

Erection of a retail store (use of class A1) and associated garden centre along with associated car parking, service yard, hard and soft landscaping, foul and surface water drainage and utility infrastructure
Plot 2 Ashby Gateway Smithy Road Ashby De La Zouch Leicestershire

Report Item No
A1

Application Reference
18/00464/FULM

Grid Reference (E) 437137
Grid Reference (N) 317181

Date Registered:
22 March 2018
Consultation Expiry:
1 May 2018
8 Week Date:
21 June 2018
Extension of Time:
None Agreed

Applicant:
Mr Freddie Jones

Case Officer:
Adam Mellor

Recommendation:
PERMIT subject to S106 Agreement

Site Location - Plan for indicative purposes only



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Executive Summary of Proposals and Recommendation

Call In

The application is called in to Planning Committee by Councillor Allman on the basis that the off-street parking is inadequate, there is a need to enhance the green credentials of the scheme and that financial contributions are required to mitigate the impacts on the vitality and viability of the Ashby De La Zouch Town Centre.

Proposal

This is an application for the erection of a retail store (use class A1) and associated garden centre along with associated car parking, service yard, hard and soft landscaping, foul and surface water discharge and utility at Plot 2, Ashby Gateway, Smithy Road, Ashby De La Zouch.

Consultations

Objections have been received from third parties as well as Ashby De La Zouch Town Council, but no objections have been received from other statutory consultees who have responded during the consultation process.

Planning Policy

The application site is within the Limits to Development in the adopted North West Leicestershire Local Plan.

Conclusion

As the site is within the Limits to Development the principle of the development is acceptable. The key issues are:

- The sequential approach to site selection;
- The impact of the development on town and local centres;
- Loss of employment land;
- Design and the impact on the character and appearance of the streetscape and wider area;
- Residential amenity;
- Highway safety;
- Landscaping;
- The integrity of the River Mease SAC; and
- Drainage and flood risk.

The report below looks at these details, and Officers conclude that the details are satisfactory. The proposals meets the requirements of relevant NWLDC policies, including the Good Design for North West Leicestershire SPD, and the NPPF.

RECOMMENDATION - PERMIT, SUBJECT TO CONDITIONS AND COMPLETION OF A SECTION 106 AGREEMENT.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1. Proposals and Background

Planning permission is sought for the erection of a retail store (use class A1) and associated garden centre along with car parking, service yard, hard and soft landscaping, foul and surface water discharge and utility infrastructure at Plot 2 Ashby Gateway, Smithy Road, Ashby De La Zouch. The 0.8 hectare site is within the defined Limits to Development and is situated on the eastern side of Smithy Road where it is set to the immediate south of the M&S Food store which occupies Plot 1 of the Ashby Gateway site.

The proposed retail store would have a gross internal area of 1,915 square metres with an associated external garden centre of 700 square metres and would be served by the existing vehicular access off Smithy Road which was created in accordance with the planning permission granted under application reference 15/00278/FULM.

A planning statement (containing a retail impact assessment, transport assessment, coal mining risk assessment, surface water drainage calculations and arboricultural impact assessment), design and access statement and framework travel plan have been submitted in support of the application. A highways technical note reviewing off-street parking associated with the development has also been submitted in response to the comments of the County Highways Authority.

The recent and relevant planning history of the site is as follows:

- 03/01464/OUT - Erection of retail units (4,645 square metres) and garden centre (929 square metres) (outline - means of access) - Refused 27th May 2005, Dismissed by the Secretary of State July 2006.
- 09/00734/FULM - Erection of discount food retail store (class A1), public house/restaurant (class A3/A4) and 60 no. bed hotel with associated parking, access, landscaping and infrastructure - Appeal against non-determination ref. APP/G2435/A/10/2135336 - Appeal dismissed 4th May 2011.
- 13/00033/OUTM - Outline planning permission application for the erection of a discount food retail store (class A1), public house/restaurant (class A3/A4) and 60 no. bed hotel (class C1) with associated parking access, landscaping and drainage - Withdrawn 27th October 2014.
- 15/00278/FULM - Construction of access road and associated services to serve existing vacant site and erection of four lighting columns - Approved 15th July 2015.
- 15/01048/FUL - Erection of restaurant (use class A3) with associated car parking and landscaping - Refuses 10th May 2016.
- 16/00499/FULM - Erection of a food store (use class A1) to include ancillary café, car parking, servicing yard, substation, landscaping and associated works - Approved 9th February 2017.

2. Publicity

13 Neighbours have been notified.

Site Notice displayed 10 April 2018.

Press Notice published Leicester Mercury 18 April 2018.

3. Summary of Consultations and Representations Received

The following summary of representations is provided.

Ashby De La Zouch Town Council has raised concerns to the application on the following

grounds:

- The off-street parking is inadequate and less than the guidance of the County Council Highways Authority.
- The green credentials of the scheme need to be enhanced by the provision of solar panels.
- The development should contribute to the provision of a cycle route along Nottingham Road as outlined in the Ashby De La Zouch Cycle Strategy as well as contributions towards improvements in the public realm in Ashby town centre to off-set the impact on the vitality of the town centre. These could be secured in a Section 106 agreement.

Coal Authority has no objections.

Leicestershire County Council - Ecology has no objections.

Leicestershire County Council - Highways Authority has no objections subject to conditions.

Leicestershire County Council - Lead Local Flood Authority has no objections subject to conditions.

National Forest Company has no objections subject to conditions.

Natural England has no objections subject to conditions.

NWLDC - Environmental Protection has no objections.

NWLDC - Environmental Protection (Contaminated Land) has no objections subject to conditions.

Severn Trent Water no representation received at the time of this report. Any response received will be reported to Members on the update sheet.

Third Party Representations

Three representations have been received which object to the application with the comments raised summarised as follows:

- The proposal is contrary to the Ashby Neighbourhood Plan and adopted Local Plan in that the area where the development would be located is designated for employment purposes.
- The health of Ashby De La Zouch Town Centre is beginning to decline given proliferation of charity shops.
- Over 77 businesses in Ashby will be impacted on as a result of the development including 15 traders in the Town Hall Market.
- Unemployment levels of the businesses in Ashby will far exceed the employment levels of the proposal.
- The Retail Impact Statement only focuses on Ashby De La Zouch and Coalville Town Centres yet many convenience stores in the smaller settlements will also be impacted on.
- Ashby De La Zouch will not gain from this development given the impacts to the local economy and the fact that profits made by the business will be spent away from the District.
- The applicant already has stores within the vicinity of the site such as Swadlincote and

- Coalville.
- Footfall to other non-retail uses in Ashby will decrease as a result of the diversion of trade.
- The analysis of the Ashby De La Zouch Town Centre Traders is more beneficial as an evidence base than that within the submitted Retail Impact Assessment.
- The development will impact adversely on the integrity of the River Mease SAC.
- Insufficient levels of off-street parking will be provided and the highway network cannot cope with the additional traffic associated with this development and others proposed in Ashby.

4. Relevant Planning Policy

National Policies

National Planning Policy Framework (2018)

The following sections of the NPPF are considered relevant to the determination of this application:

Paragraphs 9 and 10 (Achieving sustainable development);
Paragraphs 11 and 12 (Presumption in favour of sustainable development);
Paragraphs 38, 39, 40, 41, 42, 44 and 47 (Decision-making);
Paragraphs 54, 55 and 56 (Planning conditions and obligations);
Paragraphs 80 and 82 (Building a strong, competitive economy);
Paragraphs 85, 86, 87, 89 and 90 (Ensuring the vitality of town centres);
Paragraphs 105, 106, 108, 109, 110 and 111 (Promoting sustainable transport);
Paragraphs 126, 127, 130 and 131 (Achieving well-designed places);
Paragraph 163 (Meeting the challenge of climate change, flooding and coastal change); and
Paragraph 175, 178, 179 and 180 (Conserving and enhancing the natural environment).

Adopted North West Leicestershire Local Plan (2017)

The following policies of the adopted local plan are consistent with the policies of the NPPF and should be afforded full weight in the determination of this application:

Policy S1 - Future Housing and Economic Development Needs;
Policy S2 - Settlement Hierarchy;
Policy D1 - Design of New Development;
Policy D2 - Amenity;
Policy Ec3 - Existing Employment Areas;
Policy Ec8 - Town and Local Centres: Hierarchy and Management of Development;
Policy Ec9 - Town and Local Centres: Thresholds for Impact Assessments;
Policy IF4 - Transport Infrastructure and New Development;
Policy IF7 - Parking Provision and New Development;
Policy En1 - Nature Conservation;
Policy En2 - River Mease Special Area of Conservation;
Policy En3 - The National Forest;
Policy En6 - Land and Air Quality;
Policy Cc2 - Water - Flood Risk; and
Policy Cc3 - Water - Sustainable Drainage Systems.

Emerging Ashby Neighbourhood Local Plan

The Ashby Neighbourhood Plan was submitted to the Council on 1 August 2017. The Council undertook a six week consultation on the Draft Neighbourhood Plan which ended on 11 October 2017. The plan has been at Examination, and the Examiner's Report was published in August 2018. The weight to be attached by the decision maker to this version of the plan should be in

accordance with the approach set out in Paragraph 48 of the NPPF, having regard to the stage now reached towards adoption, the extent to which there are unresolved objections to the policies relevant to the determination of this application, and the degree to which the emerging policies are consistent with the NPPF.

Policy S1 - Presumption in Favour of Sustainable Development;
Policy S2 - Limits to Development;
Policy S4 - Design;
Policy E1 - Employment Land and Buildings;
Policy E3 - Connecting People in the Plan Area to New Employment Development;
Policy TC1 - Town Centre Uses;
Policy T1 - Traffic Management;
Policy T2 - Travel Plans;
Policy T4 - Walking and Cycling;
Policy NE4 - Nature Conservation; and
Policy NE 5 - Trees and Hedgerows.

Other Policies

National Planning Practice Guidance.
Good Design for North West Leicestershire Supplementary Planning Document - April 2017.
Leicestershire Highways Design Guide (Leicestershire County Council).
Circular 06/05 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within The Planning System).
River Mease Water Quality Management Plan - August 2011.
The River Mease Developer Contributions Scheme (DCS).

5. Assessment

Principle of Development

The site is located within the Limits to Development where the principle of retail development is considered acceptable subject to compliance with the relevant policies of the adopted Local Plan (2017) and other material considerations. Within the NPPF (2018) there is a presumption in favour of sustainable development and proposals which accord with the development plan should be approved without delay unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies as a whole of if specific policies in the NPPF indicate development should be restricted.

Within the NPPF it is stated that significant weight should be placed on the need to support and help achieve economic growth through the planning system and that local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.

In terms of the principle of the development it is considered that there are three distinct elements which are required to be assessed and these would be as follows:

- The Sequential Approach to Site Selection;
- The Impact of the Development on Town and Local Centres; and
- Loss of Employment Land.

These elements are assessed in more detail as follows with the submitted Retail Impact Statement being independently reviewed by an external consultant on behalf of the District Council.

The Sequential Approach to Site Selection

Paragraph 85 of the NPPF discusses allocating a range of suitable sites to meet the scale and type of retail, leisure and commercial uses in town centres to promote competitive town centres. It is considered that the NPPF is supportive of retail uses but seeks that these are provided within main town centres before than considering edge of centre locations and lastly out of town centre locations. The application site falls outside the Primary Shopping Area and Town Centre boundary for Ashby De La Zouch, as defined on the Policies Map to the adopted Local Plan, and is more than 300 metres from this boundary (the maximum distance for a site to be considered edge of centre), as such it would be categorised as an out-of-centre site. On this basis Paragraph 86 of the NPPF would be engaged which requires a sequential appraisal of site locations to be provided.

Policy Ec8 of the adopted Local Plan also reflects the advice outlined in Paragraph 86 of the NPPF in that a sequential appraisal is required should retail development not be located within the town centre.

The NPPG, in Paragraph 010 of the 'Ensuring the Vitality of Town Centres' section, outlines a checklist for the considerations which should be taken into account when determining whether a proposal complies with the sequential test and this outlines the following: -

- *"With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.*
- *Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.*
- *If there are no suitable sequentially preferable locations, the sequential test is passed."*

A sequential assessment has been submitted in support of the application, contained within the Retail Impact Statement, which have identified the following sites:

- Former Council Offices, 5 Kilwardby Street (town centre);
- Ivanhoe Business Park (out of centre);
- Land north of Ashby De La Zouch/Money Hill Urban Extension (out of centre);
- Fallen Knight Hotel, 14 - 18 Kilwardby Street (town centre);
- Royal Hotel Car Park, Station Road (edge of centre);

The assessment has been confined to Zone 3 of the survey area adopted for the purposes of the Council's 2012 Retail Study Update, which includes Ashby and the outlying areas, and is based on the shopping patterns identified in the 2012 study. The extent of the assessment area was also agreed with the District Council prior to the submission of the application. It is also the case that no sites have been specifically allocated for retail proposals within the adopted Local Plan and for the avoidance of doubt there is no requirement for the development to demonstrate need.

The conclusions of the suitability of these sites for the development is as follows but it is

important to establish that a sequentially preferable site would be one which accords with all criteria in that it is available, suitable and viable. This is as concluded within the Dundee Supreme Court decision [Tesco Stores Limited v Dundee City Council 21st March 2012] which states a site must be "*suitable for the development proposed by the applicant,*" that the "*whole exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than sought by the developer,*" as well as "*whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can fit an alternative site*" (this is as outlined in Paragraphs 24, 28 and 29 of the above decision).

Former Council Offices, 5 Kilwardby Street (town centre)

Planning permission was granted under application reference 14/00775/FULM for the demolition of existing buildings and erection of 32 no. retirement apartments and associated infrastructure and this permission has been implemented and subsequently completed. Accordingly this site is no longer available for development and is therefore discounted.

Ivanhoe Business Park (out of centre)

Development on all plots associated with this site have now commenced and accordingly no vacant plots are available for development. It is also the case that this site is further from the town centre than the application site and consequently would not be sequentially preferable.

On this basis this site is discounted as it is not available or suitable.

Land north of Ashby De La Zouch/Money Hill Urban Extension (out of centre)

Outline planning permission has been granted under application reference 15/00512/OUTM for the development of 605 residential dwellings including a 60 unit extra care centre (C2), a new primary school (D1), a new nursery school (D1), a new community hall (D1), new neighbourhood retail use (A1), new public open space and vehicular access from the A511 and Nottingham Road (outline - all matters other than part access reserved). Whilst this permission would provide an A1 use condition 23 of the permission outlines that any A1 use provided on the site will be limited to a floor space of 560 square metres (with any single unit being restricted to 460 square metres) and consequently the floor space would be significantly below that required by the applicant.

It is also the case that the description of the retail store as a 'neighbourhood retail use' would likely preclude the type of retail offer proposed by the applicant given that it would be envisaged that a convenience store would generally serve a residential development of the scale proposed. Even if allowing for some flexibility in the overall floor space the above site would not meet the requirements of the applicant.

On this basis the site is discounted as it is not suitable or viable.

Fallen Knight Hotel, 14 - 18 Kilwardby Street (town centre)

This site measures 0.14 hectares and benefits from planning permission (16/00012/FULM) and listed building consent (16/00007/LBC) for the conversion of hotel and restaurant to three townhouses, nine apartments and one commercial unit, erection of first floor extension over orangery, formation of terraces, external alterations and landscaping. Given the overall size of the site it would not be of a size which could accommodate the proposed development

(minimum of 0.6 hectares) and given that the permission seeks the retention of an existing building, which is Grade II listed, it would not be possible to adapt this building to meet the requirements of the applicant.

On this basis the site is discounted as it is not available, suitable or viable.

Royal Hotel Car Park, Station Road (edge of centre)

This site measures 1.64 hectares and planning permission exists for the demolition of side and rear extensions at existing hotel, erection of side/rear extension to existing hotel and associated external works; erection of single storey kiosk building (A3 use), erection of two-storey pavilion building (A3 and D2 use), formation of car park and alterations to existing access at Station Road involving removal of part of boundary wall to form visibility splays, associated removal of existing fencing and car park furniture and implementation of landscape works (application reference 14/00104/FULM). An application for the development of the northern car park of The Royal Hotel to provide B1 office accommodation and 28 residential apartments along with associated access, parking and amenity site (ref: 17/00761/FULM) has recently been withdrawn.

Initially the Council's external retail consultants queried the applicant's conclusions that this site was too small to accommodate the development given that it was over a hectare larger than the minimum site area required. Further information supplied by the applicant has outlined that whilst the site is large enough to feasibly accommodate the development it would be constrained by the fact that The Royal Hotel is a Grade II* listed building situated within the Ashby De La Zouch Conservation Area and that trees within its grounds would constrain development, this therefore leaves the car park which only extends to 0.3 hectares. It is accepted, by both the District Council and the Council's external retail consultants, that it would prove difficult to provide a form of development which would meet the requirements of the applicant whilst also preserving the significance of the heritage assets and protecting trees which contribute to the character and setting of these heritage assets with the car park not being of a suitable size so as to accommodate the scale of development proposed.

On this basis the site is discounted as it is not suitable or viable.

Conclusion in Relation to the Sequential Approach to Site Selection

Officers, as well as the Council's external retail consultants, are in agreement with the findings of the applicant's sequential assessment and that appropriate sites within the Town Centre, edge of centre and out of centre, have been appropriately considered and discounted for the reasons given above.

Whilst this site operates 'out of centre' it is within walking distance of the town centre, which lies around 1,200 metres to the west of the site, with such a route being on raised footpaths which are well lit. Access to public transport is also available from Nottingham Road which would provide easy access to the town centre with such routes being comparable to those which serve the other retail stores which exist in the immediate area. In this respect it is compliant with Policy E3 of the Emerging Ashby De La Zouch Neighbourhood Plan.

Having regard to the submitted information, it has been demonstrated that there are no sequentially preferable sites that are available, suitable or viable for the development either within the town centre or to its edges. The Council's external retail consultants have also indicated that whilst the above sites are the same as those identified two years ago their own

high-level review of commercial premises and development sites for sale or to let within the assessment area have not identified any sequentially preferable sites which would be of a sufficient size to accommodate the proposed development.

On this basis the application site represents the most sequentially preferable location for the proposed development and therefore the scheme is considered compliant with Policy Ec8 of the adopted Local Plan, Paragraph 86 of the NPPF and the guidance within the NPPG.

The Impact of the Development on Town and Local Centres

Policy Ec9 of the adopted Local Plan specifies that any development which proposes a town centre use which would not be within the town centre and which has a floorspace that exceeds 1000 square metres needs to be accompanied by an impact statement. In the circumstances that the proposal has a floorspace of 1915 square metres an impact statement is required.

Paragraph 89 of the NPPF requires proposed development of main town centre uses in edge and out-of-centre locations to be assessed against two impact criteria, namely the impact of the proposal on:

- Existing, committed and planned public and private sector investment in a centre or centre in the catchment of the proposal; and
- Town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time when the application is made.

Guidance on how the impact test should be used in decision taking is set out in Paragraph 015 of the 'Ensuring the Vitality of Town Centres' section of the NPPG. The guidance states that the impact test should be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible. Paragraph 016 notes that, as a guiding principle, impact should be assessed on a like-for-like basis in respect of that particular sector. Key considerations are identified as including:

- The policy status of the investment (i.e. whether it is outlined in the Development Plan).
- The progress made towards securing the investment (for example if contracts are established).
- The extent to which the application is likely to undermine planned development or investments based on the effect on current/forecast turnovers, operator demand and investor confidence.

Paragraphs 017 and 018 of the NPPG also outline guidance for applying the impact test and the considerations to take into account when assessing an impact statement.

Section 7.4 of the Retail Impact Assessment considers the impacts of the proposed development on existing, committed or planned investment which includes the following:

- 17/00430/FUL - Land Adjacent to 1 Kilwardby Street, Ashby De La Zouch;
- 09/00006/FUL - Aldi at Nottingham Road, Ashby De La Zouch;
- 16/01180/FUL - Co-Op at Holywell Spring Farm, Burton Road, Ashby De La Zouch;
- 16/00499/FUL - M&S Food Hall, Plot 1, Ashby Gateway, Ashby De La Zouch;
- 15/00063/FUL - Moria Fire Station, Shortheath Road, Moira;

The Council's external retail consultants have outlined that four of these five developments have been delivered with the outstanding one (17/00430/FUL at Kilwardby Street) being a very

different proposition to investors, than that proposed at Ashby Gateway, given that it relates to the erection of a three-storey detached building to provide five 'micro shop units' which would be modest in scale. Consequently the proposal would not have any significantly adverse impacts on this planned development or any other existing, committed or planned investment in Ashby De La Zouch Town Centre.

With regards to the implications to the vitality and viability of Ashby De La Zouch and Coalville Town Centre the Council's external retail consultants have outlined that the proposal would result in the creation of 1,810 square metres of floor space for the sale of comparison goods and 477 square metres of floor space for convenience goods. The external retail consultants also consider that a figure of 90% for the turnover of the proposal being derived from residents within Zone 3 of the Council's Retail Study Update of 2015 (the catchment area of the proposed development) is a robust assumption given the site's location on the edge of the catchment area and the shopping patterns associated with existing retail units on Nottingham Road.

In respect of the trade diversion for comparison retail goods to the proposed development Tables 5 and 6 set out in Appendix E of the Retail Impact Assessment outline that in 2022 the highest trade diversions would be from Tesco (£1.53 million) and Coalville Town Centre (£1.47 million) which, when combined, would account for 51% of the comparison retail turnover of the proposed development. The trade diversion from Ashby De La Zouch Town Centre would be £0.88 million with a total of 26% of the turnover of the proposed development being expected to be drawn from destinations outside the District.

The Council's external retail consultants initially advised that they considered the trade diversion from Tesco to be exaggerated and diversion from Ashby De La Zouch Town Centre underestimated given that the Council's Retail Study Update of 2015 outlined that within Zone 3 of the Retail Study Tesco had an overall comparison retail market share of 9.6% whereas Ashby De La Zouch Town Centre had a market share of 22.7%. Subsequent information supplied by the applicant has now revised the figures so that 26% of the comparison retail turnover would be derived from Ashby De La Zouch Town Centre (this was originally 15%) and that trade draw from out-of-centre sites (including Tesco) is reduced from 34.5% to 23.5%. The external retail consultant considers that these revised figures are more robust.

In terms of convenience trade diversion the highest levels are expected from Tesco (40% of the estimated convenience retail turnover of the proposed development) followed by Aldi (18%) and the M&S Food Hall (10%). Only 5% of the convenience retail turnover is expected to be diverted from Ashby De La Zouch Town Centre which would equate to £0.08 million in 2022. This is as outlined in Table 6 within Appendix E of the Retail Impact Assessment.

The Council's external retail consultants agree with the applicant's assumptions in terms of the likely pattern of convenience trade draw and that it is evident that the proposed convenience goods trade floor space would draw most of its turnover from existing out-of-centre food stores in close proximity to the site.

In concluding on matters associated with the impacts on the comparison retail turnover of Ashby De La Zouch Town Centre the Council's external retail consultants have outlined that the town centre is in good health with a good mix of uses, very low vacancy rates and an attractive town centre environment. Consequently the estimated levels of trade impact would not give rise to any significantly adverse impacts on Ashby De La Zouch Town Centre. Although Coalville is a more vulnerable centre the Council's external retail consultants consider that a robust level of trade diversion has been assumed from this town centre and on this basis no significant adverse impacts would arise to Coalville Town Centre.

In respect of convenience retail impacts the highest impacts would fall on the out-of-centre food stores in Ashby De La Zouch, which are not afforded any policy protection, and consequently no significantly adverse impacts would arise to the both Ashby De La Zouch and Coalville Town Centres in this respect.

Overall it is concluded that the proposed development would not give rise to any significantly adverse implications to the vitality and viability of both the Ashby De La Zouch and Coalville Town Centre and consequently the proposed development would be compliant with Policy Ec9 of the adopted Local Plan as well as Paragraph 89 of the NPPF. There would therefore be no reason to resist the development in the context of Paragraph 90 of the NPPF.

Whilst noting the comments of Ashby De La Zouch Town Council that the proposed development should make a contribution towards improvements in the public realm of Ashby De La Zouch Town Centre this is on the basis that the development impacts on the vitality of this centre. Given the above conclusion there is no justification to seek such a contribution given that it would fail to meet the test for conditions or obligations as outlined in Paragraph 56 of the NPPF in that it is not *"necessary to make the development acceptable in planning terms."*

Loss of Employment Land

The application site lies within a Primary Employment Area and consequently Policy Ec3 of the adopted Local Plan would be of relevance, along with Policy E1 of the Emerging Ashby De La Zouch Neighbourhood Plan which reflects the guidance of Policy Ec3. Part (1) of this Policy states that the Primary Employment Areas will be retained for employment generating purposes within use classes B1 (business), B2 (general industrial) and B8 (storage or distribution). Part (2) of this Policy, however, does outline that other uses will be accepted within the Primary Employment Areas where they:

*"(a) are small scale or ancillary to the above uses; or
(b) maximise job outputs and are compatible with the character and function of the area and with other nearby uses and policies of this Local Plan."*

As part of the consideration of the application Members are advised that as of 1 April 2017, there is an under-supply of some types of employment land in the District. There is an under-supply of just under 30 hectares of Class B1a/b uses. However with respect to B1c/2 uses there is an oversupply of approximately 9 hectares (above our minimum requirements) and with respect to B8, supply generally meets the need that has been identified.

The development would result in the loss of 0.8 hectares of employment land which is not considered to be a significant loss of such land. It is also the case that the retail proposal would create employment opportunities within this sector with the application suggesting that the equivalent of 30 full time jobs would be created. Furthermore the site has also been vacant since the mid-1990s and recent applications for development on the site have not been for uses within the 'B' use classes despite the prominence of the site and its easy access to the main road network.

In the context of criteria (a) and (b) of Part (2) of Policy Ec3 it is considered that the proposed floor space of the retail store would not be small scale nor would it be ancillary to a B1, B2 or B8 use, consequently it would not comply with criteria (a) of Part (2) of Policy Ec3. However, in terms of criteria (b) it is considered that the proposal would be compatible with the character and function of the surrounding area given that Plot 1 has been developed for a retail food store

within use class A1 and other A1 uses exist within the immediate area (i.e. Tesco, Aldi, Wickes and Pets at Home). In addition, Plot 1 was protected employment land but has subsequently been developed to provide a use which is not within the 'B' use classes.

On the basis that the development would be compliant with criteria (b) of Part (2) of Policy Ec3 it is considered that the loss of 0.8 hectares of employment land to provide the development would be acceptable particularly when factoring into account the adjacent plot of land has been redeveloped to provide an A1 use. As a result of this a reason to refuse the application on the basis of the loss of employment land could not be justified in this instance.

In conclusion, in the context of the above, the principle of development would be supported due to its compliance with relevant Policies of the adopted Local Plan, the Emerging Ashby De La Zouch Neighbourhood Plan and Paragraphs of the NPPF.

Whilst representations have been received from third parties, as well as Ashby De La Zouch Town Council, that the proposal is contrary to Policy TC1 of the Emerging Ashby De La Zouch Neighbourhood Plan it is noted that the current text of this Policy indicates that retail development outside the defined town centre will be subject to the sequential test and impact assessments outlined within relevant Paragraphs of the NPPF. As concluded in the sections above the proposal is compliant with the relevant Paragraphs of the NPPF and on this basis no conflict with Policy TC1 of the Emerging Ashby De La Zouch Neighbourhood Plan arises.

Design and Impact on the Character and Appearance of the Streetscape and Wider Area

The need for good design in new development is outlined not only in adopted Local Plan Policy D1, as well as the Council's Adopted Good Design for NWLDC SPD, but also Paragraphs 124, 127 and 131 of the NPPF.

It is proposed that the building would be set to the south of the M&S Food store on land which rises from north to south as well as from west to east and whilst the application site sits around 3 metres lower than the edge of the A511, set to the east, it is considered to be within a prominent location in views established not only from the A511 but also Nottingham Road to the north. At the pre-application stage it was determined that the views of the M&S Food store from the A511 should be protected and the placement of the store ensures this is the case.

The proposed finished floor level of the retail unit would be 132.10 metres Above Ordnance Datum (AOD) with it being 11 metres in height at its highest point (i.e. 143.10 metres AOD). In comparison with the adjacent M&S Food store it would have a floor level which is 0.2 metres lower as well as an overall height which would be 1.5 metres lower than the highest part of the M&S Food store. In terms of floor space the proposed unit would be 699 square metres larger than that of the M&S Food store.

Pre-application advice has been provided in respect of the proposal and it was determined at that stage that the materials pallet for the building should be reflective of those used on the M&S Food store which is considered to be of a high quality design. The plans as submitted have heeded the advice which was provided and the building will be constructed utilising powder coated metal panels and timber feature fins, it will also incorporate a feature parapet to define the entrance to the store in the same manner as that adopted by the M&S Food store. The incorporation of such design features was considered important in defining the design approach to the buildings upon the Ashby Gateway so as to clearly distinguish them from neighbouring built forms.

In terms of orientation the entrance to the store would be angled so as to be visible from the

junction of Smithy Road with Nottingham Road as well as from Smithy Road itself and the expanse of glazing on the elevations which are visible from these highways has been increased so as to ensure that views into the store from the main pedestrian routes are established in accordance with the Council's adopted Good Design SPD. Pedestrian links from Smithy Road to the store entrance would also be provided so as to ensure the site is not only accessible from people travelling to the site via Nottingham Road but also employees within the numerous business premises which exist on Coalfield Way and Charter Point Way to the south.

With regards to the garden centre element of the scheme this would be set to the south-east of the unit and therefore sits between the south-eastern elevation of the store and the A511. The main concern raised, at the pre-application stage as well as during the consideration of the application, was associated with the visibility of this area and following amendments it is considered that a suitable design approach has been achieved. Views of the garden centre area from the A511 and Coalfield Way would be limited due to the difference in land levels and views from Nottingham Road, across the car park of the M&S Food store, would now be restricted by the provision of a suitable boundary fence (Heras Zenith fencing with Tenax Quadra Windbreak Mesh coloured Dark Grey ranging from 2.4 to 4.2 metres in height) and the planting of a 2 metre high beech hedgerow on the boundary with the M&S car park. On this basis the store itself would remain the main visual focus in views from the immediate area.

Overall the scale, design and layout of the development would be acceptable and would ensure that the development integrates into the environment in which it is set. On this basis it would accord with Policy D1 of the adopted Local Plan, the Council's adopted Good Design SPD, Policy S4 of the Emerging Ashby Neighbourhood Local Plan and Paragraphs 124, 127 and 131 of the NPPF.

Residential Amenity

There are no residential properties within the vicinity of the site which would be impacted on as a result of the development and consequently it is considered compliant with the aims of Policy D2 of the NPPF as well as Paragraph 180 of the NPPF.

Highway Safety

The County Highways Authority (CHA) have been consulted on the application and have advised that they have no objections subject to the imposition of conditions on any permission granted.

It is proposed that the vehicular access into the site off Smithy Road, created in accordance with the permission granted under application reference 15/00278/FULM, would be utilised to serve the store with this access also being shared with the adjacent M&S Food store. It is considered that this access has been designed to cater for the amount of vehicles associated with both of the stores and this access has adequate levels of visibility to enable vehicles to enter Smithy Road in a slow and controlled manner.

With regards to the impacts on the highway network the CHA are satisfied that the methodology of the transport statement (TS) and retail impact statement (RIS) is acceptable and whilst additional vehicle movements would be associated with the proposal, it is determined that the works recently undertaken to the A511 and B587 roundabout will deliver significant additional capacity on the highway network and consequently safeguard against any severe detriment to highway safety in this respect. It is, however, the case that it would be necessary to impose a condition restricting the proposed floor space of the unit to an appropriate split of comparison and convenience retailing (i.e. to meet the bespoke requirements of the applicant) given that any other retail uses within use class A1 could generate a greater level of vehicular activity than

that which has been assessed in the TS and RIS.

The CHA are satisfied with the proposed works which would be undertaken to the boundary with the highway, subject to relevant conditions, and agreement of such works separately with the CHA under Section 278 of the Highways Act 1990. They have also advised that the personal injury collision (PIC) data from the last 6 years would not lead to any requirement for highway safety measures to be secured as part of any permission granted.

In respect of off-street parking it is proposed that 79 off-street car parking spaces would be provided in connection with the store. Initially the CHA raised concerns as the level of off-street parking was below their requirements and as such the proposal would result in highway safety issues by exacerbating a known on-street parking problem in the area. The applicant sought to address this matter by the submission of a Highways Technical Note 1 (HTN1) which assessed the car parking demands at the neighbouring M&S Food Store, via surveys undertaken on three days in July 2018. HTN1 concluded that the maximum demand for vehicles within this car park was 57 between the peak hours of 14:00 to 15:00 with capacity not exceeding 80% at any time during the surveys. As such the level of car parking for the proposed store would be sufficient.

The CHA rejected the conclusion of HTN1 given that the survey was undertaken in the school holidays and as such did not represent 'normal' conditions due to Government advice in this respect advising that transport data should not be collected during non-neutral months (i.e. summer holidays). It was therefore advised by the CHA that in order for reliable survey data to be provided it would be necessary for this to be collected at an appropriate time of the year (i.e. not school holidays) with the survey ideally being based on a B&M store located in Leicestershire and of the same format to that proposed at Ashby Gateway.

As a result of this position the applicant submitted a further Highways Technical Note 2 (HTN2) which has assessed the parking demands at the B&M store on Rockingham Road in Market Harborough. This store met the criteria of the CHA in that it is based in Leicestershire, is a stand-alone store (i.e. not on a retail park), has its own car park and includes a garden centre. The B&M store in Market Harborough has 161 off-street car parking spaces and a total floor area of 3,718 square metres (2,788sqm internally and 930sqm within a garden centre). HTN2 concluded that the peak on-site accumulation was 76 vehicles on a Friday and 91 vehicles on a Saturday with it being noted that the combined floor space of the B&M store in Market Harborough is 1,159sqm greater than that proposed at Ashby Gateway. Taking into account the difference in the floor space between the two stores it is identified that a maximum parking demand on Fridays and Saturdays at the Ashby Gateway store would be 60 and 69 vehicles respectively and as such a sufficient level of off-street parking is proposed.

The CHA have reviewed HTN2 and have concluded that its findings are robust and provide sufficient justification for the level of off-street parking proposed. It is, however, the case that it would be necessary for the store to manage the car parking, via the installation of an enforcement camera to ensure time limits for parking are not exceeded, and the applicants have confirmed their acceptance to this condition. It is also noted that the adjacent M&S Food Store has recently received permission for the installation of a car park enforcement camera under application reference 18/00855/FUL.

Paragraph 109 of the NPPF outlines that *"development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."* Given the conclusions of the County Highways Authority it is determined that, subject to conditions, no unacceptable or severe detriment to highway safety would arise and consequently the proposal would be deemed

compliant with Policies IF4 and IF7 of the adopted Local Plan, Policies T1 and T2 of the Emerging Ashby Neighbourhood Plan as well as Paragraphs 105, 106 and 109 of the NPPF.

Landscaping

An arboricultural assessment has been submitted in support of the application and this has demonstrated that in order to facilitate the development a total of nine trees would need to be removed from the site along with a partial section of a group of trees, these trees would mainly be confined to the southern boundary of the site and are predominately young saplings of between 7 and 9 metres in height. On the basis of the current maturity of the trees they would not warrant protection via a Tree Preservation Order (TPO).

Whilst such trees would be removed a comprehensive soft landscaping scheme has been submitted in support of the application and as part of the consideration of the application the National Forest Company has been consulted. On the initial landscaping scheme submitted the National Forest Company indicated that although the loss of existing trees was regrettable the suggested landscaping scheme would mitigate against this loss due to the semi-mature trees within the car park having an instant visual impact and the establishment of a native woodland belt to the southern boundary and planting of a Beech hedgerow also being of benefit to landscape diversity.

However, an amended landscaping scheme has been required due to the County Highways Authority advising that they would not accept landscaping within the highway boundary and this has consequently led to the loss of the native woodland belt and a few individual trees. The National Forest Company have been reconsulted on the revised landscaping scheme and whilst it is regrettable that the extent of landscaping has been reduced, the proposed planting to be provided within the site boundaries would accord with their previous recommendations.

It is considered that as the soft landscaping within the confines of the site would remain in accordance with the recommendations of the National Forest Company, with an additional 2 metre high beech hedge being introduced to the boundary of the site with the M&S car park, the proposal would be acceptable particularly given that the applicant has no control over land within the highway in order to provide the soft landscaping initially proposed. Accordingly the submitted soft landscaping scheme would be acceptable and would be conditioned on any permission granted.

No details of the hard landscaping to be provided on the site has been submitted and consequently a condition would be imposed on any permission granted for these details to be agreed.

Overall the proposal would be considered compliant with Policies D1 and En3 of the adopted Local Plan as well as Policy NE5 of the Emerging Ashby De La Zouch Neighbourhood Plan.

Ecology

The County Council Ecologist has been consulted on the application and has raised no objections. On this basis that no ecological mitigation is required in connection with the development it would accord with Policy En1 of the adopted Local Plan, Policy NE4 of the Emerging Ashby De La Zouch Neighbourhood Plan and Paragraph 175 of the NPPF and Circular 06/05.

Impact on the River Mease Special Area of Conservation/SSSI

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). Discharge from the sewage treatment works within the SAC catchment area is a major

contributor to the phosphate levels in the river. Discharge into the river from non-mains drainage systems and from surface water disposal can also result in an adverse impact on the SAC, including in relation to impacts on water quality and flow levels.

The proposal could result in an impact on the SAC, which may undermine its conservation objectives, as it could result in the additional discharge of foul drainage to the treatment works/use of a non-mains drainage system and surface water drainage discharge.

The River Mease Developer Contribution Scheme First and Second Development Windows (DCS1 and 2) have been produced to meet one of the actions of the River Mease Water Quality Management Plan (WQMP). Both DCS1 and DCS2 are considered to meet the three tests of the 2010 Community Infrastructure Levy (CIL) Regulations and Paragraph 56 of the NPPF. There is no capacity available under DCS1 and so DCS2 was adopted by the Council on the 20th September 2016.

The proposed development would result in the provision of amenity facilities for staff and therefore there would be an increase in foul drainage discharge to the mains sewer from the site. A DCS2 contribution would be calculated using the British Flows and Loads 4 document and this indicates that for full-time employees a rate of 90 litres/per person/per day would be expected. The application forms indicate that the proposal will create 30 full-time jobs and according the formula calculation would be as follows:

30 full-time employees x 90 litres = 2700 litres/per person/per day

Using the formula for non-residential schemes in DCS2, the resulting contribution is calculated as follows:

2700 litres x 1 x 2.5 = £6750

The applicant has indicated that they are willing to pay the required DCS contribution and the Council's solicitor has been instructed. The Environment Agency and Natural England have both issued Standing Advice relating to the River Mease SAC under which they do not need to be consulted if the proposal connects to the mains sewer and the applicant is agreeable to the payment of the DCS contribution. On the basis that the applicant's calculation does not include for customer toilets a condition would be imposed to outline that no customer toilets should be installed within the premises given that they would not be mitigated.

The flows from the site need to be taken into account against the existing headroom at Packington Treatment Works and at present sufficient capacity is available so as to accommodate the foul drainage from the site.

The provision of the building and hard surfaces on the site will impact on land which is currently undeveloped but whilst this is the case it is considered that the impacts to the River Mease SAC from surface water run-off could be mitigated by the imposition of a condition on any consent granted to ensure that run-off rates from the site to the mains sewer are the equivalent of its undeveloped state.

In conclusion it can be ascertained that the development on the site will, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any features of special scientific interest of the River Mease SSSI. It therefore complies with the Habitat Regulations 2017, Policies S2, En1 and En2 of the adopted Local Plan, Policy NE4 of the Emerging Ashby De La Zouch Neighbourhood Plan and the NPPF.

Drainage and Flood Risk

The site lies within Flood Zone 1, and is therefore in an area at the lowest risk of flooding, and is not within an area impacted by surface water flooding as defined by the Environment Agency's Surface Water Flood Maps. Whilst not in an area which would be prone to flooding it is noted that there is a need for surface water to be adequately drained for the purposes of the River Mease SAC. The scheme has been assessed by the County Council Lead Local Flood Authority (LLFA) who whilst not objecting to the proposed means of surface water drainage, which would discharge surface water run-off to the mains sewer at a rate consistent with its undeveloped state, have outlined that consent from Severn Trent Water would be required to enable a connection into the mains sewer to be made. No representation has been received from Severn Trent Water to advise that they would not accept the surface water flows with it being the case that an agreement of a connection to the mains would be made directly with Severn Trent Water under separate legislation outside of the planning process. In these circumstances it is considered that subject to the imposition of appropriate conditions on any consent granted for the surface water drainage scheme to be provided the proposal would accord with Policies Cc2 and Cc3 of the adopted Local Plan as well as Paragraph 163 of the NPPF.

Insofar as foul drainage is concerned, it is indicated that this would be discharged to the mains sewer, which would be a necessity in terms of the River Mease SAC, and would be agreed with Severn Trent Water under separate legislation. No representation to the application has been received from Severn Trent Water advising that this would not be appropriate and as such it is considered that the drainage can be met by the existing sewerage system in place. On this basis the proposed development would accord with Paragraph 180 of the NPPF.

Land Stability and Contamination

The Council's Contaminated Land Officer has reviewed the application and has determined that there are no objections to the application subject to the imposition of conditions associated with the submission of a Risk Based Land Contamination and relevant Verification Investigation should remediation be required, this is due to known issues with ground gas and contamination issues in the area. It is considered that the imposition of such conditions are reasonable given the use of the building and the need to ensure the health and safety of employees and customers of the store.

As the site lies within a Coal Mining Referral Area a Coal Mining Risk Assessment has been submitted in support of the application. The Coal Authority has been consulted on the Risk Assessment and have raised no objections to the application. On this basis it is considered that there are no land stability issues associated with the creation of the development.

On the basis of the above, and subject to the imposition of relevant conditions, it is considered that the proposal would accord with Policy En6 of the adopted Local Plan as well as Paragraphs 178, 179 and 180 of the NPPF.

Other Matters

In terms of the third party comments received which have not been addressed above the applicant has outlined that the submitted Retail Impact Assessment is based on industry established information provided by Experian which is a definitive source of information for town centre health checks. The use of such information has also been considered acceptable by the Council's external retail consultants. Consequently it is considered to be a more reliant source of material for the basis of the assessment of the application than that provided by the third party which is not substantially backed with any financial or factual information. It is also the case that vacancy rates have reduced and an above 'national average' of comparison retailers

are now present in Ashby De La Zouch Town Centre than was the case at the time of the Council's Retail Studies of 2012 and 2015 which would not suggest that the town centre is failing. The presence of charity shops would also not suggest a failing town centre given that such businesses generally require small floor space premises which are characteristically found in traditional high street destinations, such as Ashby, where small terraced retail units are present, it is also the case that they represent only 7% of the town centre's unit composition.

Conclusion

The application site is situated within the Limits to Development where the principle of this type of development is acceptable. It is also considered that the information as submitted has adequately assessed the impacts of the proposal on the vitality and viability of Ashby De La Zouch and Coalville Town Centres and that no significant adverse impacts would arise, in this respect, as well as the fact that there are no sequentially preferable sites available for the proposed development. On this basis compliance with Policies Ec8 and Ec9 of the adopted Local Plan as well as Paragraphs 24 and 26 of the NPPF has been demonstrated. The loss of employment land, in this instance, is also considered acceptable in the context of Policy Ec3 of the adopted Local Plan. It is also considered that the proposal would also not impact adversely on the character and appearance of the streetscape and wider area, residential amenity, highway safety, ecology, existing landscaping, contaminated land or the integrity of the River Mease SAC, nor would the proposal exacerbate any localised flooding issue. There are no other material planning considerations that indicate planning permission should not be granted and accordingly the proposal, subject to relevant conditions and completion of a Section 106 agreement, is considered acceptable for the purposes of the above mentioned policies.

It is therefore recommended that the application be permitted.

RECOMMENDATION - PERMIT, subject to conditions and completion of a Section 106 agreement;

1. **Time limit.**
2. **Approved plans.**
3. **External materials.**
4. **Restriction on floor space of comparison goods.**
5. **Restriction on use class.**
6. **Finished floor levels and ground levels.**
7. **Boundary treatments (including retaining walls).**
8. **Soft landscaping.**
9. **Replacement landscaping.**
10. **Hard landscaping.**
11. **Retained tree and hedgerow protection.**
12. **Car parking.**
13. **Car park monitoring camera.**
14. **Cycle parking.**
15. **Off-site highway works.**
16. **Construction traffic management plan.**
17. **Foul drainage.**
18. **Surface water drainage.**
19. **Surface water drainage during construction.**
20. **No installation of customer toilets.**
21. **Contaminated land.**
22. **Verification investigation.**