generally.' Whilst that may be the case, there are wider consequences of the UCO 2020 which the Council and the applicant both recognise. Applying Use Class E(a) food store is understandable and set out as a consequence of the UCO. This is no different to past practice where conditions restricting the type of use to an application are considered to ensure a proposal is acceptable as per NPPF paras 55 and 56. MRPP is referring to para 6.1.19 of the officer's report and in regard to the existing Aldi store at Arlington Way. MRPP's representation on this matter appears confused. Paragraph 6.1.19 refers to the existing Aldi store, not the proposed Aldi store. The existing store was approved in 1992, see decision notice, enclosed (ref 91/750/392/81). The decision notice shows that there are no conditions restricting the type of use proposed. Therefore, as set out in para 6.1.19 and in the

Representation from Aldi in response to the above representation from Tesco.



context of the discussion of employment sites set out in the preceding paragraphs the officer is correct to identify an 'exclusive marketing period' applied for a ten year period 'as a significant marketing opportunity to the test the market in terms of attracting other types of employment.'. This is considered sensible and reasonable. Away from paragraph 6.1.19, the officer provides a condition, Condition 20, to restrict the type of retail Use Class E(a) for a food store only. This complies with NPPF paragraph 56 and is a practice that Tesco would have accepted on stores of its own where relevant, as is the case here.

2) The Importance of Statute and Case Law on Heritage Decision Making The objection makes reference to the heritage impacts arising from the development and the importance of statute and case law on heritage decision making. The points raised in the objection are: • Members are not being adequately advised of the fundamental significance of relevant statute and case law to decision making on heritage assets – and there is no guidance given to Members regarding the significance of these legal tests; • In making the judgement, the officer fails to make clear the statutory presumption in favour of preservation and how it has demonstrably applied that proposal its recommendation; • The public benefits do not amount to public interest benefits and are matters that would normally be provided or expected to arise from the kind of development proposed or are so minor or inconsequential in nature that there must be considerable doubt as to whether even harm at the lower end of the scale can be put aside bearing in mind the significant weight and presumption to refuse that has to be applied to harm in heritage decision-making. We deal with each of these in turn.

Relevance of statute and case law relevant to decision making The Committee Report sets out the heritage considerations relevant to the determination of this application, summarising comments from the Historic Environment team at section 4.1.6. Within this section, attention is clearly drawn to the decision making framework which includes the principal legislation as well as the provisions within the NPPF, NPPG, the Local Plan and other guidance (for example Historic England's Good Practice Advice Notes). The relevant guidance is repeated at section 6.7 where the Officer concludes on the heritage effects. At paragraph 6.7.7, the Officer advises Members that they should give 'great weight' to the asset's conservation which, in the case of listed buildings, derives from the statutory duty. There is no corresponding statutory duty in respect of a Registered Battlefield. The balancing exercise is undertaken by officers at 6.7.9 and advises Members that 'great weight' has been applied to the conservation of the Registered

Battlefield in considering the planning balance. The Koko decision ([2015] EWHC 2475 (Admin)) dealt with the reporting of heritage cases to Members and, at paragraphs 14 and 15, the correct means in which to report heritage impacts to Members. This provides a very clear process which the Officer appears to have taken into account in the reporting of the Aldi proposals to their Planning Committee Members, notably the identification of the relevant Acts, development plan and other material planning considerations, the significance of the asset and the Officer's conclusions. The Officer's report therefore provides a robust reporting of the heritage impacts arising from the proposed development.

**Making the judgement** The Officer's Report sets out the basis for the consideration of the heritage impacts, noting that, in line with case law, great weight is attributed to the preservation of heritage assets. Officers have undertaken a balancing exercise taking into account the harm arising from the proposals against the public benefits. The Officers Report clearly sets out the methodology for undertaking such an exercise and then applies that approach to the consideration of this application.

**Public Benefits** The objector considers that the public benefits as set out by the applicant 'would normally be provided or expected to arise from the kind of development being proposed, or are so minor and inconsequential in nature...' and refers specifically to the matter of alternative sites, the application site's allocation and job creation. These are considered in turn below but also have important overlap.

Alternative sites: Whilst an assessment of alternative sites is a planning policy requirement, the relocation of the Aldi store is of importance and provides a public benefit. The existing store, as set out in JLL's Planning Statement, is no longer fit for purpose, and following several years of searching for an alternative site, to meet customer demands and expectations; combined with the need to provide a more efficient store, the application site and development are able to provide this. A larger store will allow existing and new customers to shop at a new store providing improved choice to ensure customers can buy quality produce at discounted prices. Customers within the catchment benefit from improved choice and increased competition, and the opportunity to buy goods at lower prices, particularly in the current economic climate with a continued rise in living costs. Tesco, a competitor, does not wish to see this application succeed, and therefore seeks to restrict choice and competition. The applicant has clearly demonstrated that it satisfied Policy MD4 Part 2, part i, that there are no 'alternative locations' for the proposed development.

This is set out in the Sequential Test section of the Planning Statement. These points are of very significant benefit to the public who will clearly benefit from a fit for purpose deep discount supermarket providing fair competition.

Job Creation: The applicant can confirm that the proposal will create **15 jobs, not 10**. This is clearly (and simply) an error in the committee report and it is the applicant that confirms 15 jobs will be created. There will be no displacement of jobs. MRPP is making a false assertion with no evidence. In addition the proposal will result in the creation of construction jobs which provides opportunities for apprentices as well as already qualified tradespeople. This is also a significant benefit. Appeal decision APP/L3245/W/18/3203094, copy enclosed, for an Aldi store at Whitchurch, Shropshire, considered the public benefits of that proposal. It concluded at para 41 that the benefits of jobs to be created attracted 'very substantial weight' with varying degrees of weight to other benefits. Marketing the Arlington Way store is not a compensation. It is a real opportunity that this will deliver new jobs operationally as well as part of any redevelopment or refurbishment and contribute to the local economy resulting in a very substantial public benefit. The objector has also failed to appreciate that the application site is currently not contributing any public benefit. There has been no interest from other parties in bringing jobs and opportunities to the local area. This proposal will bring additional jobs as a result of the development of the application site and of the existing Arlington Way site providing a compelling contribution to the local economy which is a public benefit that should carry substantial weight in assessing the perceived harm.

Summary Whilst we note the objection submitted on behalf of Tesco Stores, it has no merit and is wholly unfounded. As the Officer's Report notes, the heritage impacts arising from development have been clearly set out and the relevant statutory and policy requirements have been addressed. The weight to give to the benefits of the proposed development and the judgment whether these outweigh the harm to heritage assets (which is to be given great weight) are matters of judgment for Members. The conclusion that the benefits outweigh harm is one which is not irrational and so will not provide Tesco with any further basis for challenge in the High Court.

3) The Overstating of a 'Land Swap' The land swap is one element of the proposal. Policy MD4 part 2 is critical and is fully addressed by the applicant by demonstrating the proposal is acceptable for non Class B or sui generis uses. The criteria are fully considered: i.

there are no other suitable development sites for the proposal; ii. the development will provide significant employment opportunities or other significant benefits for the sustainability of the community; iii. the development will not adversely affect the range and choice of employment sites in terms of location, quality, type and size. MRPP doesn't even reference policy MD4 which is the critical point here. In regard to the Arlington Way store, this will most likely be sold and a period of ten years gives strong confidence that the site can be redeveloped or converted for employment uses. MRPP suggests that the site will only be leased and will definitely be converted back to retail after ten years. It is not possible for anyone to predict the retail or other climate in ten years' time, by which time the local plan should have been reviewed at least once if not more. This point is therefore irrelevant. Furthermore, the 'land swap' provides the only opportunity to create additional jobs as the application site has so far failed to create jobs since its adoption in 2015. The 'land swap' therefore provides an important public benefit.

4) Adverse Highway Issues and Misapplication of the Highway Safety Test MRPP's comments cherry pick parts of the LHA response and present them out of context to present an unduly negative impression of the assessments that have been undertaken. Of course, any development which attracts a proportion of new traffic to an area will have a negative impact in that respect; but it is important to understand whether this negative adverse impact is so severe that it is unacceptable. The applicant's highway consultant, officers at National Highways and Shropshire Council's officers are all agreed that the traffic attraction will not have a severe impact. Indeed, MRPP does not assert that the traffic loadings would have a severe impact on the operational performance of the network. Matters pertaining to highway safety are treated in the same way. First, it is clear from the Officer's Report and SC Highway Authority's comments that they conclude (correctly) that there will be no unacceptable impact on highway safety. Officers can no doubt clarify the position of the LHA in respect of the tests in paragraph 111 of the NPPF with members at the committee meeting. Secondly, the need for further safety audits is absolutely standard and expected, a requirement for Stage 2, Stage 3 and Stage 4 audits relate to any development requiring highway works. This is normal, not something out the ordinary, and in no way suggests that this site represents a highway risk that needs to be further safety audited. The conditions proposed by the Officer are appropriate and sufficient.

Conclusions MRPP's objection is purely one of attrition and seeks to delay the delivery of **Page 10**

	<p>development to protect its client, Tesco Stores Limited which operates a hypermarket scale Tesco Extra store in an out of centre location. Tesco's store therefore warrants no protection in planning policy terms. In line with paragraph 111 of the NPPF, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. MRPP do not conclude that there is a severe impact, all they seek to do is confuse members by their letter and therefore it is inappropriate. The officer's report follows the requirements of the relevant guidance including the Development Plan and NPPF and is clearly presented. The above response and enclosures further demonstrate that the proposed development is acceptable in planning policy terms and planning permission should be granted.</p>	
<b>Item No.</b>	<b>Application No:</b>	<b>Originator:</b>
8	19/04432/EIA	Member of the public
<p>A further letter of objection has been received from a member of the public raising two issues of concern in relation to the exiting security lighting on site and the noise of the fans.</p> <p>Both issues are covered in the report and subject to conditions.</p> <p><b>Officer comments.</b></p> <p>The issue in relation to the security lighting is also an issue that the Council's Regulatory Services can look into if it is considered to have a detrimental impact on the amenity of nearby residential dwellings.</p> <p>Fan noise is also an issue that both the Council's Regulatory Services and the site permit operated and managed by the Environment Agency can investigate.</p> <p>In consideration of these two issues and the application under consideration, a condition is recommended to be attached to any approval notice issued as set out in condition number 7 in appendix 1 to the report.</p> <p>Noise is also covered as set out in the report.</p>		

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