UPDATE SHEET

PLANNING COMMITTEE – 10 July 2024

To be read in conjunction with the
Report of the Head of Planning and Infrastructure to Planning Committee

(a) **Additional information received after the publication of the main reports;**

(b) **Amendments to Conditions;**

(c) **Changes to Recommendations**

A1 23/01153/FULM Erection of new Lidl foodstore (use class E) with car parking, landscaping and other associated works.

Ashfield House, Resolution Road, Ashby De La Zouch.

Additional Representations/Information

An additional representation has been received from Tesco which raises concerns in relation to the following four points:

1) *Breach of the retail sequential approach arising from the suitable and available Local Centre defined within the Money Hill (Urban Extension) Masterplan;*
2) *Impact on planned investment to the Money Hill Local Centre (as an alternative to the above);*
3) *Breach of the development plan's requirement to retain Primary Employment Areas; and*
4) *Lack of condition to restrict the permission to 'limited assortment discount retailing'.*

A full copy of the representation received is available to view on the District Council's website.

In email correspondence of the 8th July 2024 to Members of the Planning Committee, Martin Robeson Planning Practice, acting on behalf of Tesco, also raised the following two points:

1) *Tesco is a key anchor to the local centre. The applicant's retail impact assessment's survey relies upon only a small percentage (or "observed value") of respondents to suggest that the store trades well. As a consequence, the centre is "perceived to be healthy". However, the store operates at below the company average and there is a real risk of significant harm from the out of centre application proposal.*
2) *The development results in an unnecessarily excessive loss of trees and vegetation. A -9.66% net loss in biodiversity is accepted by Officers to be unacceptable. Paying compensation is seen by the development plan as last resort. However, were the proposal to provide car parking at no more than is required by the Council's standards, the increase in vegetation would provide a positive outcome. This solution has not been explored.*

The following questions/queries were also raised by Members at the Technical Briefing on the 8th July 2024:

a) *It was a requirement of the deferral of the application for Ashby De La Zouch Town Council to be approached to determine the schemes any financial contribution secured could contribute towards and this has not been carried out.*

Officer comment

<u>Additional Tesco Representation</u>

In terms of the representation from Tesco, officers would comment as follows:

1) *Breach of the retail sequential approach arising from the suitable and available Local Centre defined within the Money Hill (Urban Extension) Masterplan;*

The comments raised in this respect have been addressed within the *'Conclusion in Relation to the Sequential Approach to Site Selection'* sub-section of the *'Principle of Development'* section of the Committee report (pages 36 to 37 (pages 24 and 25 of the PDF)).

Fundamentally Tesco have a difference of opinion in relation to the 'availability' of the Money Hill site.

2) *Impact on planned investment to the Money Hill Local Centre (as an alternative to the above);*

Criterion (iv) of Policy H3a (Housing provision: new allocations – Land north of Ashby De La Zouch) of the adopted Local Plan states that development will be subject to the following requirements:

"Provision of a range of infrastructure including a new primary school, extensions to secondary schools, affordable housing, open spaces, green infrastructure and community facilities and enhanced public transport provision."

It is outlined by Tesco that the proposed development would likely prejudice the future development of the masterplan's local centre proposals given that a smaller scale convenience store would not be viable in the context of the proposed development's larger format.

The terms of Policy Ec9 of the adopted Local Plan, criterion (a) of Paragraph 94 of the NPPF, and Paragraph 015 of the Town Centre and Retail section of the NPPG are as outlined in the *'The Impact of the Development on Town and Local Centres'* sub-section of the *'Principle of Development'* section of the Committee report (page 37 (page 25 of the PDF)).

As highlighted in the Committee report, the proposed Class E uses at Money Hill are not defined as a 'local centre' in either the adopted or emerging Local Plan. The Council's external retail consultant also concur's with the Committee report's conclusion that the scale and character of the retail development previously permitted at Money Hill would be different to the district's existing local centres, being more of neighbourhood significance (as outlined in Table 7.9 of the North West Leicestershire District Council Retail and Leisure Capacity Study 2019 which can be viewed here). The Council's external retail consultant also notes that the Committee report highlights Policy H1b of the adopted Local Plan, which supports the renewal of the now-lapsed outline planning permission, meaning that any future permission would likely be subject to a similar condition capping the gross quantum of retail development to 560 square metres (sqm), and the gross floor space of any single retail unit to 460 sqm.

In respect of the first bullet point set out in Paragraph 015 of the *'Ensuring the Vitality of Town Centres'* section of the NPPG, therefore, there is some support in the adopted Local Plan for retail development at the Money Hill site. However, there is no adopted local centre at this location, and the planning history and adopted Local Plan envisage a development of 'neighbourhood significance' rather than anything of comparable size and role to the district's existing local centres. Arguably, therefore, the provisions of

Policy Ec9 of the adopted Local Plan and criterion (a) of Paragraph 94 of the NPPF do not apply to the proposed retail development at Money Hill, since it cannot be described as *"a centre…in the catchment area of the proposal".*

However, even if the planned investment in the Money Hill retail development were deemed to be relevant, limited progress has been made towards securing this investment (the second relevant consideration set out in Paragraph 015 of the *'Ensuring the Vitality of Town Centres'* section of the NPPG). The time period for the submission of a reserved matters application in connection with the outline consent has expired, and the Committee report identifies that in officers discussions with the Money Hill residential developer (Taylor Wimpey) it has been confirmed that the retail development is unlikely to be delivered within the next two to three years. Given this early stage, with no planning application yet submitted for any form of retail development, it is unlikely that (for example) any contracts have yet been established.

In terms of the third bullet point of Paragraph 015 of the *'Ensuring the Vitality of Town Centres'* section of the NPPG, the adopted Local Plan and planning history in respect of the Money Hill site envisage relatively small-scale retail development given the condition of the previous permissions limiting the gross retail floorspace. Facilities of such size would typically serve a localised, top-up shopping function which is qualitatively different to the form of discount supermarket retailing proposed. There is no evidence to suggest that a small convenience store intended to support the local community, to be created in line with the requirements of criterion (iv) of Policy H3a of the adopted Local Plan, would not come forward or would be unviable in the event of planning permission being granted for the proposed Lidl.

While the area intended for the retail development at Money Hill would meet the applicant's minimum size requirement (of 0.6 hectares), officers and the Council's external retail consultant are not aware of any investment proposal for a supermarket that could support main food shops at Money Hill. Furthermore, the adopted Local Plan and approved Money Hill Masterplan were prepared in the context of existing out-of-centre stores at Resolution Road, Dents Road and Smithy Road, with the proposed retail development intended to serve a different role and function rather than to directly compete with such stores.

As a consequence of the above officers, and the Council's external retail consultant, consider that the proposed development will not have a significant adverse impact on any investment planned at the Money Hill site.

3) *Breach of the development plan's requirement to retain Primary Employment Areas;*

The comments raised in this respect were previously addressed by the Committee update sheet of the 4th June 2024 which is attached as Appendix 2 to the Committee report.

Principally it is stated that:

"Whilst the adopted Local Plan, and made ADLZP [Ashby De La Zouch Neighbourhood Plan], would look long term, Policy Ec3 is not dogmatic as it includes due flexibility through Part (2) to respond to changes in circumstances."

4) *Lack of condition to restrict the permission to 'limited assortment discount retailing'.*

The comments raised in this respect were previously addressed by the Committee update sheet of the 4th June 2024 which is attached as Appendix 2 to the Committee report.

There is no additional evidence presented by Tesco that would cause officers, or the Council's external retail consultant, to alter the conclusion reached previously. However, the Council's external retail consultant would clarify that:

According to GlobalData's most recent 'Convenience and Comparison Goods Sales Densities of Major Grocers – 2023e' dataset, the average convenience sales density for a discount retailer in 2023 prices is <u>£12,933.00 per sqm</u> (based on the average sale densities of Lidl and Aldi). This figure compares to an average convenience sales density for all of the UK's major retailers (i.e. Aldi, Asda, Co-op, Iceland, Lidl, M&S Food, Morrisons, Sainsbury's, Tesco and Waitrose & Partners) of <u>£12,871 per sqm</u>; and an average convenience sales density for the 'Big Four' retailers (being Asda, Morrisons, Sainsbury's and Tesco) of <u>£14,017 per sqm</u>.

Thus, whilst there is variation in the sales densities of individual retailers, assuming that the floorspace figures are capped to those assessed in the Committee report, the Council's external retail consultant considers that, even in the worst case scenario, the turnover of the proposal would not be sufficient to cause a significant adverse impact on Ashby De La Zouch town centre or any other town/local centre in the catchment.

It is also the case that Paragraph 56 of the NPPF requires conditions to be 'enforceable'. Tesco's proposed condition would require the proposal to be restricted to no more than 4,000 individual product lines. Other, similar conditions imposed on permissions for 'Limited Assortment Discount' (LAD) retailers of which the Council's external retail consultant are aware have used different precise numbers of product lines, although all numbering within the thousands. While Tesco asserts that enforcement of its proposed condition *"would be a simple matter of counting the lines",* officers and the Council's external retail consultant consider that it would be impractical to require the local authority to undertake this exercise.

Tesco is correct that LAD retailers assert that their form of retailing have distinct and different impacts on economic and social considerations compared to others. However, officers and the Council's external retail consultant, reiterate that the proposed floorspace caps, in addition to the other conditions proposed in the Committee report, are sufficient to ensure that the vitality and viability of nearby centres is safeguarded. This is because the format of the proposed foodstore is, in practice, limited by a number of factors including its size, location, car parking capacity and so on.

As a consequence of this, officers and the Council's external retail consultant consider that the proposed LAD condition would not fully reflect the NPPF's test of enforceability and is not necessary to make the development acceptable in planning terms in light of the other conditions proposed.

<u>*Email Correspondence from Martin Robeson Planning Practice on behalf of Tesco*</u>

In terms of the email correspondence from Martin Robeson Planning Practice, acting on behalf of Tesco, officer's would comment as follows:

1) *Tesco is a key anchor to the local centre. The applicant's retail impact assessment's survey relies upon only a small percentage (or "observed value") of respondents to suggest that the store trades well. As a consequence, the*

centre is "perceived to be healthy". However, the store operates at below the company average and there is a real risk of significant harm from the out of centre application proposal.

No evidence has been supplied by Tesco to demonstrate the impact arising as a result of the proposed development but, even if they had, page 40 of the Committee report (page 28 of the PDF document) makes it clear that an 'out-of-centre' store, such as the Tesco Extra at Resolution Road, does not benefit from policy protection under Policy Ec9 of the adopted Local Plan, Policy TC1 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) or Paragraph 94 of the NPPF.

Furthermore, the same page of the Committee report states that *"In considering the post-impact viability of foodstores it is important to recognise that a company average sale density figure is exactly 'an average', and that many stores trade viably below benchmark level."*

It is also the case that no evidence has been provided to support Tesco's assertion that the Tesco Extra at Resolution Road acts as a key anchor to the town [not local] centre. Even in the unlikely event that this Tesco Extra store closes as a result of the proposed Lidl being constructed, officers and the Council's external retail consultant consider that its loss would not adversely impact on the health of Ashby De La Zouch town centre, or any other town/local centre within the catchment area of the development.

Based on the above any impact arising to the Tesco Extra store at Resolution Road would not be material to the consideration of the planning application.

2) *The development results in an unnecessarily excessive loss of trees and vegetation. A -9.66% net loss in biodiversity is accepted by Officers to be unacceptable. Paying compensation is seen by the development plan as a last resort. However, were the proposal to provide car parking at no more than is required by the Council's standards, the increase in vegetation would provide a positive outcome. This solution has not been explored.*

The Committee report makes it clear that the proposed development is not subject to the mandatory 10% biodiversity net gain (BNG) requirement given the timing of its submission. Therefore in line with Paragraphs 180 and 186 of the NPPF simply a 'gain' would need to be demonstrated.

The *'Ecology'* section of the Committee report (see page 68 (page 56 of the PDF)) outlines that the County Council Ecologist is satisfied with the information as submitted demonstrating that a biodiversity 'gain' would be achieved, which would be delivered by landscape planting, bird and bat boxes, and deadwood hibernacula, and conditions would be imposed on any permission granted to secure such features. It is therefore not understood where the figure of *"-9.66% net loss in biodiversity"* has been derived from, nor is it evidenced by Tesco.

It is also the case that the *'Landscaping'* section of the Committee report (see pages 68 to 70 (pages 56 to 58 of the PDF)) indicates that the Council's Tree Officer has no objection to the removal of the identified trees and hedges to facilitate the development given that such loss could be suitability mitigated by an appropriate landscaping scheme.

The reference to *"Paying compensation is seen by the development plan as a last resort"* is also not quantified by Tesco but it is considered that this perhaps relates to the terms of Parts (2) and (3) of Policy Ec3 which will look for National Forest woodland planting to be provided on site before such time as a monetary contribution is provided for such woodland planting off-site. The *'Landscaping'* section of the Committee report makes it clear that the National Forest Company (NFC) has indicated that the site area is below the threshold whereby on-site or off-site National Forest planting would be required.

As proposed 100 parking spaces would be created which is only 4 more spaces then that which would be required by policies of the adopted Local Plan and the Leicestershire Highways Design Guide (LHDG), this being as outlined in the *'Internal Highway Layout'* sub-section of the *'Highways Impact'* section of the Committee report (see page 63 (page 51 of the PDF)). In this circumstance it is considered that the removal of 4 parking spaces, which based on the standard dimensions of 5.5 metres in length by 2.4 metres in width would only create an area of 52.8 square metres, would not enable the provision of such significant landscaping improvements that a reason to refuse the application based on the current layout, which in any event has been assessed to be acceptable and in accordance with relevant policies, could be substantiated.

<u>Question/Queries Raised by Members at the Technical Briefing</u>

At the Planning Committee meeting on the 4th of June and at the Technical Briefing on the 8th of July, officers were asked to contact Ashby De La Zouch Town Council to find out if there were any town centre schemes which this development could contribute towards.

The Town Council has advised that they have the following schemes in mind which they would like the developer to contribute towards:

Scheme	Cost (£)
Deep clean of town centre including weed spraying, repair of pavements and street furniture	20,000
Pop-up 'park' for Market Street	5,000
Map boards need upgrading	10,000
New flower towers	15,000
More CCTV cameras	35,000 each

Officers have commented that contributions can only be requested from a developer where they are CIL compliant, and the Committee members have requested clarity on how that assessment is made.

Page 14 of the agenda identifies that where planning obligations through S106 of the Planning Act are requested, all requests must comply with paragraph 57 of the NPPF where it says that planning obligations can only be sought where they meet the following tests:

(a) Necessary to make the development acceptable in planning terms;
(b) Directly related to the development; and
(c) Fairly and reasonably related in scale and kind to the development

The above 3 points also appear as written above in paragraph 122 of *The Community Infrastructure Levy Regulations 2010 (as amended in 2019).*

The National Planning Policy Guidance (NPPG) (GOV.UK *Guidance on Planning Obligations)* makes it clear that planning obligations can only be asked for where the following situations are met:

- *The requirements are set out in adopted policy which has been examined in public:*
- *Where they make unacceptable development acceptable in planning terms;*
- *Where the need for the infrastructure that the Council is requesting has been taken account of and a viability assessment has been made in terms of its affordability*

In a North West Leicestershire context, policy IF1 of the local plan specifies that new development will be supported where its impact on infrastructure is mitigated. It goes on to say that the type of infrastructure that is required to support new development is as follows:

a. Affordable Housing;
b. Education, health, cultural facilities and other public services:
c. Transport including highways, footpaths and cycleways, public transport and associated facilities:
d. Green infrastructure such as public open space, sport and recreation and National Forest planting:
e. The provision of superfast broadband communications;
f. Utilities and waste; and
g. Flood prevention and sustainable drainage.

The policy specifically states that contributions for that specified in parts a-g above will be required where they make an unacceptable scheme acceptable in planning terms. The policy also says that other contributions which meet the same criteria but not listed above will also be considered.

Officers have made it clear to the committee that a contribution towards a cycle path from the town centre to link up to the surrounding area is not CIL compliant as there isn’t a worked up and costed scheme in place. Furthermore, the County Highway Authority has advised that in highways terms (with their remit being public transport, cars, pedestrians and cyclists) the scheme is acceptable as proposed therefore a contribution towards a cycle path isn’t needed as the scheme is not unacceptable as proposed in connectivity terms.

In relation to the schemes suggested by the Town Council which relate to works in the town centre which was another topic that was previously discussed by the committee, these are assessed as follows:

Scheme	Assessment
Deep clean of town centre including weed spraying, repair of pavements and street furniture	This fails the CIL test as this is unrelated to this development and is unnecessary to make the development acceptable in planning terms. This also fails policy IF1 of the Local Plan as this doesn’t constitute the provision of necessary

	infrastructure and doesn't relate to the categories of infrastructure listed.
Pop-up 'park' for Market Street	Same as above
Map boards need upgrading	Same as above
New flower towers	Same as above
More CCTV cameras	Same as above

The Community Infrastructure Levy regulations allow a local authority to charge CIL payments on qualifying schemes and the use of such payments could potentially be used for schemes such as those that appear above. It must be clarified however, that North West Leicestershire District Council is not a CIL charging authority and S106 obligations cannot be used in the same way. The regulations make it clear that S106 agreements are different to CIL payments, and they must be treated differently and applied strictly in line with the three tests as advised above and, in the guidance, as contained in the NPPG.

Other schemes where contributions weren't requested

Questions were also raised at the Technical Briefing meeting over why no contributions were sought from the M&S and B&M developments which are nearby to this site. Officers have checked the relevant cases and wish to comment as follows:

M&S – 16/00499/FULM – No contributions were requested by any consultee for this development; therefore it was deemed to be acceptable without the need to contribute towards any local infrastructure.

B&M – 18/00464/FULM – A contribution was requested by Ashby Town Council towards public realm works in the town centre to offset what they perceived to be the negative impact of the scheme and for the provision of a cycle way along Nottingham Road to the town centre. The case officer concluded at the time that as the scheme had no impact on the vitality or the viability of the town centre there was no justification to seek the contribution. The case officer commented in their report that both contributions failed the test for obligations as contained in paragraph 56 of the NPPF as they weren't necessary to make the development acceptable in planning terms. Having regards to the above, this scheme was permitted without the need for a planning obligation.

Conclusion

Having regards to the CIL regulations, the guidance in the NPPG, policy in the NPPF, the requirement of policy IF1 of the adopted local plan and the B&M case quoted above, it is considered that as the Lidl scheme will not have a negative impact on the town centre (as confirmed by the Council's independent retail advisor) and is acceptable in planning terms, there is no demonstrated need or justification for any contributions for necessary infrastructure in the locality that arise from this scheme.

Other Matters

On page 17 of the Committee report (page 5 of the PDF) there is additional text below the final paragraph of point 5 (*whether the sequential test has been applied properly*) which is a not relevant and therefore should be discarded.

RECOMMMENDATION – NO CHANGES TO RECOMMENDATION.

This page is intentionally left blank