
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 02-Mar-2023

Subject: Planning Application 2021/94029 Demolition of existing structures and erection of a foodstore (class E) with associated access, parking, servicing areas and landscaping site of, Former Spotted Cow Pub, New Hey Road, Oakes, Huddersfield, HD3 4BU

APPLICANT
LIDL GB LTD

DATE VALID
20-OCT-2021

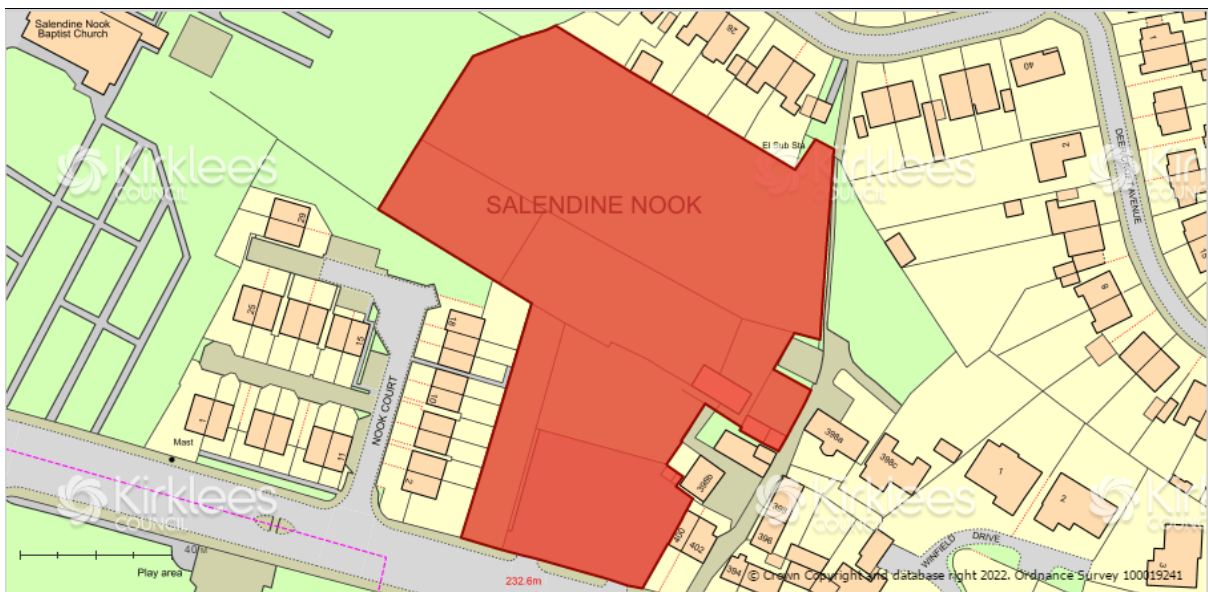
TARGET DATE
19-JAN-2022

EXTENSION EXPIRY DATE
31-JAN-2023

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Lindley

Ward Councillors consulted:

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development subject to the conditions set out in the Officer Report and to secure a Section 106 agreement to cover the following matters:

- 1) Biodiversity – A financial contribution of £44,620 towards off-site measures to achieve biodiversity net gain in accordance with the Biodiversity Technical Advice Note;
- 2) Sustainable Travel Improvements – A financial contribution of £26,000 for the provision of 2no. bus stop shelters on New Hey Road (stops 22485 & 22498) as well as a further £10,000 towards Travel Plan Monitoring; and
- 3) Management – The establishment of a management company for the management and maintenance of infrastructure (including surface water and foul drainage infrastructure until formally adopted by the statutory undertaker).

In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1. This proposal is brought to the Strategic Committee because it represents a departure from the development plan as the site constitutes a part of HS38 which is a residential allocation. The proposed development is for non-residential development on the site and its boundary is in excess of 0.5 hectares. The proposal also exceeds the trigger for retail development that has a floor space greater than 1250 square metres.
- 1.2 A similar previous application (2019/91433) was refused at the Strategic Committee meeting on the 19th December 2019. The reasons for refusal centred on the loss of housing land contrary to the development plan, a significant adverse impact on the vitality of a local centre and the negative impact on the visual amenity of the character of the local area.

- 1.3 This revised application is supported by updated evidence which seeks to address the previous reasons for refusal, including a financial viability assessment and an updated retail impact assessment based on the change in circumstances since the submission of the previous application. The sales area of the proposed store has been reduced and its appearance has also been amended to a more traditional stone design, similar to Lidl's existing store in Holmfirth.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises an area of land located on the northern side of New Hey Road, Salendine Nook. The front part of the site previously contained a public house (The Spotted Cow) and its curtilage. The pub has since been demolished. The rear part of the site is a largely grass/turfed area that slopes up steeply close to the northern boundary where it meets the rear gardens of some houses on Deercroft Crescent.
- 2.2 To the west of the site is residential development (2015/90452 & 2018/92160). Part of the western boundary is also flanked by the grounds of Salendine Nook Baptist Church. To the east of the site is a group of dwellings set around a narrow road off New Hey Road, these dwellings include two listed buildings.
- 2.3 The site is flanked by a significant number of mature trees, which are covered by a Tree Preservation Order, and there is a public footpath alongside the eastern boundary linking New Hey Road with Deer Croft Crescent.

3.0 PROPOSAL:

- 3.1 Full application for the erection of an E Class food store with associated parking, servicing areas and landscaping. The applicant is Lidl.
- 3.2 The proposed store is located towards the back of the site and has a gross internal floor area of 2,061 square metres and a retail sales area of 1,100 square metres.
- 3.3 A car park with 113 spaces is proposed in the front part of the site and to the north eastern corner including 7 disabled bays, 8 parent and child bays and 2 electric charging point bays. Deliveries are to be made on the south western elevation of the building with external plant located on the western corner.
- 3.4 Soft landscaping is proposed to the perimeter of the site and much of the area around the store would be enclosed by a retaining wall and will require diversion of a culvert within the site boundary.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 The following applications relate to the application site:

2020/93308 – Erection of foodstore (Use Class E) with associated parking, servicing areas and landscaping – Withdrawn before decision issued.

2019/91433 – Erection of an A1 Foodstore with associated parking, servicing areas and landscaping – Refused at Strategic Planning Committee (19th December 2019) – Decision Issued 12th February 2020.

2017/93846 - Demolition of existing public house and erection of 32 residential dwellings - Resolution to approve at Sub-Committee on 22nd February 2018 subject to a Section 106 Agreement – Application withdrawn before decision issued

2017/90602 - Erection of 26 no dwellings - Resolution to approve at Sub-Committee on 31st August 2017 subject to a Section 106 Agreement – Application withdrawn before decision issued

- 4.2 The following applications on adjacent land, within the same housing allocation to the east are relevant:

2015/90452 - Outline application for erection of 22 dwellings and garages, and formation of associated car parking, access and landscaping. Allowed at appeal 3rd May 2016

2018/92160 - Reserved matters application pursuant to outline permission 2015/90452 (Appeal No: APP/Z4718/W/15/3140324) for erection of residential development – Approved

There have also been numerous discharge of condition applications relating to the above. The site has since been developed and is occupied by residents.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 The assessment of the application has been subject to the following amendments:

- Various amendments to the housing layout supporting the applicant's viability position. The original layout and the penultimate layout over-utilised cut and fill to increase the abnormal costs of the housing scheme through the increased cost of removing excavated material and reliance on excessively large retaining walls. This was overcome through maximising highway gradients as advised within the Highway Design Guide SPD. The number of units in the housing development layout was also increased from 29 to 31 to meet the allocation yield.
- Removal of transom bar from store glazing to add verticality.
- Clarification of front boundary treatment appearance.
- Detailed hard and soft landscaping submission and confirmation that invasive species have been removed from the proposal.

- 5.2 It should be noted that the majority of the scheme's design, inclusive of internal parking layout, access and drainage, were arrived at under a previous submission.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 Kirklees Local Plan (2019):

LP1– Presumption in favour of sustainable development
LP2 – Place Shaping
LP3 – Location of new development
LP4 – Providing Infrastructure
LP7 – Efficient and effective use of land and buildings
LP11 – Housing Mix and Affordable Housing
LP13 – Town centre uses
LP19 – Strategic transport infrastructure
LP20 – Sustainable travel
LP21– Highway safety and access
LP23 – Core Walking and Cycling Network
LP22 – Parking
LP24 – Design
LP27 – Flood risk
LP28 – Drainage
LP30 – Biodiversity and geodiversity
LP33 – Trees
LP35 – Heritage
LP51 – Protection and improvement of local air quality
LP52 – Protection and improvement of environmental quality

6.3 National Planning Guidance:

NPPF Section 2 - Achieving sustainable development
NPPF Section 4 – Decision Making
NPPF Section 5 – Delivering a sufficient supply of homes
NPPF Section 7 – Ensuring the viability of town centres
NPPF Section 12 – Achieving well-designed places
NPPF Section 14 – Meeting the Challenge of Climate Change, Flooding and Coastal Change
NPPF Section 15 – Conserving and enhancing the natural environment
NPPF Section 16 – Conserving and enhancing the historic environment

6.4 Adopted Guidance

Biodiversity Net Gain – Technical Advice Note
Highway Design Guide SPD
Viability Guidance Note

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been publicised in accordance with the Development Management Procedure Order 2015 (as amended) by way of neighbour letters to adjoining properties, a site notice and through a press advert in the Huddersfield Examiner.

7.2 388 representations have been received from local residents and interested parties, of which 367 representations were in support of the application, 21 were in objection.

The comments raised by those in support of the application are summarised as follows:

- Development will introduce competition to the nearby Aldi which is good for consumers
- More choice for consumers
- Cheaper prices provided by this type of retailer
- Proposal will provide jobs
- Accessible and convenient location
- Proposal is preferable to houses; more housing would result in more pressure on local infrastructure and services
- Permanent job creation
- The Spotted Cow was an eyesore; development will improve the area
- Proposal would mean less congestion around the Sainsbury's store
- Would benefit the local community and the school
- Lidl will be providing toilets which will be beneficial for the local area.
- The proposed store would promote competition into the local area between retailers.

The issues raised by those objecting to the proposal are summarised as follows:

- Development would have a significant adverse impact on the vitality and viability of Salendine Nook Local Centre
- The area is already served by similar stores, notably the Aldi being built on New Hey Road. Potential for an existing store to fail incurring a derelict site.
- Site is not edge of centre for retail purposes and does not meet the sequential test for sites, with more suitable sites available in the town centre. The sequential assessment is flawed.
- Concerns raised with the applicant's retail assessment
- The application is a departure from the Local Plan and conflicts with the allocation of the site for housing development and the site is considered to be viable for housing by representors.
- Detrimental impact on local businesses including the Salendine Nook Shopping Centre.
- Concerns raised with extra traffic that would be generated, especially with the site being close to the high school, nursery, church and homes.
- Design does not complement the area
- Highway safety impacts, including as a result of the proposed access and increases in traffic generation that could impact pedestrians, notably school children.
- Potential noise nuisance/disturbance from HGV deliveries and intensification of site use, particularly at unsociable hours for local residents.
- Neighbouring properties overlooked by shoppers/loss of privacy
- More pollution from cars

7.3 In addition to the Council's publicity of the application, a community engagement exercise was undertaken by a third party on behalf of the applicant. This involved the distribution of 8,000 freepost response forms in a questionnaire format to an identified catchment area for the proposed store. Separate neighbour letters were issued to residents immediately adjacent and Local Ward Councillors were contacted and a meeting was held with some of the Ward Members. A press release was also issued in the Huddersfield Examiner on the 1st September 2021. A dedicated website for the development was provided which included an online feedback form. A summary report and evidence of the responses to the Community Engagement exercise has been provided to the Council, dated October 2021. In summary, of the 461 responses received, 92% of respondents support a new Lidl store on New Hey Road, 7% disagree and 1% were not sure.

7.5 No formal responses from Ward Councillors were received, though multiple discussions between Ward Councillors and the Case Officer have occurred throughout the assessment period of the application.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways Development Management – No objection subject to conditions and travel plan monitoring contribution

KC Lead Local Flood Authority – No objection subject to conditions

8.2 Non-statutory:

KC Conservation – No objections in terms of the impact on the setting of the nearby listed buildings. However concerns were raised in respect of the development's visual impact through the introduction of a large food store with parking and signage in this location, which has a predominantly residential character.

KC Crime Prevention – Advice provided in respect of boundary treatments

KC Design – Objection – Based upon the development's adverse impact upon the character of the area.

WYP Counter Terror – Advice provided and issued to applicant.

KC Environmental Health – No objection subject to conditions

KC Planning Policy – No response

KC Landscape – No response

KC Trees – No objection subject to compliance with submitted Arboricultural Method Statement

KC Ecology Unit – No objection subject to conditions and a No Net Loss to Biodiversity financial contribution of £44,620 to be captured via a Section 106 agreement.

KC Waste Strategy – No objections following further information submitted.

Yorkshire Water – No objection subject to a condition

9.0 MAIN ISSUES

- Principle of development including viability and retail assessment
- Urban design issues
- Residential amenity
- Highway issues
- Drainage issues
- Ecology & Trees
- Contaminated Land
- Planning obligations
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

Land allocation

- 10.1 The application site comprises housing allocation HS38 in the Local Plan and has an indicative capacity of 32 dwellings.
- 10.2 The context to the land's allocation is that it was included as a housing allocation through the Local Plan process, being added as a modification by the Planning Inspector. The allocation has been partially developed through an outline application upheld at appeal and a reserved matters application subsequently approved (2015/90452 & 2018/92160 respectively) which comprise 23 units.
- 10.3 The housing allocation forms part of the five year housing land supply in the adopted Local Plan.
- 10.4 The proposal is for an E class food store and the development would therefore conflict with the land's allocation in the Local Plan.
- 10.5 The NPPF establishes a principle in favour of sustainable development although paragraph 12 of the NPPF states that "*the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan...permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.*"
- 10.6 The Local Plan was adopted in February 2019 and is therefore considered to be up-to-date.

- 10.7 Section 5 of the NPPF relates to the delivery of a sufficient supply of homes. Paragraph 59 of NPPF states *“it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed”*. Paragraph 65 of the NPPF goes on to state that *“strategic policy-making authorities should establish a housing requirement figure for their whole area”*.
- 10.8 The Kirklees Local Plan Strategy and Policies document sets out the housing requirement at 31,140 in the Spatial Development Strategy. Table 7 in the plan sets out the housing capacity in the Local Plan and as noted in paragraph 8.16 there is a slight shortfall in overall housing supply.
- 10.9 Paragraph 68 of the NPPF requires planning authorities to identify a sufficient supply and mix of sites, taking into account their availability, suitability and economic viability – including specific deliverable sites for years one to five of the plan period and specific, developable sites for the remainder.

Financial Viability of the Site’s Allocation as Housing Land

- 10.10 The development of a food store within HS38 would represent a departure from the development plan. Given that the performance of Kirklees Council in respect of the Housing Delivery Test is 8% below the 95% threshold by which an Action Plan is required for housing delivery and only 2% above the need to provide a 20% land buffer in respect of its 5 Year Housing Land Supply, the loss of housing land for uses ulterior to its intended purpose could also incur a situation whereby Kirklees is subject to the need for ‘presumption in favour of sustainable development’ decisions on land within the borough irrespective of its designation. In layman’s terms a presumption in favour of sustainable development enables the possibility of allowing non-housing development on land that was originally intended to be developed for a residential use, and vice versa. Should the Council choose not to defend its housing land allocations from departures, as is the case in this instance, then the Local Planning Authority become increasingly at risk of being subject to the ‘presumption in favour of sustainable development’ scenario. Members must bear this in mind when forming their decision on the application.
- 10.11 Officers are of the opinion that all housing allocations are needed in order for the Council to meet its obligation to deliver the housing required over the plan period. However, Officers also acknowledge that there are a number of benefits to the development in terms of achieving sustainable development. These include economic benefits through job creation - with the applicant indicating that 40 jobs would be created (15 full-time and 25 part-time) – as well as through business rates. There would also be social and environmental benefits by expanding the retail offer in this location and enabling local people to meet their day-to-day shopping needs amidst the current cost of living crisis. The scheme’s benefits are considered to have significant weight in planning decision terms and are offset against the similarly essential need to deliver the Council’s housing targets, which is predicated on the delivery of allocated housing sites such as HS38.

- 10.12 Given the planning balance in respect of the benefits and shortfalls of the proposed development for a discount food store, Officers progressed in agreement with the applicant to undertake an independent financial viability appraisal for housing development of the allocated site with the resultant output of the assessment determining the principle of a policy departure (subject to other material considerations, such as sequential/retail impact/transport capacity & safety etc). Members should recall that paragraph 58 of the National Planning Policy Framework cites that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case.
- 10.13 The PPG clarifies that to define land value for any viability assessment, a benchmark land value (BLV) should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. This uplift is often referred to as 'existing use value plus' (EUV+). The applicant's viability assessor and the independent assessor have used the residual appraisal methodology, as is established practice for viability assessments. In simple terms the residual appraisal formula is as follows:

Gross Development Value less Total Development Cost (inclusive of S106 obligations, abnormal development costs and finance) less/minus Profit, equals the Residual Land Value.

- 10.14 The Residual Land Value is then compared to the Benchmark Land Value (BLV) as defined in the Planning Policy Guidance on Viability. Where the Residual Land Value produced from an appraisal of a policy compliant scheme is in excess of the Benchmark Land Value the scheme is financially viable, and vice versa:

Residual Land Value > Benchmark Land Value = Viable

Residual Land Value < Benchmark Land Value = Not Viable

- 10.15 Planning Practice Guidance indicates that a profit level of 15-20% of gross development value is generally considered to be a suitable return to developers. There are a number of factors that determine what a reasonable level of profit might be, including the availability of development finance, the state of the market and the consequent risk in proceeding with schemes, as well as development values and demand. In determining the appropriate level for an individual development, regard is had to the individual characteristics of that scheme.
- 10.16 As part of the planning considerations in connection with this application, LPA Officers have requested that the applicant justify its contention that residential development of the site is not economically viable. Following significant negotiations on the site layout, its yield and the nature of topographical cut and fill on the site (which influenced abnormal costs through the need for site grading and retaining structures), a final residential layout was agreed between the applicant and the LPA in October 2022. The agreed layout was considered realistic for a housing developer to bring forward and formed the basis for the independent assessment conducted by CP Viability (the independent assessor). All negotiations preceding this had involved disputes over the layout of the residential layout, the maximisation of highway gradients serving the scheme and the resultant impact this had on the abnormal costs identified by the applicant.

- 10.17 The approved layout includes 31 (3/4 bed) detached and semi-detached dwellings. The applicant's viability assessor (JLL) have submitted their "Appraisal Summary" updated to 17/10/2022 in support of the applicant's contention that a residential development of the subject site is not viable. The appraisal returns a negative residual land value of - (minus) £1,642,184 - which is £1,917,184 below their stated BLV (£275,000 for the purchase of the site) and therefore significantly unviable for development of the site for housing.
- 10.18 The applicant's stated BLV has been accepted by the independent assessor. However, in respect of various build costs, the independent assessor has not agreed with the applicant's BCIS build costs of £121.05 sq ft and has stated that a cost of £113.05 sq ft is more in line with the BCIS rates median rate in the HD3 post code.
- 10.19 Further to the build cost rates, the applicant submitted abnormal costs totalling £4,030,000. Given the scale and proportion of this figure in respect of the overall/cumulative build costs, the independent assessor engaged a third-party independent quantity surveyor to review the submitted abnormal costs adopted by the applicant's assessor in their report (i.e. the 31 unit scheme). The applicant's anticipated abnormal costs and the independent Quantity Surveyor's reviewed abnormal cost findings are set out in the table below.

Abnormal Costs	Applicant's Figure	IQS Revised Figure	Difference
Site Preparation	£330,000	£330,000	-
Hard Standings	£310,000	£181,750	-£128,250
Kerbs & Edgings	£40,000	£23,000	-£17,000
Boundary Treatments & Retaining Structures	£1,630,000	£724,591	-£905,409
External Lighting	£65,000	£43,700	-£21,300
Drainage, Incl Culvert Diversion	£550,000	£416,300	-£133,700
External Services inc BWIC	£160,000	£160,000	-
Landscaping	£115,000	-	-£115,000
S278 Works	£45,000	£45,000	-
Prelims (On Abnormals)	£385,000	£230,921	-£154,079
Totals	£3,630,000	£2,155,262	-£1,474,738

- 10.20 The independent Quantity Surveyor finds significant savings in the abnormal costs totalling £1,474,738 (rounded). This results in the overall abnormal costs, following the independent assessment, being estimated at £2,155,262 excluding a 12.5% external works rate applied by the assessor which totals an additional £531,184 to the IQS abnormalities alongside a 3% contingency figure. (Refer to the Independent Appraisal available on the website for full details).
- 10.21 In respect of development profit, the applicant has put forward an anticipated profit of 20% of development revenue. The independent assessor states that, in their experience, profits at the upper end of the range (i.e. 20%) are typically required for multi phased developments where there is significant upfront infrastructure works which will not be fully repaid for a number of years. This is because there is an increased perceived risk of the development being able to

be delivered in full which, in turn, increases the level of profit required. For smaller schemes, like the subject property, where the development programmes are shorter, the independent assessor regularly sees profits at 17.5% on revenue (or lower) for market value housing. This is because the perceived risk associated with the development is considered to be reduced when compared against a multi-phased development. The Planning Practice Guidance identifies that 15% is the lowest profit threshold that can be accepted to enable a scheme to be found financially viable.

10.22 The table below sets out the main points of divergence in the applicant's viability submission and the independently reviewed position:

Input	Applicant Viability Position	Independently Assessed Position
Revenue	£9,304,803	£9,582,729
Contingency	£536,494	£143,420
Abnormals	£4,030,000	£2,155,262
Developer Profit	20%	17.5%

10.23 When the viability of the proposed residential scheme is reviewed using the independently assessed position, the independent assessor concludes the following:

On the basis of a 100% market value scheme, with no planning policy contributions and the reduced abnormal costs of £2,155,262, the revised scheme of 31 dwellings generates a developer profit equivalent to 14.28% on revenue. This is below the target profit of 17.5% on revenue and is therefore deemed to be unviable. In summary, we concur with the applicant that it is reasonable to conclude that a residential development of the subject site is not viable.

10.24 Given that the scheme, in meeting the Benchmark Land Value of £275,000, is not able to generate a profit above 15% of Gross Development Value before planning policy contributions are added, the allocated housing site is not considered viable for housing development. Indeed as house price values will likely fall with inflation adding to building costs, the profitability of the site for housing development is likely to decrease further in the short to medium term thereby undermining the likelihood of the site being able to contribute to Kirklees' housing delivery targets. The Local Planning Authority would prefer the site to come forward for housing, however realistically the site poses significant financial challenges for a developer and therefore LPA Officers concede that alternative uses should be considered.

10.25 As per Paragraph 58 of the National Planning Policy Framework, the weight to be attributed to a viability assessment is for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. As the purpose of the independent assessment was to challenge the assumptions within the applicant's viability submission, and LPA Officers were rigorous in their scrutiny of the submitted housing development layout and the delays incurred to processing the application are reflective of this rigorous approach, it is considered reasonable for the Local Planning Authority to justify a departure on the basis that the site is not able to viably deliver the intended residential allocation of the development plan.

- 10.26 Members should be aware that a third party viability appraisal of the site has been submitted on behalf of a representor. The submitted third-party appraisal claims that the site is viable for housing with a site yield of 54 units and various other alterations to build costs, most notably a reduction in abnormal costs to £1,611,691. Having reviewed the proposed residential layout accompanying the third party appraisal, LPA Officers can advise Committee Members that it is not a credible assessment. This is because, in delivering 54 units, the proposal constitutes over-development that would incur unacceptable visual and residential amenity issues for the local area and its residents. For instance the front of the site would be subject to an arrangement of 3 and 4 storey apartment blocks separated less than 21m from the rear of properties on Nook Court which would significantly interfere with the privacy of residential gardens and rear windows. The need for apartment blocks is predicated on the need to generate revenue to enable the site to be financially viable and would be highly unlikely to be supported given that their height would be significantly at odds with the surrounding built character of two-storey houses and dormer bungalows. It is acknowledged that the proposed Lidl development was refused on visual amenity character reasons under a previous decision, however the impact of the apartment blocks is considered, by several orders of magnitude, more intrusive than a single storey food store situated at the rear of the site.
- 10.27 Indeed, the independent viability assessment is based upon a more sympathetic residential development which meets the site allocation yield while integrating more effectively with the surrounding area by minimising residential amenity and character issues. To conclude, the third-party appraisal is afforded little to no weight in the recommended decision.

Retail Assessment

- 10.28 Policy LP13 – Town Centres states that proposals which come forward for main town centre uses, which are located outside of the defined centre boundaries, will require the submission of a Sequential Test. The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre). It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.
- 10.29 Policy LP13 also requires a Retail Impact Assessment for planning applications which include retail development that is not located within a defined centre and where the development creates a floorspace greater than 500 sq.m gross. The proposal under this application has been subject to both a Sequential and Retail Impact test. The applicant's submissions for these tests have been reviewed by an independent consultant on behalf of the LPA.
- 10.30 In respect of the Sequential Test, the independent assessor has reviewed all of the sites and locations considered by the applicant in their submission and do not believe that any of them are both available and suitable to accommodate the proposed development. Whilst the assessor notes that other sites are being marketed in the area, it is not determined that any occupy a sequentially preferable position, and are available and suitable for the proposed development (even allowing for appropriate flexibility in terms of format and scale). It is therefore concluded that the application proposal conforms to the requirements of the sequential test as articulated by paragraphs 87 and 88 of the National Planning Policy Framework.

- 10.31 There are two centres near to the development site. The first is Salendine Nook Local Centre which is 280m west of the development site at the junction between Moor Hill Road and New Hey Road. The second is Marsh District Centre which is 2km east of the development site and also positioned on the same highway of New Hey Road/Westbourne Road. The main anchor store at Salendine Nook is a Sainsbury's convenience store whereas a larger Co-Op store anchors Marsh District Centre
- 10.32 The independent consultant's report on the applicant's retail impact assessment provided the following conclusions:
- the Sainsbury's at Salendine Nook local centre (and the centre as a whole) would continue to trade strongly subsequent to the implementation of the proposal and relevant commitments;
 - the post-impact performance of the Co-op at Marsh district centre is of greater concern, but the level of trade diversion attributable to the application proposal is limited and there have been no submissions from the operator to suggest that its ongoing viability is in peril, despite being notified for a response;
 - the wider offer at Marsh district centre would continue to perform the same important role and function in meeting day to day retail and service needs; and
 - any impact arising elsewhere would not have a material impact on the ongoing role, function and operation of defined centres.
 - the recommendation of conditions to ensure the store trades in a manner suggested in practice, notably restrictions to the gross and net floorspace, the split between convenience and comparison goods sales as well as a restriction to prevent subdivision.
- 10.33 Overall the independent assessor has concluded that the trade diversion impacts that would occur at defined centres, as a result of the development coming forward, are of an acceptable magnitude and that no centre would be the subject of a significant adverse impact or subject to a material erosion of their role or function. Furthermore, the application proposal would result in some benefit in respect of improved customer choice in the local area. Nevertheless the assessor does caveat that the most significant qualitative benefit in respect of customer choice will arise from the delivery of the approved Aldi store at Oakes Mill which is located broadly equidistant between Marsh District Centre and Salendine Nook Local Centre.

Conclusion on the principle of development

- 10.34 With regard to Retail Impacts, and contrary to the findings of the previous application 2019/91433, the development of a further food store on New Hey Road would not incur significantly adverse impacts on either Salendine Nook Local Centre nor Marsh District Centre.
- 10.35 Likewise, despite the proposal conflicting with the land's residential allocation thereby resulting in a departure from the Local Plan, an independent viability review has confirmed that the site is not viable for the delivery of housing.
- 10.36 By consequence, the principle of the development is recommended as acceptable by LPA Officers.

Urban Design and Heritage issues

Urban Design Review

- 10.37 The site lies within a predominantly residential area. There is new residential development to the west at 'Nook Court' on land that was allocated for housing (allocation HS33). To the east of the site are a cluster of historic dwellings with more modern houses slightly further along New Hey Road. Deer Croft Crescent lies immediately to the north, set at a higher topographical level from the application site. To the south is a 20th Century residential development on Dunsmore Drive.
- 10.38 The proposal would introduce a food store at the rear of the site with a parking area to the site frontage with New Hey Road and associated signage. A previous iteration of the scheme relied upon advertising hoardings and reclaimed stone. The applicant has submitted this iteration of the food store proposal to include a predominance of natural stone in its south western and south eastern elevations. In isolation, the material quality of the building is viewed positively on account of the high quality facing materials to be used in its construction alongside the vertically oriented glazing panels devoid of glazing bars.
- 10.39 The car park is formed by three banks of bays between 12 and 14 spaces in size separated by a central footpath with 20 bays on the western boundary and 33 bays across the eastern boundary. The parking allocation is inclusive of 2 rapid electric vehicle charging points, 8 parent and child and 8 disabled spaces.
- 10.40 Breaks in the residential make-up of the area are provided by the cemetery to the west, the recreation ground to the south west and Huddersfield New College to the south east. In this sense, the openness of the car park would be reflective of the historic layout of the area in that it would remain free from structures other than typical street furniture, such as lamp posts.
- 10.41 The KC DM Masterplanner (Design Specialist) states that the store's large block footprint would be at odds with the finer grain and scale and the strong residential character of the area, where a mix of detached and semi-detached modern buildings and clusters of historic farm/textile industry buildings are found. Whilst pushing the building towards the back of the site would assist in taking away some of the development's harmful impact on the street scene, this means that the front of the site would be dominated by a large expanse of hardstanding which – despite the proposed landscaping – would lack interest, would be vehicle-dominated, and would be out of character with the area.
- 10.42 It should also be noted that the previous refusal of permission for a food store on the site under 2019/91433 included a reason for refusal broadly akin to the character issues identified by KC's Design Specialist. Nevertheless, despite the form of the development incurring character issues, the composition of the food store in respect of its design is considered to be of a high quality finish that is an improvement on the previous public house that occupied the site. Indeed it should also be considered that the appearance, scale and layout of the proposal seek to optimise an awkwardly shaped and constrained site to its most efficient extent for the purpose of a retail land use. Given that the sites intended land use is proven to not be viable (i.e. a housing development), LPA Officers

must accede that alternative land uses for this brownfield site must be considered. In this context, the impact on the character of the area is not determined to be of sufficient weight to incur a reason for refusal in this instance – and is further outweighed by the public benefits of the scheme in respect of providing consumer choice to the local area in a sustainable location.

Heritage Review

- 10.43 In respect of heritage matters, set to the west of the site is the Grade II listed Salendine Nook Baptist Church set within extensive grounds and dating to 1843, its curtilage extends as far as the north-west boundary of the proposal site. The east boundary of the burial ground is formed by a low drystone wall with mature deciduous trees. To the east of the site facing New Hey Road is a small group of stone dwellings which historically formed the small hamlet of Nook which was within a rural setting that has subsequently been enveloped by the expansion of Huddersfield's urban area. The hamlet, along with the Baptist chapel to the west, is evident on the OS map of 1854. The layout of the hamlet has changed somewhat, with buildings demolished and some new houses built around the turn of the 20th century. The previous public house was attached to 400 New Hey Road and this was demolished in the early 20th century, with the more recent building understood to have been constructed in the late 1930's. Within this settlement are two Grade II listed cottages: 390 and 398 New Hey Road.
- 10.44 KC Conservation state that, although a substantial structure is proposed with extensive landscaping and excavation, the proposal has a low impact on the nearby heritage assets due to the previous changes in the area and its distance from the heritage assets. KC Conservation highlight that a residential development would be a more sensitive use for the site as the scale, mass and function would reflect the surrounding uses and would likely follow the topography of the site however, from a heritage perspective, the level of harm in this proposal is low and the public benefits outweigh this harm.

Conclusion

- 10.45 Overall, despite the potential harm to the character of the local area and in lieu of a housing development being viable on the site, the proposed food store is designed to optimise its scale, layout and appearance to minimise its impact on visual amenity whilst attempting to integrate sympathetic and high quality materials to ensure that, where it can, it reflects local vernacular.
- 10.46 Given that the proposal also incurs little harm to nearby designated heritage assets, the development of a food store on the site is found to be in accordance with policies LP24 and LP35 of the Kirklees Local Plan, relevant chapters of the National Planning Policy Framework and the National Design Guide.

Residential Amenity

- 10.47 The application has been assessed by Environmental Health who raise no objections. This includes in relation to the proposed operating hours, external lighting, noise, odour, air quality, contaminated land and the construction period. Environmental Health have recommended that, should the application be approved, conditions requiring the implementation of noise attenuation (i.e. acoustic fencing to boundaries), restricted delivery times and external plant specification details be submitted and approved by the Local Planning Authority.

- 10.48 In respect of, overshadowing, overbearance and privacy loss, the development is sited in the most optimal location to prevent such impacts occurring. The food store will be set significantly lower than the properties on Deer Croft Rise as well as those on Nook Court and LPA Officers are satisfied that this minimises the risk of overshadowing and overbearance to properties on these residential streets. In respect of privacy loss, the potential for customers parking at the site to view private residential curtilages or their habitable room windows is largely minimised (for residents of Nook Court and New Hey Road 398b, 400 & 402) through the retention of boundary treatments for the latter and the introduction of a 1800mm high acoustic close-boarded fence across the eastern boundary.
- 10.49 Overall the development is found to be in accordance with LP24 in respect of residential amenity.

Highway issues

- 10.50 As of the adoption of the Local Plan, Kirklees Council no longer has car parking standards. Policy LP22 sets out the criteria for establishing parking requirements for new developments, which should be evidence based within the planning application submission. It is considered the level of parking provided with this application is sufficient to accommodate a store of this size.
- 10.51 Overall the proposed quantum of car parking (113 spaces) would be considered acceptable, with sustainable travel measures provided on site in the form of cycle stands alongside good public transport links on New Hey Road and accessibility provided throughout the site for pedestrians. It is considered that the applicant's commitment to a Travel Plan, which would promote sustainable travel modes for the operator's staff, is also of significant benefit as it would reduce the site's reliance on car trips while having associated benefits in respect of health and air quality. The applicant has consequently agreed to provide £10,000 in travel plan monitoring to be secured through a S106 agreement attached to this planning permission, pending a Committee resolution.
- 10.52 A Transport Assessment and framework Travel Plan have been prepared and submitted by Bryan G Hall consulting engineers dated September 2021. The trip generation has been assessed using the TRICS data base. The submitted Transport Assessment assesses the traffic impact of 'retail-discount food stores' in trip generation terms. The assessment indicates that the peak periods would result in the following traffic generation:

Peak hour Friday generating 200 two way vehicle movements.
Peak hour Saturday generating 294 two way vehicle movements.

It should be noted that base traffic flows along New Hey Road were obtained from pre-covid 2018 data and a 'tempo' growth factor applied to give a robust and representative estimation of the traffic flows in both 2022 and 2026.

- 10.53 Highways Development Management consider that the traffic generated by the development can be accommodated on the local highway network without resulting in any significant adverse highway safety impacts.

- 10.54 The site access is to incorporate a right turn lane and existing traffic island relocated to accommodate the proposal. A stage 1 road safety audit and designers' response has been completed with the audit's identified amendments being included in the proposed site and highway works layouts. These off-site measures are to be secured through a Grampian condition and, due to New Hey Road being adopted highway land, it is considered that the off-site highway works have a realistic prospect of being delivered.
- 10.55 The site is located well within the recommended 400m walking distance from the nearest bus routes that operate on New Hey Road. Bus services which serve New Hey Road include the 371 which operates between Kirkheaton and Lindley at a 20 minute frequency, along with the 537 which operates between Huddersfield and Halifax at a 60 minute frequency. The bus availability for the site is therefore considered to be acceptable. The size of the development is unlikely to change the bus route or its frequency.
- 10.56 The closest bus stops on this corridor are 22485 and 22498. Both stops do not benefit from a shelter. As part of this scheme, a bus shelter would be provided at the above named stops at a cost of £13,000 each in order to improve the public transport offer. The Section 106 terms have been agreed in principle with the applicant to allow for this identified upgrade.
- 10.57 Overall the proposal is considered acceptable from a highway perspective in respect of policies LP20 and LP21 subject to the inclusion of conditions relating to the surfacing of the car park, provision of acceptable sightlines, closure of the existing access, approval of a scheme for the provision of a right turn lane from New Hey Road (the Grampian condition) and approval of details of any highway retaining structures.

Drainage issues

- 10.58 In respect of surface water drainage of the site, the use of site infiltration and other similar SUDS systems have been discounted as they are not suitable due to ground conditions. The northern part (8870m²) of the existing site is currently a field used which housed a stable and has no site surface water drainage. The southern part (1330m²) of the site is a former public house and associated hardstanding, which has an existing surface water drainage system that discharges into a combined sewer near the southern boundary of the site. The proposed surface water drainage for the site will comprise a piped surface water drainage system connected into the combined sewer manhole near the southern boundary of the site.
- 10.59 The FRA sets out that the site area is 10,200m² and will comprise a total impermeable area of 6740m². Based on a greenfield runoff rate of 5.0 litre/sec/hectare the proposed runoff rate for the site is 5.1 litre/sec. Based on 1 in 100 year rainfall and 30% allowance for climate change a 425m³ attenuation (storage) tank will be provided on-site. The Detailed Drainage Design drawing 09-122-503 indicates the proposed layout.
- 10.60 There is a high risk of overland surface water flows from adjacent properties, flowing across the site from the western boundary with the Salendine Nook Baptist Church to the southern boundary with New Hey Road. The proposed redevelopment will not interfere with the route of any overland flows, other than ensuring they do not enter the Lidl store. Overland Flows Plan drawing 09-122-501 indicates the proposed route of overland flows across the site.

- 10.61 In respect of foul drainage, there is an existing foul drainage system on the site that served the public house. This system will be removed and replaced and will be connected to the existing combined sewer manhole near the southern boundary of the site.
- 10.62 The Lead Local Flood Authority have confirmed that they are able to support The Beam Consulting Flood Risk Assessment, inclusive of the culvert diversion within the confines of the site, and consequently the proposed development is able to meet the requirements of LP27 – Flood Risk and LP28 – Drainage.

Ecology & Trees

- 10.63 In respect of the proposal's biodiversity and ecological impacts, an updated ecological assessment has been submitted with the application (relative to previous application submissions) which KC Ecology Officers have accepted. The report details that the site is of minimal ecological value and provides negligible opportunities for roosting bats. The report lays out a number of mitigation and enhancement measures that should be secured through appropriate planning conditions, which are: an ecological design strategy to implement the delivery of the lost habitat units resulting from the development, a lighting design strategy for biodiversity, restrictions on site clearance for the protection of nesting birds and eradication of invasive non-native species (Rhododendron in this instance.)
- 10.64 A Biodiversity Net Gain calculation has been submitted with the application through use of the DEFRA Metric v3.0. The metric details that there will be a 47.47% net loss in habitats (-1.60 units) on site, and no net change in hedgerows. KC Ecology accept that all options have been exhausted to provide a biodiversity net gain within the development site and it is assumed that the applicant is to provide a financial contribution to offset the loss of biodiversity. In order to ensure that a 10% biodiversity net gain is achieved as part of the proposals, 1.94 habitat units will need to be delivered via a financial contribution. The financial contribution required (based on £20,000 per habitat unit (figure taken from 2019 DEFRA Impact Assessment) + 15% admin fee (figure taken from Kirklees Biodiversity Net Gain Technical Advice Note)) to be secured through a section 106 agreement will be £44,620. This figure would need to be secured through a S106 agreement.
- 10.65 In respect of the development's impact on trees within the site, the applicant has submitted an Arboricultural Method Statement which has been accepted by the KC Trees Officer.
- 10.66 Overall the development is found to be in compliance with Local Plan Policies LP30 – Biodiversity and Geodiversity and LP33 – Trees.

Contaminated Land

- 10.67 In support of the application, the following contaminated land documents have been submitted:
1. Phase 1 Report by Beam Consulting, dated 29th September 2021 (ref: 09-122-DOC-002A)
 2. Geoenvironmental Appraisal Report by Lithos, dated December 2017 (ref: 2895/1)

3. Phase 2 report by Dunelm Geotechnical & Environmental, dated 28th September 2018 (ref: M600)

- 10.68 The reports included geotechnical information, which is outside the remit of Environmental Health, the consultation response therefore only related to the land contamination aspects of the reports
- 10.69 The Phase 1 Report by Beam Consulting (Ref: 09-122-DOC-002A) summarises the information provided in the appended Lithos Geoenvironmental Appraisal Report. The desk study identified potential sources of pollution coming from the site's historical and current uses. In the Geoenvironmental Appraisal Report (ref: 2895/1) it is detailed that the field investigation found no significant levels of contamination on the site. However, in both reports it was recommended that post-demolition investigation works would be necessary. The Phase 2 report by Dunelm Geotechnical & Environmental (ref: M600) dug another two trial pits and four boreholes to further confirming the ground conditions at the site.
- 10.70 The work to date has confirmed no contamination at the site and the KC Contaminated Land Officer accepts all three contaminated land reports provided. The site is for a commercial end-use and is going to be covered with hardstanding (car park) and therefore KC Environmental Health consider there to be minimal risk to end-users. However, as groundworks are proposed, a condition relating to unexpected contamination that may be encountered during the construction activities would be added to the decision notice, should the application be approved permission.

Representations

- 10.71 The large number of representations received in favour of the application demonstrate a level of support for the proposal and this is supplemented by the findings of the community engagement work undertaken by a third party on behalf of the applicant. Of the planning representations received the benefits of the development in terms of an enhanced retail offer, the accessibility and convenience of the store as well as job creation have been cited by residents, amongst other benefits.
- 10.72 On the other hand there have been some detailed objections received which include various material planning considerations. These concerns are addressed by LPA Officers directly below:
- Development would have a significant adverse impact on the vitality and viability of Salendine Nook Local Centre
 - Concerns raised with the applicant's retail assessment
 - Site is not edge of centre for retail purposes and does not meet the sequential test for sites, with more suitable sites available in the town centre. The sequential assessment is flawed.
 - The area is already served by similar stores, notably the Aldi being built on New Hey Road. Potential for an existing store to fail incurring a derelict site.
 - Detrimental impact on local businesses including the Salendine Nook Shopping Centre.

Officer Response: These considerations have been examined by the independent retail assessor and have been addressed within paragraphs 10.28 to 10.33 of this report.

- Concerns raised with extra traffic that would be generated, especially with the site being close to the high school, nursery, church and homes.
- Highway safety impacts, including as a result of the proposed access and increases in traffic generation that could impact pedestrians, notably school children.

Officer Response: These considerations have been examined within paragraphs 10.50 to 10.57 of this report. It should be highlighted that the applicant has commissioned a Road Safety Audit whose recommendations have been included in a revised conceptual design of internal site layout and its access.

- Design does not complement the area

Officer Response: These considerations have been examined within paragraphs 10.37 to 10.46 of this report.

- Potential noise nuisance/disturbance from HGV deliveries and intensification of site use, particularly at unsociable hours for local residents.
- More pollution from cars

Officer Response: These considerations have been examined within paragraph to 10.47 of this report with associated conditions recommended in section 12 of this report.

- Neighbouring properties overlooked by shoppers/loss of privacy

Officer Response: These considerations have been examined within paragraph to 10.48 of this report.

Planning obligations

10.73 In respect of a potential Section 106 agreement, the following would need to be secured to make the development acceptable in planning policy terms:

- A Biodiversity contribution of £44,620.
- 2no. Bus Stop Upgrades of £26,000 (2x £13,000)
- A Travel Plan monitoring fee of £10,000 (5 years at £2000py)
- Drainage Management Company until adoption by statutory undertaker.

Other Matters

Electric Vehicle Charging Points

10.74 The proposals include provision for electric vehicle recharging points. It is proposed that there will be two spaces for charging electric vehicles. The Air Quality Impact Assessment (AQIA) by Miller Goodall, dated 7th September 2019, (Ref: 102035V3) states that the development will include a Terra CGJ rapid charger, which will be able to fully charge two electric vehicles in 20 minutes.

- 10.75 Environmental Health acknowledge that for developments where some or all of the parking is likely to be used for shorter stay parking (30mins to 4 hours) then Fast (7-23kW) or Rapid (43kW+) charging points will be more appropriate. However, for a development of this size it would be expected that a minimum of 2 rapid (40 minute) chargers would be provisioned over 3 parking bays so that the same number of charging events as 11 fast chargers could be accommodated. Consequently, Environmental Health do not accept the proposal for one Terra CGJ rapid charger, and a condition would therefore be necessary for a scheme relating to electric vehicle charging points.

Climate Change

- 10.76 Addressing climate change is one of the core land use planning principles which the NPPF expects to underpin decision-taking. In this case the development would take account of climate change issues through the provision of electric vehicle charging points, a Travel Plan and suitable surface water drainage arrangements.

11.0 CONCLUSION

- 11.1 The proposal is for non-residential development on a site that is allocated for housing in the Local Plan. The loss of the housing land is regrettable, however sufficient justification to warrant a departure from the plan has been provided through rigorous independent examination of the site's viability for housing development and the proposed food stores impact on the viability of nearby local centres.
- 11.2 In respect of financial viability, the conclusion of the independent appraisal is that the site is not able to deliver a residential scheme that would enable a sufficient level of return (<15% profit margin), even before planning policy contributions are factored in. Conversely the sequential and retail impact tests have confirmed that the site is in a sequentially preferable location, being that no other identified sites are suitable or available, and that the proposed food store's trade diversion impacts upon defined centres (Marsh & Salendine Nook), are of an acceptable magnitude and that no centre would be the subject of a significant adverse impact that would erode an anchor store's role in either centre.
- 11.3 Nevertheless, it is acknowledged that the proposal would introduce a large food store with associated car parking and signage into a predominantly residential area and would therefore be somewhat at odds with its prevailing character. However, given that an allocated residential use is not able to come forward and that alternative uses should be identified for the site, the quality and layout of the development minimises its impact to an extent that prevents a reason for refusal being generated on visual amenity grounds in this instance.
- 11.4 Given that the principle of this application is considered to be acceptable in conjunction with favourable assessments in respect of residential amenity, transport impacts, sustainable drainage, ecology and contaminated land; 2021/94029 is recommended for approval to Strategic Committee subject to agreement of a Section 106 legal agreement for the planning obligations set out under paragraph 10.73 alongside the list of conditions set out in Section 12.

12.0 Summary List of Conditions (final wording and list to be delegated to the Head of Planning and Development):

- 1/. 3 Year Time Limit for Permission Implementation (TCPA S91)
- 2/. Development to be carried out in accordance with approved plan and document schedule.
- 3/. Construction Environmental Management Plan (Pre-commencement)
- 4/. Implement agreed Dust Mitigation Scheme
- 5/. Gross and net floorspace, convenience and comparison goods sales restrictions.
- 6/. No internal or external sub-division of premises for separate use or retail entity.
- 7/. Electric Vehicle Charging Points
- 8/. Implement Agreed Noise Mitigation Measures
- 9/. Acoustic Barrier Details
- 10/. Noise Specification from Fixed Plant & Equipment
- 11/. Customers Time Restrictions
- 12/. Delivery Time Restrictions
- 13/. Reporting Unexpected Contamination
- 14/. External Lighting Design Strategy for Biodiversity and Residential Amenity
- 15/. Submission of details relating to the kitchen extraction system for the bakery
- 16/. Submission of detailed Travel Plan
- 17/. Areas to be Surfaced and Drained
- 18/. Junction Access Sightlines
- 19/. Closure of Existing Access
- 20/. Submission of Details for a Right Turn Lane on New Hey Road (Pre-commencement)
- 21/. Retaining Walls (Pre-commencement)
- 22/. Implementation of agreed drainage design
- 23/. Drainage Attenuation and Flow Control Detail Submission (Pre-commencement)
- 24/. Sample of external facing materials and sample panel of masonry, inclusive of retaining wall facing materials
- 25/. Submission of detailed boundary wall specifications
- 26/. Ecological Design Strategy for Implementing Biodiversity Off-setting
- 27/. Working restrictions in respect of nesting birds
- 28/. Removal of invasive non-native species (Pre-commencement)

Background Papers:

Application and history files.

Website link:

[Planning application details | Kirklees Council](https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f94029)

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