

Erection of new Lidl foodstore (Use Class E) with car parking, landscaping and other associated works

Report Item No  
A1

Ashfield House, Resolution Road, Ashby De La Zouch,  
Leicestershire LE65 1DW

Application Reference  
23/01153/FULM

Grid Reference (E) 436935  
Grid Reference (N) 317285

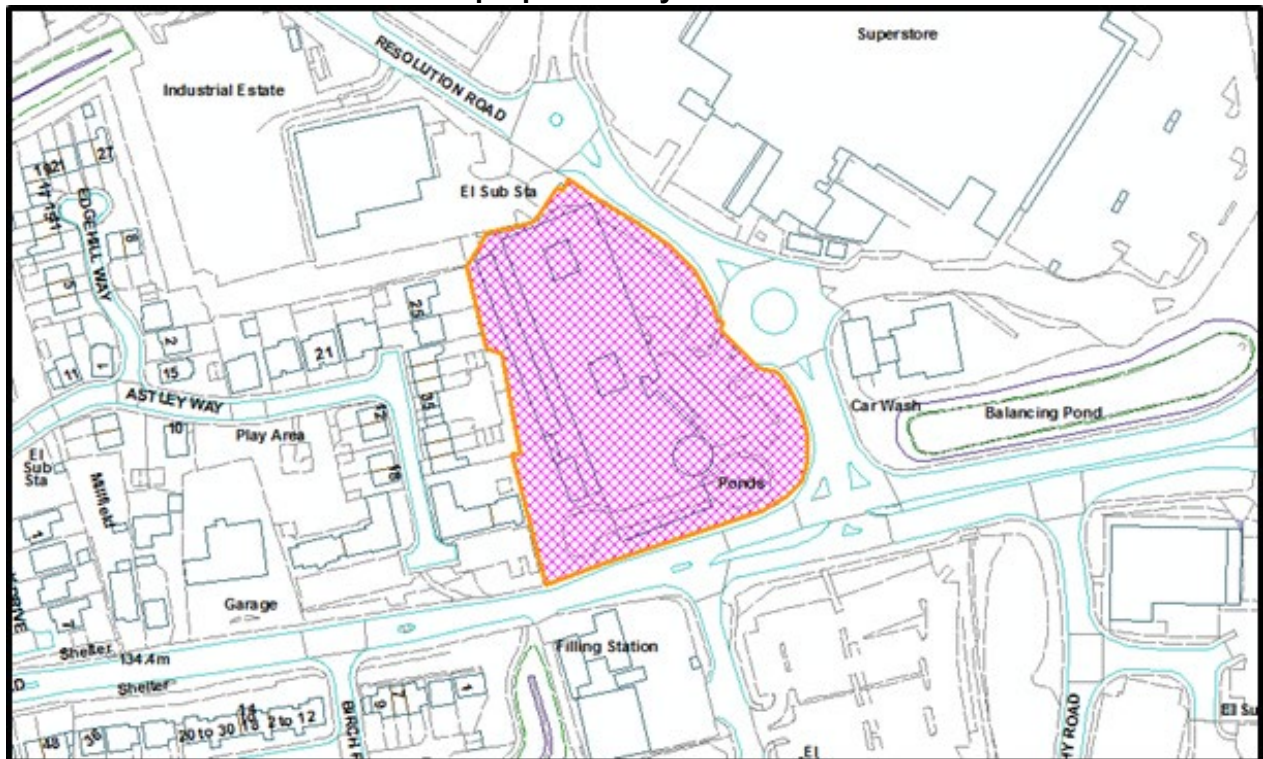
Date Registered:  
5 September 2023  
Consultation Expiry:  
23 May 2024  
8 Week Date:  
31 October 2023  
Extension of Time:  
11 July 2024

Applicant:  
Lidl (Great Britain) Limited

Case Officer:  
Adam Mellor

Recommendation: PERMIT, subject to conditions and the securing of a Section 106 Agreement

Site Location - Plan for indicative purposes only



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## Deferral of Application

A decision on the application was deferred at the Planning Committee meeting on the 4<sup>th</sup> June 2024 to allow further discussions with the applicant following questions and concerns raised by Members during the consideration of the application. The response provided by the applicant is attached as Appendix 1 to this report.

The issues raised by the Committee, and answers provided, are summarised below:

### **1. Need for a contribution for improvements to the town centre – Ashby BID and Town Council initiatives**

Paragraph 57 of the NPPF outlines that planning obligations must only be sought where they meet all of 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.*

This is also as outlined in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended).

It is outlined in ‘*The Impact of the Development on Town and Local Centres*’ sub-section of the ‘*Principle of Development*’ section of this committee report below that, following an assessment by the Council’s external retail consultant, the proposed development would not give rise to any significantly adverse implications to the vitality and viability of the Ashby De La Zouch Town Centre and consequently is compliant with Policy Ec9 of the adopted Local Plan, as well as Policy TC1 of the Ashby De La Zouch Neighbourhood Plan (ADLZNP) and Paragraph 94 of the NPPF.

In the absence of any perceived significant adverse impact to the town centre, as well as it not being demonstrated that there is an adopted town centre improvement scheme to which the proposed development could contribute towards, there is no legal and justifiable requirement to provide a financial contribution given that it would not be necessary to make the development acceptable in planning terms. Furthermore, there is no adopted policy which requires such a sum to be paid, or which would guide the potential quantum of the sum.

Whilst contributions to improve the town centre have previously been secured from both the construction of the Aldi at Dents Road and an extension to Tesco at Resolution Road, such contributions are historic (*Aldi decision issued at appeal on the 8<sup>th</sup> October 2010 (10/00029/FULM – APP/G2435/A/10/2126436) and Tesco decision issued on the 4<sup>th</sup> August 2010 (08/01606/FUL)*).

In more recent years an M&S foodstore (*approved on the 9<sup>th</sup> February 2017 (16/00499/FULM)*) and B&M store (*approved on the 17<sup>th</sup> December 2018 (18/00464/FULM)*) have been constructed at the Ashby Gateway site on Smithy Road and neither of these developments were required to contribute (including financially) towards improvements to the town centre and whereby the impacts of these schemes to the vitality and viability of the town centre were not materially different.

Notwithstanding the above, it is also outlined in ‘*The Impact of the Development on Town and Local Centres*’ sub-section of the ‘*Principle of Development*’ section of this committee report below that a new retail development at the site would generate additional levy funding for the Ashby De La Zouch Business Improvement District (ADLZBID) which is utilised for improvements

to the town centre. Consequently the scheme would, in a different way, contribute towards improvements to the town centre by the levy placed on it once the store becomes operational.

## **2. Contribution towards a town centre cycle route**

The Planning Committee Update Sheet (included as Appendix 2 to this report) identified that 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.

Although the LCWIP identifies the creation of a link from Ashby De La Zouch Town Centres to the facilities within the area of Ashby where the application site is located, no detailed design review of such a link has been undertaken to establish the costs involved. It would be necessary for the costs to be established so as 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.

On the above basis such a financial contribution would again not meet the tests laid out in Paragraph 57 of the NPPF. In addition, the lack of cycle access would be no worse than that associated with the existing office land use which is capable of being reused and which would generate greater demands for cycle access given the number of employees that could be accommodated. 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.

## **3. Improvements to the design of the store**

The design of the store has been subject to a comprehensive review by the Council's Urban Designer and whereby substantial amendments have been made to it prior to the scheme being presented to the Planning Committee. These amendments were to ensure that active elevations are presented to the public domain, high level glazing exists to provide natural light into the store and timber effect cladding is utilised to respect the setting of the store within the National Forest. No objections are raised by the Council's Urban Designer, and conditions would be imposed on any permission granted to achieve the design quality envisaged by the Council. It is also considered that the design of the store is far removed from that which would be the standard for Lidl.

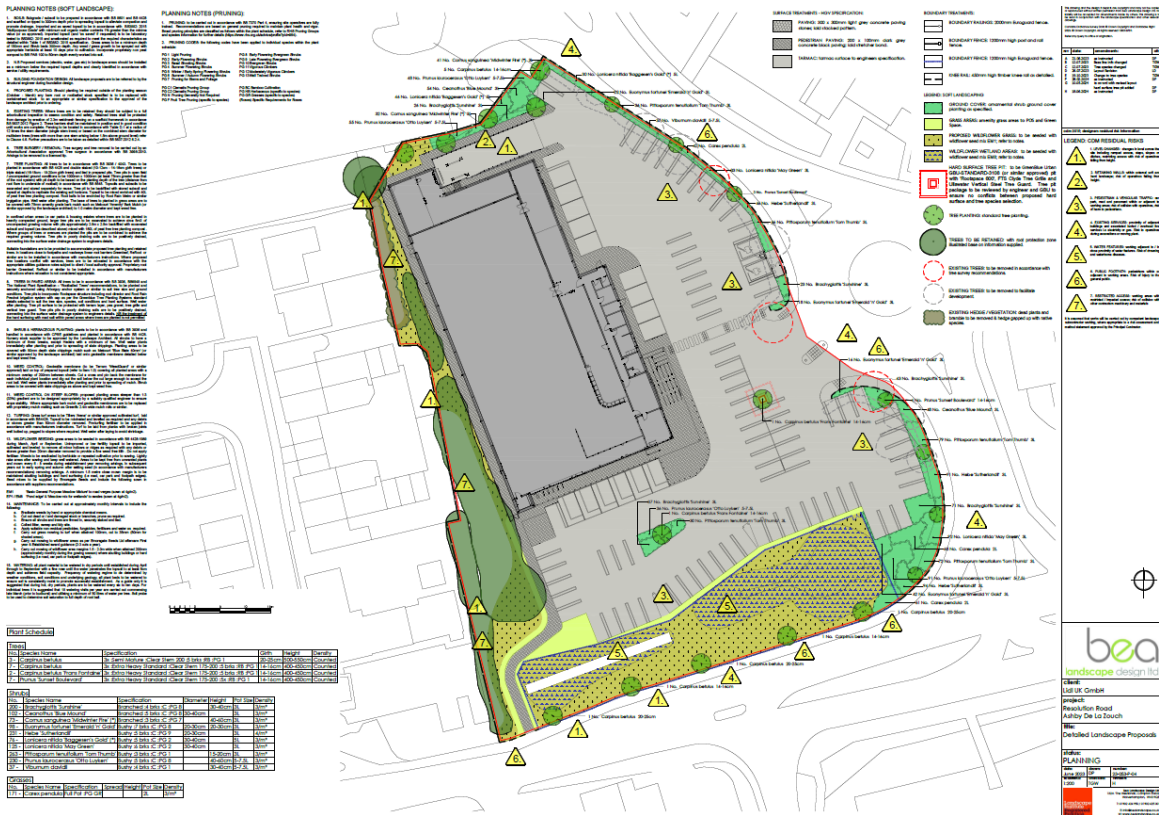
Whilst noting that the design of the store would not reflect that of the M&S foodstore and B&M store at the Ashby Gateway site, there was a particular requirement for the design of these stores to be of a high standard given their placement and prominence on the 'gateway' into Ashby De La Zouch from the A511 and Junction 13 of the A42. The proposed Lidl store is detached from the Ashby Gateway site, and it is considered that to replicate the enhanced design of M&S and B&M would deteriorate their importance as key buildings in the approach to, as well as away from, Ashby De La Zouch Town Centre.

The design of the store is therefore considered to be acceptable.

**4. Loss of trees and improvements to the landscaping scheme over that proposed**

A revised soft landscaping scheme has been submitted by the applicant which is as replicated in the image below.

**Revised Soft Landscaping Scheme**



The applicant has outlined that the soft landscaping scheme shall include wildflower grass and wetland areas, amenity grass, ornamental shrubs and 19 new trees within and upon the boundaries of the application site. Existing trees and hedges to the western boundary of the site would also be retained.

To address concerns raised by Members, the applicant has advised that the proposed trees to the frontage of the site along Nottingham Road would be upgraded from extra heavy standard trees (14 – 16cm girth) to semi-mature trees (22 – 25cm girth) which, in time, would reach mature heights of around 12 to 15 metres. This would be to compensate for the loss of the trees prior to the submission of the application.

The landscaping scheme referred to can be secured by condition should planning permission be granted.

**5. Whether the sequential test had been applied properly**

The sequential test has been undertaken in accordance with relevant guidance outlined within the NPPF and NPPG, as well as the latest planning case law, with the applicant outlining that their sequential assessment has been based on a site visit and a desktop review of any potential

sites which could accommodate the proposed development.

It is concluded in *'The Sequential Approach to Site Selection'* sub-section of the *'Principle of Development'* section of this committee report below that officers have assessed the applicant's sequential assessment and concur with its recommendations that the application site is the most sequentially preferable location for the proposed development.

Officers comments in the Planning Committee Update Sheet (included as Appendix 2 to this report) have also sequentially assessed the Money Hill Employment Land Allocation, under Policy Ec2(1) of the adopted Local Plan and concluded that this would not be sequentially preferable in comparison to the application site.

Overall it is considered that the sequential test undertaken is effective and has enabled an appropriate determination that the site is suitable and sequentially acceptable.

of the suitability of the application site to occur.

#### **6. *Has adequate marketing of the building for alternative uses taken place?***

The *'Loss of Employment Land'* sub-section of the *'Principle of Development'* section of this committee report below outlines how the Council assessed the merits of the application based on the marketing exercise which was undertaken prior to Lidl's purchase, and whereby further information was submitted by the applicant during the assessment of the application.

The applicant has outlined that the marketing exercise was undertaken by an experienced property consultant with the marketing brochure stating that the site was 'For Sale' and that Ashfield House was available freehold with vacant possession. On this basis the marketing was not restricted to any specific uses, terms, and conditions and therefore any inquiries from alternative use operators could have been submitted.

The Council's Planning Policy Team has not raised any concerns with the way that the marketing exercise has been undertaken and are happy that it demonstrates that there was no interest in Ashfield House being used within its current office use, or any other employment use.

#### **7. *Impact on neighbours amenity during the demolition of the building***

The applicant has outlined that the demolition of the building will be undertaken by an experienced contractor who will adhere to any necessary guidelines and requirements, under separate legislation, to ensure there is no adverse impact on the amenity of the surrounding area.

It is also outlined, in the *'Residential Amenity'* section of this committee report below, that a condition requiring the submission of a Construction Environmental Management Plan (CEMP) would be unreasonable given that problems arising from the construction period of the development constitutes a non-material planning consideration. As members have previously been advised, separate legislation (such as the Control of Pollution Act 1974 (as amended)) controls such issues.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) also enables a building to be demolished under a simplified 28 day prior notification procedure, whereby the only matters for consideration are the means of demolition and the aftercare of the site.

Impacts arising from the demolition of the building under a prior notification procedure would not be materially different to those associated with a planning permission, with a prior notification consent not requiring the submission of a CEMP.

A condition requiring the submission of a CEMP would therefore be unreasonable and would not meet the tests for conditions outlined at Paragraph 56 of the NPPF. Notwithstanding this, to ensure that demolition and construction is not undertaken at unreasonable times a condition restricting the hours can be imposed on any permission granted in the interests of protecting residential amenity.

In the interests of air quality a dust management plan would also be conditioned on any permission granted.

### **8. Highways impact**

The committee update sheet (included at Appendix 2 to this report) highlights that email correspondence was provided by officers to Members on the 31<sup>st</sup> May 2024 which included a technical note from the County Highways Authority (CHA) (included as Appendix 3 to this report) outlining their approach to the assessment of the application.

As part of the consideration of the application officers and the applicant have engaged with the CHA and National Highways (NH) and their conclusions are that the proposed development would not have an unacceptable impact on highway safety, nor would the residual cumulative impacts with other development on the highway network be severe. This would be subject to the imposition of conditions on any permission granted, as well as off-site highway improvement works at the junction of Resolution Road and Nottingham Road. This information is as outlined in the '*Highways Impact*' and '*Developer Contributions and Infrastructure*' sections of this committee report below.

The scheme of mitigation proposed is acceptable to the CHA when accounting for the overall impacts of the development to the highway network.

Paragraph 115 of the NPPF makes it clear that an application should only be refused on highway grounds when there is an unacceptable impact on highway safety, or the residual cumulative impacts of the development on the highway network would be severe. In the absence of any objection from the CHA or NH it is considered that there is no conflict with Paragraph 115 of the NPPF, or relevant policies of the adopted Local Plan or ADLZNP, and therefore a reason to refuse the application could not be substantiated.

The original report that went to the June 4<sup>th</sup> Committee is below and the recommendation to permit remains unchanged and is as follows:

## Reasons the case is called to the Planning Committee

This application is brought to the Planning Committee at the request of Councillor Blair-Park as it is his opinion that the present road infrastructure is incapable of handling the traffic coming and going into Ashby with daily tail backs for the A511, A/M42 and Market Street, that within 1000 metres of the proposed site there is a Tesco, Aldi, M&S Foodhall and B&M which all sell a full range of groceries, that the location is inappropriate for another large grocery retailer and that current retailers are struggling to recruit staff.

## **RECOMMENDATION – PERMIT, subject to the following conditions and the securing of a Section 106 Agreement to deliver the following;**

- (a) Travel packs at a cost of £52.85 per pack (or a cost of £500.00 if supplied by the applicant).
- (b) Six month bus pass per employee at a cost of £490.00 per pass.
- (c) Sustainable Travel Accreditation and Recognition Scheme (STARS) monitoring fee of £6000.00.

Total Financial Contribution - £27,714.00 (based on 40 employees).

1. Standard time limit (3 years).
2. Approved plans.
3. Restriction of use of building to use class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
4. Restriction on the total net sales area of the building in accordance with the details submitted.
5. Opening hours in accordance with details submitted.
6. Delivery management plan prior to the store being first brought into use to be submitted, approved and implemented.
7. Mechanical plant to be provided in accordance with details submitted within noise impact assessment (NIA). If not to be delivered in accordance with details submitted, then revised NIA to be submitted before mechanical plant installed and operated (including any relevant mitigation if required).
8. Dust management plan (DMP) prior to commencement to be submitted, approved and implemented.
9. Hours of construction.
10. A Biodiversity Construction Management Plan prior to commencement to be submitted, approved and implemented (will include mitigation measures to protect tributaries of the River Mease SAC/SSSI from pollution).
11. Finished ground and floor levels prior to commencement to be submitted, approved and implemented.
12. External materials in accordance with submitted plans.
13. Precise design finish and fixing details of supporting timber columns to be submitted, approved and implemented.
14. Soft landscaping scheme prior to soft landscaping being provided to be submitted, approved and implemented and requirement for replacement of failed soft landscaping.
15. Biodiversity enhancement scheme prior to commencement to be submitted, approved and implemented.
16. Landscape environmental management plan (LEMP) prior to the first use of the development to be submitted, approved and implemented.
17. Scheme of tree protection measures for retained trees to be provided in accordance with the tree protection plan (TPP) before the development commences.
18. Development to be undertaken in accordance with the arboricultural impact assessment (AIA).

19. Hard landscaping scheme prior to hard landscaping being installed to be submitted, approved and implemented.
20. Boundary treatment scheme (including elevational details) prior to boundary treatments being installed to be submitted, approved and implemented and removal of permitted development rights for alternative boundary treatment scheme.
21. No retaining walls to be constructed above 0.2 metres in height unless details (including elevation detail) are first submitted and approved.
22. Delivery of access arrangements (including visibility splays) in accordance with submitted plans.
23. Delivery of off-street parking and turning arrangements in accordance with submitted plans.
24. Delivery of secure cycle parking facilities prior to the first use of the development to be submitted, approved and implemented.
25. Delivery of offsite highway works in accordance with submitted plans.
26. Scheme of revised crossing arrangements at the junction of Nottingham Road and Resolution Road prior to the first use of the development to be submitted, approved and implemented.
27. Submission of a revised travel plan prior to the first use of the development to be submitted, approved and implemented.
28. Surface water drainage scheme prior to commencement to be submitted, approved and implemented.
29. Surface water drainage scheme during the construction phase prior to commencement to be submitted, approved and implemented.
30. Surface water drainage maintenance scheme prior to the first use of the development to be submitted, approved and implemented.
31. External lighting scheme in accordance with submitted plans.
32. Risk based land contamination assessment prior to commencement to be submitted, approved and implemented.
33. A verification investigation prior to first use of the development to be submitted, approved and implemented.

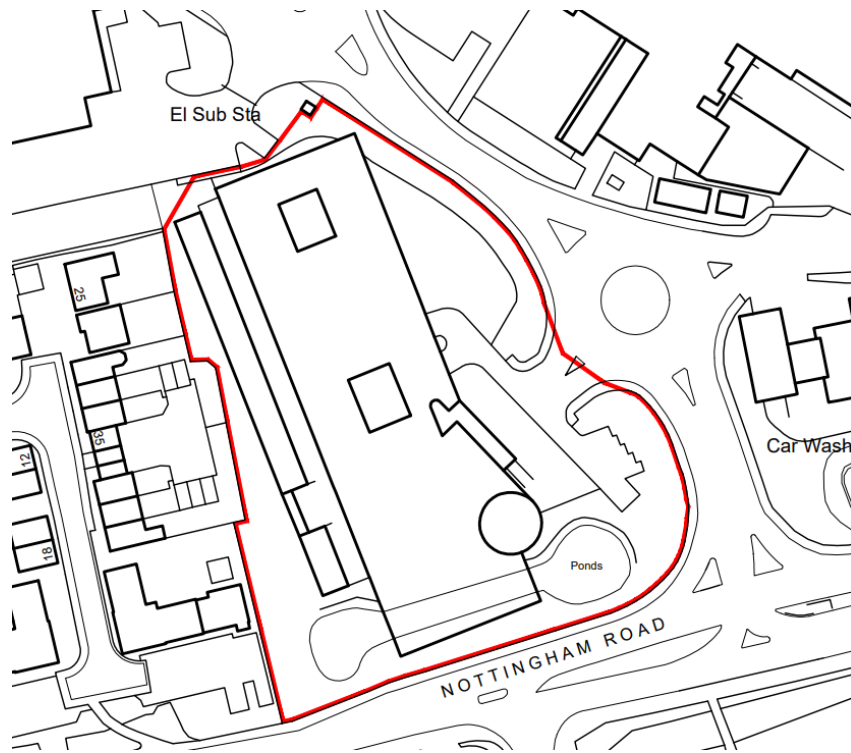
## 1. Proposals and Background

*The mandatory requirement for 10% Biodiversity Net Gain (BNG) for major development as required by the Environment Act came into force on the 12<sup>th</sup> of February 2024. However, this requirement would only be applicable to those applications received on or after the 12<sup>th</sup> of February 2024 and is not to be applied retrospectively to those applications already under consideration before this date and subsequently determined after this date. On this basis the proposed development would not be required to demonstrate a 10% BNG.*

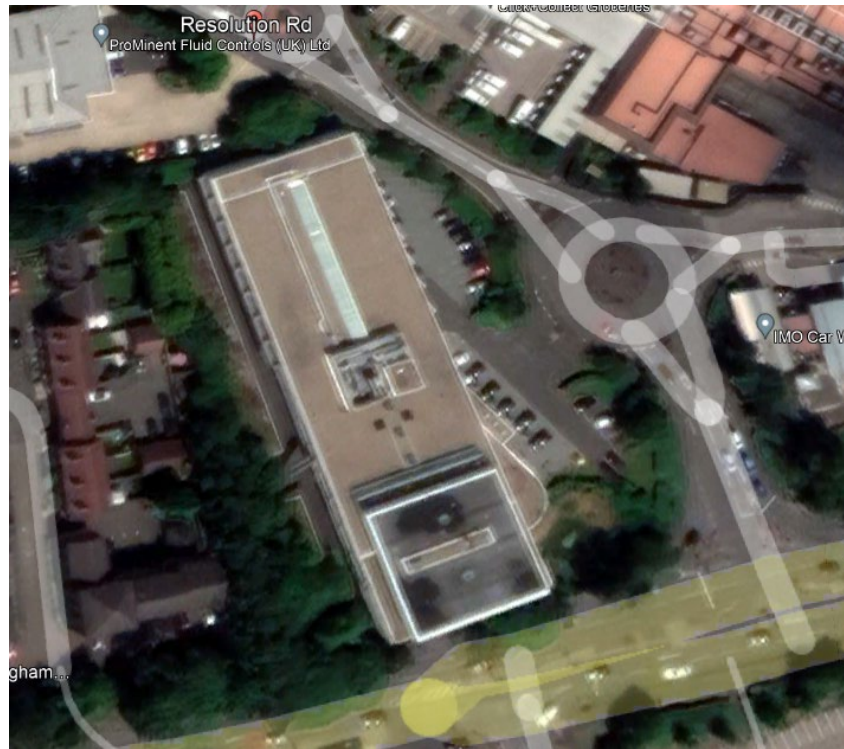
Planning permission is sought for the erection of a new Lidl foodstore (use class E(a)) with car parking, landscaping and other associated works at Ashfield House, Resolution Road, Ashby De La Zouch. The 0.93 hectare site (as identified in the image below) is within the defined Limits to Development and is situated on the south-western side of Resolution Road in close proximity to the junction of Resolution Road with Nottingham Road. The application site is also within a Primary Employment Area as identified on the Policies Map associated with the adopted Local Plan.



**Site Location Plan**



**Aerial Image of the Site Location**



As part of the proposed development the existing building on the site, known as Ashfield House, would be demolished and this would be replaced with a Lidl foodstore with a gross internal area (GIA) of 1,949 square metres (sqm) of which 1,331sqm would comprise the sales area. The sales area would accommodate around 1,065sqm of convenience shopping and 266sqm of comparison shopping. The remaining space would be made up of 405sqm of warehouse floorspace and 213sqm of ancillary floorspace comprising an in-store bakery.

The proposed Lidl would be served via the existing access point from the roundabout on Resolution Road with the proposed car park having a total of 100 parking spaces which would include 6 accessible parking bays, 9 parent and child parking bays and 2 rapid EV charging spaces. In addition 5 no. Sheffield cycle stands would be provided which would accommodate 10 bicycles.

The layout of the site is as shown on the site plan below:

**Site Plan showing the layout of the development.**



Further information in respect of the application, including the supporting documentation and relevant plans, can be found on the District Council's website.

**Relevant Planning History**

- 97/00608/MP – Erection of restaurant/public house, play barn, ancillary staff accommodation, 40 bedroom hotel and car parking – Refused 7<sup>th</sup> October 1997.
- 99/00508/MP – Erection of buildings for B1, B2 and B8 use (outline) – Approved 9<sup>th</sup> July 1999.
- 01/00382/FUL – Erection of training headquarters comprising offices and training accommodation above ground floor parking area – Approved 26<sup>th</sup> July 2001.
- 04/01583/FUL – Erection of extension to first floor to form additional office accommodation included extension of car park – Approved 10<sup>th</sup> January 2005.
- 05/00920/FUL – Installation of lighting to car park – Approved 2<sup>nd</sup> August 2005.
- 07/01183/ADC – Display of 2 no. internally illuminated signs – Approved 7<sup>th</sup> September 2007.
- 08/01646/FULM – Erection of first floor extension (including steel support frame) and second floor pavilion along with associated works including erection of car stacker

structure – Approved 15<sup>th</sup> May 2009.

- 10/00389/NMA – Non-material amendment in relation to first floor extension and second floor pavilion including car stacker – Withdrawn 4<sup>th</sup> August 2010.
- 10/00760/VCU – Variation of conditions 2 and 3 of planning permission reference 08/01646 in relation to design matters and revised storm water runoff/balancing pond scheme – Approved 5<sup>th</sup> November 2010.

## 2. Publicity

28 neighbours notified on the 7<sup>th</sup> September 2023.

Site notices were displayed on the 13<sup>th</sup> and 14<sup>th</sup> September 2023 as well as the 11<sup>th</sup> March 2024.

A press notice was published in the Leicester Mercury on the 20<sup>th</sup> September 2023 as well as the 20<sup>th</sup> March 2024.

## 3. Summary of Consultations and Representations Received

The following summary of representations is provided. All responses from statutory consultees and third parties are available to view in full on the Council's website.

### Objections from:

Councillor Blair-Park (Ward Member) objects to the application as there is sufficient retail grocery provision from four outlets within 1,000 metres of the proposed site and there is insufficient infrastructure to cope with the existing traffic levels.

Ashby De La Zouch Town Council objects on the following summarised grounds:

1. *Highways Issues (Local Plan Policy IF4) – the vehicular movements associated with the development would increase and exacerbate the congestion around Resolution Road and Nottingham Road.*
2. *Amenity of Neighbours (Local Plan Policy D2) – there is concern noise and disturbance would arise to local residents as a result of the activity at a busy supermarket when compared with the existing offices.*
3. *Inappropriate Change of Use – the proposal is contrary to Local Plan Policy Ec3 which states that the site is reserved for employment development with the site not being actively marketed for offices.*
4. *Failure to Comply with Local Plan Policy Ec8 – the sequential test submitted is flawed and has only considered two alternative sites with the site at Money Hill being wrongly dismissed. There is no need to demolish the existing award winning offices, which is against sustainability, and the use of an alternative site would not bring negative impacts associated with traffic congestion and detriment to neighbour amenity.*
5. *Neighbourhood Plan Policy TC1(a): Town Centre Uses – the development does not meet this criterion and would have a significant impact on the footfall into the town centre, estimated by the applicant to be at least 1 million per annum.*

If planning permission was to be granted Ashby De La Zouch Town Council have requested the following financial contributions towards improved local infrastructure:

- (a) Payment towards a safe cycle route into the town centre for use by customers and staff as per the submitted transport report, Lidl internal policy and NWLDC Cycling and Walking

Strategy.

- (b) Highway improvements to reduce congestion e.g. off-set roundabout on Nottingham Road etc.
- (c) A financial contribution towards Town Centre improvements to encourage footfall in the town centre (Aldi contributed £50,000 and Tesco contributed a similar amount).

Ashby De La Zouch Town Council has also requested the following conditions/mitigations if planning permission was to be granted:

1. Solar panels on the roof to meet all electricity requirements in the proposed store.
2. Restriction on deliveries due to proximity of nearby housing e.g. none after 19:00.
3. Requirement for a banksman to assist in deliveries due to the tight nature of parking and required manoeuvring.
4. Increase EV charging to at least 10% of parking spaces to reflect the climate crisis and meet Lidl climate change policy goal of making electric vehicles more attractive to customers.
5. Use of British native trees for landscaping and British timber for construction.
6. Use of permeable surfaces for parking to reduce storm runoff in what is known as a problem area for flash flooding.
7. Requirement to recruit locally with apprenticeships in construction and occupation phases.
8. Ensure a food waste policy is in place to direct food waste to Ashby Food Bank.
9. Gain BREEAM certification for sustainability.

**No Objections from:**

East Midlands Airport Safeguarding.  
Leicestershire County Council – Minerals and Waste Planning Authority.  
National Highways.  
Natural England.  
NWLDC Planning Policy.

**No Objections, subject to conditions and/or informatives, from:**

Leicestershire County Council – Ecology.  
Leicestershire County Council – Highways Authority.  
Leicestershire County Council – Lead Local Flood Authority.  
National Forest Company.  
NWLDC Environmental Protection.  
NWLDC Environmental Protection (Air Quality).  
NWLDC Environmental Protection (Contaminated Land).  
NWLDC Independent Retail Advisor.  
NWLDC Planning Policy.  
NWLDC Urban Designer.  
NWLDC Tree Officer.  
Police Architectural Liaison Officer.

**Third Party Representations**

Ten representations have been received objecting to the proposed development, with three representations being received which neither object to nor support the development proposal. The comments raised are summarised as follows:

Grounds of Objections	Description of Impact
<p><b>Principle and Need</b></p>	<p>The proposal will reduce the footfall in Ashby where shops are already vacant and as such compound the decline of Ashby.</p>
	<p>The existing Co-op on Derby Road is under-used and has the potential to close so why can this building not be utilised. Its re-use would maintain people in the town centre and it already benefits from car parking.</p>
	<p>There is no need for a further food store in Ashby.</p>
	<p>The proposed store should be located in another part of town or on the Money Hill development.</p>
	<p>The proposal is contrary to Policy Tc1 of the made Ashby De La Zouch Neighbourhood Plan as it is not of a scale appropriate to the character of Ashby De La Zouch and the functions of its town centre.</p>
<p><b>Design</b></p>	<p>The existing building is one of the best modern buildings in Leicestershire and it will be a tragedy if it is lost to facilitate the proposed development. It could be an art gallery and should be protected.</p>
	<p>It would be requested that the rear of the building is painted a darker colour, rather than white, so as to reduce its impacts to the residential receptors on Astley Way whilst also ensuring the elevation does not become discoloured as a result of the relationship with the retained trees.</p>
	<p>The development provides no public open space and landscaping is limited which conflicts with the NPPF.</p>

	<p>The proposal is not in keeping with the character of the area or streetscape.</p>
<p><b>Residential Amenity</b></p>	<p>It needs to be ensured that any cooler/heat exchangers/air conditioning units do not impact on visual/noise pollution in neighbouring gardens.</p>
	<p>The proposal is of a different nature to the existing offices with longer operating hours and deliveries at unsocial hours. It will impact adversely on residential amenity.</p>
	<p>Staff should be restricted from smoking at the rear of the building so as to prevent pollution and also not increase fire risk due to retained vegetation.</p>
	<p>There is a door on the rear elevation that looks directly towards residential gardens and properties on Astley Way.</p>
	<p>It needs to be ensured that any management of the retained trees does not reduce the level of privacy they provide and that they are maintained. They should be replaced if they subsequently fail.</p>
	<p>When deliveries are made between the hours of 20:00 to 08:00 audible reversing alarms should be turned off.</p>
	<p>Any external lighting to the rear of the store should not shine directly towards the residential receptors on Astley Way.</p>
	<p><b>Highways</b></p>

	<p>road cycling hazardous. The applicant should therefore contribute towards the provision of cycle infrastructure with the use of Featherbed Lane, and its upgrading to an all-weather path providing an ideal route.</p>
	<p>The addition of Lidl in a well-known traffic bottle neck will impact adversely on the highways and will be further exacerbated by the Money Hill development. The highway impacts would be considered severe in the context of the NPPF.</p>
	<p>Congestion occurs in the vicinity of the site already on days when retail activity is limited, there are no roadworks and it is not peak hours.</p>
	<p>Lorries have difficulties in exiting the junction of Dents Road with Nottingham Road and require vehicles to reverse.</p>
	<p>Deliveries should be directed to the McVities entrance off the bypass so as to avoid the Resolution Road junction and avoid adverse impacts to pedestrian and highway safety.</p>
	<p>The number of deliveries, and their timings, should be controlled by condition.</p>
	<p>The site is not in a sustainable location given the limited bus service, with cycle provision being non-existent.</p>
<p><b>Ecology</b></p>	<p>There is no consideration of the impacts to watercourses which are tributaries of the River Mease SAC.</p>
<p><b>Landscaping</b></p>	<p>The site layout provides no opportunities for soft landscaping to be introduced so as to soften the impacts of the car park which</p>



	<p>would lie between Nottingham Road and the store with the store itself replacing Ashfield House which sits on the road frontage. Other stores in the area are screened by landscaping.</p>
<p><b>Other Matters</b></p>	<p>There is an issue with rodent control as a result of the existing building being vacant.</p>
	<p>The red line on the site location plan includes trees which are suggested to be within the ownership of the applicant but which have been maintained by residents for the duration of occupancy since the houses on Astley Way were built.</p>
	<p>The demolition of a recently constructed building is at odds with the known need to reduce carbon emissions. The building should be retained and repurposed. What will happen to the waste generated by the building? What will be its carbon footprint?</p>
	<p>The survey Lidl has done is a small, unrepresentative sample, was only distributed locally when the development impacts will be more wide ranging, posed questions which were biased towards positive answers. It is not a question of whether Lidl should have a store in Ashby but where the store should be sited.</p>
	<p>The submitted planning statement does not assess the development against the policies of the made Ashby De La Zouch Neighbourhood Plan and is therefore flawed. The development is contrary to Policies of the made Neighbourhood Plan.</p>

Ashby De La Zouch Civic Society have also objected to the application on the following summarised grounds:

- The proposal development would greatly increase the traffic in what is already a congested area of Ashby, resulting in further queuing and delays on Nottingham Road and the surrounding routes.

- The design of the store is different to that presented as part of the public engagement with an additional storey now proposed.
- As the site is within the National Forest more trees should be planted so as to screen the store as was the case with M&S and B&M across the road.
- Both M&S and B&M adopted wood cladding so as to soften their appearance, this should be adopted here.
- The design of the building does not add to the landscape or reflect the interesting and historic buildings within Ashby.

Tesco Stores Limited have also objected to the application on the following summarised grounds:

- There would be a breach of Policy Ec3 of the adopted Local Plan's requirement to retain Primary Employment Areas.
- There is a breach of the retail sequential approach set out in Policy Ec8 of the adopted Local Plan arising from the suitability and availability of a site identified as a 'Local Centre' within the approved Money Hill (Urban Extension) Masterplan.
- The misapplication of Class E of the Use Classes Order 1987 (as amended) to erroneously seek to justify the acceptability of retail development on the site.
- The application is required to be advertised as a 'departure' given the conflict with Policy Ec3 of the adopted Local Plan.

#### **4. Relevant Planning Policy**

##### **National Policies**

##### **National Planning Policy Framework (2023)**

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

Paragraphs 8 and 10 (Achieving sustainable development);  
Paragraphs 11 and 12 (Presumption in favour of sustainable development);  
Paragraph 34 (Development contributions);  
Paragraphs 38, 39, 40, 41, 42, 43, 44 and 47 (Decision-making);  
Paragraphs 54, 55, 56, 57 and 58 (Planning conditions and obligations);  
Paragraph 85 (Building a strong, competitive economy);  
Paragraphs 90, 91, 92, 94 and 95 (Ensuring the vitality of town centres);  
Paragraphs 108, 111, 112, 114, 115, 116 and 117 (Promoting sustainable transport);  
Paragraphs 123, 124, 126 and 128 (Making effective use of land);  
Paragraphs 131, 133, 134, 135 and 139 (Achieving well-designed places);  
Paragraphs 157, 158, 159, 162, 165, 168, 173 and 175 (Meeting the challenge of climate change, flooding and coastal change);  
Paragraphs 180, 186, 187, 188, 189, 190, 191, 192, 193 and 194 (Conserving and enhancing the natural environment);  
Paragraphs 195, 200, 201, 203, 205, 210 and 211 (Conserving and enhancing the historic environment); and  
Paragraphs 215, 216 and 218 (Facilitating the sustainable use of minerals).

##### **Local Policies**

##### **Adopted North West Leicestershire Local Plan (2021)**

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 Ec5 – East Midlands Airport: Safeguarding;  
Policy Ec8 – Town and Local Centres: Hierarchy and Management of Development;  
Policy Ec9 – Town and Local Centres: Thresholds for Impact Assessments;  
Policy IF1 – Development and Infrastructure;  
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 He1 – Conservation and Enhancement of North West Leicestershire’s Historic Environment.  
Policy Cc2 – Water – Flood Risk; and  
Policy Cc3 – Water – Sustainable Drainage Systems.

#### **Made Ashby De La Zouch Neighbourhood Plan (2018)**

The Ashby Neighbourhood Plan forms part of the development plan and the following policies of the Neighbourhood Plan are relevant to the determination of the application:

Policy S1 – Presumption in Favour of Sustainable Development;  
Policy S2 – Limits to Development;  
Policy S4 – Design Principles;  
Policy S5 – Support to be given to Brownfield Sites;  
Policy E1 – Employment Land and Buildings;  
Policy E3 – Connecting People in the Plan Area to the 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 NE5 – Trees and Hedgerows.

#### **Leicestershire Minerals and Waste Local Plan (2019)**

This plan was adopted on the 25<sup>th</sup> September 2019 and as such the following policies would be considered relevant to this application:

*Providing for Minerals:*

Policy M11: Safeguarding of Mineral Resources.

#### **Other Policies**

National Planning Practice Guidance.  
Noise Policy Statement for England.  
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).  
National Forest Guide for Developers and Planners.  
River Mease Water Quality Management Plan – August 2011.  
The River Mease Developer Contributions Scheme (DCS).

## 5. Assessment

### Principle of Development

In accordance with the provision of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the Development Plan, which, in this instance, includes the adopted Local Plan (2021) and the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) (2018).

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 and ADLZNP. Within the NPPF (2023) 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 or if specific policies in the NPPF indicate development should be restricted.

Paragraph 85 of the NPPF states that “*significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.*”

### Policy Overview

The Retail and Leisure Capacity Study 2019 identifies a relatively high overall retention rate of convenience goods expenditure within the district, with only limited potential to increase this level of retention. The application site is within Zone 3 which covers Ashby De La Zouch and most residents in this zone shop locally (71.1% of convenience expenditure within Zone 3 is retained within Zone 3). In addition, Zone 3 attracts a share of customers from other Zones within the district (most notably Zone 2 – North of Coalville, Zone 4 – Measham and Zone 5 – Ibstock), reflecting the availability of convenience/food store provision in the area (including Tesco, Aldi and M&S Foodhall).

The District Council has since published a Retail Study Update Report (2020) which took account of more up to date population information and the potential impact of the Covid-19 pandemic. This Update provides an estimate of how much additional shopping retail floorspace is needed in the district, with projections provided up to 2036. Existing premises could help accommodate a significant element of the floorspace that is likely to be needed through the re-use of vacant floorspace or by current operators using their floorspace more efficiently. In addition, planning permission has been granted for an Aldi supermarket at Castle Donington (application reference 21/00793/FULM) which has subsequently been built. This has taken up all of the convenience floorspace requirements up to 2036, outside of Coalville and Ashby De La Zouch.

The table below summarises how much floorspace is needed to meet the likely level of growth in the district for the period up to 2036, taking into account the above.

	Convenience	Comparison	Food/Beverage	Total
<i>Ashby De La Zouch</i>	1300	2000	1100	4400
<i>Coalville</i>	3900	1800	700	6400
<i>Other NW Leicestershire</i>	0	600	800	1200
<b>Total</b>	5200	4400	2600	12200

These figures indicate that there is no pressing need to identify Local Plan site allocations for future retail nor food and drink related development. The Update Study does identify a need for retail development in Ashby De La Zouch for the period up to 2036 and the proposal would exceed this need. However, it is considered that the scale of development proposed is not likely to undermine the balance of the retail hierarchy of the settlements.

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:

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

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

*The Sequential Approach to Site Selection*

Paragraph 90 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 91 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 91 of the NPPF, in that a sequential appraisal is required should retail development not be located within the town centre.

The NPPG, in Paragraph 011 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 sequentially preferable site would be one which accords with all criteria in that it is available, suitable and viable.

The most relevant planning case law which concludes in this respect is the Dundee Supreme Court decision [*Tesco Stores Limited v Dundee City Council* 21<sup>st</sup> March 2012] which states that a sequentially preferable site must be *“suitable for the development proposed by the applicant,”* and 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 outlined in Paragraphs 24, 28 and 29 of the above decision). It is, however, reasonable to be cautious in being over-reliant on this decision in light of the fact that it refers to Scottish planning policy which differs in detail to English planning policy.

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 submitted PRIS sets out a number of minimum parameters to be considered in assessing potential sequential sites which reflects the nature of the development proposed:

- (i) *Available sites with an area of between 0.6 hectares (1.5 acres) and 1.6 hectares (4 acres) with the potential to accommodate a unit measuring 1,672 square metres to 2,461 square metres;*
- (ii) *Vacant units measuring 90% of the size of the proposal;*
- (iii) *Sites to facilitate customer car parking and safe manoeuvring of vehicles;*
- (iv) *A prominent site with the ability to attract passing trade;*
- (v) *Sites that can accommodate detailed service area and HGV deliveries and manoeuvring; and*
- (vi) *Sites that can facilitate a single storey building to provide an open and unrestricted sales floor area.*

In relation to the above it is considered that an individual operator’s specific requirements are not generally of relevance in applying the sequential test. This being as concluded in Paragraph 35 of the Judgement made in [*Aldergate v Mansfield District Council & Anor* [2016] EWHC 1670] where it was stated that:

*“In my judgment “suitable” and “available” generally mean “suitable” and “available” for the broad*

*type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on content.”*

It is also acknowledged that whilst the application site would be classed as an ‘out of centre’ site it is a ‘well-connected’ site, due to the pedestrian and public transport access, being within 1070 metres (approximately 0.7 of a mile) of the Ashby De La Zouch Town Centre. As such only a site within, or closer to, the town centre would be considered sequentially preferable.

The submitted PRIS contains a sequential assessment which has identified and considered the following two sites:

- (i) Car Park at Coxon Mews; and
- (ii) Money Hill Extension.

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

- (i) *Car Park at Coxon Mews (town centre)*

The PRIS outlines that this site has a total area of 0.3 hectares and consequently would not be large enough to accommodate the type of retail development proposed. Additionally there are numerous buildings bounding the site and the PRIS considers that a retail development with associated car park and delivery yard would be detrimental to the amenity of neighbouring users. The PRIS also considers that the site would be constrained for retail operations, that access arrangements would be an issue (as the site can only be accessed from South Street) and that the site has no prominence given the lack of visibility from Market Street. Development of the site would also result in the loss of an existing large car park within Ashby De La Zouch Town Centre which could impact on the viability of the town centre.

The PRIS also indicates that the site is not being actively marketed and as such would not be reasonably available.

When accounting for the above the PRIS concludes that this site would not be suitable nor available for the type of development proposed.

- (ii) *Money Hill Extension (local centre)*

The PRIS notes that condition 23 of the outline planning permission granted under application reference 22/00526/VCUM restricts the total gross floorspace of uses falling within Class A1 (now Class E(a)) of the Town and County Planning (Use Classes) Order 1987 (as amended) to no more than 560 square metres (sqm) with any single retail unit not having a total gross floorspace of more than 460sqm. Consequently the quantum of floorspace available as part of the Money Hill extension would be too small for the operational requirements of a discount foodstore.

It is also outlined by the PRIS that no reserved matters consent has been submitted for the retail component of the approved development with the site not being actively marketed at this time and as such is not available.

When accounting for the above the PRIS concludes that the site would not be suitable nor available for the type of development proposed.

*Conclusion in Relation to the Sequential Approach to Site Selection*

Officers accept the conclusions reached in relation to the Car Park at Coxon Mews not being a sequentially preferable site for the proposed development.

In terms of the Money Hill extension, the contents of the PRIS are noted in relation to the limitations imposed by condition 23 of the outline consent (22/00526/VCUM - originally 15/00512/OUTM) which condition a floorspace significantly below that required by Lidl.

Notwithstanding this, the time period for the submission of a reserved matters application in connection with the above outline consent has since expired. On this basis it would appear possible for a planning application to be submitted on the Money Hill site for the proposed development which would be assessed on its own merits and would not be required to be compliant with the terms of condition 23 given it would be obsolete. However, Policy H1b of the adopted Local Plan supports the renewal of the Money Hill permission should it lapse and consequently the terms of condition 23 would likely be reapplied if an application was submitted to renew this permission.

When accounting for the conclusions reached in *'The Impact of the Development on Town and Local Centres'* sub-section below, it is considered that locating the proposed development on the Money Hill extension would not impact on the vitality and viability of town and local centres. However, it is considered that locating the proposed development on the Money Hill extension would likely result in adverse impacts to residential amenity due to the proximity to several residential receptors, would not enable a suitable layout of development to be accommodated when accounting for the need to address the streetscape and provide servicing arrangements, and result in highway conflicts when accounting for the nature of vehicles required to serve the proposed Lidl, its relationship with the proposed location of a school, and the attraction of a wider base of customers than those who would likely frequent a more convenience based facility within a residential estate.

The site area defined for the retail development as part of the Money Hill extension is also 0.6 hectares which would be the minimum site area required by the applicant on the basis of the parameters set out in the PRIS. Consequently the entirety of the site area dedicated for retail within the Money Hill extension would be taken up by Lidl, thereby prejudicing the delivery of other retail facilities which would be of greater benefit to future residential occupants of this development.

It is also the case that whilst the approved 'Money Hill' masterplan annotates identified retail floorspace as constituting a 'Local Centre', the adopted Local Plan does not define this retail floorspace as a Local Centre, nor does the emerging draft Local Plan. The district's adopted Local Centres referred to in the adopted Local Plan are different in scale and character to the retail element of the Money Hill site which could be considered to be more of 'neighbourhood' significance rather than performing the role of a Local Centre.

In terms of making a judgement as to whether the Money Hill site is expected to become available within a reasonable period of time, it is considered that the development of new housing has only recently commenced and following discussions with the developer (Taylor Wimpey) it has been advised that the retail element is unlikely to be delivered within the next 2 to 3 years. Based on such a timeframe, along with the site not being actively marketed, it is considered that it would not be reasonably available.



Overall, therefore, officers conclude that the Money Hill extension would not be a sequentially preferable site for the proposed development.

Whilst the site operates 'out of centre' it is within walking distance of the town centre with such a route being on raised footways 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 considered that the development is compliant with criterion (b) of Policy E3 of the made ADLZNP, with it being the case, as discussed in the '*Highways Impact*' section of this report below, that contributions would be secured for bus passes and travel packs so as to encourage future employees to utilise sustainable means of transport with a travel plan also being secured by condition.

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. Officers are also not aware of any other sites which would be sequentially preferable, with it being the case that the nature and character of Ashby De La Zouch Town Centre likely prohibits the type of development proposed.

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, Paragraphs 91 and 92 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 proposing a town centre use which would not be within the town centre and which has a floorspace that exceeds 1000sqm needs to be accompanied by an impact statement. In the circumstances that the proposal has a floorspace of 1949sqm an impact statement is required.

Paragraph 94 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:

- (a) Existing, committed and planned public and private sector investment in a centre or centre in the catchment of the proposal; and
- (b) Town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).

Guidance on how the impact test should be used in decision taking is set out in Paragraph 017 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 015 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.

Paragraph 8.16 of the submitted PRIS considers the impacts of the proposed development on existing, committed or planned investment within Ashby De La Zouch Town Centre and states that:

*“From the research we have undertaken, we are not aware of any existing, committed or planned public and private investment within the above retail centres [being Ashby De La Zouch Town Centre], or any other retail centre that could be adversely affected by the proposed development.”*

The Council’s Planning Policy Team has also confirmed that they are unaware of any relevant existing, committed or planned public or private investment in Ashby De La Zouch.

The Council’s external retail consultant has outlined that the only potentially relevant investment, identified by their own research, relates to the Ashby De La Zouch Business Improvement District (ADLZBID). The latest business plan for the ADLZBID covers the period 2021 to 2026 and states that the ADLZBID team intends to invest over £1.16 million into improvements to Ashby De La Zouch Town Centre over those five years. This funding is generated by a levy on all local businesses paid for by the occupiers of the relevant properties.

The business plan confirms that the ADLZBID funding would be spent on five key project areas, which would be broken down as follows:

- (i) *Marketing, Promotion & Events* - £600,000 over five years;
- (ii) *Welcoming & Safe* - £150,000 over five years;
- (iii) *Getting Around* - £200,000 over five years;
- (iv) *Business Support* - £60,000 over five years; and
- (v) *Overheads* - £150,000 over five years.

The Council’s external retail consultant considers that given the stage reached in the ADLZBID’s business plan period, much of the investment has already taken place and would not be impacted by the proposed development. Moreover, the ADLZBID area extends to beyond the defined Ashby De La Zouch Town Centre and includes the application site itself. As a consequence, planning permission for a new retail business at the site would generate additional levy funding for the ADLZBID.

The Council’s external retail consultant also considers that it unlikely that planning permission for the proposed Lidl would prejudice the delivery of the remaining (committed and planned) ADLZBID funding, due to the limited overlap between the discount foodstore offer and the existing traders in Ashby De La Zouch, and due to the level of trade impact on the town centre (which is discussed in more detail below).

It is also the case that the Council’s external retail consultant is unaware of any other planned, committed or implemented investment within Ashby De La Zouch or any other relevant centre (including Measham Local Centre, which is the second nearest to the application site) that could be prejudiced by planning permission being granted for the Lidl.

Consequently the proposal would not have any significantly adverse impacts on any existing, committed or planned investment in Ashby De La Zouch Town Centre and would accord with criterion (a) of Paragraph 94 of the NPPF.

With regards to the implications to the vitality and viability of Ashby De La Zouch Town Centre, Section 8 and Appendix 5 of the PRIS set out the applicant's approach to the trade diversion impact.

The Council's external retail consultant recognises that the comparison goods floorspace associated with the Lidl is limited (amounting to 266sqm) and that, in practice, this element of the proposal will trade against a wide range of destinations (including online retailers and other foodstores). Within a discount foodstore the comparison goods offer comprises a range of products which are offered on a cyclical basis, with the overall comparison goods offer being qualitatively different to that which is evident in Ashby De La Zouch Town Centre (which would be the centre of greatest relevance in respect of retail impact).

Due to the nature of the comparison goods floorspace and its limited turnover, the Council's external retail consultant considers that there would be no significant adverse impact arising from the comparison goods floorspace, subject to the convenience goods floorspace being acceptable.

The applicant has undertaken its impact assessment based on a test year of 2028, which represents five years from the submission of the application in 2023. In determining the appropriate timeframe for assessing impact, Paragraph 018 of the NPPG advises that those applying the impact test should focus on impact in the first five years, as this is when most of the impact will occur.

In this regard the Council's external retail consultant notes that the NPPG directs that the design year for impact testing should be the year that the proposal has achieved a 'mature' trading pattern, which it states to be, conventionally, as the second full calendar year of trading after the opening of a new retail development. The Council's external retail consultant considers that the proposed development would likely be trading by 2024 or 2025 and as such 2026 or 2027 would be a more standard design year. However, given the limited growth in convenience sales densities and expenditure forecast to occur over the next five years, the applicant's choice of 2028 is not material to the findings of the Council's external retail consultant.

In terms of the current health of the Ashby De La Zouch Town Centre, the Council's external retail consultant considers it to be a busy town centre offering a wide range of goods and services with there being a welcome number of independent and local businesses which compliment the historic built form and maintain a traditional high street environment. Alongside the variety of independent businesses are high street 'anchors' which strengthen the attractiveness of the town centre and signal a good level of health.

Whilst, at the time of their site visit (24<sup>th</sup> January 2024), there were eleven vacancies recorded at ground floor level it is the case that there were signs of refurbishment and existing businesses relocating to new units which confirmed the attractiveness of the location and further indicated a sustainable level of town centre health. It is also the case that the health of the town centre had improved since the applicant undertook their health check in 2023 which recorded 22 vacancies (equating to 10% of the units).

The Council's external retail consultant considers that Ashby De La Zouch Town Centre is relatively viable, with the existing Co-op foodstores, on Derby Road and Market Street, being an important component which help underpin the centre's offer.

Collectively the current turnover of the two stores is estimated to equate to £12.51 million in 2021 prices, which is almost exactly in line with the 'benchmark' turnover of £12.49 million. Individually,

however, the Co-op supermarket on Derby Road appears to be trading at around £2.7 million below the company benchmark, whereas the smaller Co-op convenience store on Market Street has a turnover of around £2.72 million above benchmark.

Turing to the likely 'post impact' trading performances of the two in-centre Co-op stores, the Council's external retail consultant's assessment outlines that collectively the stores are anticipated to have a post-impact turnover of approximately 83% to 92% of the company benchmark by 2028 with the smaller Co-op convenience store on Market Street performing better.

In considering the post-impact viability of foodstores it is important to recognise that a company average sales density figure is exactly 'an average', and that many stores trade viably below benchmark level.

With this in mind, the Inspector at the 'called in' Sainsbury's Meols Cop Retail Park Inquiry (appeal reference APP/M4320/V/15/3002637) gave consideration to this fact in reviewing the estimated post-impact turnover of the Lord Street Sainsbury's store in Southport subsequent to the implementation of the Meols Cop store. Paragraph 376 of the Inspector's report states that:

*"In 2019 and 2021 with the new store in place, its [Lord Street Sainsbury's] trading performance would reduce to about 76% of its benchmark level. However, this would still be a relatively strong trading performance and on this basis there was no allegation from any of the retail consultants that the store would close."*

The Council's external retail consultant considers that the Co-op stores in Ashby De La Zouch would likely continue to trade viably if the proposed Lidl discount foodstore was implemented. On the day of their site visit the Council's external retail consultant observed that both Co-op stores appeared to be trading strongly, attracting good levels of foot and car traffic.

It is also the case that the Council's external retail consultant considers that the monetary diversion would be relatively limited (anticipated to total £0.75 million and £1.11 million by 2028), which also provides confidence that the impact should not likely undermine the viability of the stores or lead to a reduction in local consumer choice as a result of Co-op leaving the town centre.

The Council's external retail consultant also considers it unlikely that the level of trade diversion estimated would lead to the closure of other smaller foodstores in the town centre, given the lack of overlap between the proposed discount foodstore and their more specialist and/or top-up shopping offers.

The convenience trade impact on the town centre as a whole is estimated to amount to between 7% to 9% at the worst. Given the centre's relatively good health, the Council's external retail consultant is satisfied that the proposal would not result in a significant adverse impact to the Ashby De La Zouch Town Centre nor would it undermine the balance of the hierarchy of settlements within the district.

Indeed, the Council's external retail consultant anticipates that the proposal would compete primarily with the out-of-centre foodstores within close proximity to the application site, particularly Aldi on Dents Road and the Tesco Extra store on Resolution Road. Such stores do not benefit from policy protection.

It should also be noted that Ashby De La Zouch has only limited provision in respect of main food shopping destinations, and the application proposal will provide a moderate beneficial impact in supporting a discount operator within the settlement. Some weight should be afforded to this in

the decision-making process given that Paragraph 94 of the NPPF requires consideration of:

*“...the impact of the proposal on town centre vitality and viability including **local consumer choice** and trade in the town centre and **wider retail catchment** (as applicable to scale and nature of the scheme).” (my emphasis)*

This, however, should also be balanced with the trade diversion away from Ashby De La Zouch Town Centre which could be considered a negative impact capable of being weighed in the planning balance.

Overall, however, the Council’s external retail consultant considers that the proposed development would not give rise to any significantly adverse implications to the vitality and viability of the Ashby De La Zouch Town Centre and consequently the proposal would be compliant with Policy Ec9 of the adopted Local Plan as well as Policy TC1 of the ADLZNP and Paragraph 94 of the NPPF. There would therefore be no reason to resist the development in the context of Paragraph 95 of the NPPF.

### 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 made ADLZNP 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.”*

The submitted PRIS confirms that the current use of the site is for offices (now under use class E(g)(i) but formerly use class B1(a)) with the application form indicating that some 3,638sqm (GIA) of office floorspace would be lost as a result of the development.

The PRIS concludes that changing the use of the site from offices to retail *“is not considered to impact on the surrounding area given they fall within the same use class.”*

However, it is considered that the fact that the uses are (now) in the same use class (being Class E) does not, of itself, mean that Policy Ec3 does not need to be complied with. The proposal is for a redevelopment that requires planning permission and, as a result, the relevant Policies of the adopted Local Plan and made ADLZNP are engaged. It is not considered that Policy Ec3 is rendered redundant by the change to the use classes (in 2020) since the Local Plan was adopted.

It is also the case that the original planning permission for the office development (01/00382/FUL) was subject to a condition (no. 9) which stated that *“Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order revoking and re-enacting that Order), the premises shall be used only for the purposes specified in your application (i.e. office use) and for no other purposes whatsoever.”*

Further the applicants’ assertion that using the site for retail in places of offices *“is not considered to impact the surrounding area given they fall within the same use class” (Paragraph 9.9 of the PRIS)* is not agreed. Operationally these are very different uses and the nature of the impacts,

including the loss of office space, should be given full consideration.

When having regard to Policy Ec3(2)(a), a proposal for a 1,949 GIA retail foodstore is not small scale. It is also not ancillary to the other uses and consequently this criterion is not satisfied.

In respect of criterion (b) of Policy Ec3(2), the surrounding area includes a mix of commercial properties, including retail uses. It is considered that a retail use would be broadly compatible with the surrounding area in terms of character and function.

As proposed the applicant has indicated that some 40 full time equivalent (FTE) jobs would be created but no information was provided about the number of jobs in the existing office use. On this basis there was insufficient information to enable a judgement to be made as to whether employment has been maximised. Based on the floorspace of the offices and the Council's Need for Employment Land Study (of November 2020) this would likely equate to around 340 jobs.

Furthermore, there is an outstanding need for office floorspace within the district and the loss of existing office accommodation (3,638sqm on a 0.93 hectare site) will exacerbate this need. Table 11 in the District Council's Monitoring Report 2021 – 22 shows that some 19.7 hectares of office land is required in the period to 2031. In addition to this, the advice given to the applicant as part of a pre-application submission was to consider the significance of the loss of offices in terms of their functionality and the significance of the loss to overall and local supply.

Taking the above into account, the applicant was requested to provide sufficient information so as to enable a conclusion to be made that Policy Ec3(2) of the adopted Local Plan, as well as Policy EC1 of the made ADLZNP, would be met.

In particular the applicant was invited to supply more specific information such as:

- (i) The date the premises went on the market;
- (ii) Number of enquiries received, over what period and for what uses;
- (iii) What were the reasons enquires did not progress to purchase; and
- (iv) What date(s) was Lidl's offer made and accepted?

The provision of such information would, to some degree, demonstrate demand (or otherwise) for offices which would help to address compliance with Policy Ec3(2) of the adopted Local Plan and Policy EC1 of the made ADLZNP given that if there were no reasonable prospect of an office occupier, the proposed Lidl would help to 'maximise job outputs' when compared with the alternative of an unused building.

An Ashfield House Marketing Summary (AHMS) has since been submitted by the applicant and the key points of this include:

- (i) Formal marketing of the premises began in January 2022 and completed in August 2022.
- (ii) The premises were marketed directly to agents and through 3<sup>rd</sup> party websites and there were physical sales board on the premises.
- (iii) Interest was shown from 8 parties (in addition to Lidl):
  - a. 5 wanted the building for non-office uses.
  - b. 2 parties were looking at the premises as a potential investment opportunity but both rejected the property due to the lack of demand (and hence investment risk) and inflexibility of the building.
  - c. 1 party would have been an owner occupier (use not specified) but deemed the

- building unsuitable.
- d. None of the 8 parties made an offer on the premises.
- (iv) Lidl made its offer in May 2022 and completed the purchase in January 2023.

Taking into account the contents of the AHMS there was no confirmed interest from an office occupier with potential investors citing a lack of demand for office premises of this type. Two parties showed an interest in using the site for B2/B8 purposes, which would be uses which fall within the scope of the existing employment area designation under Policy Ec3, but neither progressed an offer to purchase. The property was also marketed for up to 5 months before Lidl made its offer.

Taken as a whole, this is considered to be sufficient to demonstrate that there was no realistic prospect of an office occupier coming forward over a reasonable timeframe. Similarly, the interest that there was for other policy-compliant uses did not progress to an offer. Whilst this is not to say that an office occupier would not come forward in due course, the rest of the market indicated little to no office demand at the time these premises were available for purchase.

The loss of good quality offices is regrettable, however neither is it beneficial to have a building standing empty for an extended period waiting for an office occupier to materialise. In this case, the loss of the office space is not considered a sufficient reason to refuse the application.

As proposed the Lidl would employ 40 full time equivalent (FTE) staff, whilst the applicant has not confirmed the job capacity of the existing building it is the officers' opinion that this is likely to be a higher figure than that for the proposed Lidl.

The available evidence, as submitted by the applicant, suggests a limited likelihood of the building being occupied as offices in the short term at least. This being the case, the application proposal will create jobs with more certainty and over a shorter timeframe compared with the prospect of waiting for an office occupier for the existing building. In this circumstance the proposal would be 'maximising job outputs' in line with the terms of Policy Ec3(2)(b) which in turn would ensure compliance with Policy En1 of the made ADLZNP.

Principle of Development Conclusion

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 made ADLZNP and Paragraphs of the NPPF.

Assessment of objections in relation to the principle of the development

Objection	Officer Response
<b>The proposal will reduce the footfall in Ashby where shops are already vacant and as such compound the decline of Ashby.</b>	It is assessed above that the proposed development would not impact adversely on the vitality and viability of the Ashby De La Zouch Town Centre and as such there is no conflict with relevant planning policies.
<b>The existing Co-op on Derby Road is under-used and has the potential to close</b>	The Council's external retail consultant considers that the Co-op on Derby Road will

<p><b>so why can the building not be utilised. Its re-use would maintain people in the town centre and it already benefits from car parking.</b></p>	<p>continue to trade viably with the proposed development and the District Council is not aware of any immediate closure of this Co-op store. In the circumstances that the building remains in operational use, it is not available for the applicant to occupy and consequently is not sequentially preferable.</p>
<p><b>There is no need for a further food store in Ashby.</b></p>	<p>As is outlined above there is no requirement under relevant planning policy for a developer to demonstrate need for retail development. Business competition is also not a material planning consideration.</p>
<p><b>The sequential test is flawed and has only considered two alternative sites with the site at Money Hill being wrongly dismissed. This is contrary to Policy Ec8 of the Local Plan.</b></p> <p><b>The proposed store should be located in another part of town or on the Money Hill development.</b></p> <p><b>There is a breach of the retail sequential approach set out in Policy Ec8 of the adopted Local Plan arising from the suitability and availability of a site identified as a 'Local Centre' within the approved Money Hill (Urban Extension) Masterplan.</b></p>	<p>As is concluded above there is no conflict with Policy Ec8 of the adopted Local Plan. Appropriate sites have been considered for the sequential assessment and have been discounted for the reasons outlined above. Given the 'built-up' nature of Ashby De La Zouch there are no other alternative sites within the 'centre' or 'edge of centre'.</p> <p>It is also the case that although the Money Hill masterplan defines the retail development as a 'Local Centre', neither the adopted Local Plan nor emerging draft Local Plan identify the Money Hill retail development as a Local Centre and therefore it would not be categorised higher than the application site.</p> <p>It is also considered that a supermarket would be incompatible with the largely residential environment to be created as part of the Money Hill extension and prejudice the delivery of a wider range of retail facilities which would be of greater benefit to future occupants.</p> <p>The developer of the Money Hill extension has also indicated that the retail element would not be brought forward in a reasonable period of time.</p>
<p><b>The proposal is contrary to Policy Tc1 of the made Ashby De La Zouch Neighbourhood Plan as it is not of a scale appropriate to the character of Ashby De La Zouch and the functions of its town</b></p>	<p>The proposed Lidl foodstore does not have a proposed floor space or height which is in excess of that associated with other foodstores in the area (including Tesco, Aldi and M&amp;S Foodhall) and consequently would</p>



<p><b>centre.</b></p>	<p>of a scale and in keeping with character of the part of Ashby where the development would be located. It is also assessed above that the development would not impact on the vitality and viability of Ashby De La Zouch Town Centre. Overall, there is no conflict with Policy Tc1 of the made Ashby De La Zouch Neighbourhood Plan.</p>
<p><b>The proposal is contrary to Local Plan Policy Ec3 which states that the site is reserved for employment development with the site not being actively marketed for offices.</b></p> <p><b>There would be a breach of Policy Ec3 of the adopted Local Plan’s requirement to retain Primary Employment Areas.</b></p>	<p>As is concluded above the proposal is considered to be compliant with Policy Ec3 of the adopted Local Plan.</p>
<p><b>The misapplication of Class E of the Use Classes Order 1987 (as amended) to erroneously seek to justify the acceptability of retail development on the site.</b></p>	<p>The above assessment, in relation to Policy Ec3, has accounted for the use class of the existing building being restricted by condition on the original permission as well as the misapplication of Class E.</p>

**Design and Impact on the Character and Appearance of the Streetscape**

Policy D1 of the adopted Local Plan requires that all developments be based upon a robust opportunities and constraints assessment and be informed by a comprehensive site and contextual appraisal. It also requires that developments are assessed against the Council’s adopted Good Design SPD.

Policy S4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) outlines that all new development, where appropriate, will need to satisfy 13 design principles. Such principles considered applicable to the design of buildings and their implications to the character and appearance of the streetscape and wider area would include principles 1, 2, 9 and 11. Principles 8 and 12 are only applicable to residential developments.

As a result of the development Ashfield House (as shown in the images below) would be demolished and whilst accepting that this building has architectural presence within Nottingham Road, and thereby contributes positively to the character and appearance of the streetscape, it is the case that this building could be demolished under a simplified prior notification procedure with or without the proposed development. The only matters which would be considered under such a prior notification procedure would be the means of demolition and the aftercare of the site. On this basis the loss of Ashfield House would not warrant a refusal of the application.

**Images of Ashfield House**



Site Layout

The proposed site layout, which has been slightly amended during the course of the application, is as shown in the image below.

**Proposed Site Layout**



The submitted Design & Access Statement (DAS) outlines that the proposed site layout is designed in accordance with the operational requirements of Lidl, allowing good visibility onto the site from the highway network and ensuring functionality in terms of access, parking, and servicing. The DAS also considers that the proposed layout promotes legibility and excellent natural surveillance to promote safety as well as positive visual amenity.

The Council's Urban Designer in their consultation responses to the application has raised no objections to the layout of the site, subject to consideration being given to the inclusion of tree planting which is as discussed in the 'Landscaping' section of this report below.

As proposed the Lidl store would be positioned within the site so that there is separation from both Nottingham Road to the south-east, and Resolution Road, to the north-east. The car park for the proposed store would therefore 'occupy' the gaps between the store and Nottingham Road and Resolution Road.

It is considered that the proposed layout allows pedestrian connectivity from both Nottingham Road and Resolution Road with pedestrian linkages through the site enabling permeability between Nottingham Road and Resolution Road. This would be considered beneficial, particularly to those pedestrians travelling eastwards along Nottingham Road, given that such linkages do not currently exist through the Ashfield House site.

Whilst it is accepted that it is positive for 'streets to be shaped by buildings', as outlined in the Council's adopted Good Design SPD, it is noted that attenuation basins are present adjacent to the boundary of the site with Nottingham Road and the vehicular access into the site would be taken from the roundabout on Resolution Road. Ashfield House benefitted from being an elevated

building, whereby it was supported by columns over the attenuation basins on Nottingham Road and had car parking underneath so as to have reduced separation from Resolution Road (albeit car parking still existed in the 'gap' between Ashfield House and the boundary with Resolution Road).

The proposed Lidl would have a reduced footprint when compared with that of Ashfield House but would have greater demands for parking as well as the need to accommodate servicing arrangements. Consequently it is considered that it is not as straightforward to design a supermarket to be elevated when compared with an office. It is also the case that a supermarket would have a more functional approach to its elevations than those associated with an office.

In this respect whilst the proposed Lidl could have been positioned immediately adjacent to the attenuation basins so as to enhance its presence on Nottingham Road, this would likely have resulted in the car parking being positioned to the north-west, whereby it would be in closer proximity to residential receptors on Astley Way. Servicing arrangements would also have been proposed to such an elevation making them prominent in views from Resolution Road as well as to users of the site with it being difficult to determine the elevation which would define the entrance to the store. Such positioning would also likely result in conflict with the access from Resolution Road.

It is not considered feasible for the store to be located closer to Resolution Road given the access location, with any positioning closer to this highway resulting in the car parking being to the north-west and south-west whereby it would again be in close proximity to the residential receptors on Astley Way.

When accounting for the above, it is considered that the proposed layout would be the most appropriate solution by ensuring that the servicing area is located so as to be screened by landscaping infrastructure, that the north-western elevation (which is predominately blank) is screened by retained landscaping infrastructure between the proposed store and the boundary with residential receptors on Astley Way and that the south-eastern and north-eastern elevations are 'active' elevations so as to positively address the Nottingham Road and Resolution Road streetscapes.

It is also considered that such a layout approach would not be materially different to those associated with other retail units within the immediate vicinity of the site, including Tesco, Wickes, Pets at Home and Aldi. Landscaping infrastructure could also be introduced, as discussed further in the '*Landscaping*' section of this report below, so as to 'soften' the appearance of the hard landscaping comprising the car park.

### Boundary Treatments

The plans as originally submitted proposed two types of boundary treatments which would comprise 0.45 metre high timber knee rail fencing and 2 metre high Euroguard fencing. The timber knee rail fencing would be to the north-eastern and south-eastern site boundaries (although its inclusion to part of this boundary was unclear on the submitted plans) with the 2 metre high Euroguard fencing being to the north-western and south-western site boundaries. During the course of the application it was also indicated that 1.2 metre high Euroguard fencing would be proposed around the attenuation basins for safety reasons.

In the absence of any precise information on the elevational treatment of the Euroguard fencing a condition would be imposed requiring a precise scheme of boundary treatments to be submitted given that, where possible, the boundary treatment should be the development side of the soft

landscaping infrastructure so as to ensure that such soft landscaping screens the boundary treatment. Consideration should also be given as to whether existing boundary treatments to the residential receptors on Astley Way would be sufficient rather than the introduction of a new boundary treatment. The applicant has also been advised that 1.2 metre high Euroguard fencing around the attenuation basins would not be appropriate treatment given its visibility and prominence from Nottingham Road and therefore an alternative would need to be considered.

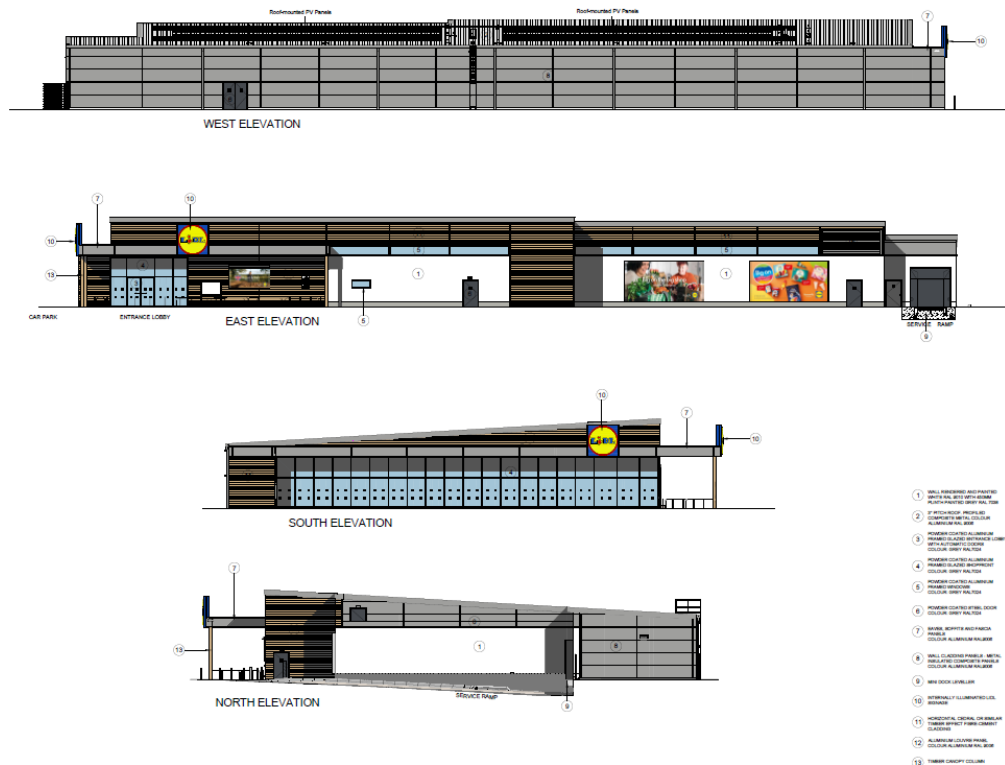
A condition would also be imposed requiring the precise details of any retaining walls/structures (if required) to be submitted so as to ensure that an appropriate design approach is taken to such features particularly if visible within the public domain.

Store Design

The proposed approach to the design of the store is as shown in the image below and has been amended throughout the course of the application to address comments raised by the Council's Urban Designer in respect of the following matters:

- (i) The positioning and extent of the timber-effect cladding as a means of emphasising the main parts of the store;
- (ii) The introduction of high level glazing to the eastern elevation of the store;
- (iii) The construction of the supporting columns in timber, including how they would be fixed into the ground and soffit and how they would be protected; and
- (iv) The location of the signage to the eastern elevation.

**Store Design**



The applicant has outlined that the eastern elevation shows high-level glazing to provide additional animation and interest to this elevation. It is also stated that, on the basis of the Council's Urban Designer's comments, there was no objection to the use of timber-effect cladding which the applicant considered to have similar aesthetics to the recent retail developments constructed within the vicinity of the site but with the benefit of having greater longevity as it wouldn't weather when compared to traditional timber.

The Council's Urban Designer considers that the amendments made have responded to earlier comments with the glazing enabling natural light to filter into the staff welfare corridor and warehouse area. It is requested that a condition be imposed requiring the exact design, shape of timber column and how it would be 'fixed' into the soffit and ground be subject to condition on any permission granted.

Whilst no amendment has been made to the positioning of the signage on the eastern elevation it is the case that any permission granted would not authorise the positioning of such signage given that this would be subject to a separate advertisement consent application. At that time consideration could be given to ensuring that the signage was positioned above the entrance glazing in the eastern elevation.

#### *National Forest Company (NFC)*

The NFC within their consultation responses have outlined that they support the inclusion of timber within the approach to the design but that their preference would be for British timber so as to support the British forestry sector rather than timber-effect cladding. They also outlined that a further aspect of National Forest identity is sustainable design and they noted that sustainability measures have been considered in the submitted Planning and Retail Impact Statement (PRIS) but they would request that an assessment of the store against the Building Research Establishment Environmental Assessment Method (BREEAM) (or equivalent) be undertaken so as to ensure the environmental performance of the building was maximised.

It is considered that the use of timber-effect cladding would be acceptable, in this instance, given that natural timber would be utilised to the columns and it is evident from the appearance of the Aldi off Dents Road that the use of natural timber can deteriorate the overall appearance of the building over time. The approach to the use of natural timber on the M&S and B&M stores is different, with such buildings being designed as 'landmark' buildings on the approach into Ashby De La Zouch given their prominence. It is considered that by designing the Lidl so as to match such buildings would diminish their overall design character.

It is not a requirement of relevant Policies of the adopted Local Plan, made Ashby De La Zouch Neighbourhood Plan or NPPF for developments to be gain BREEAM certification. Whilst being designed in a 'sustainable' manner would be encouraged, on the basis that there is no requirement for such a building to be BREEAM compliant it would be unreasonable and unnecessary to impose a condition requiring this given its lack of compliance with Paragraphs 56 and 57 of the NPPF.

#### *Design and Impact on the Character and Appearance of the Streetscape Conclusion*

It is considered that when accounting for the proposed development to be provided, the site layout would be acceptable and would ensure that 'active' and 'animated' elevations are presented to the public domain on Nottingham Road and Resolution Road whilst also ensuring that servicing areas and blank elevations are screened from the public domain. The visual presence of the car parking between the proposed store and the highways would also be softened by the introduction

of soft landscaping (predominately to the site boundaries) and in this respect the approach would not be materially different to the arrangement of car parking and buildings at Tesco, Aldi, Wickes and Pets at Home which are within the immediate vicinity of the site.

Whilst the proposal would not lead to a building having a visual presence immediately on Nottingham Road (in the manner that Ashfield House presently has) it is considered that the overall impact to the character and appearance of the streetscape would not be so adverse that a reason to refuse the application could be justified particularly given the consistency the site layout has with other existing developments of the same retail character as the proposal. The Council's Urban Designer also has no objections to the proposed site layout.

Following amendments, it is also considered that the design of the store would be acceptable with the inclusion of timber effect cladding and natural timber columns contributing to the setting of the site in the National Forest and active elevations being presented where visible within the public domain.

Overall, the Council's Urban Designer is supportive of the proposals and subject to the imposition of conditions, it is considered that the design, appearance and scale of the development would be acceptable and enable it to successfully integrate into the environment in which it is set. On this basis the proposal would be compliant with Policy D1 of the adopted Local Plan, the Council's adopted Good Design SPD, Policy S4 of the made ADLZNP and Paragraphs 131 and 135 of the NPPF.

Assessment of objections in relation to design and the impact on the character and appearance of the streetscape

Objection	Officer Response
<p><b>The existing building is one of the best modern buildings in Leicestershire and it will be a tragedy if it is lost to facilitate the proposed development. It could be an art gallery and should be protected.</b></p>	<p>The building is not considered to be a non-designated heritage asset (NDHA) which would be subject to a certain level of protection under Paragraph 209 of the NPPF.</p> <p>In any event the demolition of the existing building, be it an NDHA or not, could be carried out under a prior notification process with or without the proposed development and whereby the only matters for consideration would be the means of demolition and the aftercare of the site.</p> <p>An application has to be assessed on its own merits and at present there is no application which seeks to reuse the existing building.</p>
<p><b>It would be requested that the rear of the building is painted a darker colour, rather than white, so as to reduce its impacts to the residential receptors on Astley Way whilst also ensuring the elevation does</b></p>	<p>Amendments have been made to the building so that grey cladding would be utilised to the rear elevation, rather than render painted white, and consequently it is considered that this matter has been addressed.</p>

<p><b>not become discoloured as a result of the relationship with the retained trees.</b></p>	
<p><b>The development provides no public open space, and landscaping is limited which conflicts with the NPPF.</b></p>	<p>Policy IF3 of the adopted Local Plan outlines that open space will be sought on residential developments of 50 dwellings or more. Given that the proposed development is commercial in nature the terms of Policy IF3 would not be applicable and as such the development is not required to provide open space.</p> <p>It is concluded in the '<i>Landscaping</i>' section of this report below that a scheme of soft landscaping would be subject to condition with it being the case that soft landscaping associated with the site would likely increase in comparison to that of the existing site.</p> <p>On this basis it is considered that there is no conflict with relevant policies of the adopted Local Plan, the made Ashby De La Zouch Neighbourhood Plan and NPPF.</p>
<p><b>The proposal is not in keeping with the character of the area of streetscape.</b></p> <p><b>The design of the building does not add to the landscape or reflect the interesting and historic buildings within Ashby.</b></p>	<p>See above assessment, it is considered that the development would be in keeping with the character and appearance of the streetscape with the building itself being of an acceptable design.</p>
<p><b>Both M&amp;S and B&amp;M adopted wood cladding so as to soften their appearance, this should be adopted here.</b></p>	<p>Following engagement with the Council's Urban Designer the scheme has been amended with timber effect cladding being introduced so as to soften the appearance of the store and respect its setting within the National Forest.</p> <p>Both M&amp;S and B&amp;M were designed as 'landmark' buildings on the approach into Ashby De La Zouch given their prominence. It is considered that the overall quality of their design would be diminished should all retail buildings be of the same standard.</p>
<p><b>The design of the store is different to that presented as part of the public engagement with an additional storey now proposed.</b></p>	<p>The proposed Lidl store is single storey in nature with the submitted floor plans demonstrating that there is only a ground floor.</p>



	<p>The design of the store being different to that presented as part of the public engagement is not relevant to the assessment of the planning application with the decision being based on the scheme as submitted. It is often the case that a development may 'evolve' following consultation with the public, and prior to the submission of a planning application, so as to seek to address issues raised as part of the public consultation.</p>
<p><b>If permission is granted solar panels should be provided on the roof to meet all electricity requirements in the proposed store.</b></p>	<p>The plans as submitted demonstrate the provision of solar panels on the south-western rear roof slope of the building which would be utilised to generate electricity associated with the Lidl store.</p>

### Residential Amenity

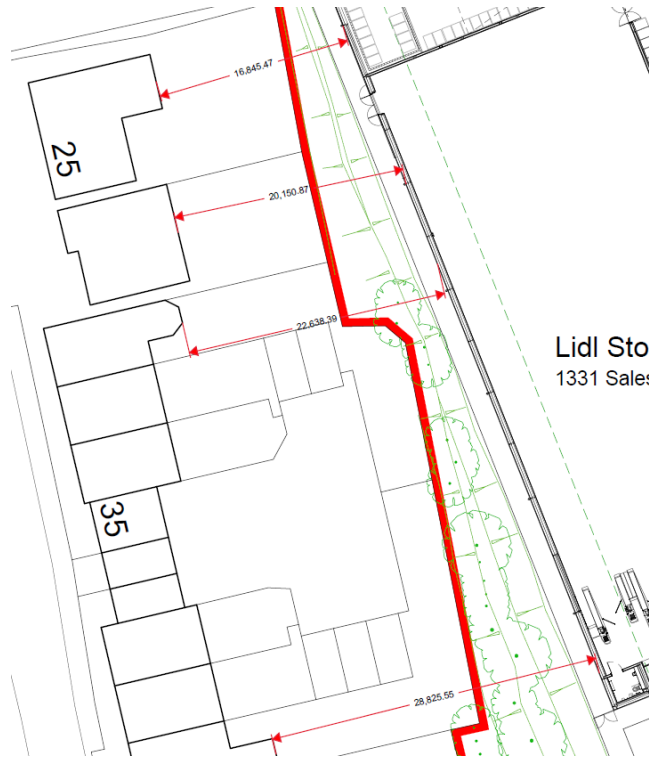
Policy D2 of the adopted Local Plan (2021) outlines that development proposals will be supported where they do not have a significant adverse effect on the living conditions of existing and new residents through loss of privacy, excessive overshadowing, and overbearing impacts, which is supported by the Council's Good Design SPD. Paragraph 191 of the NPPF states that planning policies and decisions should ensure that new development is appropriate for its location considering the likely effects (including cumulative effects) of pollution on health, living conditions, and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.

Criterion 6 of Policy S4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) states that proposals should minimise the impact on general amenity and give careful consideration to noise, odour, light and loss of light to existing properties. Light pollution should be minimised wherever possible and security lighting should be appropriate, unobtrusive and energy efficient.

The nearest residential receptors to the application site are situated to the south-west on Astley Way being nos. 25 to 67 (odd numbers inclusive).

Based on the image below, the minimum separation distance between the proposed south-western (rear) elevation of the proposed Lidl store and the north-eastern (rear) elevation of the nearest residential receptor would be 16.8 metres (to no. 25 Astley Way) with this separation distance increasing to 28.8 metres (to no. 41 Astley Way)

**Extract from Proposed Site Plan showing separation distances to certain residential receptors on Astley Way.**

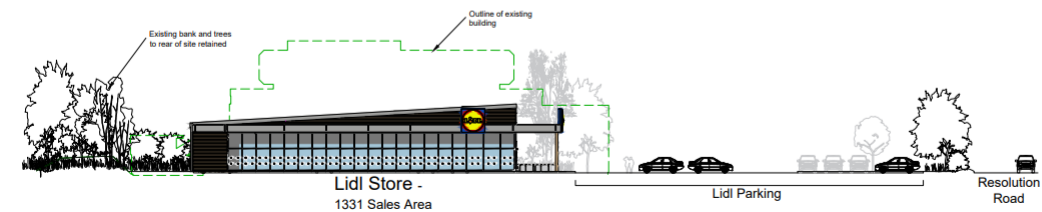


A site section drawing has also been submitted in support of the application which compares the overall height of the Lidl store with that of Ashfield House which is to be demolished to facilitate the development. This is shown below.

**Site Section drawings comparing the height of the proposed Lidl store against that of Ashfield House (to be demolished).**



Section A-A



Section B-B

As proposed the Lidl store would have an overall height of 7.1 metres at its highest point, along the north-eastern facing elevation, sloping down to 5.1 metres along its south-western facing elevation. The group of trees to be retained between the proposed store and the boundaries with the residential receptors on Astley Way have heights which range from 5 metres to 15 metres.

When accounting for the presence of the retained trees, the proposed separation distances and that the proposed Lidl store would have an overall height which would be lower than that of the building it would replace (Ashfield House), it is considered that no adverse overbearing or overshadowing impacts would arise to residential receptors on Astley Way. It is also considered that no adverse overlooking impacts would arise with the only opening in the south-western elevation comprising service doors to the sales area.

The other aspect to consider in respect of residential amenity is any potential impacts arising from noise, dust and fumes with Part 2 of Policy D2 of the adopted Local Plan outlining that development proposals will only be supported where *“they do not generate a level of activity, noise, vibration, pollution or unpleasant odour emissions, which cannot be mitigated to an appropriate standard and so, would have an adverse impact on amenity and living conditions.”* This is compliant with the terms of Paragraph 191 of the NPPF as outlined above.

Paragraph 194 of the NPPF outlines that the focus of planning decisions *“should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.”*

The applicant has outlined that the store would operate between 07:00 and 23:00 Monday to Saturday (including Public Holidays) and for a period of six consecutive hours between 10:00 and 18:00 on Sunday (with 30 minutes 'browsing' time allowed from 09:30). In terms of the existing use this is not restricted in its hours of operation, consequently such a use could operate on a 24 hour basis should the occupant wish to do so.

A Noise Assessment (NA) has been submitted in support of the application and which has assessed the impacts of both mechanical plant noise and delivery noise to the nearest sensitive receptors (NSRs), being residential properties on Astley Way. The NA has been undertaken in accordance with BS4142:2014+A1:2019 *‘Method for rating and assessing industrial and commercial sound’* (BS4142). Regard has also been given to the Noise Policy Statement for England (NPSE) which states that noise levels above the Lowest Observed Adverse Effect Level (LOAEL) are acceptable in planning terms where reduced to a minimum.

In terms of noise from mechanical plant, the NA outlines that this would be at rooftop level and positioned at the north-western end of the building and would comprise a dry cooler and variable refrigerant flow (VRF) system which would run on a 24/7 basis according to demand. Following assessment the NA concludes that noise from mechanical plant would be acceptable with no adverse impacts during both day and night, and would fall in the LOAEL of the NPSE and NPPG. The NA recognises that should the type of mechanical plant, or its location, be altered than a reassessment would be required.

With regards to delivery noise, the NA outlines that deliveries are contained to an articulated lorry which includes a refrigerated section with condensing unit. The goods are moved internally from the articulated lorry into the store with the goods mainly being on pallets moved via an electric pallet truck. It also states that the delivery operation takes around an hour with most stores having between 2 to 3 deliveries a day. The servicing element of the proposed Lidl store would be within

the north-western part of the building.

Following assessment, the NA concludes that delivery noise would also fall within the LOAEL of the NPSE and NPPG.

In conclusion the NA outlines that the initial BS4142 assessment indicated that the proposed development would be of a low impact to nearby residential receptors as predicted rating levels, during both the day and night at all NSRs, fell below the measured background noise levels. The contextual assessment also indicated that absolute levels within habitable rooms of nearby dwellings would fall below BS8233:2014 (*‘Guidance on sound insulation and noise reduction for buildings’*) criteria for both the day and night and that the rating level will be considerably lower than the residual noise climate. On this basis the NA does not consider that mitigation for noise associated with the development is necessary.

The submitted NA has been assessed by the Council’s Environmental Protection Team who have raised no objections to the application subject to the imposition of a condition which would seek to ensure that the proposed mechanical plant to be installed is in accordance with that outlined within the NA. If alternative, or additional, mechanical plant was to be installed, or it was repositioned, then a revised NA would be required. It is considered that the condition to be imposed could require the submission of a revised NA if the mechanical plant was to be varied and could ensure that any relevant mitigation, if required, is provided.

With regards to external lighting the application is supported by a proposed lighting layout which has been assessed by the Council’s Environmental Protection Team and where no objections have been raised with respect to the impact to residential amenities. The proposed lighting layout would therefore be secured by condition on any permission granted.

The Department for Levelling Up, Housing and Communities (DLUHC) and Planning Aid’s ‘Material Planning Considerations’ checklist, as referenced on the District Council’s website, stipulates that *“problems arising from the construction period of any works, e.g. noise, dust, construction vehicles, hours of working”* constitutes a non-material planning consideration. This is due to the fact that separate legislation (such as the Control of Pollution Act 1974 (as amended)) can control issues arising from construction activity. On this basis it is considered unreasonable to impose a condition requiring the submission of a wide ranging Construction Environmental Management Plan (CEMP) given that it would not be necessary to make the development acceptable in planning terms.

It is also the case that if any statutory nuisance issues were to arise as a result of the development then the Council’s Environmental Protection Team would be able to investigate such issues and take appropriate action, where required, under separate Environmental Protection Legislation.

Overall, the proposed development would not give rise to any adverse impacts to residential amenities and consequently the proposal would accord with Policy D2 of the adopted Local Plan, criterion 6 of Policy S4 of the made ADLZNP as well as Paragraphs 191 and 194 of the NPPF.

Assessment of objections in relation to residential amenity

Objection	Officer Response
<b>It needs to be ensured that any cooler/heat exchangers/air conditioning</b>	It is concluded above that the Council’s Environmental Protection Team consider that

<p><b>units do not impact on visual/noise pollution in neighbouring gardens.</b></p>	<p>the mechanical plant to be installed will be acceptable based on the findings of the submitted Noise Assessment. A condition would be imposed requiring the mechanical plant to be installed in accordance with that deemed to be acceptable.</p>
<p><b>The proposal is of a different nature to the existing offices with longer operating hours and deliveries at unsocial hours. It will impact adversely on residential amenity.</b></p> <p><b>There is concern noise and disturbance would arise to local residents as a result of the activity at a busy supermarket when compared with the existing offices contrary to Policy D2 of the adopted Local Plan.</b></p>	<p>For the reasons as outlined above it is considered that the proposed development would not impact adversely on residential amenity.</p>
<p><b>Staff should be restricted from smoking at the rear of the building so as to prevent pollution and also not increase the fire risk due to retained vegetation.</b></p>	<p>It is a considered that a note to the applicant could advise on this request given that a condition would not be enforceable on the basis that it would not meet the tests outlined in Paragraph 56 of the NPPF (i.e. not necessary to make the development acceptable in planning terms). In any event the staffing area is to the front of the building so it is considered unlikely that staff would go to the rear of the building as part of a 'smoke break'.</p>
<p><b>There is a door on the rear elevation that looks directly towards residential gardens and properties on Astley Way.</b></p>	<p>The door on the rear elevation is a service door at ground floor level and would be likely be used as a fire escape in the case of an emergency. When accounting for the doors use, and the retention of the existing landscaping providing an appropriate screen, it is considered that no adverse overlooking impacts would arise.</p>
<p><b>It needs to be ensured that any management of the retained trees does not reduce the level of privacy they provide and that they are maintained. They should be replaced if they subsequently fail.</b></p>	<p>A condition would be imposed on any planning permission granted requiring the approval of a landscape management plan so as to ensure that retained, as well as proposed, trees are appropriately maintained. A condition would also be imposed requiring the replacement of any failed landscaping.</p>

<p><b>There should be a restriction on deliveries due to proximity of nearby housing (e.g. none after 19:00).</b></p> <p><b>When deliveries are made between the hours of 20:00 to 08:00 audible reversing alarms should be turned off.</b></p>	<p>The Council's Environmental Protection Team do not require the timings of deliveries to be restricted and consequently a condition specifying deliveries can only be undertaken at certain times would not be necessary to make the development acceptable in planning terms. As such it would fail the tests for conditions outlined in Paragraph 56 of the NPPF.</p>
<p><b>Any external lighting to the rear of the store should not shine directly towards the residential receptors on Astley Way.</b></p>	<p>An external lighting scheme submitted in support of the application has been reviewed by the Council's Environmental Protection Team who are satisfied that such a lighting scheme would not impact adversely on residential amenity. A condition would be imposed requiring the external lighting scheme to be delivered in accordance with that submitted.</p>

**Air Quality**

Part (2) of Policy D2 of the adopted Local Plan outlines that development will be supported which does not generate a level of pollution, which cannot be mitigated to an appropriate standard and so, would have an adverse impact on amenity and living conditions.

Policy En6 of the adopted Local Plan specifies that proposals for development which are within or close to an Air Quality Management Area (AQMA) will be supported where (a) a planning application is accompanied by a detailed investigation and assessment of the issues; and (b) appropriate mitigation measures are identified which avoid any unacceptably adverse impacts upon the site or adjacent areas.

Paragraph 192 of the NPPF outlines that planning decisions should *“sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement...Planning decisions should ensure that any development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.”*

The application site does not lie within or adjacent to an Air Quality Management Area (AQMA), with both of the AQMAs in the district (at High Street/Bondgate, Castle Donington and Copt Oak) being in excess of 10 kilometres from the application site.

An Air Quality Assessment (AQA) has been submitted in support of the application which was subject to review by the Council's Environmental Protection Team Air Quality Officer (EPTAQO). In their original consultation response the Council's EPTAQO requested that the AQA be updated

to account for air quality targets proposed by the Department for the Environment, Food and Rural Affairs (DEFRA).

An amended AQA has subsequently been submitted with the applicant outlining that the DEFRA Local Air Quality Management (LAQM) background concentration maps assume that background concentrations will improve (i.e. reduce) over time, in line with the predicted reduction in vehicle emissions as well as reduction in emissions from other sources.

The amended AQA states that the impacts of dust emitting activities associated with the construction phase of the development to sensitive receptors (i.e. residential and ecological receptors) could be appropriately mitigated by dust control measures being employed. In this respect the amended AQA outlines that a Dust Management Plan (DMP) could provide measures for controlling dust including details of any monitoring scheme (if appropriate). The implementation of a DMP would either eliminate or reduce impacts to 'negligible' so as to be compliant with the Institute of Air Quality Management (IAQM) *'Guidance on the Assessment of Dust from Demolition and Construction'*. Whilst noting that it is outlined, within the *'Residential Amenities'* section of this report above, that construction activities do not comprise a material planning consideration it is considered that the specific requirement to control dust as part of the construction process is a means of protecting air quality and therefore there is justification for the imposition of such a condition in this instance. The provision and subsequent implementation of a DMP would therefore be conditioned on any permission to be granted.

Within the amended AQA it is concluded that construction traffic will be limited to a relatively short period with construction vehicles using routes which are already utilised by haulage/construction vehicles as well as workers. Any impacts to air quality would therefore be temporary. The AQA considers that the impacts of construction traffic could be mitigated by measures such as encouraging the use of sustainable transport options by construction workers, utilising a construction logistics plan to manage the sustainable delivery of goods and materials and ensure vehicles are not left 'idling'. Whilst recognising such measures it is considered that a condition securing them would be unenforceable given that, in particular, it would be difficult to monitor the movement of construction works and construction vehicles delivering to the site. When accounting for the temporary impact of construction traffic, it is considered that any impacts arising would not be so adverse that a reason to refuse the application could be justified.

In terms of the impacts associated with road traffic emissions from the operation of the development, the amended AQA outlines that the proposed development would not be expected to expose future users to poor air quality and consequently the impacts would be not significant. It is also outlined that electric vehicle charging points would be incorporated into the scheme and that space and water heating would be electric with no emissions at the point of use. Whilst no mitigation is specifically necessary, it is considered that the implementation of measures to promote sustainable transport to employees and (some) customers could reduce the mean roadside concentration of traffic-related pollutants. It is considered in the *'Highways Impact'* section of this report below that a travel plan would be secured via condition which will assist in this respect.

Following the receipt of the amended AQA, the Council's EPTAQO has no objections to the application.

Overall, and subject to the imposition of conditions on any permission to be granted, the proposed development would not conflict with the aims of Policies D2 and En6 of the adopted Local Plan or Paragraph 192 of the NPPF.

## Highways Impact

Policy IF4 of the adopted Local Plan requires that development takes account of the impact upon the highway network and the environment, including climate change, and incorporates safe and accessible connections to the transport network to enable travel choice, including by non-car modes, for residents, businesses, and employees. Policy IF7 of the adopted Local Plan requires that development incorporate adequate parking provision for vehicles and cycles in order to avoid highway safety problems and to minimise the impact upon the local environment.

Policy T1 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) states that traffic management measures that improve vehicular and pedestrian safety will be encouraged. Criterion 3 of Policy S4 of the made ADLZNP requires adequate off-street parking to be provided with criterion 5 supporting the provision of electrical charging points.

As part of the consideration of this application the County Highways Authority (CHA) and National Highways (NH) have been consulted with the consultation response from the CHA taking into account the advice outlined in the Leicestershire Highways Design Guide (LHDG).

The application as originally submitted was accompanied by a Transport Assessment (TA) and Travel Plan (TP) with Highways Technical Notes (HTNs), a Stage 1 Road Safety Audit (RSA) (including Designers Response (DR)) and updated traffic figures subsequently being submitted following consultation responses from the CHA and NH. Re-consultation has been undertaken on this information.

### Site Access

It is proposed that the existing site access from Resolution Road would be utilised which is the south-western arm of the existing four arm roundabout junction. Resolution Road is an unclassified road with a speed limit of 30mph.

Whilst the applicant did not initially propose any amendments to the site access, the CHA required the exit kerb radius from the Resolution Road roundabout at the site access to be increased to at least 15 metres. Subsequent amendments to the plans have accommodated this request with it being acceptable to the CHA that the extent of works to increase the access width will be undertaken on land outside of the application site (but being within the public highway and therefore within the ownership of the CHA).

It has also been demonstrated, by swept path analysis, that heavy goods vehicles (HGVs) can enter and exit the site in an appropriate manner.

### *Road Safety Audit*

The Stage 1 RSA submitted by the applicant identified five problems which are as follows:

- (i) Loss of control type collisions for all users;
- (ii) Possible collisions between road users and pedestrians within the island dwell area;
- (iii) Risk of ponding resulting in loss of control type collisions;
- (iv) Risk of pedestrian trip/fall type injuries; and
- (v) Risk of collisions if visibility for pedestrians and road users is reduced due to vegetation.

The DR associated with the Stage 1 RSA provides recommendations to address such problems which would be as follows:



- (i) Carriageway resurfacing works would be undertaken over the extents of the works proposed on the arm of the roundabout which functions as the site access.
- (ii) The pedestrian refuge island has been increased in width to 2 metres.
- (iii) This problem was due to a blocked gully near the site access and therefore a drainage survey will be undertaken to mitigate the impact.
- (iv) Encroaching vegetation would be removed on the footway with the existing tactile paving being replaced.
- (v) A 2 metre wide footway would be provided and the encroaching vegetation would be cut back.

The CHA have accepted the conclusions and recommendations of the Stage 1 RSA and DR with such matters being addressed under Section 278 of the Highways Act 1980 (as amended) which would be negotiated and approved separately by the CHA outside of the planning process.

Overall the CHA are satisfied that a safe and suitable access would be delivered in connection with the proposed development.

#### Highway Safety

The HTNs have demonstrated that a total of 5 Personal Injury Collisions (PIC's) have occurred within 500 metres of the proposed site access in the most recent 5 year period. One PIC was considered 'serious' in severity with the remaining four being considered 'slight'.

Having reviewed the circumstances of each of the PIC's, the CHA is satisfied that there is no evidence to suggest that the proposed development would increase the likelihood of further incidents occurring.

#### Impact on the Highway Network

##### *Committed Development*

The CHA outlined in their original consultation response that the TA had given consideration to the Money Hill development (associated with application reference 13/00335/OUTM) but did not consider the G-Park development at the Former Lounge Disposal Point (associated with application reference 19/00652/FULM) or that on the eastern side of Flagstaff Island.

This issue has subsequently been addressed by the information presented within the HTNs and is acceptable to the CHA.

##### *Trip Generation*

The HTNs have calculated that the total weekday two-way trips in the AM peak period (08:00 to 09:00) would be 69 trips with 38 trips in the PM peak period (16:00 to 17:00). The PM peak period has been determined by the applicant following a survey of the junction of Resolution Road with Nottingham Road with the data being acceptable to the CHA. There would be no movements on a Saturday which is commensurate with the existing office use.

The proposed development, when compared with the existing office use of the site, would result in an additional 14 two-way movements in the AM weekday peak period and an increase in 135 two-way movements in the PM weekday peak period. On a Saturday, the development peak would be between 12:00 and 13:00 and would result in an additional 278 two-way movements.

On the basis of this information the CHA advised that Junction Capacity Assessments (JCAs) would need to be submitted and this is as discussed in the '*Junction Capacity Assessments*' sub-section below.

### *Trip Distribution*

The HTNs have calculated there would be a 66% diversion of trade from both existing stores and the surrounding settlements with this broken down as 27% from Aldi on Dents Road, 26% from Tesco Extra on Resolution Road, 5% from the M&S Foodhall on Smithy Road and 8% from other settlements (namely Coalville). 10% of the trips will be new with 24% of the trips being 'pass by' for vehicles travelling (predominately) along Nottingham Road.

Such information is considered acceptable to the CHA.

### *Traffic Impact Assessment*

Originally the CHA required the TA to be amended so as clearly identify the impact on the junctions surrounding the application by identifying the number of Passenger Car Units (PCUs). It was also a requirement for the future assessment year to assess the application year +5 years to 2028.

The HTNs subsequently submitted by the applicant have addressed these matters and demonstrated the impact to the following junctions:

- (i) Proposed Site Access/Resolution Road/Tesco Access Roundabout Junction;
- (ii) Resolution Road/Nottingham Road Signalised T-Junction;
- (iii) Nottingham Road/Dents Road Signalised T-Junction; and
- (iv) A511/Nottingham Road (B587)/Roundabout Junction.

On the basis of the information submitted the CHA outlined that Junction Capacity Assessments (JCAs) would be required for junctions (i) and (ii). The impact to junctions (iii) and (iv) would be below 30 two-way trips and therefore no JCAs were required for these two junctions.

The JCAs are discussed in the '*Junction Capacity Assessment*' sub-section below.

### *Junction Capacity Assessments*

The applicant has submitted Junction Capacity Assessments (JCAs) associated with the impacts at the following junctions:

- (i) Proposed Site Access/Resolution Road/Tesco Access Roundabout Junction; and
- (ii) Resolution Road/Nottingham Road Signalised T-Junction.

This being as outlined in the '*Traffic Impact Assessment*' sub-section above.

The JCA submitted for the site access junction with Resolution Road has demonstrated that this junction would have adequate capacity to accommodate the proposed development and as such no specific mitigation is required by the CHA.

In terms of the junction of Resolution Road with Nottingham Road, the CHA has outlined that this junction currently operates over practical capacity and therefore the addition of the proposed

development would increase the impact (particularly at the weekends). On this basis the CHA require specific mitigation for this impact which would comprise the installation of kerbside detection on pedestrian demand dependent crossings. Such improvements would prevent some pedestrian stages of the junction cycle being demanded where a pedestrian crosses before being signalled to go by the 'green man', and consequently improves operational capacity by only allowing pedestrian crossing stages when required.

The CHA have recommended that such works are secured by condition on any permission granted and therefore the impacts to the junction of Resolution Road with Nottingham Road would be mitigated.

### National Highways

For their part NH have no objections as having reviewed the scope and scale of the proposed development its impact upon the strategic road network (SRN) would not be severe. This is due to the setting of the proposed development in a predominantly retail area and where it would be anticipated that the majority of trips would derive from Ashby De La Zouch thereby not interacting with the SRN.

### Internal Highway Layout

A total of 100 parking spaces would be provided as part of the proposed development which would be in excess that required by the LHDG (a requirement of 96 parking spaces) but is considered acceptable by the CHA. This would include the provision of parent and child parking spaces, accessibility spaces and electric vehicle (EV) charging spaces.

Five Sheffield cycle stands would also be provided at the site, with such cycle parking being located in close proximity to the accessibility parking spaces. It has not been demonstrated whether such cycle parking would be undercover but this could be secured by condition.

Following amendments to the layout it has also been demonstrated that HGV movements can enter and exit the site in a forward gear along with the provision of a pedestrian crossing point which enables wider connectivity through the site to Resolution Road. This is welcomed by the CHA.

Overall, and subject to the imposition of conditions, the CHA consider the internal layout to be acceptable.

### Transport Sustainability

The CHA have outlined that the application site would be served by multiple regular services to nearby towns and cities such as Leicester, Burton and Coalville. The site is also connected by foot and cycle by existing footways allowing people who live locally in Ashby De La Zouch to access the site.

### Travel Plan

The TP submitted in support of the application has been updated as part of the HTNs and whilst the CHA acknowledge there are some unknowns with the nature of a development of this type, the TP should identify the intended number of staff due to work at the site.

It is also outlined by the CHA that written communication and marketing are important and as

such the TP should include in person events where the TP Co-ordinator is able to engage staff, with the target audience of the TP being provided with the skills that would enable them to feel confident in choosing active and sustainable travel as a natural choice of transport. This could include cycle training, Dr Bike events and walking buddy systems which could operate alongside national events such as cycle to work days and also walking month.

Currently the TP states that a “voucher towards the purchase or loan of a bicycle and/or cycle equipment for staff, Partnership with local cycle shops” would be promoted by the Betterpoints app to all staff. However, the CHA have outlined that Betterpoints app rewards active travel journeys and therefore bike loans and bike vouchers are not what this app is targeted at as outlined in the TP. On this basis vouchers for active and sustainable travel would need to be provided by the applicant.

Overall, the CHA would require a revised TP where specific initiatives are set out which have clear deliverables and measurable outcomes and this could be secured by condition on any permission granted.

The CHA would also secure financial contributions towards travel packs, bus passes, and a travel plan monitoring fee via a Section 106 agreement, with these requirements being as discussed in the ‘Developer Contributions and Infrastructure’ section of this report below.

Highways Impact Conclusion

Paragraph 115 of the NPPF indicates 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.” Subject to the imposition of conditions, and securing of relevant contributions, neither the CHA of NH have any objections to the application, and as such the proposed development would not have an unacceptable impact on highway safety nor would the cumulative impacts with other committed development on the highway network be severe.

On this basis the proposed development would be considered compliant with the aims of Policies IF4 and IF7 of the adopted Local Plan, Criteria 3 and 5 of Policy S4 and Policy T1 of the made ADLZNP as well as Paragraphs 110, 114, 115 and 116 of the NPPF.

Assessment of objections in relation to the highways impact

Objection	Officer Response
<p><b>Whilst supporting the applicant’s assertions of encouraging staff and employees to cycle to the store there is no explanation of how this will be delivered with there being no dedicated off-road cycle path on Nottingham Road with the volume of traffic making cycling hazardous. The applicant should therefore contribute towards the provision of cycle infrastructure with the use of Featherbed Lane and its upgrading to an all-weather path providing an ideal route.</b></p>	<p>See above assessment. The CHA has no objections in relation to the site’s location and the ability of staff to access the proposed store via means other than the private car with such measures being promoted and secured within a Travel Plan.</p> <p>The CHA has not requested that the applicant contribute towards improving cycling infrastructure to the store and it is considered that this would require a co-ordinated approach outside of the</p>

<p><b>If permission is granted a payment towards a safe cycle route into Ashby De La Zouch Town Centre for use by customers and staff should be secured as per the submitted transport report, Lidl internal policy and the NWLDC Cycling and Walking Strategy.</b></p>	<p>requirements of this planning application. It would also be unreasonable and unnecessary for the proposed development to contribute towards improvements to cycling infrastructure if no such request has been made by the CHA and there is currently no devised scheme which the development would contribute to.</p>
<p><b>The addition of the Lidl in a well-known traffic bottle neck will impact adversely on the highways and will be further exacerbated by the Money Hill development. The highway impacts would be considered severe in the context of the NPPF.</b></p> <p><b>The vehicular movements associated with the development would increase and exacerbate the congestion around Resolution Road and Nottingham Road contrary to Policy IF4 of the Local Plan.</b></p> <p><b>The proposed development would greatly increase the traffic in what is already a congested area of Ashby and resulting in further queuing and delays on Nottingham Road and the surrounding routes.</b></p>	<p>For the reasons as outlined above the proposed development is considered acceptable to both the CHA and NH and consequently compliant with relevant planning policy.</p>
<p><b>Congestion occurs in the vicinity of the site already on days when retail activity is limited, there are no roadworks and it is not peak hours.</b></p>	<p>See above assessment. The CHA and NH have no objections to the application with it being concluded that the proposed development would not impact adversely on the highway network.</p>
<p><b>Lorries have difficulties in exiting the junction of Dents Road with Nottingham Road and require vehicles to reverse.</b></p>	<p>Lorries associated with the proposed development would have no interaction with the junction of Dents Road with Nottingham Road and consequently any issues associated with this junction would be existing situation which would not be for the development to mitigate against.</p>
<p><b>Deliveries should be directed to the McVities entrance off the bypass so as to avoid the Resolution Road junction and avoid adverse impacts to pedestrian and highway safety.</b></p>	<p>See above assessment. The CHA are satisfied that deliveries associated with the proposed development can be undertaken via the junction of Resolution Road and Nottingham Road and consequently there is</p>

	no requirement for deliveries to be diverted.
<p><b>The number of deliveries, and their timings, should be controlled by condition.</b></p> <p><b>There should be a requirement for a banksman to assist in deliveries due to the tight nature of parking and required manoeuvring.</b></p>	<p>The CHA do not require the number of deliveries or their timings to be restricted, nor do they consider there is a requirement for a banksman. On this basis the imposition of a condition in this respect would be unnecessary and unreasonable.</p>
<p><b>The site is not in a sustainable location given the limited bus service, and cycle provision is non-existent.</b></p>	<p>Policy S2 of the adopted Local Plan identifies Ashby De La Zouch as a 'Key Service Centre' which is the second most sustainable settlement after the Coalville Urban Area. It is also concluded above that the CHA consider the site location to be sustainable.</p>
<p><b>There should be highway improvements to reduce congestion secured as part of any permission granted, e.g. off-set roundabout on Nottingham Road.</b></p>	<p>See above assessment. The CHA have recommended alterations to the proposed crossings at the junction of Resolution Road with Nottingham Road so as to mitigate the impact of the development to the highway network.</p>
<p><b>The EV charging spaces should be increased to at least 10% of the parking spaces to reflect the climate crisis and meet the Lidl climate change policy goal of making electric vehicles more attractive to customers.</b></p>	<p>Policy IF7 adopted Local Plan does not specify the need for electric vehicle (EV) charging spaces, with criterion 5 of Policy S4 of the made Ashby De La Zouch Neighbourhood Plan 'supporting' the provision of EV charging spaces. Criterion (e) of Paragraph 111 of the NPPF seeks to ensure that adequate provision of EV charging spaces is made as part of new development.</p> <p>The CHA consider that the number of parking spaces to be delivered (including the two EV spaces) is acceptable with it being possible for Lidl to adapt their car park in the future should more EV charging spaces be required.</p> <p>It is also the case that Requirement S4 of Approved Document S (Infrastructure for the Charging of Electric Vehicles) of the Building Regulations stipulate that for non-residential</p>

	<p>development in a car park of 10 or more parking spaces only one car parking space is required to be an EV charging space with cable routes then being provided to ensure that one fifth of the total number of remaining car parking spaces could also be served by an EV charging point (i.e. a further 20 spaces).</p> <p>On this basis there would be no justification to refuse the application because less than 10% of the total number of parking spaces (i.e. 10 in the instance as 100 parking spaces are provided) are EV charging spaces given that there is no objection from the CHA.</p>
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### Ecology

Vegetation, in the form of trees and other shrubs, are present on the site. Such features could be used by European Protected Species (EPS) or national protected species. As EPS may be affected by a planning application, the Local Planning Authority has a duty under regulation 9(5) of the Habitats Regulations 2010 to have regard to the requirements of the Habitats Directive in the exercise of its functions.

Part (1) of Policy En1 of the adopted Local Plan states that proposals for new development will be supported which conserve, restore or enhance the biodiversity in the district.

Policy NE4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) states that development proposals which conserve or enhance the network of important local biodiversity features and habitats will be supported and that development proposals should promote preservation, restoration, and creation of high quality habitats especially to support local wildlife sites, local priority habitats, and the National Forest Project. Criterion 7 of Policy S4 of the made ADLZNP also outlines that development should protect and enhance biodiversity and landscaping, and that the use of native trees in soft landscaping schemes and the incorporation of swift or bat boxes is supported.

As part of the consideration of the application an Ecological Impact Assessment (EIA), and Technical Report for Great Crested Newts (GCNs), have been submitted which have been subject to review by the County Council Ecologist. The County Council Ecologist has raised no objections to the application and has outlined that there was no evidence of protected species being present on the site and that the habitats were generally of low ecological value with the exception of the attenuation basins within the south-eastern part of the site and the woodland/scrub to the south-western boundary. It is proposed that these habitats would be retained as part of the development with the County Council Ecologist indicating that such habitats should be protected during the construction phase. So as to ensure this, the County Council Ecologist recommends the imposition of a condition requiring the submission of a Biodiversity Construction Management Plan.

For their part Natural England (NE) have commented on the need for the integrity of the River Mease Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI) to be preserved as part of the development and this is discussed in the *'River Mease Special Area of*

*Conservation/SSSI – Habitat Regulations Assessment*’ section of this report below. NE have no particular comments in respect of other ecological/biodiversity features.

The mandatory requirement for 10% Biodiversity Net Gain (BNG) for major development as required by the Environment Act came into force on the 12<sup>th</sup> of February 2024. However, this requirement would only be applicable to those applications received on or after the 12<sup>th</sup> of February 2024 and is not to be applied retrospectively to those applications already under consideration before this date and subsequently determined after this date. On this basis the proposed development would not be required to demonstrate a 10% BNG. Notwithstanding this, Paragraphs 180(d) and 186(d) of the NPPF set out a requirement for developments to minimise their impacts on and provide net gains for biodiversity. In this case it is noted that the development would be undertaken on a brownfield site following the demolition of Ashfield House.

The EIA outlines that a BNG calculation has been undertaken, although the specific calculation has not been submitted, which demonstrates overall that a 10% net gain could be delivered by including the incorporation of landscape planting, bird and bat boxes and deadwood hibernacula which would provide refuge, shelter and hibernation opportunities for a range of wildlife. As part of the consideration of the application the County Council Ecologist has raised no objections to the BNG measures suggested and considers that these could be secured by condition on any permission granted.

Overall, and subject to the imposition of the relevant conditions and informative, there would be no conflict with Policy En1 of the adopted Local Plan, criterion 7 of Policy S4 and Policy NE4 of the made ADLZNP, Paragraphs 180 and 186 of the NPPF and Circular 06/05.

Assessment of objections in relation to ecology

Objection	Officer Response
<p><b>There is no consideration of the impacts to watercourses which are tributaries of the River Mease SAC.</b></p>	<p>It is concluded in the <i>‘River Mease Special Area of Conservation/SSSI – Habitat Regulations Assessment</i>’ section of this report below that the proposed development would not impact adversely on the integrity of the River Mease SAC/SSSI with no objections being raised by Natural England.</p>

**Landscaping**

Part (2) of Policy En3 of the adopted Local Plan outlines that new developments within the National Forest will contribute towards the creation of the National Forest by including provision of tree planting and other landscape areas within them.

Policy NE5 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) outlines that opportunities to enhance the coverage of trees and hedgerows will be encouraged.

The application is accompanied by an Arboricultural Impact Assessment (AIA), Tree Survey and Constraints Plan (TSCP), Tree Retention and Removals Plan (TRRP) and Tree Protection Plan (TPP). The TSCP identifies that there are 11 individual trees on the site (with only one rated category B (*moderate quality*)), four groups of trees (3 of which are rated category B) and three



hedgerows (all rated category C (*low quality*)).

As part of the consideration of the application the Council's Tree Officer has been consulted and they consider that the AIA, as well as the TSCP, TRRP and TPP, have been carried out in accordance with BS5837:2012 (*'Trees in Relation to Design, Demolition and Construction'*) and as such are acceptable for the purposes of considering the arboricultural implications to the proposal.

The AIA identifies that nine individual trees, as well as two hedgerows, would be removed to facilitate the development with all of these trees (and the two hedgerows) being to the north-eastern boundary of the site with Resolution Road. Three of these trees are categorised as unsuitable for retention due to their condition (category U), irrespective of any redevelopment of the site, with the other six comprising six low quality (category C) cherry trees and one moderate quality (category B) ash tree. All of the other existing trees would be retained, including those to the south-western boundary which provide screening for the residential receptors on Astley Way.

Within the TPP there are details for temporary protection of retained trees during the construction works, along with recommendations for the construction of no-dig hard surfacing within part of the root protection area (RPA) of the western boundary trees, such details are acceptable to the Council's Tree Officer.

A detailed landscape proposals plan has also been submitted and following consideration of this plan the Council's Tree Officer considers that suitable mitigation would be provided for the trees, and hedges, which would be lost as a result of the development given that those trees to be removed are ornamental/amenity landscape planting types applicable to the previous site use.

On this basis the Council's Tree Officer has no objections subject to the imposition of conditions on any permission granted so as to secure the AIA, TPP and detailed landscape proposals.

For their part the National Forest Company (NFC) have outlined that the application site area is below the threshold (of 1 hectare) where National Forest planting (be that on-site or off-site) would be required in line with Policy En3 of the adopted Local Plan.

Whilst this is the case, the NFC have indicated that Policy En3 of the adopted Local Plan seeks to ensure that the character and design of new development respects its setting within the National Forest. In their original consultation response the NFC considered that the detailed landscape proposals should be amended so as to provide wider landscaping strips to the north-eastern and south-eastern site boundaries and that tree planting be provided within the car park. The Council's Urban Designer also encouraged tree planting within the car park as well as designing out 'vacant' spaces within the site which could promote displaced car parking.

The applicant subsequently submitted amended detailed landscape proposals and outlined that although some verges had been removed to accommodate the car park a significant amount of tree planting would be undertaken as a result of the development, including tree planting within the car park. 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.

Whilst it is considered that such tree planting could be widened within the car park, as well as additional tree planting being undertaken in the south-eastern part of the site and 'vacant' spaces, it is considered that a condition could be imposed on any planning permission granted so as to secure a detailed soft landscaping scheme and whereby tree planting is undertaken in the car park. The imposition of such a condition would fundamentally address the comments raised by

the NFC and Council’s Urban Designer and ensure that soft landscaping would contribute positively to visual amenity.

In terms of hard landscaping the plans show the provision of tarmac to the car park surfacing and car parking spaces, block paving (coloured grey) to pathway routes around the store and the pedestrian link to Nottingham Road and paving stones (coloured grey) to the crossing point within the site. Whilst the use of block paving and paving stones is supported it is considered that the widespread use of tarmacadam should be reconsidered and whether or not a rolled tarmac surface could be introduced along with the need for it to be made clear where the permeable paving would be located as outlined in the surface water drainage strategy (this being discussed in more detail in the ‘*Flood Risk and Drainage*’ section of this report below). A condition would therefore be imposed requiring a revised hard landscaping scheme to be submitted.

Overall the proposed development, subject to the imposition of conditions, would be considered acceptable and compliant with the aims of Policies D1 and En3 of the adopted Local Plan and Policy NE5 of the made ADLZNP.

Assessment of objections in relation to landscaping

Objection	Officer Response
<p><b>As the site is within the National Forest more trees should be planted so as to screen the store as was the case with M&amp;S and B&amp;M across the road.</b></p> <p><b>The site layout provides no opportunities for soft landscaping to be introduced so as soften the impacts of the car park which would lie between Nottingham Road and the store, with the store itself replacing Ashfield House which sits on the road frontage. Other stores in the area are screened by landscaping.</b></p>	<p>The imposition of a condition can ensure that a detailed soft landscaping scheme is submitted and which gives consideration to further tree planting to the boundary with Nottingham Road. It is the case, however, that the proposal development would likely result in a greater level of soft landscaping on the site then currently exists.</p>
<p><b>The soft landscaping scheme should incorporate British native trees as well as British timber in the materials of construction.</b></p>	<p>It can be ensued, by condition, that native trees species are used within the soft landscaping scheme along with the use of British timber in the materials of construction (albeit this would simply be limited to the canopy columns).</p>
<p><b>The hard landscaping scheme should use permeable surfaces for parking so as to reduce storm runoff in what is known as a problem area for flash flooding.</b></p>	<p>It is outlined in the ‘<i>Flood Risk and Drainage</i>’ section of this report below that permeable surfaces would be used in the surface water drainage strategy which is acceptable to the Lead Local Flood Authority. A condition would be imposed to secure a precise surface water drainage strategy which would</p>

	demonstrate betterment, in terms of surface water runoff, than that associated with the existing site.
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**Flood Risk and Drainage**

Policy Cc2 of the adopted Local Plan outlines that the risk and impact of flooding will be minimised through directing new development to areas with the lowest probability of flooding; ensuring that new development addresses the effective management of all sources of flood risk; ensuring that development does not increase the risk of flooding elsewhere and ensuring wider environmental benefits of development in relation to flood risk. It is also states the circumstances where development will be supported.

Policy Cc3 of the adopted Local Plan outlines that where it is necessary to manage surface water drainage than Sustainable Urban Drainage Systems (SuDS) should be incorporated into developments unless it is clearly demonstrated that SuDS are not technically, operationally or financially viable and that surface water drainage issues from the development can be alternatively mitigated; or that the SuDS scheme itself will adversely affect the environment or safety.

Criterion 10 of Policy S4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) outlines that development should be avoided in areas of medium and high flood risk (flood zones 2 and 3) and where surface water drainage is to be managed SuDS should be incorporated.

The application site comprises land which is within Flood Zone 1 (low risk of fluvial flooding) and is predominantly at a very low risk of surface water flooding (pluvial flooding), as defined by the Environment Agency’s Surface Water Flood Maps. The exceptions to this are the attenuation basins adjacent to Nottingham Road and the filter drain network to the south-western boundary where low to high risk of surface water flooding is possible.

A Flood Risk Assessment (FRA) and Drainage Strategy (DS) submitted in support of the application also identifies that the application site is at a negligible risk of groundwater flooding, and is not at risk from tidal flooding or flooding from artificial sources (such as reservoirs and canals).

When accounting for the terms of Paragraph 168 of the NPPF, it is considered that the sensitive parts of the development, i.e. the building itself and associated car parking, have been sequentially located away from the parts of the site where there is a high risk of pluvial flooding.

As part of the consideration of the application the Lead Local Flood Authority (LLFA) have been consulted and having reviewed the FRA and DS they have outlined that the site currently discharges, unrestricted, to the offsite adopted network. Whilst representing development on a brownfield site, the proposed surface water drainage strategy would seek to discharge at a greenfield runoff rate of 4.4 litres per second by the use of pervious paving and the existing attenuation basins (adjacent to Nottingham Road). Such a solution would comprise a Sustainable Urban Drainage System (SuDS).

In such circumstances the proposed surface water drainage system would result in a betterment to the surface water discharge rates from the existing site and consequently would not create or exacerbate any localised surface water flooding impact. On this basis the LLFA have no objections to the application subject to the imposition of conditions on any permission granted

which would seek to secure the surface water drainage scheme, a scheme of surface water drainage during the construction phase and the future maintenance and management of the installed surface water drainage scheme. Subject to the imposition of these conditions the proposed development would be compliant with Policies Cc2 and Cc3 of the adopted Local Plan, criterion 10 of Policy S4 of the made ADLZNP and Paragraphs 165, 173 and 175 of the NPPF.

Foul drainage would be discharged via the existing connection to the foul drainage network within Resolution Road with such a connection being agreed with Severn Trent Water (STW) under separate legislation outside of the planning process. In agreeing a connection STW would have an opportunity to determine whether capacity exists in the foul drainage network to accommodate the development before enabling the connection. In any event when accounting for the extant office use of the site it is considered that there would be a reduction in foul drainage discharge from the site given the limited number of customer toilets (only one) and the staffing shifts which would be employed in this type of retail development. On this basis there would not be an increased risk of pollution discharge from the foul drainage network and as such the proposal would be compliant with Paragraph 191 of the NPPF.

### **River Mease Special Area of Conservation/SSSI – Habitat Regulations Assessment**

Policy En2 of the adopted Local Plan outlines, amongst other things, that the Council will work with Natural England, the Environment Agency, Severn Trent Water, other local authorities and the development industry so as to improve the water quality of the River Mease Special Area of Conservation.

Policy NE4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) supports Policy En2 of the adopted Local Plan with criterion 9 of Policy S4 of the ADLZNP also referring to the River Mease SAC/SSSI.

The site lies within the catchment area of the River Mease Special Area of Conservation (SAC). The watercourse to the south-east of the site on the opposite side of Nottingham Road (between Dents Road and Smithy Road/Coalfield Way) would be a tributary of the river given its hydrological connection with the Gilwiskaw Brook. Discharge from the sewerage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river. Surface water flows can also adversely impact on the SAC.

As a result of the proposed development there could be an impact on the River Mease SAC, which may undermine its conservation objectives, from an increase in foul and surface water drainage discharge. Therefore, an appropriate assessment of the proposal and its impacts on the SAC is required.

Discharge into the river from surface water disposal via a sustainable drainage system or via the mains sewer system can also result in an adverse impact on the SAC, including in relation to water quality and flow levels.

As is outlined above, it is considered that an existing watercourse to the south-east of the site on the opposite side of Nottingham Road (between Dents Road and Smithy Road/Coalfield Way) is a tributary of the River Mease given its hydrological connection with the Gilwiskaw Brook.

### *Foul Drainage*

In March 2022 Natural England (NE) published advice in respect of the nutrient neutrality methodology which can be used to mitigate against the impacts of additional phosphate entering

the SAC from foul drainage associated with new development.

Such advice outlines that development which will not give rise to additional overnight stays within the catchment does not need to be considered in terms of any nutrient input, except in exceptional circumstances. This is as a result of a likelihood that those using the development live locally, within the catchment, and thus their nutrient contributions are already accounted for within the background.

As part of the consideration of the application Natural England (NE) have been consulted and they have outlined that the submitted River Mease SAC Statement outlines that it is highly likely that the proposed development would employ fewer staff than the extant office use with fewer washroom amenities being required. This would consequently reduce the amount of wastewater generated and as such the amount of phosphorus requiring treatment before being discharged into the River Mease SAC catchment would also be reduced. On this basis NE consider that a Nutrient Budget does not need to be calculated for the proposal and impacts from foul water are unlikely, consequently they have no objections.

On this basis there would be no impact on the integrity of the River Mease SAC as a result of foul drainage discharge.

#### *Surface Water Drainage*

As is outlined in the 'Flood Risk and Drainage' section of this report above, surface water discharge from the proposal would discharge via pervious paving and attenuation basins at a run-off rate of 4.4 litres per second (l/s).

NE consider that the proposed surface water design is an improvement to the existing scenario and therefore impacts from surface water pollutants are also considered unlikely. On this basis they have no objections.

It is stated in the 'Ecology' section of this report above, that a condition would be imposed on any permission granted requiring the approval of a Construction Environmental Management Plan (CEMP) for Biodiversity and it is considered that the approval of such a plan would also ensure that construction activity associated with the development would not result in an adverse impact to the integrity of the River Mease SAC albeit given the separation of the application site from the watercourse by the presence of Nottingham Road it is considered that any adverse impacts would be unlikely.

On this basis there would be no impact on the integrity of the River Mease SAC as a result of surface water discharge.

#### *River Mease Special Area of Conservation/SSSI – Habitat Regulations Assessment Conclusion*

On the basis of the above, it can be ascertained that the proposal would, either alone or in combination with other plans or projects, have no adverse effect on the integrity of the River Mease SAC, or any of the features of special scientific interest of the River Mease SSSI, and would comply with the Habitats Regulations 2017, Policies En1 and En2 of the adopted Local Plan, criterion 9 of Policy S4 and Policy NE4 of the ADLZNP and the NPPF.

#### **Contaminated Land**

Policy En6 of the adopted Local Plan outlines that proposals for development on land that is (or

is suspected of being) subject to contamination will be supported where a detailed investigation and assessment of the issues is undertaken and that appropriate mitigation measures are identified, where required, which avoid any unacceptably adverse impacts upon the site or adjacent areas, including groundwater quality.

Criterion 13 of Policy S4 of the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) requires new development to take account of risk from land instability and/or contamination and where necessary include appropriate mitigation and/or treatment measures.

The Council's Land Contamination Officer has reviewed the application and has outlined that due to the historic use of the site any planning permission to be granted should be subject to conditions requiring the submission of a risk based land contamination assessment, along with any remedial scheme and verification plan should the assessment identify any unacceptable risks.

It is considered that the imposition of such conditions is reasonable in the circumstances that the land would be utilised for commercial purposes, and therefore necessary to ensure the health and safety of any future employees. Subject to the imposition of such conditions, the development would accord with Policy En6 of the adopted Local Plan, criterion 13 of Policy S4 of the made ADLZNP as well as Paragraphs 180, 189 and 190 of the NPPF.

### **Impact on Safeguarded Minerals**

As part of their consultation response the County Council Minerals and Waste Planning Team (LCCMWP) have raised no objections to the application in respect of any impacts to safeguarded minerals or waste safeguarding.

On this basis there would be no conflict with Policy M11 of the adopted Leicestershire Minerals and Waste Local Plan or Paragraph 218 of the NPPF.

### **Aviation Safety**

Part (1) of Policy Ec5 of the adopted Local Plan outlines that development which would adversely affect the operation, safety or planned growth of East Midlands Airport will not be permitted.

As part of the consideration of the application East Midlands Airport Safeguarding (EMAS) have been consulted and they have raised no objections to the application given that aviation safety at East Midlands Airport (EMA) would not be compromised.

On this basis there would be no conflict with Policy Ec5 of the adopted Local Plan.

### **Impact on the Historic Environment**

Policy He1 of the adopted Local Plan and the advice in the NPPF requires heritage assets to be preserved and enhanced. Where development results in harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The proposed development must also be considered against sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which states that special regard shall be had to the desirability of preserving the setting of a listed building and the character and appearance of the conservation area.

An Archaeology and Heritage Assessment (AHA) has been submitted in support of the application and this identifies that the nearest heritage asset is the Ashby De La Zouch Conservation Area

which is some 700 metres to the east of the site with the Grade II listed Lockton House being some 800 metres to the south-east of the site.

The proposed development does not share any intervisibility with the Ashby De La Zouch Conservation Area, or any other heritage assets, due to the curve in the road leading towards the town centre and the presence of the more recent 20<sup>th</sup> and 21<sup>st</sup> century development. On this basis there would be no harm to the significance of heritage assets as a result of the development with the setting of listed buildings and the character and appearance of the conservation area being preserved.

As no harm arises, an assessment in the context of Paragraphs 207 and 208 of the NPPF is not required.

There is no archaeological significance associated with the site.

On this basis the proposed development would be compliant with Policy He1 of the adopted Local Plan, Paragraphs 200, 201, 203, 205, 210 and 211 of the NPPF and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Developer Contributions and Infrastructure**

A request has been made for a Section 106 contribution towards transportation. This request has been assessed against the equivalent legislative tests contained within the Community Infrastructure Levy (CIL) Regulations (CIL Regulations) as well as Policy IF1 of the adopted Local Plan and Paragraphs 34, 55 and 57 of the NPPF.

#### *Transportation Contributions*

The contributions set out under the '*Highway Impacts*' section of this report above include the following:

- (a) Travel packs to inform new employees from first site use of the available sustainable travel choices in the surrounding area. These can be provided through Leicestershire County Council (LCC) at a cost of £52.85 per pack. If not supplied by LCC, a sample travel pack shall be submitted to and approved in writing by LCC. An administration fee of £500.00 will be charged when submitting such documents for approval;
- (b) Six month bus pass per employee (an application form to be included in the travel packs and funded by the developer) to encourage new employees to use bus services, to establish changes in travel behaviour from first occupation and promote usage of sustainable travel modes other than the car. These can be supplied through LCC at a current average cost of £490.00 per pass; and
- (c) A travel plan monitoring fee of £6,000.00 for the Sustainable Travel Accreditation and Recognition Scheme (STARS).

#### *Section 106 Total Contributions:*

On the basis of the above the following contributions should be secured within a Section 106 agreement:

- Highways - £27,714.00.
- Total Financial Contribution - £27,714.00 (based on 40 employees).

No other contributions have been requested and the applicant is agreeable to paying the relevant contributions.

Subject to these contributions being secured within a Section 106 agreement the proposed development would be compliant with Policy IF1 of the adopted Local Plan and Paragraphs 34, 55 and 57 of the NPPF.

Assessment of objections in relation to developer contributions and infrastructure

Objection	Officer Response
<p><b>A financial contribution towards Town Centre improvements to encourage footfall in the town centre (Aldi contributed £50,000 and Tesco contributed a similar amount).</b></p>	<p>The development does not impact on the vitality and viability of the Ashby De La Zouch Town Centre and the calculation of the contribution, and precisely what it would be utilised for, is not stated. On this basis there is no justification to seek such a contribution and it would fail to meet the tests for an obligation as outlined in Paragraph 57 of the NPPF given that it is not necessary to make the development acceptable in planning terms.</p>

**Other Matters**

Assessment of objections in relation to other matters

Objection	Officer Response
<p><b>There is an issue with rodent control as a result of the existing building being vacant.</b></p>	<p>The control of rodents would be the responsibility of the land owner and would be addressed by separate legislation outside of the planning process. This matter is therefore not a material planning consideration.</p>
<p><b>The red line on the site location plan includes trees which are suggested to be within the ownership of the applicant but which have been maintained by residents for the duration of occupancy since the houses on Astley Way were built.</b></p>	<p>Land ownership records are held by Land Registry with land ownership not being a material planning consideration. If there is a dispute over land ownership, or where the boundary lies, then this would be a civil matter between the affected parties.</p> <p>The information submitted suggests that the applicant would become responsible for the future maintenance of the trees retained within the site to the boundary with residential receptors on Astley Way with a condition imposed on any permission granted requiring</p>



	<p>the approval of a landscape management plan.</p>
<p><b>The demolition of a recently constructed building is at odds with the known need to reduce carbon emissions. The building should be retained and repurposed. What will happen to the waste generated by the building? What will be its carbon footprint?</b></p> <p><b>There is no need to demolish the existing award winning offices, which is against sustainability.</b></p>	<p>The demolition of the existing building could be carried out under a prior notification process, with or without the proposed development, and whereby the only matters for consideration would be the means of demolition and the aftercare of the site.</p> <p>On this basis it is considered that the impact associated with carbon emissions and the carbon footprint as a result of the demolition of the building would not be relevant in the assessment of the application. The disposal of any waste generated by the development would be subject to relevant controls under separate legislation outside of the planning process.</p>
<p><b>The survey Lidl has done is a small, unrepresentative sample, was only distributed locally when the development impacts will be more wide ranging, posed questions which were biased towards positive answers. It is not a question of whether Lidl should have a store in Ashby but where the store should be sited.</b></p>	<p>The survey undertaken by Lidl, and the statement of community involvement, have no bearing on the consideration of the planning application which is assessed against relevant policies of the adopted Local Plan, made Ashby De La Zouch Neighbourhood Plan and NPPF. The statement of community involvement is primarily the means by which the applicant outlines how they have engaged with the community and how such engagement has perhaps influenced their approach to the application submission.</p>
<p><b>The submitted planning statement does not assess the development against the policies of the made Ashby De La Zouch Neighbourhood Plan and is therefore flawed. The development is contrary to Policies of the made Neighbourhood Plan.</b></p>	<p>Whilst it may the case the applicant's planning statement has not assessed the development against relevant policies of the made Ashby De La Zouch Neighbourhood Plan it is the case that this report has taken such policies into account.</p>
<p><b>There should be a requirement to recruit locally with apprenticeships in construction and occupation phases.</b></p>	<p>There is no requirement under relevant planning policy for a development to ensure that they recruit (in either the construction or operational phases) locally and thereby a condition or Section 106 agreement to secure such a request would not meet the relevant tests outlined at Paragraphs 56 and 57 of the</p>

	NPPF given that it would be unreasonable and not necessary to make the development acceptable.
<b>It should be ensured that a food waste policy is in place to make sure food waste goes to Ashby Food Bank.</b>	There is no requirement under relevant planning policy for food waste associated with development of this nature to be deposited with a local food bank with most stores undertaking their own approach in this respect. A condition requiring this would not be enforceable, nor would it be necessary to make the development acceptable. These conflicts would be against the relevant tests for conditions outlined at Paragraph 56 of the NPPF.
<b>The building should gain a BREEAM certification for sustainability.</b>	It is not a requirement of relevant Policies of the adopted Local Plan, made Ashby De La Zouch Neighbourhood Plan or NPPF for developments to be gain BREEAM certification. Whilst being designed in a 'sustainable' manner would be encouraged, given that there is no requirement for such a building to be BREEAM compliant it would be unreasonable and unnecessary to impose a condition requiring this given its lack of compliance with Paragraphs 56 and 57 of the NPPF.
<b>The application is required to be advertised as a 'departure' given the conflict with Policy Ec3 of the adopted Local Plan.</b>	The application has been advertised as a departure given the terms of Policy Ec3 of the adopted Local Plan.

## Conclusion

In accordance with the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point for the determination of the application is the development plan which, in this instance, includes the adopted North West Leicestershire Local Plan (2021) and the made Ashby De La Zouch Neighbourhood Plan (ADLZNP) (2018). The application site comprises a brownfield site 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 demonstrated that no sequentially preferable sites are available for the development and that there would no adverse impact to the vitality and viability of the Ashby De La Zouch Town Centre. On this basis the proposal complies with Policies Ec8 and Ec9 of the adopted Local Plan, Policy TC1 of the made ADLZNP and Paragraphs 91, 92, 94 and 95 of the National Planning Policy Framework (NPPF) (2023). The loss of employment land, in this instance, is also considered acceptable in the context of Part (2) of Policy Ec3 of the adopted Local Plan and Policy EC1 of the ADLZNP.

In addition to the need to determine the application in accordance with the development plan, regard also needs to be had to other material considerations (and which would include the requirements of other policies, such as those set out within the NPPF). The NPPF also contains a presumption in favour of sustainable development and when having regard to the three objectives of sustainable development, it is concluded as follows:

*Economic Objective:*

This objective seeks to ensure that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity, and that the provision of infrastructure is identified and coordinated. It is accepted that, as per most forms of development, the scheme would have some economic benefits including to the local economy during the construction stage and when the Lidl becomes operational, albeit this would be balanced with the jobs lost as a result of the demolition of the existing offices.

*Social Objective:*

The economic benefits associated with the proposed development would, by virtue of the social effects of the jobs created on those employed in association with the construction and operation of the development, also be expected to provide some social benefits. The NPPF identifies in particular, in respect of the social objective, the need to ensure the fostering of a well-designed and safe built environment, with accessible services and to support communities health, social and cultural well-being.

In terms of the social objective's stated aim of fostering a well-designed and safe environment, it is considered that, the design of the proposed Lidl and its associated layout would be of an appropriate design which would successfully integrate into the environment in which it is set. The provision of the Lidl would also expand the retail choice on offer in Ashby De La Zouch and support the social objectives aims of providing an accessible service and supporting the communities health and social well-being.

*Environmental Objective:*

The development would be constructed on a brownfield site which would be the most appropriate land for new development as outlined by Paragraphs 123 and 124 of the NPPF. Given the location of the development in relation to Ashby De La Zouch Town Centre, it is also considered that the site would be well served by public transport and other facilities with the proposed development also including the provision of solar panels so as to generate electricity for the store. This would enable the development to contribute positively towards the movement towards a low carbon economy. It is also the case that scheme's design would be acceptable and would enable the development to integrate into the built environment in which it is set.

Subject to conditions, improvements would also be made in respect of the soft landscaping infrastructure on the site along with a net gain in biodiversity being demonstrated. There would also be no adverse impacts to the integrity of the River Mease Special Area of Conservation (SAC)/Site of Special Scientific Interest (SSSI).

Having regard to the three objectives of sustainable development, as well as the conclusions in respect of various technical issues as outlined above, it is considered that subject to the imposition of conditions and the securing of a Section 106 agreement the overall development would represent sustainable development and approval is recommended.

## Appendix 1 - Applicant's Response to Deferral Reasons

Mr Adam Mellor  
Principal Planning Manager (Major Projects)  
Planning and Development  
North West Leicestershire District Council  
PO Box 11051  
Coalville  
LE67 0FW

Date: 19<sup>th</sup> June 2024

Dear Adam,

Re: Planning Application ref. 23/01153/FULM – Erection of a new Lidl foodstore (Use Class E) with car parking, landscaping and other associated works at Ashfield House, Resolution Road, Ashby-de-la-Zouch, Leicestershire, LE65 1DW.

Further to the meeting with the Council Planning Officers on 12<sup>th</sup> June 2024 and your email to Richard Huteson dated 14<sup>th</sup> June, which set out the reasons for the deferral of the application by the Planning Committee, this note provides the applicant's responses to the matters raised by the Members at the 4<sup>th</sup> June Planning Committee.

The following matters have been raised:

1. Need for a contribution for improvements to the town centre - Ashby Bid and Town Council initiatives.
2. Contribution towards a town centre cycle route.
3. Improvements to the design of the store.
4. Improvements to the landscaping scheme over that proposed.
5. A review of the effectiveness of the sequential test that was carried out.
6. Review of the appropriateness of the advertising that was carried out for an alternative use to employment on this land.
7. Impact of the demolition of the building on the surrounding area.
8. Highways impact.

We shall take each matter in turn below.

1. Need for a contribution for improvements to the town centre - Ashby Bid and Town Council initiatives.

In this regard, it should be noted that our retail impact assessment has concluded that the proposed foodstore would not cause any significant adverse impact on Ashby-de-la-Zouch town centre. The Council's external retail planning advisor, who has scrutinised the planning application has also concluded that there will be no adverse impact on the vitality and viability of the town centre.

As such, due to there being no perceived significant adverse impact on the town centre, and no adopted town centre improvement scheme, there is no legal and justifiable requirement to provide a financial contribution to mitigate where no harm has been identified. Therefore, there is no requirement to make the development in planning terms. Further, there is no policy requiring such a sum to be paid or to guide the potential quantum of that sum.

On that basis, it is considered that any such planning contribution would not satisfy the legal tests set out in regulation 122(2) of the Community Infrastructure Levy Regulation 2010 and NPPF paragraph 57.

During the debate, the Committee Members made numerous references to the historic financial contributions provided by Aldi and Tesco to improve the town centre. However, as advised by the Officers during the debate, these were agreed some years ago and a number of legal cases have since come out regarding the legal basis of such contributions. This is particularly relevant where the proposed development would not give rise to a significant adverse impact on a town centre and there is no mechanism or policy requiring such mitigation.

Furthermore, it is understood that neither the M&S or B&M, which were the latest retail units that have opened in the vicinity, have also not provided any financial contribution to the town centre improvements. No retail impact assessment were submitted for these applications given that they were under the identified threshold, but it is considered that both of these stores would have resulted in some modest trade diversion from the town centre.

2. Contribution towards a town centre cycle route.

Within the Local Highway Authority advice to the planning application, and following a comprehensive consultation with Lidl's highway consultant, it was concluded there was no requirement to provide any contribution towards a town centre cycle route. Whilst it is understood that there may be aspirations for a cycle route close to the site which connects the site to the wider cycle route network, there is no concrete/adopted scheme or indicative timescales as to when one will come forward, if ever. Within the Planning Committee Update Sheet, the Officers have agreed that there is no lawful justification for applicant to contribute to a cycle route and Highway Officers have only asked for Travel Plan contributions.

On that basis, it is also not considered that this contribution would satisfy the legal tests as it would not be lawful and could be subject to a potential legal challenge.

However, the applicant will consult with Highways in relation to any such requirements during the S278 off-site highway works design process.

3. Improvements to the design of the store.

The design of the store was subject to a comprehensive consultation process with the Council's Urban Design and Planning Officers and received no objection from the National Forest. The applicant has gone above and beyond the standard design of Lidl foodstore, which it should be noted, is a functional building. The design of the building includes timber effect cladding to reflect the character of the National Forest, active elevations on east and south given their prominence and high-level glazing and one glazed elevation to provide natural light into the building. The design of the proposed Lidl is considered to reflect the character and commercial nature of the site and its surroundings, which is different to M&S and B&M stores which are both located in a highly visible gateway locations next to a bypass and are subject to different design criteria.

4. Improvements to the landscaping scheme over that proposed.

The proposed development will include a high-quality soft landscaping scheme including wildflower grass and wetland areas, amenity grass, ornamental shrub and 19 new trees within and on the boundaries of the site. It should also be noted that the proposal the existing trees and hedges and vegetation on the western boundary of the site next to the residential gardens.

Notwithstanding that and having regard to the comments made by the Members the applicant has upgraded the proposed trees on the frontage of the site along Nottingham Road, from extra heavy mature trees (14-16cm girth) to semi-mature trees (22-25cm girth) to address the Committee concerns. When matured, these trees will reach a height of 12-15m.

5. A review of the effectiveness of the sequential test that was carried out.

The sequential test was undertaken in accordance with the relevant NPPF and NPPG guidance as well as in line with the latest case law relating to sequential test. The applicants have consulted with the Planning Officers prior to the submission of the application in relation to any sequential sites to be included in the sequential assessment. In addition, a site visit and desktop review of any other potential sites was undertaken, however no other potential sites for assessment were identified. Subsequently, the sequential assessment was undertaken and concluded that there are no other suitable or available sites within the centres or on the edge of the centres that could potentially accommodate the development. The Council's retail planning advisors have reviewed the sequential assessment raised no concerns and concluded that the sequential test has been passed in accordance with local and national planning policy.

Members comments in relation to allocated employment sites within the Money Hill Masterplan were addressed within Planning Committee Update Sheet.

6. Review of the appropriateness of the advertising that was carried out for an alternative use to employment on this land.

It is understood that this issue was debated and resolved during the Planning Committee discussion.

Notwithstanding that, the marketing exercise was undertaken by an experienced property consultant. The marketing brochure stated that the site was 'For Sale' and that the property is available freehold with vacant possession. Therefore, the marketing was not restricted to any specific uses, terms and conditions and as such any inquiries from alternative use operators could have been made.

7. Impact of the demolition of the building on the surrounding area.

The demolition of the building will be undertaken by an experienced main contractor who will adhere to any necessary guidelines and requirements to ensure that there is no adverse impact on the amenity of the surrounding area. The applicant is happy to agree a planning condition requiring submission of a Demolition Management Plan that will set out, for instance hours and day of operations and other necessary details.

8. Highways impact.

Following extensive consultation with both National Highways and County Highways on this application, it was concluded that there would be no significant adverse impact from highways perspective. Whilst the members comments are noted both of the above statutory consultees have not raised any objections to Lidl proposal. On that basis, based on the evidence provided, there is no justification to refuse the application on any highway related impact(s).

We trust that the above information provided will address the comments raised by the Members and that the application can be heard at the 10<sup>th</sup> July Planning Committee.

Should you have any questions or queries with regards to the content of this letter, please contact me.

Yours faithfully,  
Rapeys

**Appendix 2 - Planning Committee Update Sheet on item A2 that was sent to the 4<sup>th</sup> of June Committee meeting**

## **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**

**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 30<sup>th</sup> 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.*

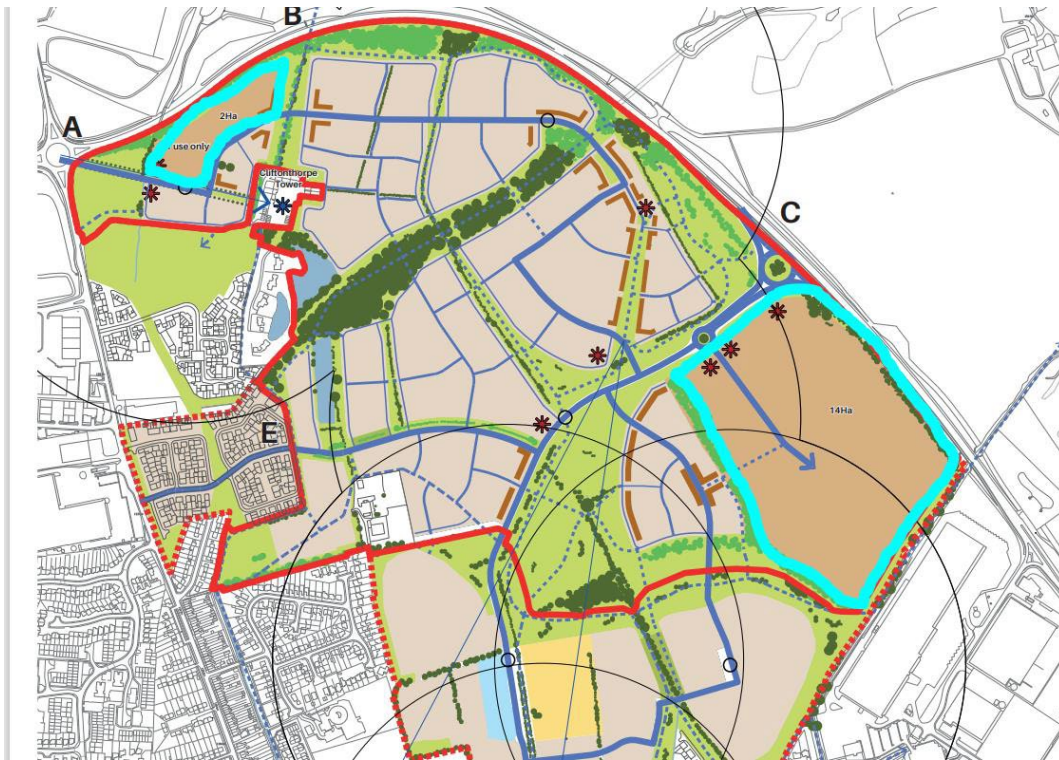
The applicant has advised that they removed the vegetation (including trees) prior to the submission of the planning application to allow hoarding to be erected to ensure the safety and security of the site. The applicant has outlined that the vast majority of tree planting has been retained, with additional 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 pace 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 31<sup>st</sup> 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

**Appendix 3 – LCC Highways Briefing Note for Planning Committee Members – 24<sup>th</sup> May 2024**

**From:** Adrian Whiteman

**Sent:** Friday, May 24, 2024 2:34 PM **To:** ADAM MELLOR <ADAM.MELLOR@NWLeicestershire.gov.uk> **Cc:** Michael Biggin; Harry Horsley; Ruth Davis **Subject:** EXTERNAL: 23/01153/FULM | Ashfield House, Resolution Road, Ashby De La Zouch

Dear Adam,

Further to your correspondence with my colleague Michael, I write on behalf of the Local Highway Authority's (LHA's) Highway Development Management (HDM) team as requested to set out the background to some of the issues set out in our final response to the above planning application yesterday, where we advised approval subject to conditions and obligations.

It is the role of the LHA to provide observations based upon the information provided by the Applicant to determine if the proposed application would have a severe impact on the local highway network. This is in line with Paragraph 115 of National Planning Policy Framework. The LHA are aware of the specific site locality and concerns members have with regard to traffic congestion.

When considering the traffic impact of the development, the existing 'permitted' impact of the Ashfield House office development must be taken into account, as it is the current land use of the site which we understand could be bought back into use without further planning permission. As the Ashfield House office building would not typically have operated on a weekend, much of our consideration of the traffic impact, given the proposals area retail development, has been focused on the 'Saturday Peak' period, which in this case is between 12pm and 1pm.

An assumption of 10% new vehicle trips generated by the proposed development has been agreed by the LHA. This is typical practice for the assessment of a retail use, given that the remainder of trips would already be on the highway network (i.e. pass-by trips, diverted trips and transferred trips). These 90% of trips would therefore change their routing in the vicinity of the site rather than being entirely new, and not all would add to existing congestion.

As part of discussions with the Applicants transport consultant, the LHA has sought to determine the impact of the development, and therefore detailed junction capacity assessment of the Nottingham Road / Resolution Road signal-controlled junction has been undertaken with and without development. The LHA has considered the results in detail, and we acknowledge that this junction is operating above capacity and that the development would have an impact which, though moderate in terms of the overall operation of the junction, could be considered significant against paragraph 114 of the NPPF. A number of options have therefore been explored and the LHA has opted to secure the installation of kerbside detection on the controlled pedestrian crossing points at the junction in connection with the planning application. This means that at busy periods if a pedestrian presses the button but crosses before the lights change, a sensor will detect this and not change the signals to red for traffic unnecessarily. This would make some improvement to the operation of the junction, which we consider will provide sufficient improvement such that the impact cannot be considered severe. The LHA consider this to be the most appropriate and reasonable mitigation possible.

I trust that the above is helpful, but please do not hesitate to contact us if you have any queries. I will shortly be going on leave, not returning until 03 June 2024, however Ruth Davis will be in the office next week and she is very familiar with the case.

Regards,

Adrian

**Adrian Whiteman** (he/him)

Principal Transport Planner (District Liaison)

Highway Development Management

Highways & Transport Commissioning Service

Leicestershire County Council