

DEVELOPMENT PLAN

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that “where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.

Unitary Development Plan - current status

The Unitary Development Plan for Sunderland was adopted on 7th September 1998. In the report on each application specific reference will be made to those policies and proposals, which are particularly relevant to the application site and proposal. The UDP also includes a number of city wide and strategic policies and objectives, which when appropriate will be identified.

STANDARD CONDITIONS

Sections 91 and 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 require that any planning application which is granted either full or outline planning permission shall include a condition, which limits its duration.

SITE PLANS

The site plans included in each report are illustrative only.

PUBLICITY/CONSULTATIONS

The reports identify if site notices, press notices and/or neighbour notification have been undertaken. In all cases the consultations and publicity have been carried out in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

LOCAL GOVERNMENT ACT 1972 – ACCESS TO INFORMATION

The background papers material to the reports included on this agenda are:

- The application and supporting reports and information;
- Responses from consultees;
- Representations received;
- Correspondence between the applicant and/or their agent and the Local Planning Authority;
- Correspondence between objectors and the Local Planning Authority;
- Minutes of relevant meetings between interested parties and the Local Planning Authority;
- Reports and advice by specialist consultants employed by the Local Planning Authority;
- Other relevant reports.

Please note that not all of the reports will include background papers in every category and that the background papers will exclude any documents containing exempt or confidential information as defined by the Act.

These reports are held on the relevant application file and are available for inspection during normal office hours at the Economy and Place Directorate at the Customer Service Centre or via the internet at www.sunderland.gov.uk/online-applications/

Ms. Irene Lucas CBE
Chief Executive

Reference No.: 16/02130/VAR Variation of Condition

Proposal: Variation of condition 3 of previously approved application 99/00084/OUT to allow: The Class A1 development hereby permitted shall not be used for the retailing of any of the following goods without the prior consent of the local planning authority: (a) food and drink (excluding the sale of food and drink for consumption on the premises); (b) fashion clothing (excluding gardening/DIY overalls and protective clothing); (c) fashion accessories; (d) footwear (excluding gardening/DIY protective footwear); (e) jewellery; (f) cosmetics and toiletries; (g) pharmaceutical products; (h) books and magazines (excluding gardening/DIY books and magazines); (i) toys (excluding garden toys and play equipment); (j) sports goods (including walking and climbing equipment) and (k) camping equipment, in order that the local planning authority may retain control over the development. However, the area indicated pink on drawing no.15165-SK05 with a gross internal area of no more than 5,162 sq.m shall be used for the sale of any non-food goods and up to 30% (1,549 sq.m) of food and drink goods.

Location: B And Q Warehouse Trimdon Street Sunderland SR4 6DW

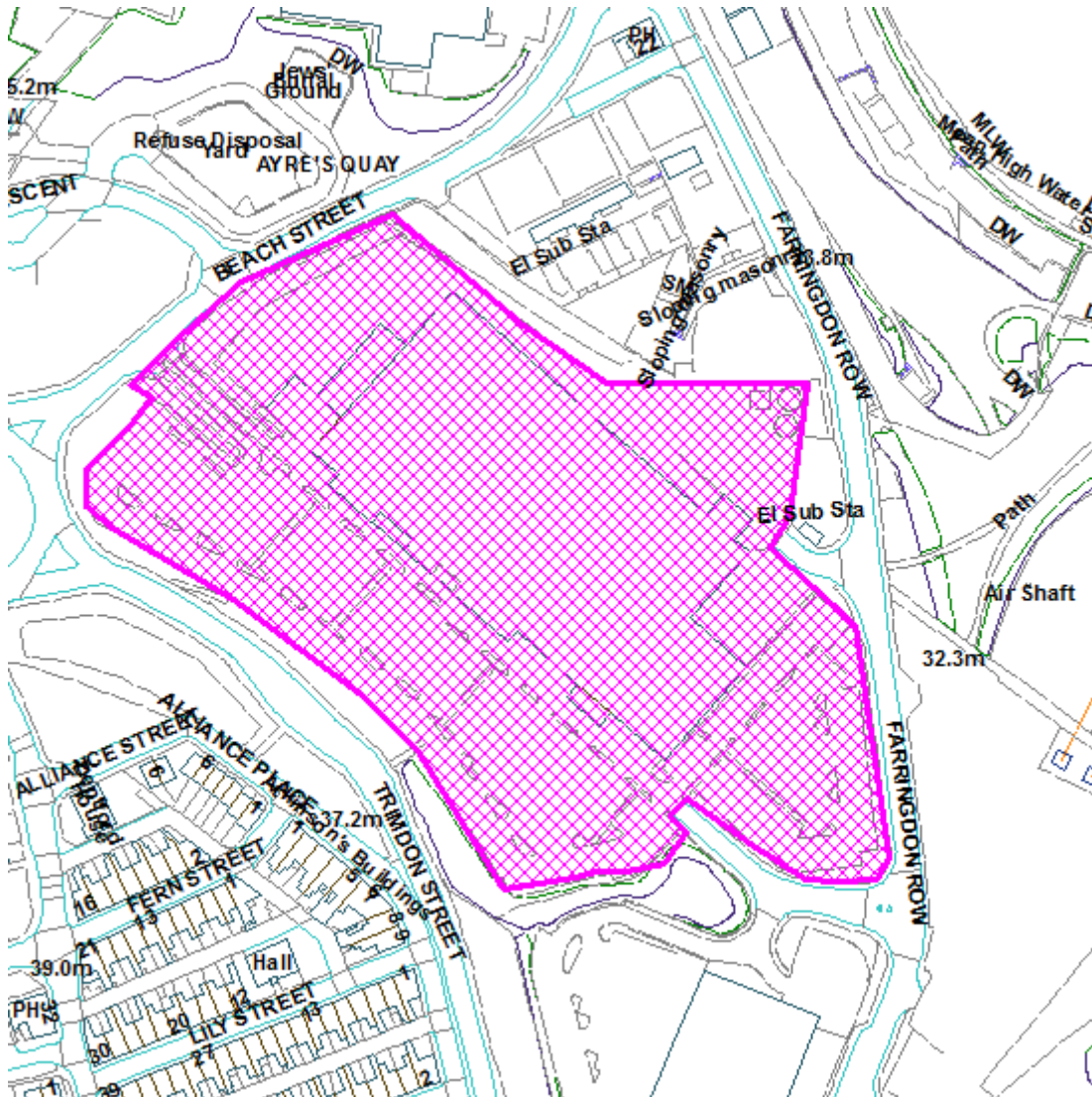
Ward: Millfield

Applicant: Wm Morrison Supermarkets Plc

Date Valid: 29 November 2016

Target Date: 28 February 2017

Location Plan



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PROPOSAL:

The proposal is a Section 73 application which seeks a variation of condition 3 of outline planning permission 99/00084/OUT to allow up to 5162 square metres of floor space to trade with a flexible A1 use at the B&Q Warehouse DIY store, Trimdon Street, Sunderland.

Part of the application site is currently occupied by a large B&Q Warehouse DIY store and as a result of a business decision to down size its operations it has led B&Q making internal changes resulting in it occupying 6101 square metres of floor space, leaving 5162 square metres of floor space vacant. The site is irregular in shape and measures approximately 4.3 hectares. The site is located outside the City Centre boundary and is therefore considered to be in an "out of centre" location.

Members may recall that outline planning permission was granted 26.03.99 to allow the development of land to provide retail warehouse with garden centre and building materials outlet, car park and access to include stopping up of all-purpose highway and change of use to footpath, landscaping and carpark. Reserved matters approval followed in April 1999 (ref : 99/00376/REM).

Full planning permission was obtained in 2014 for the sub-division and extension to the existing DIY retail warehouse and new Morrison's foodstore with associated external alterations. This also included realignment of the car park (ref : 14/01440/FUL).

Following the approval of the latest permission B&Q has rearranged its on-going operations internally to align with the planning permission leaving 5162 square metres vacant. However, it is worth noting that no external alterations were made and the car park has remained, subsequently the latest permission was never implemented.

Condition 3 of the original outline consent 99/00084/OUT restricts the sale of goods that can be sold from the site. Condition 3 states:

"The Class A1 development hereby permitted shall not be used for the retailing of any of the following goods without the prior consent of the local planning authority:

- (a) food and drink (excluding the sale of food and drink for consumption on the premises);
- (b) fashion clothing (excluding gardening/DIY overalls and protective clothing);
- (c) fashion accessories;
- (d) footwear (excluding gardening/DIY protective footwear);
- (e) jewellery;
- (f) cosmetics and toiletries;
- (g) pharmaceutical products;
- (h) books and magazines (excluding gardening/DIY books and magazines);
- (i) toys (excluding garden toys and play equipment);
- (j) sports goods (including walking and climbing equipment); and
- (k) camping equipment,

in order that the local planning authority may retain control over the development."

The current application seeks a variation of the above condition to allow for the remaining 5,162 square metres to trade with a flexible A1 use. The application seeks to amend condition 3 as follows:

"The Class A1 development hereby permitted shall not be used for the retailing of any of the following goods without the prior consent of the Local Planning Authority:

- (a) food and drink (excluding the sale of food and drink for consumption on the premises);
- (b) fashion clothing (excluding gardening/DIY overalls and protective clothing);
- (c) fashion accessories;
- (d) footwear (excluding gardening/DIY protective footwear);
- (e) jewellery;
- (f) cosmetics and toiletries;
- (g) pharmaceutical products;
- (h) books and magazines (excluding gardening/DIY books and magazines);
- (i) toys (excluding garden toys and play equipment);
- (j) sports goods (including walking and climbing equipment); and
- (k) camping equipment,

In order that the local planning authority may retain control over the development. However, the area shown in pink on drawing ref. 15165-SK-05, with a gross internal area of no more than 5,162 sq. metres shall be used for the sale of any non-food goods and up to 30% (1,549 sq. metres) of food and drink goods."

The application has been supported by a Planning and Retail Statement and a Transport Assessment.

Members should note that in given the specialist nature of the retail planning considerations arising from this application the Local Planning Authority (LPA) has employed the services of a retail policy specialist in order to advise the Council in its consideration of this application. The LPA therefore instructed Hollissvincent to undertake an independent audit of the retail policy aspects of the application.

A copy of the Hollissvincent's audit report and policy advice in respect of this application is included as an Appendix to this report and Members should therefore read this committee report in conjunction with the Hollissvincent report.

Furthermore, Members should also note that in the event that they are minded to approve the application it is considered necessary to refer it to the Secretary of State in accordance with Article 9 of the Town and Country Planning (Consultation) (England) Direction 2009, as the application includes retail development outside the town centre.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Fire Prevention Officer
NE Ambulance Service NHS Trust
Network Management
Flood And Coastal Group Engineer
Millfield - Ward Councillor Consultation
Nexus
Southern Area Command - Police
Environmental Health

Final Date for Receipt of Representations: **09.01.2017**

REPRESENTATIONS:

No letters of representations were received.

Nexus - No objection to the proposed variation at the site.

Tyne and Wear Fire Services - No objection.

Public Protection and Regulatory Services - No objection.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments

B_14_Development in areas of potential archaeological importance
 B_19_Creation of a "user friendly" environment
 R_1_Working towards environmentally sustainable development
 R_4_Incorporation of energy saving measures
 S_1_Provision of enhanced shopping service, including local provision, based on existing centres.
 S_2_Encouraging proposals which will enhance / regenerate defined existing centres.
 S_3_Support to other existing centres, local groups and small shops, including new provision
 SA_55_"City Opportunity Site" on land at Livingstone Road/ Beach Street
 T_8_The needs of pedestrians will be given a high priority throughout the city.
 T_9_Specific provision will be made for cyclists on existing/new roads and off road
 T_14_Accessibility of new developments, need to avoid congestion and safety problems arising
 CN_22_Developments affecting protected wildlife species and habitats
 EN_12_Conflicts between new development and flood risk / water resources
 EN_14_Development on unstable or contaminated land or land at risk from landfill/mine gas

COMMENTS:

The key planning issues to consider in relation to this application are:

1. Planning and Retail Policy considerations
2. Highway considerations
3. Design and amenity considerations
4. Flood Risk considerations

1. Planning and Retail Policy considerations

The NPPF was published on 27 March 2012. Paragraphs 2, 11, 12, 13 and 196 of the NPPF emphasise that planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. They confirm, also, that the NPPF is a material consideration in planning decisions.

Thus, the statutory starting point for consideration of planning applications is the development plan and development that accords with an up-to-date Local Plan should be permitted, unless material considerations indicate otherwise.

Paragraphs 7 and 8 of the NPPF explain that there are three dimensions to sustainable development - economic, social and environmental - and that these are mutually dependant, so that gains in each should be sought jointly and simultaneously.

Under the heading of 'the presumption in favour of sustainable development', Paragraph 12 confirms that the NPPF '...does not change the statutory status of the development plan as the starting point for decision making'. Thus, Paragraph 12 states that:

'...development that accords with an up-to-date local plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise'.

Paragraph 14 of the NPPF then sets out the presumption in favour of sustainable development in more detail and says that it '...should be seen as a golden thread running through both plan-making and decision-taking'.

For decision-taking this means, unless material considerations indicate otherwise:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- specific policies in this Framework indicate development should be restricted.

Thus, if an application accords with the development plan, the provisions of Paragraph 14 of the NPPF suggest that it should be permitted without delay, unless material considerations indicate otherwise. Conversely, it is clear that applications which do not accord with an up-to-date development plan should be refused, unless material considerations indicate otherwise. The second decision-taking bullet point in Paragraph 14 of the NPPF only comes into force if the development plan is '...absent, silent or relevant policies are out-of-date'.

The development plan for this part of Sunderland comprises the saved policies of the City of Sunderland Unitary Development Plan (UDP), adopted in 1998, together with the saved policies of UDP Alteration No. 2 (Central Sunderland), adopted in September 2007. Given that both of these plans were adopted prior to the publication of the NPPF (March 2012) Paragraph 215 states that following 12 months from the day of the NPPF's publication '...due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework...'

In view of Paragraph 215, Hollissvincent has highlighted a degree of conflict that exists between UDP policies S1, S2 and S3, with their requirement to sustain and enhance centre(s), with the more up-to-date Development Management policies of the NPPF i.e. the impact tests within the context of significantly adverse, as set out in Paragraph 26.

Furthermore, policy S2A of Alteration No. 2, which deals, amongst other things, with development in locations outside the City Centre Retail Core and City Centre Boundary, is also not considered to be fully consistent with the NPPF. Firstly, because this policy incorporates criteria relating to need and scale, which are no longer required by the NPPF. Secondly, the policy refers to there being no unacceptable impacts on vitality and viability of the retail core, as opposed to 'significant adverse impact' as stipulated by the NPPF. Thirdly, because Policy S2A states that there will be a strong presumption against retail development outside the City Centre boundary, which again is not consistent with the up-to-date tests as set in Paragraph 24, 26 and 27 of the NPPF.

Hollissvincent has therefore advised that more weight should be given to the policy requirements as laid down by Paragraphs 24 (Sequential Test), 26 (Impact Test) and 27 of the NPPF. The implications of these policies will be discussed in further detail in the later parts of this particular section of the report.

Returning to the site specific land use allocation it is noted that it falls within the Central Sunderland Boundary as covered by Alteration No. 2. However, the application site is not subject to any specific land use proposals in Alteration No. 2 and as a consequence the main land use allocation reverts back to UDP policy SA55.

Policy SA55 identifies the application site as forming part of a wider "City Opportunity Site" for mixed commercial development. The principal uses identified by policy SA55 as being appropriate are food and drink (A3), business (B1), hotel (C1), leisure (D1, D2) and car sales, as such it is noted that A1 (Retail) is not identified. Nevertheless, this policy permits other key town centre uses, of which retail is one, subject to three specific requirements, which are:

- a. There is no suitable alternative location, either in the City Centre or edge of centre;
- b. A development proposal does not solely or cumulatively divert investment from existing centres, so as to threaten their vitality and viability; and that
- c. It contributes to a balanced distribution of facilities accessible to all sectors of the community and will not have an adverse impact on overall travel and car use.

As will be discussed immediately below the application proposal is considered to pass the up-to-date sequential and impact tests of the NPPF and as such, on the balance of reasonableness and appropriateness meets the first two criteria, whilst the applicant's Transport Assessment work has satisfactorily demonstrated that the site is highly accessible by public transport so there is no reason to expect an adverse impact on overall travel and car use.

Consequently, and although it is noted that Retail (A1) is not identified as a principal accepted use, it is considered that the planning submission has satisfactorily demonstrated a scheme which does not conflict with a, b or c (as above) and is therefore in accordance with the main land use policy (SA55) associated with the site.

- Sequential Test, Potential Fall Back Position and Impact Test considerations

As referenced to in earlier parts of this particular section of the report the following paragraphs discuss the up-to-date NPPF Sequential Test and Impact test considerations. These two tests are crucial in assessing the acceptability or otherwise of the scheme. Paragraph 27 of the NPPF states that where an application fails to satisfy the sequential test (Paragraph 24 of the NPPF) or is likely to have a significant adverse impact on either existing, committed and planned public and private investment in a centre or centres in the catchment area or the vitality or viability of the town centre (Paragraph 26 of the NPPF) the application should be refused.

- Sequential Test

Paragraph 24 of the NPPF sets out the sequential test that applies to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan. Paragraph 24 states that '...applications for main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available should out of centre sites be considered'. In considering out of centre proposals, such as the development proposal, Paragraph 24 states '...preference should be given to accessible sites that are well-connected to the town centre'.

In applying the sequential approach, Paragraph 24 requires applicants and local authorities to demonstrate flexibility on issues such as format and scale. Furthermore, important case law has determined that there is a requirement for developers, retailers and local authorities to demonstrate flexibility and realism in applying the sequential approach, with flexibility relating to such matters as format and scale, while sequentially preferable locations must be able to provide for a retail development that will serve a similar function and achieve similar objectives to the development being proposed.

The applicant's sequential assessment submission considered the former Crowtree Leisure Centre, large vacant premises within the City Centre including Joplings Department Store and the former Hutchinson's Building, the remainder of the Holmeside Triangle and the former Vaux Brewery site. The applicant's assessment considers that all four sites do not represent suitable and viable opportunities for their development proposal. Reviewing the submission on behalf of the LPA, Hollissvincent has concurred with the applicant's planning submission, concluding that there are no sites or premises within or on the edge of the City Centre which are currently

available and suitable for meeting the scale and form of the development proposal that would be created as a result of the Section 73 application proposal.

Taken each of the sites in turn, the former Crowtree Leisure Centre is to form Phases 3 and 4 of extensions to the Bridges Shopping Centre. Phase 3 has recently seen a planning approval (ref:16/00892/FUL) for a retail unit, whilst Phase 4 could not accommodate the floorspace requirements of the retailer targeted by the Section 73 application proposal.

With regards to the former Joplings Department Store, this has recently seen a planning consent for the three upper floors for hotel use, whilst only retaining a small (ground floor) element of retail floor space which is considered too small to accommodate the proposals. The site is considered to be unavailable and unsuitable. The former Hutchinson's building, at 3000 square metres is significantly less than the proposed development and its ground floor is less than 1000 square metres. It is therefore considered that the site is unsuitable.

In respect of the Holmeside Triangle the recent planning permission granted for the Sunderland College Campus, which was partly approved due to its significant regeneration and economic benefits, now results in there being limited land available for further development and much of what does remain is currently occupied by various retail and leisure uses, including the Market. This City Centre site is therefore not considered to be available or suitable for a large foodstore development, whilst B&Q's site-specific need to secure a store of a more appropriate size would not be assisted by the remaining part of the Holmeside redevelopment opportunity.

Lastly, from the perspective of the former Vaux Brewery, which is an 'edge-of-centre' site for the purposes of the NPPF, this has long been earmarked via planning policy as a business and housing site. Looking forward into the future the former Vaux Brewery, via the emerging Core Strategy, is a Strategic Site that has the capacity to deliver significant office employment that will help to realise the full potential of the City's economy. The site is now within the ownership of the City Council, which has long-resisted large-scale retail uses, including an earlier retail-led mixed use proposal by Tesco, which has now been satisfied at the Sunderland Retail Park.

To re-iterate, there are considered to be no sites or premises within or on the edge of Sunderland City Centre which are available and suitable for the B&Q/ Morrisons application proposal. It is therefore considered that the application proposal passes the sequential test set out in Paragraph 24 of the NPPF.

Fall Back Position - Extant Planning Permission at Trimdon Street.

Through discussions with the agent it seems clear that Morrisons is no longer interested in operating a foodstore from the premises in Trimdon Street that are subject to extant consent ref:14/01440/FUL. Hollissvincent consider that there remains "an outside chance" or "slight possibility" that Morrisons may assign its lease at Trimdon Street to a food superstore competitor, so that a fall-back position exists which is "real" rather than being merely "theoretical." This fall-back position is therefore a material consideration in assessing the Section 73 application to vary condition 3 of the original outline planning consent. However it is considered that Morrisons would prefer to assign its lease to a non-food retailer, so that the probability of the fall-back occurring is low, which diminishes the weight which should be given to it.

- Impact Test

Paragraph 26 of the NPPF sets out the impact tests for applications for retail, leisure and office development that are located outside town centres and which are not in accordance with an up-to-date Local Plan. Thus, given that the current application would constitute an out-of-centre

development and as the UDP is not up-to-date in the context of the NPPF, it therefore considered it must face the more up-to-date tests set out in Paragraph 26 of the NPPF.

The NPPF requires that for applications over 2,500 sq.m an assessment of the impact on existing, committed and planned public and private investment in centre(s); as well as an assessment of impact on the vitality and viability of the town centre and wider area up to five years from when the application is made, is required.

With reference to the first impact test (the impact on existing, committed and planned investment) the hollissvincent appraisal concludes that the current proposal will not have a significant adverse impact on existing, committed and planned investment within the City Centre or in the Local Centres at Chester Road and Hylton Road. As a consequence the application proposal passes the first of the impact tests.

In regards to the second test (impact on vitality and viability) in light of the very recent health check findings for the City Centre, as set out in the Sunderland Retail Needs Assessment Report 2016, and the positive prognosis for the City Centre's future, it is considered highly unlikely that the current proposal would have a significant adverse impact in the City Centre. Similarly, it is considered highly unlikely that Chester Road and Hylton Road Local Centres would face a significant adverse impact on their vitality and viability.

As a consequence, Hollissvincent consider that the application proposal passes the two impact tests set out in Paragraph 26 of the NPPF.

- Policy and Retail Policy consideration conclusion

In summary, whilst there is likely to be some conflict with the town centre enhancement objectives contained in policies S1, S2 and S3 of the UDP, as a result of trade diversion, and whilst there is some conflict with aspects of Policy S2A of the UDP Alteration No.2 (including its presumption against retail development outside of the City Centre boundary), it is considered that these policies do not address, or are not consistent with, the up-to-date sequential and impact tests for out-of-centre retail development, as set out in paragraphs 24 and 26 of the NPPF, hence more weight should be given to the latter in this determination.

Further and notwithstanding any fall-back position that exists on the site it is concluded the planning and retail policy position is that there are no sites or premises within or on the edge of Sunderland City Centre which are available and suitable for the Morrisons application proposal. It is therefore considered that the application proposal passes the sequential test set out in Paragraph 24 of the NPPF.

There is no clear evidence to suggest that the application proposal will have a "significant adverse" impact on investment in the City Centre, or in any nearby District or Local Centres. Similarly there is no clear evidence to suggest that the application proposal would cause a significant adverse impact on the overall vitality and viability of Sunderland City Centre, or in any other nearby District and Local Centres. It is therefore considered that the application accords with the impacts tests as set out in Paragraph 26 of the NPPF.

With the above in mind, hollissvincent appraisal recommends that the proposal is acceptable on planning and retail policy grounds.

2. Highway considerations

UDP policy T14 requires new development to be readily accessible by pedestrians and cyclists, whilst development proposals should not cause traffic congestion or highway safety problems and make appropriate safe provision for access and egress. Policies T8 and T9 seek to improve facilities for pedestrians and cyclists respectively.

- Parking

The Transport Assessment indicates that there will be adequate parking provision and that the worse-case scenario would only see 76% of the proposed car parking spaces in use. Colleagues in Network Management (Street Scene) noted that the parking provision of the application proposal fell below the recommended number, as advocated in Sunderland City Council's Design Guide. However, Network Management, having assessed the scheme on its individual merit, considers the information submitted in the Transport Assessment and supporting Transport Statements to have satisfactorily demonstrated that the proposed parking provision will be adequate in this case.

- Traffic flow

Assessments of nearby junctions and roundabouts predict that they will operate within capacity with Ratio of Flow to Capacity (RFC) values below the threshold of 0.85 in all assessment periods. It is, however, noted in the Transport Assessment that there would be a minor impact on the Queen Alexandra Bridge Roundabout (south) with a predicted 2 per cent increase in peak hour traffic compared to the base traffic flows. However, Network Management has also noted that the introduction of the New Wear Bridge will address capacity issues and existing queuing problems at this roundabout.

- Sunderland Strategic Transport Corridor

The proposed development will be directly affected by Phase 3 of the Sunderland Strategic Transport Corridor (SSTC3) which will link Silksworth Way and Trimdon Street with the new Wear Crossing (Phase 2 of the SSTC). SSTC3 is currently under consideration by the Local Planning Authority.

In conclusion, it is considered that the Transport Assessment and supporting Transport Statements have satisfactorily demonstrated that the highway network will be able to cope with the traffic associated with the development proposal. The proposed development will provide for an acceptable level of parking while the site is considered to be well served by public transport.

3. Design and amenity considerations

Unitary Development Plan (UDP) policy B2 requires the scale, massing, layout and setting of proposed development to respect and enhance the best qualities of nearby properties and the locality. Policy B2 also requires development proposals to provide for an acceptable amount of privacy amenity, whilst also protecting visual and residential amenity.

The proposed scheme proposes no modification to the existing appearance of the building and any future alterations will require a separate full planning application.

4. Flood Risk considerations

UDP policy EN12 stipulates that in assessing proposals for development, the Council, in conjunction with the Environment Agency and other interested parties, will seek to ensure that the proposal would not be likely to impede materially the flow of flood water, or increase flooding elsewhere, or increase the number of people or properties at risk from flooding and not adversely affect the quality or availability of ground or surface water, including rivers and other waters.

Further to consultations with the Lead Local Flood Authority, it is considered that the proposed variation will have no significant impact on flood risk and drainage.

Conclusion

As has been discussed above the application proposal is considered to be in accordance with the main land use policy (SA55) associated with the site and is considered to pass the more up-to-date Development Management tests of the NPPF i.e. Paragraphs 24 (Sequential) and 26 (Impact). It is considered that more weight should be given to the NPPF tests than the saved UDP policies, in particular UDP policies S1 and S2 and Alteration No. 2 policy S2A, as they are not considered to be fully consistent with the NPPF.

Furthermore and again as discussed above the application proposal is considered to be acceptable from a highway engineering, design and amenity, flood risk perspective.

However, in light of there being some conflict with the town centre enhancement objectives of UDP policies S1 and S2, as a result of trade diversion, and also with aspects of policy S2A (Alteration No. 2) with its presumption against retail development outside the City Centre boundary, it is considered that in the event that Members are minded to approve, given that the application proposal is for an out-of-centre retail proposal over 5,000 sq.m, it should be referred to the Secretary of State in accordance with the Town and Country Planning (Consultation)(England) Direction 2009 (Circular 02/2009).

EQUALITY ACT 2010 - 149 PUBLIC SECTOR EQUALITY DUTY

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act. As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;
- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION:

Members be minded to approve the application for the reasons stated in the Consideration and Conclusion Sections above and referred to the Secretary of State in accordance with the provisions of the Town and Country Planning (Consultation) (England) Direction 2009 (Circular 2/09).

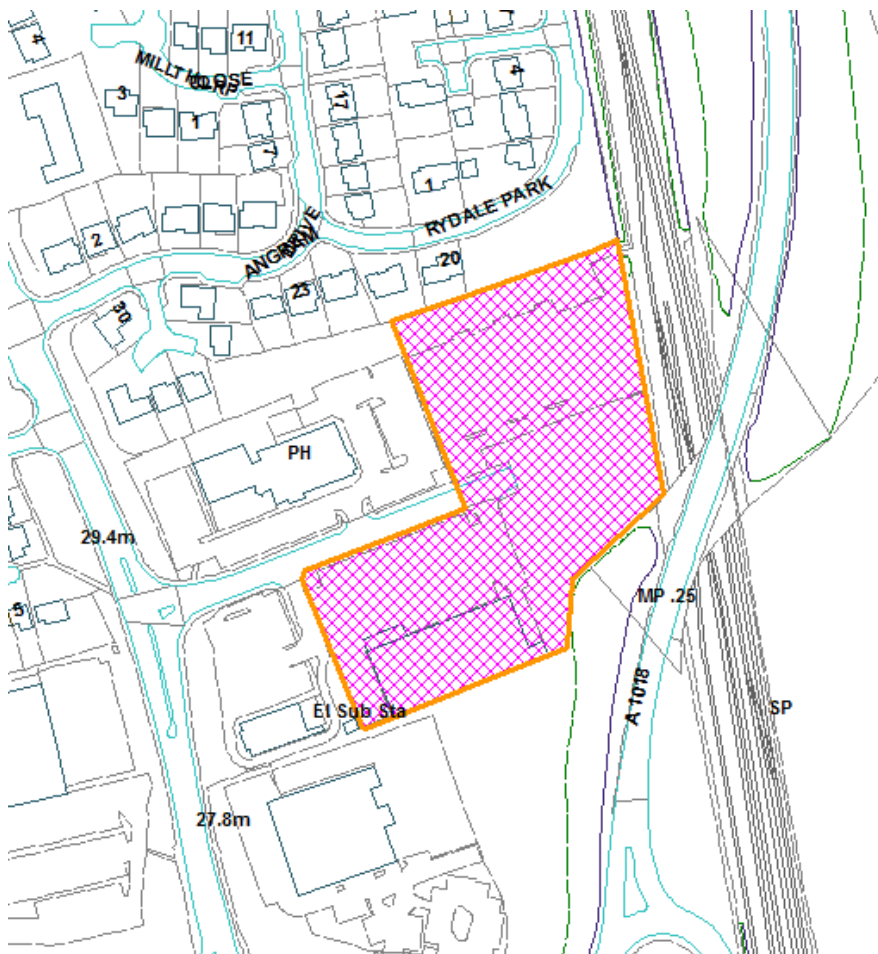
Reference No.: 17/00298/VAR Variation of Condition

Proposal: Variation of Condition 4 (Number and times of deliveries) of planning approval 16/02018/VAR to allow for maximum of two deliveries per day to be taken at, or despatched from, the approved store, with one delivery to take place between the hours of 08:00 and 13:00 and one delivery to take place between the hours of 12:00 and 18:00, Monday to Sunday (including Bank Holidays) (Additional consultation, amended proposals and additional supporting information received)

Location: Lidl Ryhope Road Sunderland SR2 9TB

Ward: Ryhope
Applicant: Lidl UK GmbH
Date Valid: 20 February 2017
Target Date: 22 May 2017

Location Plan



PROPOSAL:

The proposal relates to the variation of condition 4 (number and times of deliveries) of planning approval 16/02018/VAR to allow for a maximum of two deliveries to be taken at, or despatched from, the approved store, with one delivery to take place between the hours of 08:00 and 13:00 and one delivery to take place between the hours of 12:00 and 18:00, Monday to Sunday (including Bank Holidays) (amended proposal) at Lidl, Ryhope Road, Sunderland, SR2 9TB.

The application proposes to vary a condition of planning permission reference 16/02018/VAR which, as Members may recall, was approved at the Development Control (South) Area Sub-Committee meeting on 24th January 2017. This previous application represented a variation to the development approved in respect application refs. 15/01588/FUL and 16/01569/VAR, which were approved at the Sub-Committee meetings of 24th November 2015 and 13th December 2016 respectively.

These three previous applications relate to the erection of a new Lidl foodstore on an area of vacant land adjacent to Lidl's existing foodstore off Ryhope Road in Grangetown, development which was initially allowed following the approval of app. ref. 15/01588/FUL. The first variation application (ref. 16/01569/VAR) was submitted to secure permission for a series of minor alterations to the external appearance of the originally approved foodstore building, whilst the second variation (ref. 16/02018/VAR) sought permission for changes to the opening hours of the store. Following the approval of this application, the store is permitted to open between the hours of 07:00-23:00 Monday to Saturday and 10:00-16:00 on Sundays and Bank Holidays.

The site of the new Lidl forms part of the Salterfen commercial estate which, as well as the existing Lidl store, features a McDonalds restaurant, a home furniture store and a public house, all accessed from Ryhope Road. To the north, the site is abutted by the rear gardens of the recently-built dwellings of Angram Drive and Rydale Park and the plots of three further dwellings, which are in the process of being constructed. To the east, meanwhile, the site is bordered by the Durham coastal railway line at the point where it is bridged by the recently-built A1018 Southern Radial Route.

The approved foodstore has a gross external floor area of 2566 sq. metres and its main customer entrance is to the south-west corner, facing the approach from Ryhope Road. The store's delivery/loading area, meanwhile, is to the north side of the building, towards the rear boundaries of the dwellings fronting Angram Drive and Rydale Park. The new store opened in December 2016 and is now fully operational.

Planning permission for the new foodstore has been granted subject to a series of conditions, one of which (condition no. 4 of app. ref. 16/02018/VAR) is designed to manage the delivery arrangements for the store. The condition currently stipulates:

'Notwithstanding the submitted information, only one delivery per day shall be taken at, or despatched from, the store hereby approved and no deliveries shall take place outside the hours of:

Monday to Saturday (except Bank Holidays) 06:00 to 23.00;
Sundays and Bank Holidays 07:00 to 22.00;

In order to protect the amenities of the area in accordance with policies EN5 of the UDP'

The condition was imposed in order to ensure the store's operation would maintain acceptable standards of amenity in respect of adjacent residential properties and the wider locality and to this

end, a further condition limits the opening hours of the store (condition no. 3). Deliveries are also required to be undertaken in accordance with the Service Yard Management Plan produced by the applicant (as stipulated by condition no. 16). In addition, as required by condition no. 13 of the current planning approval, the developer has erected a noise barrier along the northern boundary of the site, adjacent to the rear gardens of properties fronting Angram Drive and Rydale Park.

The current planning permission also includes a condition (no. 15 of app. ref. 16/02018/VAR) which required the submission of a 'validating' noise assessment, the purpose of which is to validate the levels of noise predicted by the noise assessment submitted with the initial planning application (i.e. app. ref. 15/01588/FUL).

The current application initially sought to vary the terms of condition 4 to allow for a second delivery to take place at the store between the existing permitted hours (i.e. 06:00 to 23:00 Monday to Saturday and 07:00 to 22:00 on Sundays and Bank Holidays).

This initial proposal has, however, since been amended so that the application now seeks permission for a maximum of two deliveries, with one delivery to take place between the hours of 08:00 and 13:00 and one delivery to take place between the hours of 12:00 and 18:00, Monday to Sunday (including Bank Holidays).

The application has been accompanied by a supporting statement, prepared by the applicant's agent, which explains that the proposed second delivery is designed to meet the store's operational requirements and is typical of a Lidl store. The deliveries are intended to both bring stock to the store and collect its waste.

The application has also been accompanied by two noise assessments, one of which was submitted in support of the initial proposal and the second submitted in respect of the amended proposal. Both have been prepared by Rapleys (the planning agent).

No other conditions attached to the current planning approval are proposed to be varied as part of this application and in the event Members were minded to approve the application, all other conditions attached to the current planning permission which remain relevant to the development and the ongoing operation of the store (including those relating to store opening hours and the maintenance of noise mitigation measures) would be imposed in respect of the new permission.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Network Management
Ryhope - Ward Councillor Consultation
Environmental Health
Network Management
Ryhope - Ward Councillor Consultation
Environmental Health

Final Date for Receipt of Representations: **24.04.2017**

REPRESENTATIONS:

Public consultation:

Two letters of representation have been submitted in respect of the planning application, one from the occupier of 21 Angram Drive and one from the occupier of 1 Rydale Park.

The following issues have been raised by the objector from 21 Angram Drive:

- The store has already been receiving two deliveries per day, sometimes outside the existing permitted hours;
- Residents always feared that the position of the delivery bay would give rise to noise issues given their experiences with the existing store;
- The first noise assessment submitted with the planning application indicates that noise from deliveries exceeds predicted levels by 10dB which, given that the decibel is a logarithmic unit of measurement, is a massive increase in noise;
- The effectiveness of the proposed acoustic fencing along the side of the delivery bay is based on guesswork and given the inaccuracies in previous reports, there is no confidence that it will work;
- Lidl should not be allowed a second delivery until it can be demonstrated that one delivery is within required dB limits;
- Lidl should be required to install permanent sound monitoring equipment, to be available to residents suffering from noise nuisance;

The following issues have been raised by the objector from 1 Rydale Park:

- The proposed delivery times are unacceptable and have had a huge impact on family life and health;
- Deliveries at 6am have woken up children and deliveries late in the evening disturb children going to bed;
- There is no break at weekends;
- The banging from unloading lorries is 'horrendous';
- Reasonable delivery times should be put in place - i.e. 9am to 6pm on weekdays, 9am to 5pm on Saturdays and no deliveries on Sundays or Bank Holidays.

Further consultation with the public was undertaken on receipt of the amended proposal, with consultation letters issued on 3rd April 2017. No further formal representations to the application have been received to date, although the consultation period does not expire until 24th April 2017.

In addition to the above, residents occupying properties adjacent to the site have submitted a range of more general correspondence to the City Council's Development Management office regarding concerns over delivery practices and issues relating to noise intrusion at the store, the quality and accuracy of the noise assessments submitted on behalf of Lidl and some of the decisions made by the Council's Development Management team in relation to enforcement action.

Council's Highways officers:

No observations or recommendations.

Council's Environmental Health team - comments on initial proposal:

The Council's Environmental Health officers have considered the methodology and conclusions of the first noise assessment submitted with the application (produced by Rapleys, ref.

958/104/1), which was designed to support the proposal for two deliveries to the store between the existing permitted hours.

It is firstly noted that deliveries are currently restricted to one per day, with the permission for this arrangement based on the predictive noise assessment submitted with the original planning application for the foodstore development. This assessment calculated and predicted noise levels associated with the store's operation and the impact this would have on the amenity of local residents and it concluded that noise impacts, including from deliveries, would largely be acceptable.

The report submitted with the current application provides additional background noise monitoring and the measurement of a single delivery between 17:55 and 19:01 on 06/02/2017. The associated LAeq (equivalent continuous noise level, i.e. the 'average' noise level measured over the course of the delivery event) measured during this period was 53.8dB, whilst the LMax (maximum noise level measured during the delivery event) was 69.5dB. These noise levels are significantly above those predicted by the assessment submitted with the original planning application - indeed, the original assessment underestimated delivery noise exposure by around 10dB (meaning actual noise levels could be perceived as being twice as loud as predicted).

The Environmental Health team has, however, expressed concern in relation to the methodology used within the assessment, particularly as it has not been undertaken in accordance with the recommendations provided by British Standard 4142:2014.

Notwithstanding this concern, the noise levels measured by the assessment would appear to support the concerns and issues raised by neighbouring residents in relation to noise from deliveries and the effect they are having on their amenity and quality of life. In addition, noise monitoring undertaken by the Council's Environmental Health team within the home of a resident has confirmed the audibility of regular impact noise whilst deliveries take place.

The assessment recommends that in order to address the exceedance of the predicted noise levels, an additional 2 metres high noise barrier should be installed along the northern side of the delivery bay. It is suggested that this will attenuate noise by 13dB, thus reflecting the noise levels predicted by the original assessment.

The Council's Environmental Health team consider, however, that whilst the barrier may result in betterment to the noise levels experienced to the ground floors of nearby dwellings, it is likely that rooms to first and second floors will not benefit from significant betterment and may still experience elevated noise levels. Rooms to these floors are likely to be bedrooms and could be adversely impacted by deliveries taking place early in the morning or late in the evening. It is also of concern that data from a different location has been used in calculating the predicted effectiveness of the barrier - given that the store is fully operational, there is not considered to be any reason not to use real-time, site-monitored data.

In summary, the Council's Environmental Health team consider that it is difficult to fully consider the prospect of allowing a second delivery to the store when the submitted noise assessment indicates that the store is currently unable to provide one delivery at a level that does not impact negatively on nearby residential premises without the installation of additional mitigation. The current noise assessment does not facilitate a robust assessment of the proposal and it is therefore recommended that a further assessment is undertaken in accordance with BS4142:2014, with a focus on an appropriate penalty for reported 'banging' noises. The assessment should also be fully informed by actual on-site data, rather than imported data. The installation of any mitigation proposed by the assessment prior to the preparation of a new report would also be beneficial.

Council's Environmental Health team - comments on revised proposal:

The Council's Environmental Health team have considered the methodology and conclusions of the noise assessment submitted to support the revised proposal (also produced by Rapleys, ref. 958/104/2) for two deliveries per day, with one delivery between 08:00 and 13:00 and the second between 12:00 and 18:00.

The second assessment includes background noise measurements taken at one of the new dwellings fronting Rydale Park, in addition to measurements of delivery activity during one delivery event. The measurements have been taken following the erection of the noise barrier along the side of the delivery bay, as recommended by the first noise assessment. It is observed that delivery noise has been afforded a significant acoustic penalty to compensate for impact noise associated with offloading activities and the resulting noise level has been compared to prevailing background noise levels.

A difference of 2dB has been reported during the monitoring period - BS4142 suggests that a specific noise exceeding the background by +10dB or more is likely to be an indication of a significant adverse impact, whilst an exceedance of around +5dB is likely to be an indication of an adverse impact. The lower the rating level is to the measured background sound level, the less likely an adverse impact and as such, on the basis of the assessment provided, the impact is considered to be low.

The Environmental Health team notes, however, that noise monitoring has only been undertaken at ground floor level of nearby dwellings and, as highlighted previously, first and second floor rooms are less likely to benefit from the mitigation provided by the new noise barrier.

In recognition of this, it is noted that Lidl now propose a reduced delivery schedule whereby the first delivery to the store will take place between 08:00 and 12:00 midday and the second between 12:00 midday and 18:00, when bedroom and resting areas are less likely to be used and negatively impacted. Ensuring that deliveries take place between these times is likely to further reduce the difference between the measured noise levels and the prevailing background noise (which were taken before 08:00, after which time background noise levels typically increase). The Council's Environmental Health team have recommended that a condition stipulating these delivery times be imposed in the event the application is approved.

In addition, it is understood that further mitigation, in the form of resilient matting on the loading bay ramp, has been installed since the undertaking of the assessment. This measure is likely to positively impact on any exceedance above background noise levels.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments

EN_5_Protecting sensitive areas from new noise/vibration generating developments

COMMENTS:

The principle of the proposed redevelopment of the site to deliver a new foodstore, with associated access, parking and landscaping has already been established through the approval of application ref. 15/01588/FUL at the Development Control (South) Area Sub-Committee

meeting on 24th November 2015. In determining the initial application, regard was given to the full range of material considerations relevant to the proposed development, including the implications of the development in respect of land use, impact on local retail centres, visual and residential amenity, ecology, flood risk and drainage, land contamination and highway and pedestrian safety.

The proposed variation of condition 4 of the extant planning permission seeks permission to amend the number and timings of deliveries associated with the store. The nature of the proposed variation is such that it is only considered to give rise to fresh material issues in relation to the impact of the revised delivery arrangements on the amenity of the locality and in particular, the living conditions of the adjacent residential dwellings. As such, it is not considered necessary to revisit the full range of matters previously addressed in the determination of the initial application. For a consideration of the full range of matters listed above, please refer to the report to the Sub-Committee produced in respect of app. ref. 15/01588/FUL.

RELEVANT PLANNING POLICY

In assessing the merits of the proposed variation to the approved scheme, regard must be given to the guidance provided by the National Planning Policy Framework (NPPF). It sets out current Government planning policy and planning applications must be determined with regard to it. The NPPF outlines a series of 12 'core planning principles' which underpin plan-making and decision-taking and are considered to contribute to the over-arching aim of delivering sustainable development. Particularly relevant in this case are the principles that the planning system should proactively drive sustainable economic development and seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Also of relevance is paragraph 19 of the NPPF, which stresses the role of the planning system in supporting sustainable economic growth and advises that planning should operate to encourage and not act as an impediment to sustainable growth. Paragraph 20, meanwhile, states that Local Planning Authorities should plan proactively to meet the development needs of business and support and economy fit for the 21st century.

Particularly pertinent to the consideration of this application is section 11 of the NPPF, paragraph 109 of which sets out that the planning system should contribute to and enhance the natural and local environment by, amongst other measures, preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

With specific regard to noise, paragraph 123 requires planning policies and decisions to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put upon them because of changes in nearby land uses since they were established;
- identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

Also of relevance is the Government's online National Planning Practice Guidance (NPPG) resource, which provides more detailed guidance and further context in respect of the broader policy framework provided by the NPPF. The NPPG offers a range of additional planning practice

guidance in relation to noise and confirms that it is an issue which needs to be considered when new developments may create additional noise (paragraph 001, reference ID: 30-001-20140306). It also advises that whilst noise can override other planning concerns, it should not be considered in isolation, separately from the economic, social and other environmental dimensions of the proposed development (paragraph 002, reference ID: 30-002-20140306).

The NPPG states that Local Planning Authorities' decision-taking in respect of development proposals should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved;

This would include identifying whether the overall effect of the noise exposure is, or would be, above or below the Significant Observed Adverse Effect Level (i.e. the level of noise exposure above which significant adverse effects on health and quality of life would occur) and the Lowest Observed Adverse Effect Level (i.e. the level of noise exposure above which adverse effects on health and quality of life can be detected) for the given situation. Below these is the No Observed Effect Level, the level of noise exposure below which no effect at all on health or quality of life can be detected. Further information on these Levels is provided by the Explanatory Note to the Noise Policy Statement for England (NPSE).

Paragraph 005 (ID: 30-005-20140306) of the NPPG provides some guidance for recognising when noise could be a concern in considering a development proposal. It states that at the lowest extreme, when noise is not noticeable, there is by definition no effect (i.e. No Observed Effect Level). As noise exposure increases, it will become more noticeable but there will be no adverse effect so long as the exposure does not cause any change in behaviour or attitude and there is no perceived change in quality of life.

Paragraph 005 continues by advising that as noise exposure increases further, it crosses the Lowest Observed Adverse Effect Level boundary, above which noise starts to cause small changes in behaviour and attitude (e.g. needing to turn up the volume on the TV) and begins to have an adverse effect. In such situations, consideration needs to be given to mitigating and minimising those effects (taking into account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the Significant Adverse Effect Level boundary to be crossed - above this level, the noise causes a material change in behaviour (e.g. keeping windows closed for most of the time or avoiding certain activities during noisy periods). If exposure is above this level, the planning system should be used to avoid this effect occurring, but such decisions must still take into account of the economic and social benefits of the activity causing the noise.

At the highest extreme, noise exposure would cause extensive and sustained changes in behaviour without an ability to mitigate the effect of the noise. In such cases, the impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be prevented from occurring.

Paragraph 006 (ID 30-006-20141224) of the NPPG goes on to advise that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation. Such factors include:

- The source and absolute level of noise together with the time of day it occurs. Some types and levels of noise will cause a greater adverse effect at night than during the day because people tend to be more sensitive to noise at night as they are trying to sleep and because background noise tends to be lower;
- For non-continuous sources of noise, the number of noise events and the frequency and pattern of occurrence of the noise;
- The spectral content of the noise (i.e. whether the noise contains particular low or high frequency content) and the general character of the noise (i.e. whether or not the noise contains particular tonal characteristics or other particular features);

Paragraph 006 also advises that other specific factors should be taken into account, such as:

- the cumulative impacts of different sources of noise, along with the extent to which the source of noise is intermittent and of limited duration;
- whether adverse internal effects can be completely removed by closing windows;
- recognising that where high noise levels already exist, even a small increase in overall noise levels may result in a significant adverse effect occurring;
- the effect of noise on external amenity spaces;

In terms of mitigation, paragraph 008 (ID 30-008-20140306) of the NPPG states that the type required will depend on the nature of the development being considered and the character of the proposed location. There are, however, four broad types of mitigation:

- engineering (i.e. reducing noise generated at source and/or containing the noise generated);
- layout (i.e. optimising the distance between the noise source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose-built barriers);
- using planning conditions/obligations to restrict noisy activities and/or specifying permissible noise levels;
- mitigating the impact on areas likely to be affected through noise insulation when the impact is on a building;

In considering impacts of noise on residential developments, paragraph 009 (ID 30-009-20140306) of the NPPG states that noise impacts may be partially off-set if residents of the affected dwellings have access to:

- a relatively quiet façade (containing windows to habitable rooms) as part of their dwelling, and/or;
- a relatively quiet external amenity space for their sole use (e.g. a garden or balcony). Intended benefits would, however, be reduced with increasing noise exposure;
- a relatively quiet, protected, nearby external amenity space for sole use by a limited group of residents as part of the amenity of their dwellings and/or;
- a relatively quiet, protected, external publically accessible amenity space (e.g. a public park) that is nearby.

The guidance provided by the NPPF and NPPG is underpinned by the Noise Policy Statement for England (NPSE), the 'vision' of which is to 'promote good health and good quality of life through effective management of noise within the context of Government policy on sustainable development'. Its policy aims are essentially those set out by aforementioned paragraph 123 of the NPPF. The Explanatory Note to the NPSE provides further information on the noise 'Effect Levels' noted earlier and stresses (at paragraph 2.22) that 'it is not possible to have a single objective noise-based measure that defines Significant Observed Adverse Effect Level (SOAEL)

that is applicable to all sources of noise in all situations. Consequently, SOAEL is likely to be different for different noise sources, for different receptors and at different times'.

The NPSE makes reference to guidance provided by the World Health Organisation (WHO) when discussing noise impacts. The WHO's Guidelines for Community Noise provides values for annoyance in relation to external noise exposure and are set at 50 or 55dB(A), representing day time levels below which a majority of the adult population will be protected from becoming moderately or seriously annoyed respectively.

The relevant guidance of the NPPF and NPPG as detailed above feeds into policies EN5 and B2 of the Council's adopted Unitary Development Plan (UDP). Policy B2 echoes the NPPF's aim of maintaining appropriate standards of amenity, whilst policy EN5 sets out that where development is likely to significantly increase ambient noise levels, the Council will expect an applicant to carry out an assessment of the nature and extent of likely problems and incorporate suitable mitigation measures in the design of the development. In cases where unacceptable noise intrusion cannot be practically mitigated, planning permission should be refused.

CONSIDERATION OF INITIAL PROPOSAL

With regard to the amenity implications of the proposed delivery arrangements, it is considered that the primary matter for assessment is whether the provision of a second delivery to the store will result in nearby residential dwellings experiencing levels of noise which will have a 'significant adverse impact' on their quality of life (as per paragraph 123 of the NPPF).

As Members are aware, the existing planning permission for the new Lidl foodstore currently allows for one delivery to be taken at, or despatched from, the store between the hours of 06:00 to 23:00 Monday to Saturday and 07:00 to 22:00 on Sundays and Bank Holidays. These delivery arrangements were considered to be acceptable on the basis that the noise assessment submitted with the initial planning application predicted that the maximum internal noise levels to be experienced by the nearest residential dwellings would only be 1dB greater than the recommended criteria levels contained in British Standard 8233. These predicted noise levels also informed the consideration of the proposed location of the delivery bay at the northern end of the site, adjacent to the dwellings of Rydale Park and Angram Drive.

Since the opening of the store, occupiers of the dwellings closest to the site have regularly complained to the Council's Development Management and Environmental Health teams that deliveries are very noisy, to the extent that quality of life is being detrimentally affected. Complaints have also indicated that Lidl were routinely carrying out more than one delivery to the store per day and were, on occasion, also delivering outside of permitted hours.

The initial proposal sought to secure a variation of condition 4 of the extant planning permission to authorise a second delivery between the existing permitted hours. The proposal was accompanied by a noise assessment which measured noise levels associated with a delivery taking place at the site. As set out in the 'Representations' section of this report, the Council's Environmental Health team expressed concern that the noise from deliveries had been measured as 53.8dB LAeq and 69.5dB LAm_{ax}, around 10dB greater than had been predicted by the assessment submitted with the first planning application. In addition, it was considered that the value of the mitigation proposed by the application (i.e. the new noise barrier along the side of the delivery bay) had not been robustly demonstrated given that its effectiveness had been calculated using predictive data.

The Council's Environmental Health team ultimately considered that the noise levels measured by the assessment demonstrated that, as has been suggested by neighbouring residents, deliveries to the store were having a negative impact on the amenity of the closest dwellings to the site, particularly where deliveries were being taken early in the morning or late in the evening, when residents of the dwellings were more likely to be resting or occupying bedrooms.

The proposal to introduce a second delivery would, it was considered, exacerbate this impact, particularly if, for example, two deliveries were to take place early in the morning or late in the evening or if residents were to experience one early delivery and one late delivery during any given day. The concerns of objectors to the proposal in relation to the impact of the proposed second delivery during existing permitted hours were therefore shared.

Indeed, in the Council's view, introducing a second delivery within the existing permitted hours would result a significant adverse effect on the living conditions and quality of life of the nearest residential dwellings to the site, in conflict with the objectives of the aforementioned policy guidance provided by the NPPF, NPPG, NPSE and policies EN5 and B2 of the Council's UDP.

These significant concerns were communicated to the agent of the applicant, who was requested to undertake a more robust assessment of noise at the site, which should properly account for, and demonstrate the effectiveness of, any mitigation proposed to alleviate concerns regarding delivery noise.

Members should note that at this point, given the concerns of the Council's Environmental Health officers in respect of the harm to amenity being caused by delivery noise and as the Council has been made aware of Lidl already accepting more than one delivery per day at the store, the Council's Development Management Compliance team served a Temporary Stop Notice (TSN). The purpose of this was to prevent the undertaking of a second delivery to/from the store for a temporary period of 28 days from the date the TSN was served (20th March 2017). At the same time, the Compliance team also issued a Breach of Condition Notice (BCN), designed to take effect immediately after the TSN had expired.

CONSIDERATION OF REVISED PROPOSAL

Subsequent to the aforementioned concerns being communicated to Lidl and the serving of the TSN and BCN, Lidl submitted a new noise assessment for the Council's consideration and set out proposed revisions to the delivery arrangements and additional mitigation in support of seeking a second delivery to the store.

As set out in the 'Representations' section of this report, the Council's Environmental Health team has advised that the second assessment provides a more robust consideration of the noise generated by a delivery event at the store. The second assessment also uses measurements taken after the erection of the noise barrier alongside the delivery bay proposed by the first assessment. As such, it is considered to provide a more representative and reliable assessment of delivery noise than was offered by the first report (and the predictive assessment submitted with the initial planning application for the new store).

It is recognised that only one delivery event has been measured, but the Council's Environmental Health officers do not consider there to be any reason to suggest that the measurements taken are not representative of a typical delivery to the store, especially as the methodology set out by BS4142 has been followed and as the assessment has been carried out by a competent acoustic consultant.

The second assessment identified that following the erection of the new noise barrier, noise from deliveries would exceed prevailing background noise levels by 2dB, a level which is considered to demonstrate that the effect of delivery noise on the amenity of neighbouring dwellings is low. The assessment did not, however, consider whether the mitigation afforded by the noise barriers at the site would be of the same benefit to upper floor rooms within the nearest dwellings.

In recognition of this, Lidl have proposed to amend the originally-proposed delivery times so that one delivery would take place between 08:00 and 13:00 and the second between 12:00 and 18:00. The Council's Environmental Health team consider that this arrangement would mean deliveries would not occur during the early morning or late evening, when the bedroom and resting areas of nearby dwellings are less likely to be used or impacted and when residents are more likely to be away from the property (e.g. at work or at school). Moreover, the proposed hours of deliveries is likely to further reduce the difference between the measured noise levels and prevailing background noise levels (which were measured before 08:00), since background levels typically increase over the course of the day.

In addition, Lidl have proposed further mitigation in the form of noise resilient matting installed to the loading bay ramp, whilst Lidl have also begun using a pallet truck with a 'silent drive' feature, which reduces driving and lifting noise to a minimum and is designed for use in noise-sensitive areas. These measures are likely to have a positive impact on any exceedance above background noise levels.

To summarise, the Council's Environmental Health team consider that the proposed revisions to the delivery arrangements and the additional mitigation put forward by Lidl would mean that the level of noise resulting from delivery events are likely to only marginally exceed background noise levels. As such, the impact from deliveries on the amenity of neighbouring dwellings is considered to be low. The impact on the amenity of dwellings will be lessened further by the timings of deliveries, which will only take place after 8am and not after 6pm, outside of the times of day when residents are likely to be resting.

On this basis, it is considered that the proposed delivery arrangements would not cause a significant adverse effect on the living conditions of the neighbouring residential properties, in accordance with the aforementioned policy objectives of the NPPF, NPPG, NPSE and policies B2 and EN5 of the Council's UDP.

Members should note that given the conclusions of the Council's Environmental Health team, the Council's Development Management Compliance team has withdrawn the aforementioned Temporary Stop Notice. The Breach of Condition Notice, however, remains extant and unless withdrawn, would come into effect after the Committee meeting on 29th April. Members should also note that condition 15 of the existing planning permission, which required the submission of a 'validating' noise assessment, has now been discharged on the basis that the Council's Environmental Health team are satisfied that the predictions made by the noise assessment submitted with the initial planning application have been adequately validated.

CONCLUSION

As set out in the 'Relevant Planning Policy' section of this report, both the NPPF and NPPG essentially promote an approach to noise whereby if it is anticipated that noise will have a harmful effect on residential amenity, Local Planning Authorities should seek to use mitigation measures to reduce any adverse impacts to an acceptable level. Furthermore, the NPPG (at paragraph 006) is clear in advising that when considering the issue of noise, Local Planning Authorities must take into account matters such as the time of day a noise occurs, the numbers of noise events and the type of noise occurring.

In this case, it was clear that deliveries to the store were adversely affecting the living conditions of neighbouring residential properties and so allowing a second delivery to the store within the existing permitted hours was not considered to be acceptable. Lidl have, however, proposed revisions to the proposals and additional mitigation which together serve to reduce the level of noise generated by delivery events and restrict the hours during which deliveries will take place.

As concluded by the Council's Environmental Health team, the level of noise generated by deliveries to the store is now considered to be low, subject to the maintenance of the new noise barrier alongside the delivery bay and the introduction and maintenance of the resilient matting to the delivery ramp. This conclusion is based on actual data from measurements taken at the store.

It must also be taken into account that the noise during a delivery is non-continuous - a delivery typically takes no more than 1 hour and is characterised by intermittent noises, i.e. the engine of the delivery vehicle followed by bangs and crashes from goods and trolleys being rolled out of or into the rear of the vehicle. Furthermore, there are only proposed to be two deliveries to the store per day; as such, for the vast majority of each day and overnight, there will be no noise at all from deliveries to the store.

The impact of deliveries will then be lessened further by the timings proposed by Lidl, which will mean that deliveries will take place during reasonable, less sensitive hours, when residents of the nearest properties are less likely to be resting and when background noise levels at the site have increased. The two periods in which deliveries are proposed to occur would also limit the likelihood of 'back-to-back' deliveries, i.e. one delivery taking place immediately after the other.

In summary, subsequent to the introduction of additional mitigation measures, the noise levels generated by delivery events have been measured as only marginally exceeding background noise levels. This marginal exceedance will be further mitigated by the additional mitigation measures put forward by Lidl and its impact on amenity limited significantly by deliveries not taking place during the early morning or late evening. As such, it is considered that the proposed provision of two deliveries during the stipulated hours will not have a significant adverse effect on the living conditions of the nearest residential properties and it is therefore considered that the revised delivery proposals accord with the aims and objectives of the NPPF, NPPG, NPSE and policies B2 and EN5 of the Council's UDP in this regard.

The concerns of objectors in relation to the potential for additional noise and disturbance in association with the proposed second delivery are noted. As set out earlier in this report, it is recognised that deliveries have been giving rise to significant adverse effects on amenity and as a consequence, permitting a second delivery within the existing permitted hours was not considered to be acceptable.

It must now be taken into account, however, that the additional mitigation proposed by Lidl will reduce noise from deliveries and that deliveries would only take place after 08:00 and no later than 18:00. Consequently, in the event the application is approved, there would no longer be deliveries between 06:00 and 08:00 and nor would deliveries be permitted until 23:00, as is allowed by the current planning permission for the development, thus ensuring deliveries no longer occur during the most sensitive periods of the day.

In this regard, Members should note that in the event the application was refused, the existing condition relating to delivery arrangements, which permits earlier and later deliveries than are now proposed, would continue to apply to the operations at the store. It is therefore suggested that although a second delivery to the store is being sought, the proposals do offer some betterment to the existing permitted arrangements insofar as delivery noise would be reduced and deliveries would take place at less sensitive times of the day.

An objector to the application has suggested that even more restrictive delivery hours should be imposed, including preventing any deliveries on Sundays and Bank Holidays. It must be noted, however, that the noise assessments submitted do not identify any marked difference in background noise levels on Sundays/Bank Holidays and that seeking to impose further restrictions on the permitted days and hours of delivery is not supported by the available noise data.

It has also been suggested that Lidl should not be allowed a second delivery until it can be demonstrated that a delivery can take place within 'required' noise limits. Members must note, however, that as detailed earlier in this report, the relevant national and local planning policies do not 'set' specific limits for noise; rather, the appropriateness of any given level of noise must be considered on its merits and with regard to the particular characteristics of the relevant site, including existing background noise, and the characteristics of the noise itself, including the type of noise occurring, its frequency, duration and its timings.

Objectors to the proposals have also set out concerns regarding alleged breaches of planning control and planning conditions by Lidl, particularly in relation to the numbers and times of deliveries to the store. Members must note, however, that the Council's Development Management Compliance team possess the powers to take enforcement action in respect of breaches of planning control and planning conditions, as has already been demonstrated by serving of the TSN and BCN by the Compliance team. In the event Members were minded to approve the current application, the Compliance team would be able to intervene and, where appropriate, take enforcement action in respect of any breaches of any planning permission so granted. In addition, Members should note that the Council's Environmental Health team are afforded powers to intervene in situations where public nuisance is being caused by, for example, unacceptable noise intrusion.

Given the enforcement powers available to the Council in this regard, planning permission could not be withheld on grounds relating to concerns that Lidl may, in the future, breach the terms of any permission granted by the Council and nor, for example, could planning permission be withheld until Lidl 'prove' that they are able to operate within the terms of the proposed delivery arrangements.

The Council has also received more general complaints in respect of activities at the site, including in relation to the conduct of delivery drivers, the cleaning of the car park at unsociable hours, the store's alarm being set off at unsociable hours and instances of anti-social behaviour in the store's car park. These matters are, it is considered, beyond the scope of planning control and instead must be raised with other bodies with relevant powers such as the Council's Environmental Health team (in relation to noise) and, if necessary, the police (in relation to anti-social behaviour).

The implications of the proposed variation of condition 4 of the extant planning permission at the site have been given very careful consideration by the Council's Development Management and Environmental Health officers, having regard to the relevant planning policy guidance provided by the National Planning Policy Framework, National Planning Practice Guidance and the Council's Unitary Development Plan.

For the reasons detailed above, it is considered that subject to the maintenance of the mitigation measures proposed by the application (i.e. the acoustic fencing, resilient matting to the delivery ramp and use of the 'silent drive' pallet truck), noise from deliveries will have a low impact on the amenity of the nearest residential dwellings. Whilst there is still a slight exceedance above background noise during deliveries (calculated as +2dB), it is considered that this will be appropriately compensated by the proposed timings of deliveries, which would not take place

before 08:00 or after 18:00. This will ensure that residents are not exposed to delivery noise at the most sensitive times of the day and when conditions suitable for resting can reasonably be expected. The consideration of the application and the conclusion reached has been informed by what is considered to be robust and representative actual data measured at the application site using methodology which follows the appropriate British Standards and codes of practice.

Given the technical evidence and conclusions provided by the report in relation to noise from the deliveries at the store, which are not disputed by the Council's Environmental Health officers, and given the guidance set out by the NPPF and NPPG in relation to noise and its effect on residential amenity, it is considered that the Council could not reasonably sustain a refusal of planning permission on grounds relating to noise and disturbance from deliveries to the store. In this regard, it is considered that the Council, in its capacity as Local Planning Authority, cannot reasonably demonstrate that the proposed second delivery would have a significant adverse effect on the amenity of neighbouring noise sensitive properties, subject to appropriate conditions requiring the maintenance of mitigation measures and numbers and timings of deliveries.

As such, the proposal is considered to comply with the relevant requirements of the NPPF, NPPG and policies B2 and EN5 of the Council's adopted Unitary Development Plan (1998) and the application is consequently recommended for approval.

EQUALITY ACT 2010 - 149 PUBLIC SECTOR EQUALITY DUTY

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act. As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;
- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to'

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION: Approve, subject to the conditions below;

Conditions:

1 The development to which this permission relates must be begun not later than three years beginning with the date on which this permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time.

2 Unless otherwise first agreed in writing with the Local Planning Authority, the development hereby granted permission shall be carried out in full accordance with the following approved plans:

The amended planning application form received 14/12/2016;
The location plan received 16/02/2017 (drawing no. A(90)EXP001, rev 3);
The existing site layout submitted with app. ref. 15/01588/FUL, received 30/07/2015 (drawing no. A(90)EXP002, rev 1);
The existing elevations submitted with app. ref. 15/01588/FUL, received 30/07/2015 (drawing no. A(00)EXE001, rev 01);
The existing ground floor plan submitted with app. ref. 15/01588/FUL, received 30/07/2015 (drawing no. A(00)EXP001, rev 01);
The existing roof plan submitted with app. ref. 15/01588/FUL, received 30/07/2015 (drawing no. A(00)EXP201, rev 01);
The amended proposed site layout submitted with app. ref. 15/01588/FUL, received 12/10/2015 (drawing no. A(90)GAP005, rev 12);
The amended proposed elevations received 28/09/2016 (drawing no. A(00)GAE001, rev C1);
The amended proposed roof plan received 30/09/2016 (drawing no. A(00)GAP201, rev C1);
The amended proposed floor plans received 30/09/2016 (drawing no. A(00)GAP001, rev C1);
The amended landscaping plan submitted with app. ref. 15/01588/FUL, received 12/10/2015 (drawing no. R/1738/1A);
The amended proposed car park levels submitted with app. ref. 15/01588/FUL, received 12/10/2015 (drawing no. 001, rev P3);
The proposed lighting plan submitted with app. ref. 15/01588/FUL, received 12/10/2015 (revision C);
The lighting specifications submitted with app. ref. 15/01588/FUL (produced by Philips, dated 20/05/2015);

The proposed drainage plans submitted with app. ref. 15/01588/FUL received 12/10/2015 (drawing nos. D101, rev P3 and D103, rev P2);

The Flood Risk and Foul Drainage Assessment submitted with app. ref. 15/01588/FUL (produced by WYG, revision B dated 08/10/2015);

The Service Yard Management Plan submitted with app. ref. 15/01588/FUL (produced by WYG, dated October 2015);

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan.

3 The premises shall only be operated for the purposes hereby approved between the hours of 07:00 and 23:00 Monday to Saturday and 10:00 and 16:00 Sundays and Bank Holidays, in order to protect the amenities of the area and to comply with policy EN5 of the UDP.

4 Notwithstanding the submitted information, a maximum of two deliveries per day shall be taken at, or despatched from, the store hereby approved. Not more than one delivery shall arrive between the hours of: Monday to Sunday - 08:00 to 13:00, and not more than one delivery shall arrive between the hours of: Monday to Sunday - 12:00 to 18:00. No deliveries at all are permitted between the hours of 18:00 and 08:00 (Monday to Sunday). The restrictions are required in order to ensure that the amenity of nearby residents is not adversely affected by way of noise and disturbance from deliveries to the store and to accord with the objectives of the NPPF, NPPG and policy EN5 of the UDP.

5 All planting, seeding or turfing comprised in the approved details of landscaping (received 12/10/2015, drawing no. R/1738/1A) shall be carried out in the first planting season following the occupation of the buildings or the completion of the development whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation, in the interests of visual amenity and to comply with policy B2 of the UDP.

6 Notwithstanding any details which have been provided, no products or waste items shall be stored outside the building, including in the delivery area to the north elevation of the store, in the interests of visual amenity and highway safety and to comply with policies B2 and T14 of the adopted Unitary Development Plan.

7 Notwithstanding the submitted plans and the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any statutory instrument which revokes and re-enacts the provisions of that Order, the gross external area of the store hereby approved shall not exceed 2,566 sq. metres, in order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the UDP.

8 Notwithstanding the submitted plans, the total sales area of the store hereby approved shall not exceed 1,450 sq. metres including, for the avoidance of doubt, any mezzanine floorspace, in order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the UDP.

9 Notwithstanding the submitted plans, the comparison goods sales area within the new store shall not exceed 300 sq. metres, in order to protect the vitality and viability of nearby local centres and comply with the requirements of the NPPF and policies S1 and S3 of the UDP.

10 The noise barrier/fence approved via the discharge of condition 19 of app. ref. 15/01588/FUL (LPA reference: 16/01155/DDI) and the noise barrier proposed alongside the delivery bay (as detailed in the Noise Assessment for Lidl UK GmbH, Ryhope Road, Sunderland, produced by Rapleys, dated February 2017, ref. 958/104/1) shall be installed in full accordance with the agreed/submitted details prior to the commencement of more than one delivery to the store per day and shall be maintained as such thereafter for the lifetime of the development, in order to protect the amenities of the area and to accord with the requirements of policy EN5 of the UDP.

11 The plant associated with the development hereby approved shall only be installed at the locations detailed on the proposed site plans (drawing no. A(90)GAP005, rev 12) and in accordance with the specifications provided within the Noise Assessment (WYG, dated July 2015) submitted with the application, in order to protect the amenity of the locality and to comply with the requirements of the NPPF and policy EN5 of the UDP.

12 The servicing of the delivery area of the store hereby approved shall be undertaken in full accordance with the Service Yard Management Plan (prepared by WYG, dated October 2015) at all times, in order to protect the amenity of the locality and comply with the requirements of policy EN5 of the UDP and the NPPF.

13 No external plant or machinery, other than that detailed by the approved plans and particulars, shall be installed to roof of the delivery area of the building hereby approved without full details of the proposed plant and machinery firstly being submitted to and approved in writing by the Council as Local Planning Authority. For the avoidance of doubt, the details to be submitted must include an assessment of the noise likely to be generated by the plant or machinery in question and its impact on the amenity of nearby noise-sensitive properties. Any such plant or machinery shall then be installed and operated in full accordance with the agreed details, in the interest of maintaining acceptable standards of amenity and to comply with the requirements of paragraph 123 of the NPPF and policy EN5 of the UDP.

14 The lighting scheme approved via the discharge of condition 25 of app. ref. 15/01588/FUL (LPA reference: 16/00771/DDI) shall be maintained in accordance with the details submitted in respect of the discharge of the condition, in order to ensure a satisfactory form of development and to comply with policies B2 and T16 of the UDP.

15 The boundary treatments approved via the discharge of condition 13 of app. ref. 15/01588/FUL (LPA reference: 15/02591/DDI) shall be maintained in accordance with the details submitted in respect of the discharge of the condition, in the interests of visual amenity and the operational integrity of the railway and to comply with policy B2 of the UDP.

16 The approved final scheme for the disposal of foul and surface water (approved via discharge of condition 15 of app. ref. 15/01588/FUL, LPA ref. 15/02592/EDI) shall be monitored

for a period of two years from the completion of the approved development. Any unforeseen problems caused by the increase of surface water into the drainage system shall be rectified by the applicant to the written approval of the City Council. The scheme is required in order to minimise the risk of flooding from any sources and prevent flooding of adjacent railway infrastructure, in accordance with the requirements of paragraph 103 of the NPPF and policy EN12 of the UDP.

17 Within 3 months of the date of this decision, a lighting control strategy shall be undertaken and submitted to the City Council, as Local Planning Authority, for its written approval. The assessment shall consider all sources of artificial light at the application site which were not considered in respect of the discharge of condition 25 of planning permission ref. 15/01588/FUL (LPA ref: 16/00771/DDI), with specific regard to their impact on the amenity of neighbouring residential dwellings. For the avoidance of doubt, the assessment must consider light from sources such as car headlights, delivery vehicles and delivery events. If, in the written opinion of the Council as Local Planning Authority, the assessment identifies a negative impact on the amenity of neighbouring residential dwellings, it will be necessary to submit details of proposed scheme of mitigation for the consideration and written approval of the City Council within one month of the City Council's written opinion being received. The approved mitigation measures shall then be put in place within one month of obtaining written approval and shall be maintained thereafter for the lifetime of the approved development, in the interests of minimising intrusion from artificial lighting at the site and to comply with the requirements of policy B2 of the adopted UDP and the NPPF.

18 The acoustic matting detailed in Appendix 3 of the 'Noise Assessment for Lidl UK GmbH, Ryhope Road, Sunderland', prepared by Rapleys, March 2017 (ref. 958/104/2), shall be installed prior to the commencement of more than one delivery to the store per day and maintained thereafter for the lifetime of the development, in order to ensure the noise implications of the proposed delivery arrangements are acceptable and to accord with the objectives of the NPPF, NPPG and policies EN5 and B2 of the Council's UDP.

Reference No.: 17/00335/LP3 Local Authority (Reg 3)

Proposal: **Change of use from open space to allotments including the erection of new boundary fence, stripping of contaminated land, importation of 350mm topsoil and provision of hardstanding.**

Location: Ford Quarry Allotments Pallion Trading Estate Sunderland

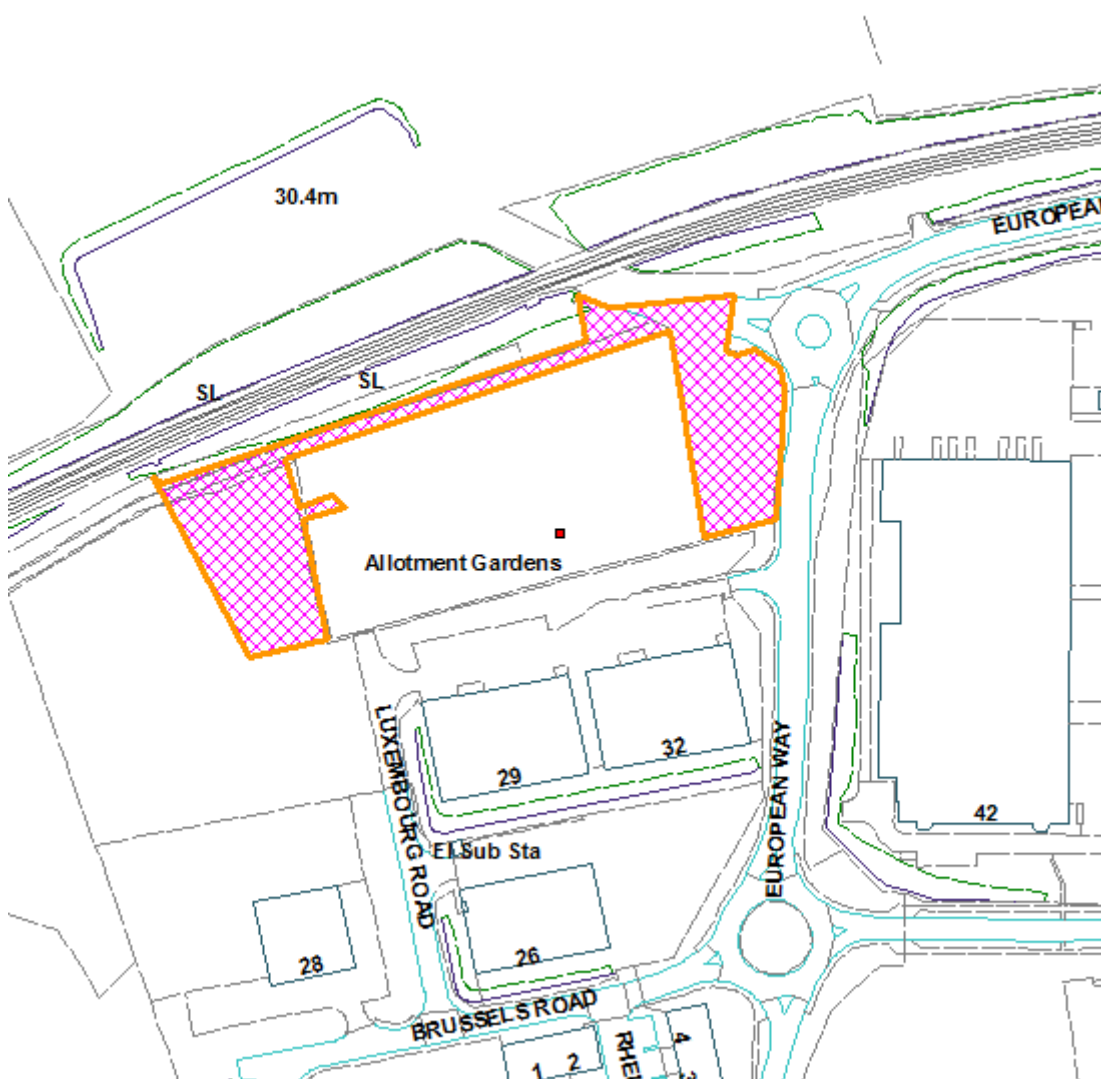
Ward: Pallion

Applicant: Sunderland City Council

Date Valid: 22 February 2017

Target Date: 19 April 2017

Location Plan



PROPOSAL:

INTRODUCTION / BACKGROUND

The site is located on the south side of the river wear and is a large existing allotment site with open space to the was allocated as a site which would be extended to accommodate tenants of allotments that may have been closed (in particular Simpson Street) as a result of the extension of the Sunderland Strategic Transport Corridor 3.

PROPOSAL

The proposal is to extend the existing allotment site to the west and east ends of the site and enclose with a 2 metre high fence which consists of self coloured galvanised steel palisade fencing to match the fencing of the existing site. Internal partitions would consist of 1.2 metre high close boarded timber fencing.

TYPE OF PUBLICITY:

Press Notice Advertised
Site Notice Posted
Neighbour Notifications

CONSULTEES:

Millfied - Ward Councillor Consultation
Network Management
Environmental Health
Public Rights Of Way Officer
Nexus
Network Rail

Final Date for Receipt of Representations: **07.04.2017**

REPRESENTATIONS:

Nexus No adverse comments

Network Rail No comment on the submitted scheme.

Network Management -No comments

Environmental Health - Comments received and conditions are recommended to be imposed should members be minded to grant consent.

National Heritage Upon the expiry of the consultation period no comments or representations have been received.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments
L_1_General provision of recreational and leisure facilities
L_7_Protection of recreational and amenity land
L_9_Retention of land used for allotments
B_3_Protection of public/ private open space (urban green space)
EC_2_Supply of land and premises for economic development purposes
EC_4_Retention and improvement of existing business and industrial land
EC_9_Locations for Hotels and Conference centres.
EC_15_Development or extension of bad neighbour uses
B_1_Priority areas for environmental improvements
S_13_Resisting retail development on land allocated for industry
EC_4_Retention and improvement of existing business and industrial land
EC_5_Sites for mixed uses

COMMENTS:

The key issues to consider in the determination of this application are:-

1. Principle of Development
2. Siting and Amenity issues
3. Highway Safety Issues
4. Land contamination

1. PRINCIPLE OF DEVELOPMENT

NATIONAL AND LOCAL POLICIES

NATIONAL POLICY

At the heart of the National Planning Policy Framework (NPPF) is the presumption in favour of sustainable development.

In paragraph 7 of the NPPF There are three dimensions to sustainable development which consist of an economic role, social role and environmental role. The three dimensions give rise for the need for the planning system to perform the roles of contributing to a strong responsive and competitive economy, supporting strong and healthy communities and protecting and enhancing the natural environment.

In particular paragraph 69 of the NPPF states that planning can play an important role in facilitating social interaction and creating healthy, inclusive communities, Local Planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see.

Paragraph 70 of the NPPF also aims to deliver social recreation and cultural facilities and service the community needs and should plan positively for the provision of use of shared space to enhance the sustainability of communities and residential developments.

LOCAL POLICIES

The Council's saved Unitary Development Plan (UDP) adopted in 1998 is the statutory development plan for Sunderland. Highlighted below are the relevant planning policies for this application.

Policies L1, L7 and L9 and B3 which seek to enhance the quality of life for residents and provide a high standard of recreational sporting and cultural facilities and retain land allocated as open space unless alternative provision of equivalent scale, quality and accessibility is made which achieves the indicated standards or the land is for educational purposes and there would be no significant effect on the amenity, recreational and wildlife habitat value of the site. Land used for allotments will be retained for this purpose except where alternative provision is made within the locality, or the site has become significantly underused through lack of local demand. Use of allotments for business/industrial purposes will be resisted.

Policies EC 2, 4, 9 and 15 and B1, identified as existing areas of land to maintain an industrial type and policy S13, which relates to retail on industrial land that must be in accordance with policies EC4 and 5 to be compatible uses.

The site is considered inaccessible for industrial purpose and as such extending the land into allotment land subject remediation for contamination would be considered acceptable in this instance. It would be considered to support recreational and educational provision and have no significant impact upon the recreational or habitat value of the site. The proposal would therefore be considered to comply with policies L1, L7, L9, B1 and B3 and EC2, 4, 9 and 15 in this instance.

SITING AND AMENITY

Policy B2 of the UDP dictates that development should be designed to a high standard and the scale, massing, setting and layout of new developments should respect and enhance the best qualities of nearby properties and the locality and retain acceptable levels of privacy and improve and enhance places in which people live.

Details of the proposed boundary treatments have been submitted with the application. Proposed perimeter fencing would consist of 2 metre high security palisade fencing (triple pointed) to match existing and internal partition fencing constructed of 1.2 metre high, close boarded timber fencing. The design of the boundary treatments are considered to be appropriate for the proposed use and in keeping with what exists within the vicinity and as such would not lead to adverse visual impact upon the general street scene. The site is not within close proximity of any residential properties and as such would not be considered to lead to any harm to residential amenity, in compliance with policy B2 of the UDP.

Summary Siting and Amenity Issues:

The proposed extension and siting of the fencing would not be considered to have a detrimental impact upon the area and members are minded to grant consent.

HIGHWAY SAFETY

Policy T14 of the UDP states that proposed development should retain off street parking in the interests of highway safety.

The applicant states that some of the informal parking are at the east entrance is to be enclosed by the extension therefore the hard-standing area is to be extended to compensate.

The Council's Network Management Team have not objected to the scheme and as such the proposal is considered to be acceptable in compliance with policies T14 and T22 of the UDP.

Summary Highway Issues - The proposal is considered acceptable in highway terms and members are recommended to grant consent.

CONTAMINATION

Policies EN14 and EN15 relates to potentially contaminated or unstable land and states that the council will promote and encourage the reclamation of land which may be contaminated and which is a threat to public health of safety or to the natural environment.

The applicant submitted a site remediation statement and soil testing reports with an intention to excavate and remove existing soils to a depth of 600mm and replace with imported clean subsoil and topsoil to enable the soil to be utilised for crops.

The Council's Public Protection and Regulatory Services have comment that a Desk Study has not been provided for the site therefore it is not possible to comment on whether sampling should have been targeted in particular areas of the site, or to advise whether the scope of chemical testing was reasonable for the former potentially contaminative uses.

Two chemical sampling reports have been provided from Dunelm for two areas on opposite sides of current allotments as follows:

B (East) 30/11/2016 "Inspection of Topsoil Suitability - Ford Quarry Allotment Extension" Plot1-2 (Three samples tested)

A (West) 23/02/2017 "Inspection of Topsoil Suitability - Ford Quarry Allotment Extension" Plot 3-6 (Seven samples tested)

Area East - proposed layout B (Visit 1)

Sunderland City instructed Dunelm to take three samples located in Area B on 15th November 2016. The depths of samples are not indicated however it is inferred these were from near surface "topsoil". A soil description is not provided however the Dunelm engineer considered them to be "generally free of debris". Testing was conducted for common heavy metals/metalloids and asbestos. No testing was conducted for PAHs. The testing showed that all three samples exceeded the screening criterion for lead of 80mg/kg with a range of between 120mg/kg and 310mg/kg. One nickel concentration of 30mg/kg is stated to fail the criterion of 50mg/kg (although the S4UL limit is now understood to be 260mg/kg). Therefore only lead appears to fail screening. Background concentrations of lead have not been considered however given this is a change of use rather than an existing condition and the continuing health concerns regarding historical lead exposure, it would be preferable to minimise lead concentration in allotments. Testing according to BS3882:2015 was also carried out for the three samples. These show that the soil is not an ideal growing medium due to low organic content and poor/variable available plant nutrients for total nitrogen, phosphorus, potassium and magnesium, and also consistently high electrical conductivity. The absence of certification as a suitable topsoil may be an obstacle to reuse unless the soil is improved.

It is concluded by Dunelm that the areas sampled are unsuitable for reuse as allotments due principally to high lead concentrations. It was originally proposed to provide a clean cover layer 600mm thick comprising 450mm of clean subsoil and 150mm of clean topsoil. This appears to be superseded by a drawing in the second report which indicates the cover will comprise 350mm of topsoil over 250mm of subsoil.

Area East - proposed layout B (Visit 2)

During the second visit to the site Dunelm revisited Area B. The north of Area B is denoted Plot 1 and appears to be hardstanding denoted variously as "100mm base course over 150mm Type 1" (granular road subbase) to the west, "tarmac" mid and south central and "compacted granular hardstanding" mid northern boundary and east. The south of Area B denoted Plot 2 is shown as open ground with a rectangular corner of Type 1) in the northwest corner.

Two pits are shown in the southern half of the site 2A & 2B. The material described in logs for 2A and 2B in the top 600mm do not indicated the soils to be generally free of debris e.g. "MADE GROUND: Dark brown slightly sandy, gravelly clay. Gravel is subrounded to angular, medium to coarse of sandstone, limestone, brick, concrete, wood, metal, glass, plastic, cloth and roof sheets." The samples tested from 2A and 2B are denoted as being from a depth of 600mm on the logs however no chemical testing is reported. Given the presence of "roof sheets" it would have been helpful if bulk asbestos testing had been carried out together with testing of asbestos fibres in soil (although it is noted that asbestos was not found in the previous three samples; these were generally free of debris).

Area West - proposed layout A (Visit 2)

The western site denoted as layout A comprises four plots numbered consecutively Plot 3 in the south and Plot 6 in the north. Plot 6 is shown to be infested with a stand of Japanese Knotweed which extends into the neighbouring site to the west which is outside the ownership of Sunderland City, and onto Nexus land to the north. The south of layout A over most of Plot 3 and extending slightly onto Plot 4 contains approximately 1.8m of "fill" which is denoted to be excavated and placed on the adjacent North East Ambulance service site. Access to Plots 3 to 6 appears to be via an area of 100mm base course on 150mm of Type 1. The Drawing indicates a combination of existing features and the new features and it is inferred that the access gravel area is probably part of the design to be constructed. Eight trial pit locations are shown although the text refers to sample being taken from only seven locations. The tabulated results refer to eight sets of chemical data for soils whilst the laboratory certificates include only seven samples. The depth of sample of 0.6mbgl is only given for 3B (Plot 3 trial pit B) however the logs show environmental samples (ES) taken consistently from a depth of 0.6m at all locations. The soil description given for 0.0-0.6m in each trial pit is identical "MADE GROUND: Brown slightly sandy, slightly gravelly clay (topsoil). Gravel is subrounded to angular, fine to coarse of sandstone, limestone, plastic and wood."

Soil concentrations of contaminants of concern were acceptable with the exception of lead concentration in 4A (310mg/kg), 4B (140mg/kg) and 4C (110mg/kg) compared with the screening value of 80mg/kg (C4SL for allotments). Based on these results it was inferred that lead concentration in Plot 4 were not acceptable.

Testing for leachability used the NRA leaching procedure (10:1 liquid to soil ratio) which has been superseded by BS EN 12457-1: 2002 for basic screening purposes assuming percolation tests are not necessary. The NRA results may underestimate the short term leachability of soils. In the context of the site this is probably not significant since acceptable soil concentrations are likely to be driven by concerns for human health for this sensitive land use rather than groundwater.

Testing was conducted against the British Standard for Topsoil BS 3882:2015 for three samples 3B, 4A & 5C. These indicated that the soil was of reasonable quality with a deficiency for phosphorus but generally suitable for re-use. None of the three samples contained appreciable plastic or glass.

Dunelm's engineer during the site inspection indicated that the material contains a significant content of brick, glass and plastic, and was texturally suitable for use in its current state; it was recommended that the material is screened and re-inspected prior to reuse.

The Drawing supplied with the report shows allotments to be stripped of a minimum of 600mm of topsoil/subsoil and import of 350mm of topsoil and 250mm of subsoil.

Comments

There are several areas of uncertainty that might preclude a strategy for re-use of materials on the site. Plot 6 has not been tested due to presence of Japanese Knotweed. Plot 4 and Area B were found to have elevated lead concentrations notwithstanding that the depth of sampling quoted is from 0.6mbgl which is below the depth of interest (or above in the case of Plot 3 which is to be excavated). There are no textural differences noted between soils in Plot 4 compared with other plots to indicate why some plots have elevated lead and others may not. The trial pitting for Area B indicated considerable anthropogenic content "brick, concrete, wood, metal, glass, plastic, cloth and roof sheets" whereas on the previous visit soils were considered to be "generally free of debris".

From the layout drawings for areas A and B it appears that a clean cover is now proposed over all allotments in Area A and B (excepting areas of hardstanding). This is to be composed of 350mm of topsoil and 250mm of subsoil. Drawing D7720/01 indicates that the chemical testing schedule for the cover layer material will be in Appendix 1 of the Specification, which has not been provided.

Summary Conclusion of land contamination

The Specification for the cover layer should be provided including the nature of the source (e.g. Greenfield or Brownfield), proposed frequency of testing, the testing suite and the compliance standards for chemical testing. Imported Topsoil and Subsoil should be certified to British Standards BS 3882:2015 and BS 8601:2013 respectively.

Additional investigation should be carried out in Area B to confirm the nature of the Made Ground since this appear to have changed between visits; which implies it may not have been sampled and tested.

A Japanese Knotweed management plan should be developed for the site. Consideration needs to be given to how re-infestation can be prevented.

Transfer of materials off the site should take due regard to waste regulations.

A Remediation Strategy/Verification Plan should be provided for the cover layer together with a Verification Report including details of unexpected contamination.

Summary Contamination

The proposed development is considered acceptable in terms of respect of ground contamination and members are recommended to be minded to grant consent subject to a condition that soil

testing and replacement is undertaken, remediation, verification be undertaken along with remediation for Japanese knotweed.

CONCLUSION

For the reasons above the proposal is considered to be acceptable and in accordance with relevant local and national policies. Members are therefore minded to Grant Consent, under Regulation 3 of the Town and Country Planning General Regulation 1992.

EQUALITY ACT 2010 - 149 PUBLIC SECTOR EQUALITY DUTY

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

age;
disability;
gender reassignment;
pregnancy and maternity;
race;
religion or belief;
sex;
sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to'

(a) tackle prejudice, and
(b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION:

Members are therefore minded to Grant Consent, under Regulation 3 of the Town and Country Planning General Regulation 1992 and in accordance with the draft conditions listed below.

Conditions:

1 The development to which this permission relates must be begun not later than three years beginning with the date on which permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time

2 Unless otherwise first agreed in writing with the Local Planning Authority, the development hereby granted permission shall be carried out in full accordance with the following approved plans:

- Site layout plan drawing No. LS000072/002 received on 22.2.17
- Site plan drawing No. LS000074/001 received on 22.2.17
- Location plan drawing No. LS000074/001 received on 22.2.17
- Fence details plan drawing No. LS000074/004 received on 22.2.17

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan.

3 Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions number 4 to number 6 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition number 7 has been complied with in relation to that contamination. To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

4 Site Characterisation - Unless otherwise agreed in writing by the Local Planning Authority development must not commence until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site (site characterisation), whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;

- (ii) an assessment of the potential risks to: human health property (existing or proposed) including building, crops, livestock, pets, woodland and service line pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments.
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11.' To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan

5 (Submission of Remediation Scheme)

Unless otherwise agreed by the Local Planning Authority, development must not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environment Protection Act 1990 in relation to the intended use of the land after remediation. To ensure that the risks from land contaminated to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the adopted Unitary Development Plan.

6 Implementation of remediation scheme

Implementation Remediation Scheme The remediation scheme approved under Condition number 5 (Submission of Remediation Scheme) must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimise, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy EN14 of the Unitary Development Plan.

7 Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition number 4 (Site Characterisation), and when remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition number 5 (Submission of Remediation Scheme), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared which is subject to the approval in

writing of the Local Planning Authority in accordance with condition number 6 (Implementation of Approved Remediation Scheme). If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until this condition has been complied with in relation to that contamination. To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks and in accordance with policy EN14 of the Unitary Development Plan.

8 No occupation of any part of the permitted development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved, in order to comply with the requirements of paragraph 109 of the NPPF and policy EN14 of the UDP.

9 No development shall commence until a detailed method statement for the removal/eradication of Japanese knotweed on the site has been submitted to and approved in writing by the County Planning Authority. The method statement shall include proposed measures to prevent the spread of Japanese knotweed during any operations such as mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds / root / stem of any invasive plant covered under the Wildlife and Countryside Act 1981. Thereafter, the approved method statement shall be carried out.

Reason: To prevent the further spread of Japanese knotweed and to comply with policies EN1, EN14, EN15 of the Council's Unitary development Plan

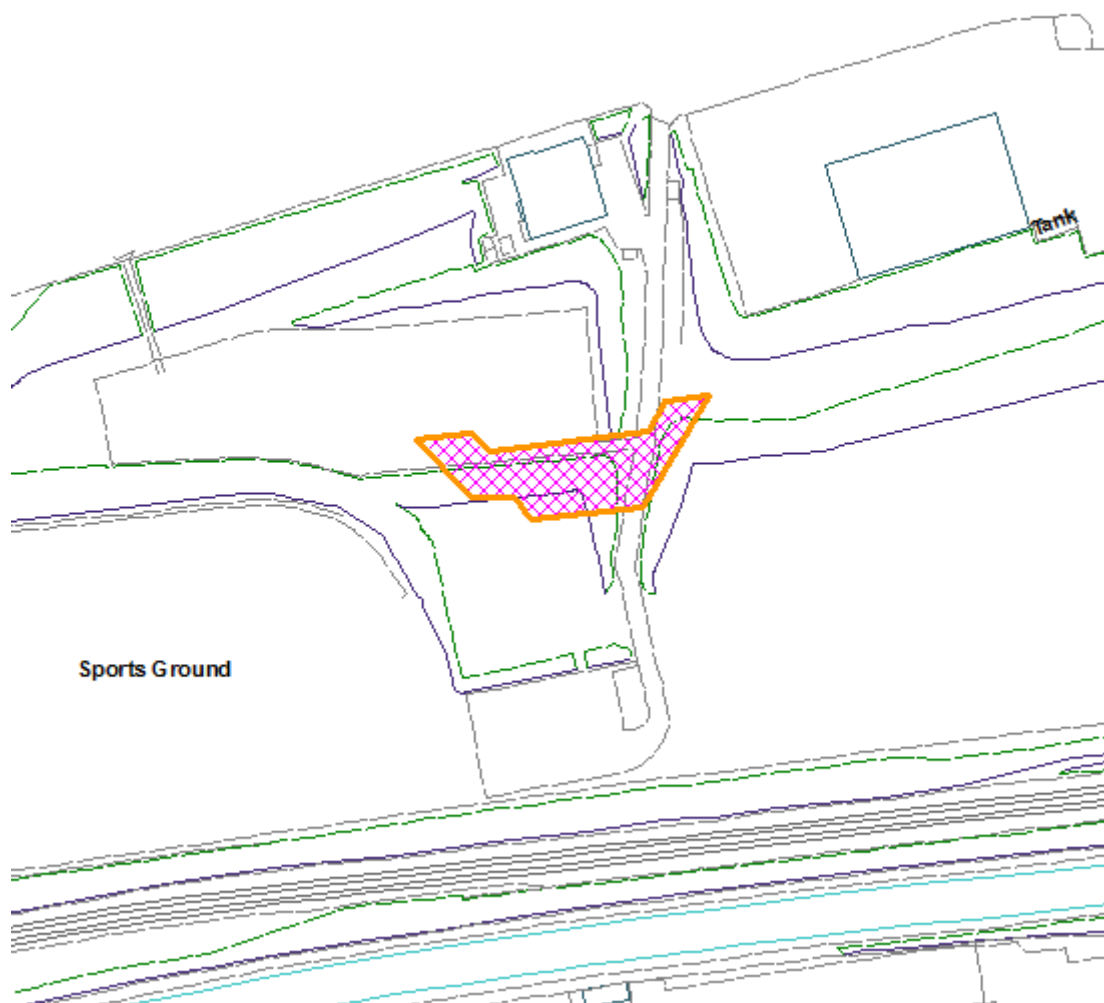
Reference No.: 17/00344/LP3 Local Authority (Reg 3)

Proposal: **Erection of a electricity sub-station with associated access.**

Location: Land At Alexandra Business Park Off Woodbine Terrace/European Way
Sunderland SR4 6UG

Ward: Pallion
Applicant: Sunderland City Council
Date Valid: 22 February 2017
Target Date: 19 April 2017

Location Plan



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PROPOSAL:

The proposal is for the erection of a electricity sub-station with associated access.

TYPE OF PUBLICITY:

Site Notice Posted

CONSULTEES:

Pallion - Ward Councillor Consultation
Network Management

Final Date for Receipt of Representations: **24.03.2017**

REPRESENTATIONS:

No representations have been received to the proposed development.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments
EN_10_Proposals for unallocated sites to be compatible with the neighbourhood

COMMENTS:

The main areas to consider on the proposed development is the scale, massing, layout of the proposed development.

The proposed substation is required as there is insufficient capacity within the existing infrastructure to support redevelopment in/ around the area upon completion of the New Wear Crossing project. This proposal will future proof availability of secure distribution supplies in and around the New wear Crossing area thereby facilitating the redevelopment of the surrounding area.

The proposed development would normally be considered as permitted development. The development is located within the redline of planning application 09/04466/LAP which was an Environmental Impact Assessment development for the New Wear Crossing development. The development for the substation has been screened and is not considered to be EIA development in this instance.

The proposed development is for the construction of a new preformed GRP electrical substation and retaining wall adjacent the new Western Link currently under construction.

The access and egress to the substation will be obtained via a layby from the Western Link constructed from reinforced grass paving system.

The proposed scale, massing, layout and access to the substation has been carefully considered and as such there are no visual impact or highway issues that would prevent the Local Planning Authority granting planning permission as the development complies with policies B2 and T14 of the adopted Unitary Development Plan.

Equality Act 2010 - 149 Public Sector Equality Duty

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;
- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to -

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION:

Members are recommended to Grant planning permission in accordance with Regulation 3 of the Town and Country Planning General Regulation 1992.

Conditions:

1 The development to which this permission relates must be begun not later than three years beginning with the date on which permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time

2 Unless otherwise first agreed in writing with the Local Planning Authority, the development hereby granted permission shall be carried out in full accordance with the following approved plans:

Drawing Number SCC-D-SUBSTATION-0001 received 22/02/2017

Drawing Number - NWC_D_SCC_07_GEN_800144 received 22/02/2017

Drawing Number -NWC_D_SCC_07_HIG_11005 Rev C02 received 22/02/2017

Drawing Number -NWC_D_JCS_07_ENV_30025 Rev C04 received 22/02/2017

Drawing Number - NWC/D/JCS/07/HIG/20003 Rev C01 received 22/02/2017

Drawing Number 22-400813-002 Rev P1 received 22/02/2017

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan.

Reference No.: 17/00558/FU4 Full Application (Reg 4)

Proposal: **Erection of a single storey extension to 3no. existing classrooms to front elevation and installation of new concrete path. (amended description 04.04.17)**

Location: East Herrington Primary Academy Balmoral Terrace East Herrington
Sunderland SR3 3PR

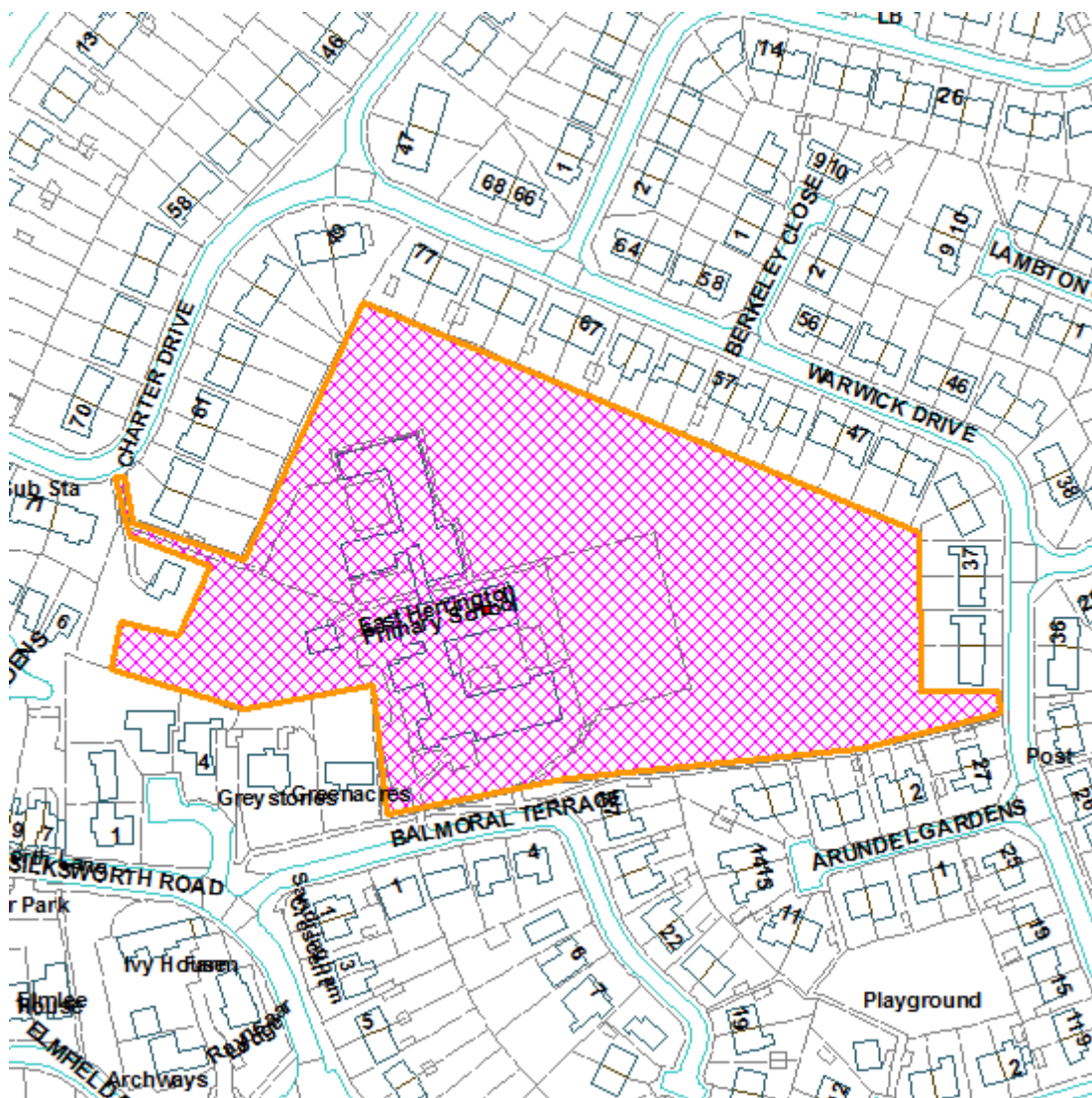
Ward: St Chads

Applicant: East Herrington Primary Academy

Date Valid: 16 March 2017

Target Date: 11 May 2017

Location Plan



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PROPOSAL:

The application relates to the erection of a single storey extension to the eastern elevation of East Herrington Primary Academy, Balmoral Terrace, East Herrington, SR3 3PR.

APPLICATION SITE AND SURROUNDINGS

The site to which the application relates is East Herrington Primary Academy which is located within a predominantly residential setting. The proposed development is to be situated on the eastern elevation facing onto Warwick Drive.

The proposed development site is largely screened from the surroundings by the existing built development, planting and boundary enclosures. The school building is of a flat roofed construction and is largely single storey.

The main entrance to the school is taken from Balmoral Terrace, which is a cul de sac of semi-detached bungalows. Pupils also benefit from pedestrian access from a number of gated routes leading from Charter Drive and Warwick Drive.

PROPOSAL

The proposal relates to the erection of a single storey extension to provide increased classroom space for Year 1 Classrooms.

The proposed development, is to be constructed on a paved area and will be screened by existing built development to the north and south. The development is to measure a maximum of 22.5 metres by 3.3 metres with a maximum flat roof height of 3.5 metres.

The building is to be finished with a Glass Reinforced Plastic (GRP) flat roof of a comparable scale to the existing buildings and will contain six upstanding roof lights which will provide additional natural light. Powder coated flashing is to be installed to the roof up stand while the windows are also to be powder coated to match.

It is also proposed to extend the pathway to the side of the existing classroom to the north in order to provide a 1.8 metre wide concrete flagged path to the front of the proposed extension.

TYPE OF PUBLICITY:

Neighbour Notifications

CONSULTEES:

St Chads - Ward Councillor Consultation
Network Management
Environmental Health

Final Date for Receipt of Representations: **12.04.2017**

REPRESENTATIONS:

Neighbours

No representations have been received as a result of the expiry of the neighbour consultation or wider publicity processes.

Consultees

Executive Director of City Services (Transportation)

Following consultation with the Transportation Section, no objections or recommendations were received in relation to the proposal. It is noted that the extension does not result in any increase in staffing or pupil numbers.

Public Protection and Regulatory Services (Public Health)

Following consultation with the Public Health Section, it was recommended that a desktop study be required due to groundwork being undertaken and given the sensitive end use. It was confirmed that this could be applied as a condition.

Northumbrian Water (NWA)

Northumbrian Water confirmed that, they do not have any specific comments to make with regard to the application.

POLICIES:

In the Unitary Development Plan the site is subject to the following policies;

B_2_Scale, massing layout and setting of new developments

EN_10_Proposals for unallocated sites to be compatible with the neighbourhood

L_7_Protection of recreational and amenity land

T_14_Accessibility of new developments, need to avoid congestion and safety problems arising

T_22_Parking standards in new developments

COMMENTS:

The main issues to consider in the assessment of this application are the:

- Principle of development
- Design and external appearance
- Highway implications

Principle of Development

The site in question is not allocated for any specific land use within the Council's Unitary Development Plan (UDP) and, as such, is subject to policy EN10. This policy dictates that, where the UDP does not indicate any proposals for change, the existing pattern of land use is intended to remain. As the proposal relates to an extension to the existing school building, it is considered that the proposal accords with the above policy.

Whilst not specifically designated for any particular land use the site is governed by UDP Policy L7. Policy L7 states, in part, that land allocated for open space or outdoor recreation, as shown on the proposals map, will be retained in its existing use. This includes playing fields attached to schools or other educational establishments. Permission for other uses on these sites will only be granted if:

- (i) the development is for educational purposes; and
- (ii) there would be no significant effect on the amenity, recreational and wildlife habitat of the site.

In accordance with the above, the proposal is limited in scale and occupies an area of hard standing. The 1.8 metre wide concrete flag path will encroach slightly onto the grassed area to the east however; overall it is likely the proposal will have a limited impact to the amenity, recreational or wildlife habitat of the site. Furthermore the proposal is required for the enhancement of the educational facility and as such the proposal is considered to accord with UDP Policy L7.

In light of the above, it is considered that, the proposed extension accords with policies EN10 and L7 of the Unitary Development Plan and is therefore considered to be acceptable in principle.

Design and External Appearance

Policy B2 of the UDP relates to new development, redevelopment and alterations to existing buildings and states in part that the scale, massing, layout or setting of new developments and extensions to existing buildings should respect and enhance the best qualities of nearby properties and the locality and retain acceptable levels of privacy.

With regard to policy B2 detailed above, it is considered that the size and form of the proposed extension will not detract from the appearance of the existing school or wider area. The proposal is limited in scale, set well away and screened from the surrounding residential properties by the existing buildings, planting and boundary enclosures, thus ensuring that the amenities of surrounding residential properties are protected.

As such it is considered that the design and appearance of the extension is acceptable and complies with the requirements of Policy B2 of the adopted UDP.

Highway Implications

Policy T14 of the UDP states that new development proposals must not result in conditions which are prejudicial to highway and pedestrian safety, whilst policy T22 requires new development to be afforded an appropriate level of dedicated car parking provision.

The proposed extension is situated within a part of the school grounds inaccessible to vehicular traffic and as such no alterations are proposed with regard to the vehicular access arrangements to the school, or the car parking facilities currently available within the school grounds. As such, it is considered that the proposal accords with policies T14 and T22.

CONCLUSION

For the reasons given in this report it is considered that the principle of development is acceptable and the proposal is of an appropriate design and appearance without resulting in any adverse impact to visual amenity. The proposal raises no concerns in terms of highway or pedestrian

safety and as such the proposal is considered to comply with policies B2, EN10, L7, T14 and T22 of the UDP.

EQUALITY ACT 2010 - 149 PUBLIC SECTOR EQUALITY DUTY

During the detailed consideration of this application/proposal an equality impact assessment has been undertaken which demonstrates that due regard has been given to the duties placed on the LPA's as required by the aforementioned Act.

As part of the assessment of the application/proposal due regard has been given to the following relevant protected characteristics:-

- o age;
- o disability;
- o gender reassignment;
- o pregnancy and maternity;
- o race;
- o religion or belief;
- o sex;
- o sexual orientation.

The LPA is committed to (a) eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In addition, the LPA, in the assessment of this application/proposal has given due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This approach involves (a) removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The LPA has taken reasonable and proportionate steps to meet the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities, as part of this planning application/proposal.

Due regard has been given to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves. Particular consideration has been given to the need to:-

- (a) tackle prejudice, and
- (b) promote understanding.

Finally, the LPA recognise that compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

RECOMMENDATION:

Accordingly it is recommended that Members grant consent in accordance with Regulation 4 of the Town and Country Planning General Regulations 1992 (as amended) subject to the conditions below.

Conditions:

1 The development to which this permission relates must be begun not later than three years beginning with the date on which permission is granted, as required by section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 to ensure that the development is carried out within a reasonable period of time

2 Unless otherwise first agreed in writing with the Local Planning Authority, the development hereby granted permission shall be carried out in full accordance with the following approved plans:

Location plan, drawing no.1, received 15.03.17

Site plan, drawing no.1, received 28.03.17

Existing plans, drawing no.2, received 15.03.17

Existing and proposed elevations, drawing no. 3, received 15.03.17

Proposed plans, drawing no.4, received 15.03.17

In order to ensure that the completed development accords with the scheme approved and to comply with policy B2 of the adopted Unitary Development Plan.

3 No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:

2) A site investigation scheme, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved, in order to comply with the requirements of policy EN14 of the Unitary Development Plan.

4 No occupation of any part of the development hereby approved shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy

and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved, in order to comply with the requirements of policy EN14 of the Unitary Development Plan.

5 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved, in order to comply with the requirements of policy EN14 of the Unitary Development Plan.