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**Report of the Head of Planning and Development****STRATEGIC PLANNING COMMITTEE****Date: 21-Nov-2019****Subject: Planning Application 2019/91433 Erection of an A1 foodstore with associated parking, servicing areas and landscaping former Spotted Cow Pub, New Hey Road, Oakes, Huddersfield, HD3 4BU****APPLICANT**

Lidl GB Ltd

**DATE VALID**

01-May-2019

**TARGET DATE**

31-Jul-2019

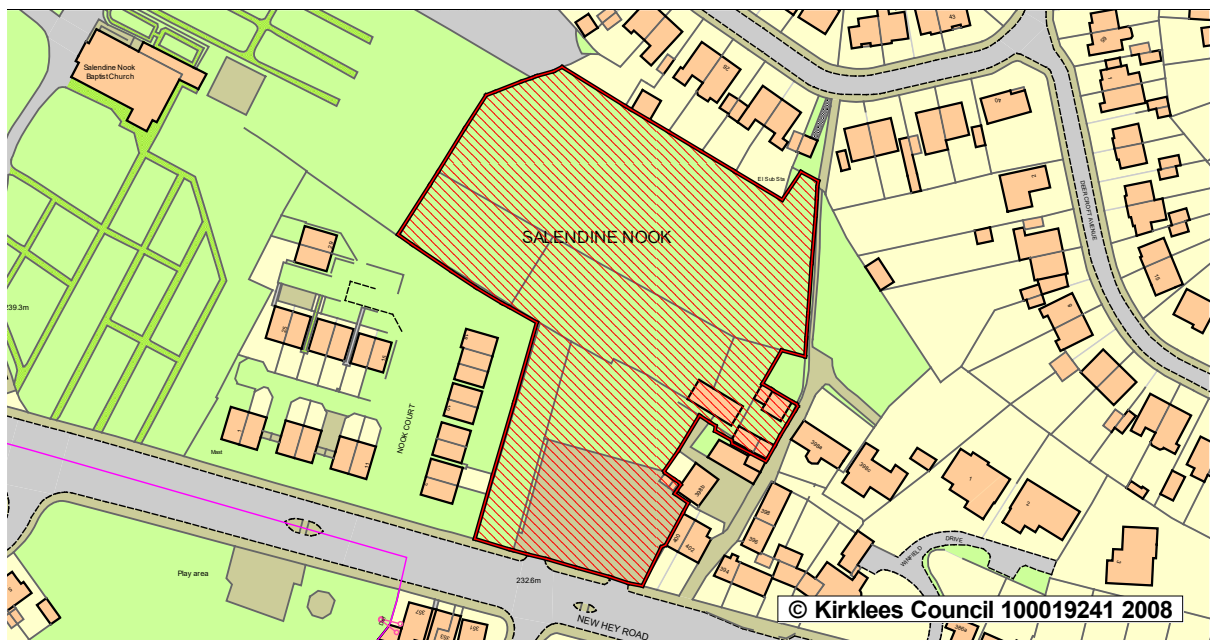
**EXTENSION EXPIRY DATE**

30-Nov-2019

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Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

**LOCATION PLAN**

**Map not to scale – for identification purposes only**

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**Electoral Wards Affected:**    **Lindley**

Yes

Ward Members consulted  
(referred to in report)

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## **RECOMMENDATION:**

### **REFUSE –**

1. The site comprises housing allocation HS38 in the Kirklees Local Plan. The proposed retail development is therefore contrary to the provisions of the development plan and the loss of the housing land would prejudice the council's ability to deliver the housing growth required over the lifetime of the plan.
2. The development would result in a significant adverse impact on the vitality of existing Local Centres when assessed cumulatively with planning application 2019/91556. This would be contrary to LP13 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.
3. The site lies within a predominantly residential area and the introduction of a large food store with prominent parking area to the frontage and associated signage would be at odds with the prevailing character of the area and would harm visual amenity, contrary to Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

### **1.0 INTRODUCTION:**

- 1.1. This proposal is brought forward to the Strategic Committee because it represents a departure from the development plan, the development is for non-residential development on a site that is over 0.5 hectares and it is for retail development that has a floor space greater than 1250 square metres.
- 1.2 An extension of time to the application's determination period has been agreed until 30<sup>th</sup> November 2019.

### **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 now been demolished. The rear part of the site is a largely grassy 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 that is currently under construction. 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 A1 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 1,377 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.

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.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 The following applications relate to the application site:

2017/93846 - Demolition of existing public house and erection of 32 residential dwellings - Resolution to approve at Sub-Committee on 22<sup>nd</sup> 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 31<sup>st</sup> August 2017 subject to a Section 106 Agreement – Application withdrawn before decision issued

4.2 The following applications on adjacent land 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 3<sup>rd</sup> 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.

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

5.1 Additional and revised information submitted to address drainage, ecological and arboricultural issues.

- 5.2 The applicant provided a rebuttal to the council's independent retail assessment.

## **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 27<sup>th</sup> February 2019).

### **6.2 Kirklees Local Plan (2019):**

LP1– Presumption in favour of sustainable development  
LP3 –Location of new development  
LP7 – Efficient and effective use of land and buildings  
LP13 – Town centre uses  
LP19 – Strategic transport infrastructure  
LP20 – Sustainable travel  
LP21– Highway safety and access  
LP22 - Parking  
LP24 – Design  
LP27 – Flood risk  
LP28 - Drainage  
LP 30 – Biodiversity and geodiversity  
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 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

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 Five representations have been received either objecting to the application or raising concerns. The issues raised are summarised as follows:

- Development would have a significant adverse impact on the vitality and viability of Salendine Local Centre
- Site is not edge of centre for retail purposes
- 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
- Concerns raised with extra traffic that would be generated, especially with the site being close to the high school
- Proposal would be an eyesore

- Design does not complement the area
  - Cheap and inappropriate materials being proposed. Stone should be used.
  - A food store such as this in a residential area is not in keeping
  - Site should be developed for housing
  - Highway safety impacts, including as a result of the proposed access
  - Potential noise nuisance/disturbance from HGV deliveries
  - Neighbouring properties overlooked by shoppers
  - Concerns raised with impact of sheet piling on adjacent property
  - Potential unintended desire line crossing eastern boundary
  - More pollution from cars
- 7.2 A petition containing over 1300 signatures has also been received objecting to the application on the basis of the detrimental impact that it would have on the Salendine Nook Shopping Centre.
- 7.3 Eighty-two representations have been received that are in support of the application. The comments raised are summarised as follows:
- Development will introduce competition which is good for consumers
  - More choice for consumers
  - Sainsbury's at Salendine Nook has a monopoly in this area
  - 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
  - Site is an eyesore; development will improve the area
  - Proposal would mean less congestion around the Sainsbury's store
  - Would benefit the school
- 7.4 In addition a community engagement exercise was undertaken by a third party on behalf of the applicant. This involved the distribution of 10,000 postcards and an accompanying website asking for feedback. A summary report and evidence of the responses has been provided to the Council. In summary of the 326 responses received 86% support a new Lidl store on New Hey Road, 6% disagree, 3% not sure and 5% of responses were left blank.
- 7.5 Councillor Burke – "I support retail development on this site over housing." Councillor Burke also confirmed that he shared concerns raised in relation to the use of inappropriate materials and that stone would be more suitable.

## **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 – Further information required in relation to a culverted watercourse within the site.

## 8.2 **Non-statutory:**

KC Conservation & Design – No objections in terms of the impact on the setting of the nearby listed buildings however concerns raised with the visual impact of the introduction of a large food store with parking and signage in this location, which has a predominantly residential character.

KC Environmental Health – No objection subject to conditions

KC Trees – Concerns raised with the proximity of the loading bay area to protected trees and the potential impact of this aspect of the development on the viability of the protected trees.

KC Ecology Unit – Additional ecology information required.

Yorkshire Water – No objection subject to condition

## 9.0 **MAIN ISSUES**

- Principle of development including retail assessment
- Urban design issues
- Residential amenity
- Highway issues
- Drainage issues
- 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. At that time there was an application for residential development on the site with a resolution from the planning committee to approve planning permission subject to a s106 agreement (planning application reference 2017/93846). The planning application was however subsequently withdrawn before a decision was issued.
- 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 A1 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 67 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.
- 10.10 The development would represent a clear departure from the development plan. Furthermore, there is a slight shortfall in meeting the overall housing supply requirement set out in the Local Plan and therefore all housing sites make an important contribution to meeting the Council’s housing growth targets.
- 10.11 It is acknowledged that the applicant has indicated that there is no realistic prospect of the site coming forward for residential use because they own the land and have no intention of developing it for housing. Nevertheless it is not considered that significant weight can be afforded to this argument, especially at such an early stage of the Local Plan. To accept this premise would undermine the fundamental basis of the land allocations within the Plan. The applicant has also suggested that the site would not be viable to develop for housing although this has not been tested through a viability exercise and the previous application on the site for housing suggests that housing would be viable.
- 10.12 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. However, these benefits are not considered to outweigh the essential need to deliver the Council’s housing targets, which is predicated on the delivery of allocated housing sites such as this.

### *Retail Assessment*

- 10.13 The application is supported by a retail assessment. This has been assessed on behalf of the Council and takes into account a separate application for an A1 (Aldi) food store that is approximately 1.4km further down New Hey Road – planning application 2019/91556 and which is reported elsewhere on this agenda.
- 10.14 There is a significant overlap in the Primary Catchment Areas (PCAs) of both stores. The potential trade diversion from existing centres and stores that fall within the PCA of both stores has been assessed, including that from Salendine Nook Local Centre, Sainsbury's Acre Street (Lindley), New Hey/Oakes Local Centre and Huddersfield Town Centre.
- 10.15 The site is within an edge of centre location for the purposes of retail development, being approximately 250m from the Salendine Nook Local Centre. The Salendine Nook Local Centre predominantly comprises the Salendine Nook Shopping Centre which houses a Sainsbury's supermarket, an opticians, doctors' surgery, pharmacy, dental practice, phone shop, charity shop and cafe amongst other businesses. There are also some hot food takeaways on the site. The wider centre includes a Post Office immediately adjacent to the shopping centre and some premises further to the west.
- 10.16 The NPPF requires main town centre uses such as the proposal to be located in town centres, then in edge of centre locations. Only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. This is also reflected in Policy LP13 of the Local Plan.
- 10.17 A sequential assessment has been provided by the applicant. Given that the site is edge-of-centre in NPPF terms, only in-centre sites would be sequentially preferable to the application proposals. However, the applicant's assessment has also considered potential alternative sites on the edge of existing centres, in terms of their suitability and availability to accommodate the proposed development.
- 10.18 The sequential assessment considers the following sites:
- Lindley District Centre
  - Salendine Nook Local Centre
  - Birchencliffe Local Centre
  - Acre Street Local Centre
  - New Hey Road/Acre Street Local Centre
  - New Hey Road/Plover Road Local Centre
- 10.19 The retail assessment that has been carried out on the Council's behalf raises no issues with the submitted sequential assessment and is therefore accepted by officers.
- 10.20 In terms of the retail impact assessment, the two stores within existing centres that have the potential to be adversely impacted by the operation of both the Lidl and Aldi stores are the Sainsbury's at Salendine Nook and the Sainsbury's on Acre Street. Although the applicant disagrees with the assessment regarding Sainsbury's Acre Street, they have confirmed that the most significant trade diversion impact forecast to result from the proposed development would be on the Sainsbury's store at Salendine Nook.



- 10.21 As a standalone store, the impact of the proposed Lidl store would be acceptable and would not result in significant adverse impacts on the vitality and viability of existing centres and will offer consumers additional convenience and store choice. However, when assessed cumulatively with the proposed Aldi store it is considered that there is the potential for there to be significant adverse impacts on the vitality and viability of existing centres.

*Conclusion on the principle of development*

- 10.22 The proposal conflicts with the land's allocation in the Local Plan and the loss of the housing land would prejudice the council's ability to meet its housing delivery targets over the lifetime of the plan. The principle of the development is therefore considered to be unacceptable on the basis that it is a departure from the provisions of the plan.
- 10.23 The Council is currently considering two separate applications for discount food stores on New Hey Road – one on behalf of Lidl and one on behalf of Aldi. The retail impact assessment establishes that on their own each store would be acceptable however both stores together would have a significant adverse impact on the vitality and viability of existing centres.
- 10.24 Taking into account the objection to the principle of retail development on the housing allocation, the Aldi application is in principle a more suitable scheme. As such officers consider that the Lidl application should be refused on retail grounds based on the cumulative impact assessment of both stores. It is to be noted that both stores are within edge-of-centre locations and so in this respect neither store is sequentially preferable over the other.
- 10.25 The Council is aware that the applicant has instructed some further work to be undertaken in relation to household shopping surveys in order to support their retail impact assessment. This would be considered by the Council should it be submitted before the application is determined by the committee or it would be taken into account as part of any potential appeal should the application be refused.

Urban Design issues

- 10.26 The site lies within a predominantly residential area. There is new residential development to the west that is currently under construction on land that is 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 up from the application site. To the south is a 20<sup>th</sup> Century residential development on Dunsmore Drive.
- 10.27 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. The former public house on the site, which has recently been demolished, sat centrally in the car park aligned with 400/402 New Hey Road and formed a strong visible building line.
- 10.28 The nearest commercial development is distinct from the site, being located within the clearly defined Salendine Nook shopping centre and the garage on the opposite side of the road.

- 10.29 The proposal would introduce a substantial food store with large parking area to the site frontage and associated signage.
- 10.30 The car park is formed by three banks of 12 bays separated by a central footpath with 21 bays on the western boundary; the access way abuts the eastern boundary. This treatment of land introduces a substantial area of hard standing that despite landscaping will be out of character with the area.
- 10.31 The building will be sat towards the rear of the site but due to the scale of the building it will be prominent in the area, as discussed in the applicant's own Heritage Impact Assessment. Such a large block of building is at odds with the residential character of the area, being a mix of detached and semi-detached modern buildings and clusters of historic farm/textile industry buildings. Whilst pushing the building towards the back of the site mitigates some of the impact on the street scene this means that the site is dominated to the rear by such a large building, leaving the frontage dominated by vehicles and in some regards lacking interest.
- 10.32 Overall a development of this nature and scale is contrary to the nature of the surrounding area, that being one of residential. The Kirklees Local Plan Policy LP24 states that good design should be at the core of all proposals and should be considered at the outset of the development process. Such a large building set behind a car park off New Hey Road fails to respect the residential character of the area and does not enhance the area apart from the reuse of the land of the former public house. However, this could be enhanced in a number of ways including through residential development.
- 10.33 The application fails to comply with LP24 of the Local Plan.
- 10.34 The applicant has proposed to include a much greater proportion of stone to the façade of the building but this does not materially alter the above assessment.

#### Residential Amenity

- 10.35 The application has been assessed by Environmental Health who raise no objections. This includes in relation to the proposed operating hours and external lighting.

#### Highway issues

- 10.36 The proposal is to provide a commercial development for A1 use with a retail floor area of 1377m<sup>2</sup> and 2016m<sup>2</sup> Gross internal area. A total of 113 car parking spaces is associated with the development.
- 10.37 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.

- 10.38 Overall the proposed car parking would be considered acceptable, with the sustainable travel measures provided on site in the form of cycle stands and also the good public transport links and accessibility for pedestrians. It is considered by implementing a travel plan with a full commitment to creating a modal shift to sustainable travel modes, the need to rely on the car will be significantly reduced.
- 10.39 A Transport Assessment and Framework Travel Plan have been submitted in support of the application. 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:
- 16.00 – 17.00 Friday generating 213 two way vehicle movements.  
12.00 – 13.00 Saturday generating 246 two way vehicle movements.
- 10.40 The site access is to incorporate a right turn lane and existing traffic island relocated to accommodate the proposal. A stage 1 safety audit and designers' response has been completed with the amendments identified included in the proposal.
- 10.41 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.
- 10.42 The site is located within the recommended 400m from the nearest bus routes that operate on New Hey Road. Bus services which operate on 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 frequency.
- 10.43 The closest bus stops on this corridor 22485 and 22498 do not have a shelter. As part of this scheme a bus shelter could be provided at the above named stops at a cost of £13,000 each in order to improve the public transport offer.
- 10.44 Overall the proposal is considered acceptable from a highway prospective 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 and approval of details of any highway retaining structures.

#### Drainage issues

- 10.45 The Lead Local flood Authority requested further information in relation to a culverted watercourse within the site. This has been provided by the applicant (a culvert diversion is proposed) and a response to this will be provided to Members within the written update.

## Representations

- 10.46 The 82 representations received in support 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.
- 10.47 On the other hand there have been some detailed objections received which include similar concerns to those raised by officers in terms of the principle of the development on a housing allocation, the retail impacts of the development and the impact on the character of the area. A petition with over 1300 signatures has also been provided which cites concerns over the impact of the development (and the separate Aldi application) on the future viability of the Salendine Nook Local Centre.
- 10.48 Ward Councillor Cahel Burke supports retail development on the site over housing although concerns have been expressed in relation to materials. The applicant has however provided a draft plan indicating a stone façade to address this concern.

## Planning obligations

- 10.49 A Travel Plan monitoring fee would be required (£10,000) and the contribution towards bus stop improvements as detailed at paragraph 10.38.

## Other Matters

- 10.50 Additional information has been provided in relation to ecological matters and an update on this will be provided to Members.
- 10.51 There are a number of protected trees surrounding the site. The only area of concern is in relation to the impact of the proposed loading bay. Revised information has been submitted to address this concern and an update will be provided to Members on this.
- 10.52 The proposals include provision for electric vehicle recharging points. This will help to mitigate the impact of the development on air quality and climate change.
- 10.53 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 would prejudice the council's ability to deliver the housing growth as set out in the Local Plan and therefore the principle of development is considered to be unacceptable.

- 11.2 As a stand-alone store the retail impacts of the development on the vitality and viability of existing centres is considered to be acceptable. However, when assessed cumulatively with a separate application for an A1 food store (planning application reference 2019/91556) there would be a significant adverse impact. Given that the principle of this application is considered to be unacceptable it stands that application 2019/91556 represents the more suitable retail scheme and as such the proposal is the one that tips the balance in terms of the retail impacts.
- 11.3 The proposal would introduce a large food store with associated car parking and signage into a predominantly residential area. This would be at odds with the prevailing character of the area and would harm the visual amenity of the area.
- 11.4 For the reasons set out above the proposed development would not constitute sustainable development and is therefore recommended for refusal.

## **12.0 Refuse for the following reasons:**

1. The site comprises housing allocation HS38 in the Kirklees Local Plan. The proposed retail development is therefore contrary to the provisions of the development plan and the loss of the housing land would prejudice the council's ability to deliver the housing growth required over the lifetime of the plan.
2. The development would result in a significant adverse impact on the vitality of existing Local Centres when assessed cumulatively with planning application 2019/91556. This would be contrary to LP13 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.
3. The site lies within a predominantly residential area and the introduction of a large food store with prominent parking area to the frontage and associated signage would be at odds with the prevailing character of the area and would harm visual amenity, contrary to Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

### **Background Papers:**

Application and history files.

Website link:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f91433>

Certificate of Ownership – Certificate A signed.