

UPDATE SHEET

PLANNING COMMITTEE – 4 June 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 23/00173/FULM Demolition of existing buildings and erection of 100 dwellings, with access, foul pumping station and associated landscaping and infrastructure.

Land Off Standard Hill, Hugglescote, Coalville.

Additional Representation/Information

At the technical briefing Members raised concerns in relation to the impact of the construction phase of the development to residential amenities and the scheme of boundary treatments to be provided along the boundary with Private Road.

Officer Comment

A condition will be imposed on any permission granted to secure a suitable scheme of boundary treatments which will include the boundary with Private Road. When considering such a boundary treatment scheme, discussions can be held with the Ward Member and an informative would be added to any permission granted advising of this.

A condition limiting the construction hours of the site is also proposed as this meets the test for conditions.

RECOMMENDATION – NO CHANGES TO RECOMMENDATION, with the following additional conditions proposed:

- Limit on the construction working hours on the site
- Proposed boundary treatment including that on Private Road

A2 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 development plan's requirement to retain Primary Employment Areas;*
- 2) *Inappropriate approach to the Decision Making process;*
- 3) *Misapplication of NPPF presumption of sustainable development; 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.

The following questions/queries were also raised by Members at the Technical Briefing on the 30th May 2024:

- a) *When were trees removed from the site? And the reasoning as to why the trees were removed;*
- b) *The employment land allocation as part of the Money Hill development should be sequentially assessed;*
- c) *Why is the impact to Ashby De La Zouch Town Centre not significant if £1 million is to be lost by Co-op between its two stores?*
- d) *How does the development impact on the current investment in Ashby De La Zouch Town Centre?*
- e) *Concerns associated with the vehicular access into the site and why an alternative vehicular access is not proposed;*
- f) *The highway impact to the junction of Resolution Road with Nottingham Road which is already over capacity, and which is only to be mitigated by alterations to the traffic lights;*
- g) *The lack of access to the site via cycling; and*
- h) *The impact of the construction phase of the development on residential amenities.*

Officer comment

Additional Tesco Representation

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

- 1) *Breach of the development plan's requirement to retain Primary Employment Areas;*
- 2) *Inappropriate approach to the Decision Making process; and*
- 3) *Misapplication of NPPF presumption of sustainable development.*

The purpose of Policy Ec3 of the adopted Local Plan (as well as Policy En1 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP)) is to safeguard the existing stock of better-quality employment land/premises. As part of this policy there is a recognition that circumstances do change and therefore Part (2) of this Policy allows alternative uses within designated Existing Employment Areas where certain criteria are met. This is consistent with Paragraph 126 of the NPPF.

An assessment has been provided by the applicant which has demonstrated that there was no demand for the use of the building as offices, or any uses within use classes B2 or B8 of the use classes order, with the building being marketed for a reasonable period.

Whether the proposal maximises job outputs, in line with criterion (b) of Part (2) of Policy Ec3 is a matter of planning judgement. The adopted Local Plan does not define what is meant by maximising jobs, and it is officer's view that the proposal would maximise jobs. This is considered to be the case when accounting for the fact that there is no demonstrable demand for the existing office space, or the use of the building/land within use classes B2 or B8, and therefore the building either stands empty for a significant period of time with no employment created or the land is developed for an alternative use which would result in the creation of some 40 full-time equivalent jobs.

Whilst the adopted Local Plan, and made ADLZNP, would look long term, Policy Ec3 is not dogmatic as it includes due flexibility through Part (2) to respond to changes in circumstances.

It is also the case that Policy Ec3 is not expressed as a sequence policy in the manner suggested by Tesco, as Part (2) of Policy Ec3 allows alternatives to be considered. Fundamentally it is the view of officers that the proposed development does not conflict with Policy Ec3 given that Part (2) of this Policy allows consideration to be given to alternative uses of employment land, on this basis the proposed development is compliant with the adopted Local Plan and made ADLZNP.

The fact that the application has been advertised as a 'departure' also does not contradict this position given that until the appropriate assessment was undertaken it could not be determined whether the proposal was to be compliant with Policy Ec3, or not.

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

The Council's external retail consultant has outlined that the condition suggested by Tesco is similar to those imposed on a number of recent permissions for discount supermarkets.

Notwithstanding this, it is considered that the imposition of a condition limiting the number of product lines that can be sold from an individual store is, in practice, of limited enforceability. Furthermore, restricting the number of saleable product lines considering the intention to impose a condition limiting the quantum of convenience and comparison sales floorspace to those outlined in the Committee report seems unnecessary.

Indeed, the sales densities of Limited Assortment Discounters are now comparable to other major food retailers in the UK, particularly in terms of convenience. The proposed

floorspace restrictions will ensure that no other business model with a potentially materially greater impact on trade in Ashby De La Zouch Town Centre will be able to viably trade from the proposed Lidl store if permission is granted.

Consequently it is considered that the suggested wording of the condition by Tesco would not fully reflect the five 'tests' for conditions as outlined in Paragraph 56 of the NPPF, with the proposed floorspace restrictions alone providing sufficient certainty to adequately safeguard the vitality and viability of Ashby De La Zouch Town Centre (as well as other centres within the catchment of the application site).

The Council's external retail consultant concurs with this position.

Question/Queries Raised by Members at the Technical Briefing

With regards to the questions/queries raised by Members at the Technical Briefing, officers would comment as follows:

- a) *When were trees removed from the site? And the reasoning as to why the trees were removed.*

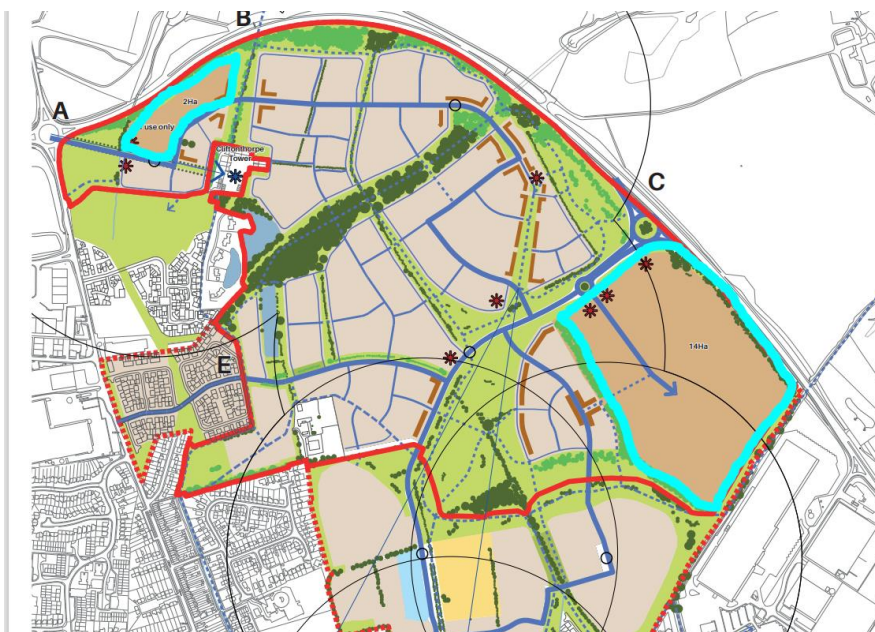
The applicant has advised that they removed the vegetation (including trees) prior to the submission of the planning application to allow hoarding to be erected to ensure the safety and security of the site. The applicant has outlined that the vast majority of tree planting has been retained, with additional tree planting being delivered as part of a soft landscaping scheme.

The sentence on page 129 of the Committee report stating that *"It was also the case that trees to the south-eastern site boundary had already been removed by the site owner before such time as Lidl purchased the site"* should therefore be disregarded.

- b) *The employment land allocation as part of the Money Hill development should be sequentially assessed.*

The employment land allocation as part of the Money Hill development is covered by Policy Ec2(1) of the adopted Local Plan which outlines the criteria which is required to be met for the land to be developed. The location of the allocated land is as shown in the image below.

Money Hill Employment Land Allocation – Policy Ec2(1)



The criteria to be met by the applicant for a site to be sequentially preferable is as outlined on page 93 of the Committee report.

A sequential assessment has been provided by the applicant which has concluded that the Money Hill employment allocation is not currently being marketed and is therefore not available at the present time with the site being less well connected by public transport than the application site. On this basis the applicant considers that the Money Hill employment land allocation is not sequentially preferable to the application site.

It is also the case that page 93 of the Committee report states “*only a site within, or closer to, the town centre would be considered sequentially preferable.*” In this respect the allocated employment land within the Money Hill development would not be sequentially preferable given that it is a greater distance from the Ashby De La Zouch Town Centre. Also the terms of Policy Ec2(1) do not offer the flexibility to consider alternative uses of the allocated land which Policy Ec3(2) does.

On the above basis, officers would conclude that the Money Hill employment allocation would not be sequentially preferable to the application site.

c) *Why is the impact to Ashby De La Zouch Town Centre not significant if £1 million is to be lost by Co-op?*

As set out on page 98 of the Committee report, by the impact year of 2028 the estimated monetary diversions from the convenience goods turnover of the two town centre Co-op stores would be estimated to amount to between £0.75 million per annum, or £1.1 million per annum in a worst-case scenario. Such monetary diversion would amount to 6.6% (or 9.7% in the worst-case scenario) of the combined annual convenience goods turnover of the two Co-op stores in the impact year of 2028.

Page 98 of the Committee report also outlines that the two Co-op stores are collectively trading almost exactly in line with the company benchmark. At the levels of impact

identified above, the Co-op stores would have a post-impact turnover of approximately 83% to 92% of the benchmark by 2028.

The Council's external retail consultant considers that the Co-op stores would continue to trade viably at this level for the reasons as outlined on pages 98 and 99 of the Committee report.

Moreover, the relevant policy test set out in criterion (b) of Paragraph 94 of the NPPF is whether the application proposal would have a significant adverse impact on the vitality and viability of the town centre as whole (rather than on any individual store or stores).

The Council's external retail consultant has estimated that the convenience trade impacts on the entire Ashby De La Zouch Town Centre will amount to between 7% and 9% (in the worst-case scenario) (as outlined on page 99 of the Committee report) and given the town centre's relatively good health it is considered that no significant adverse impact would arise within Ashby De La Zouch Town Centre.

On this basis the proposal is compliant with criterion (b) of Paragraph 94 of the NPPF as well as relevant policies of the adopted Local Plan and made ADLZNP.

d) How does the development impact on the current investment in Ashby De La Zouch Town Centre?

So far as the impact on existing investment in Ashby De La Zouch Town Centre, and in particular the Co-op stores, is concerned the Council's external retail consultant has outlined that such stores will continue to trade viably should planning permission be granted. This conclusion being based, in part, on the limited overlap between the discount foodstore offer and the existing Co-ops. Thus, the available evidence suggests that any investment that has already taken place in the Co-op stores will not be impacted by the proposed development.

With regard to any committed or planned investments that may be due to take place in Ashby De La Zouch Town Centre, and in particular the Co-op stores, the key considerations are as outlined on page 96 of the Committee report.

The NPPF and NPPG do not give any definition or stage that must be reached before an investment can be considered to be 'planned'. However, numerous appeal decisions support the interpretation that whether an investment is 'planned' depends on local facts and circumstances.

As far the Council's external retail consultant, and officer's, are aware the Co-op has not publicly announced any intention to invest further in its town centre stores, and no evidence has been provided to suggest that Co-op has plans to make any significant financial contribution towards them. Indeed the Committee report, at page 96, indicates that neither the Council's external retail consultant, officers, or the applicant have been able to identify any committed or planned investments anywhere in Ashby De La Zouch Town Centre that could be adversely impacted by the proposed development.

On this basis there is no evidence to demonstrate that the proposal would be contrary to criterion (a) of Paragraph 94 of the NPPF, or relevant policies of the adopted Local Plan and made ADLZNP.

- e) *Concerns associated with the vehicular access into the site and why an alternative vehicular access is not proposed; and*
- f) *The highway impact to the junction of Resolution Road with Nottingham Road which is already over capacity, and which is only to be mitigated by alterations to the traffic lights.*

Members are referred to the email correspondence provided by officers on the 31st May 2024 which includes a technical note provided by the County Highways Authority.

- g) *The lack of access to the site via cycling.*

The Council is working with Leicestershire County Council (LCC) on the Local Cycling and Walking Infrastructure Plan (LCWIP) which has the aims of increasing mobility by means of sustainable transport methods and which links jobs and communities together.

Whilst the LCWIP identifies the creation of a link from Ashby De La Zouch Town Centre to the services within the area of Ashby where the application site is located, at present LCC has not undertaken detailed design reviews of the individual links to establish the costs involved. It would be necessary for the costs to be established to subsequently determine the types of developments which may contribute towards such costs, as well as the level of contribution which may be attributed to an individual application.

At present, therefore, there is no committed cycling scheme in place which the development could contribute to. Notwithstanding this, the Money Hill development would deliver cycling infrastructure which would enable connectivity through Money Hill to Resolution Road (via Featherbed Lane) albeit the timescale for the delivery of this infrastructure is currently unknown.

In any event, it is also considered that any lack of access to the site via cycling would be no worse than that associated with the former office use of the land which would likely have resulted in greater demands for cycle access, than the proposal, given the number of employees the building could accommodate. It is also the case that not all users of the foodstore will utilise cycling as a means of accessing the site as this would be dependent on the type of shopping they are undertaking.

Overall, therefore, there would be no justification to refuse the application on the lack of the delivery of improved cycling infrastructure to the site.

- h) *The impact of the construction phase of the development to residential amenities.*

A CEMP condition cannot be used as such a condition doesn't meet the tests for a planning condition as contained in the NPPF. A condition limiting the construction hours of the site is proposed to help to protect the living conditions of the nearest occupiers as this type of condition meets the test in the NPPF.

Other Matters

References to the 'Environmental Bill' on pages 79 and 127 of the Committee report should be to the 'Environment Act'.

For the purposes of clarity, the Council's external retail consultant assessed the submitted Planning and Retail Impact Statement (PRIS) based on the impact of the development on town and local centres. Officers have undertaken the assessments in relation to the sequential approach to site selection and the loss of employment land.

For the avoidance of doubt, and where relevant, regard has also been had to the public sector equality duty, as required by Section 149 of the Equality Act 2010 and to Local Finance Considerations (as far as it is material), as required by Section 70(2) of the Town and Country Planning Act 1990 (as amended).

RECOMMENDATION – NO CHANGES TO RECOMMENDATION, with the following additional condition proposed:

- Limit on the construction working hours on the site