

18th March 2021
Kirklees Metropolitan Council
Planning Services
PO Box B93
Civic Centre 3
Huddersfield
HD1 2JR

Via email only

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Dear Adam Walker,

Re: Application 2020/62/93308/W | Erection of foodstore (Use Class E) with associated parking, servicing areas and landscaping | former Spotted Cow Pub, New Hey Road, Oakes, Huddersfield, HD3 4BU

On behalf of _____ we **object** to the above application for planning permission for a Lidl store at New Hey Road, Huddersfield.

_____ operate the Local Centre at Salendine which includes a Sainsburys Local and object on two main points, which are discussed in more detail below, and are summarised as follows:

1. The application is considered to have a significantly adverse impact on the vitality and viability of Salendine Local Centre; and,
2. The application is a departure from the plan and conflicts with the allocation of the site for housing development.

Proposed development

The planning application reference 2020/62/93308/W proposes the development of a 2,061 sqm gross internal area/1,377 sqm net (sales) Lidl foodstore, with associated car parking spaces, servicing areas landscaping and access.

The application describes the site as being around 250m to 300m to the east of Salendine Nook Local Centre, as defined in the adopted Local Plan.

The retail statement supporting the planning application characterises the Lidl Store as serving a different sector to larger supermarkets, which would cater for those undertaking weekly food shopping trips. The report notes Lidl's more limited range of circa 2,000 product lines, compared with a typical range of 20,000+ lines in a superstore operated by one of the main convenience retailers.

Relevant Planning History

The application is a resubmission of a previous application for a similar foodstore, which was refused planning permission on 12 February 2020, planning application ref 2019/62/91433/W.

The reasons for refusal of the previous application were:

- 1. The site comprises housing allocation HS38 in the Kirklees Local Plan. The proposed retail development is therefore contrary to the provisions of the Development Plan and the loss of the housing land would prejudice the Council's ability to deliver the housing growth required over the lifetime of the Plan.*
- 2. The development would result in a significant adverse impact on the vitality of existing Local Centres when assessed cumulatively with planning application 2019/91556. This would be contrary to Policy LP13 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.*
- 3. The site lies within a predominantly residential area and the introduction of a large food store with prominent parking area to the frontage and associated signage would be at odds with the prevailing character of the area and would harm visual amenity, contrary to Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.*

Relevant Planning Policy

Planning policy at both local and national level has not changed since the previous planning application was refused planning permission.

The starting point for the consideration of the acceptability of a development is its accordance with the development plan. If a development is in accordance with the plan, and the plan is up-to-date, then the decision should be to grant planning permission unless material considerations indicate otherwise. The NPPF is a material consideration.

Development Plan Policy

The Kirklees Local Plan was adopted on 27 February 2019 and is now the statutory development plan for Kirklees. The Local Plan comprises the strategy and policies document, allocations and designations document and associated policies map showing the allocations and designations. The application site is allocated for residential development (HS38, 32 dwellings). The Salendine Centre is identified as a Local Centre and is therefore subject to Policy LP13.

Policy LP13 - Town centre uses

Policy LP13 states that *"main town centre uses shall be located within defined centres... and then in accordance with the sequential test."* It goes on to state that *"Proposals that have a significant adverse impact on the vitality and viability of a centre, or compromise the role and function of a centre will not be supported."*

As a Local Centre, Salendine should *"Provide for top-up shopping and local services particularly food and drink."*

The Policy continues to set out the requirements of sequential and impact tests for proposals for town centre uses which are located outside the defined centres. A local threshold for the Impact Assessment is set as follows:

"An Impact Assessment will be necessary for proposals for/or which include retail, leisure and office developments which are not located within a defined centre where:

- the proposal provides a floorspace greater than 500 sq.m gross; or*
- the proposal is located within 800 metres of the boundary of a Town Centre or District Centre and is greater than 300 sq.m gross; or*
- the proposal is located within 800 metres of the boundary of a Local Centre and is greater than 200 sq.m gross."*

"Proposals which would have a significant adverse impact on surrounding centres shall not be supported."

Policy LP65 Housing Allocations

The application site is allocated for residential development in the recently adopted local plan, as site HS38, Land north of New Hey Road, Salendine Nook. The site is expected to deliver approximately 32 dwellings, and this has been proven to be achievable through the previous application on the site (app ref: 17/93846). The application was withdrawn during the S106 negotiations however it has not been demonstrated that the development of the site for residential units would be unviable or undeliverable.

National Planning Policy Framework (NPPF)

The NPPF seeks to support the role of town centres at the heart of communities. Paragraph 86 of the Framework confirms the application of the sequential test for new main town centre uses, stating that first preference for the location of such uses should be within town centres, then in edge of centre locations; and only if suitable sites are not available should out of centre sites be considered.

Edge of centre locations for retail uses are defined in the Framework as being "well connected" to and "up to 300m" from the primary shopping area.

Paragraph 89 of the Framework has confirmed the impact test is to be applied to retail proposals outside of town centres and not in accordance with an up to date development plan. Developments of a scale above the national or locally set threshold should be assessed with regard to:

"a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;

and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme)."

Paragraph 90 confirms that "*Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused*".

Appraisal of the applicant's Retail Assessment

The applicant has undertaken a revised retail impact assessment which forms part of the Planning and Retail Statement. The quantitative impact assessment undertaken relies upon the same household survey undertaken in October 2019 as presented in the assessment undertaken for the previous refused planning application.

The requirement to undertake the assessment arises from Local Plan Policy LP13. For proposals within 800 m of a local centre, Policy LP13 sets a local threshold of 200 sqm for the requirement of a retail impact assessment. It is notable that this threshold is considerably lower than the national threshold of 2,500 sqm set in the NPPF.

The policy requirement was considered in full at the Local Plan Examination, where the council's justification was based on the view that development of a greater scale than the threshold could lead to a "significant adverse" impact, which could merit refusal of an application in accordance with the NPPF (see Appendix B of the Council's Examination Hearing Response to Examination Matter 18). The Local Plan Inspector endorsed this precautionary approach, stating at paragraph 109 of the Local Plan Inspector's report:

"I am satisfied that the thresholds are proportionate and justified and should help to protect the vitality of defined centres."

The Council reviewed the retail case made by the applicant on the previous application and considered that the likely impact of the proposal would be unacceptable and the same precautionary approach should be taken in respect of the revised application.

Comment is provided below on a number of specific areas of concern raised by the assessment provided by the applicant.

Location of the proposal, Proximity to the Local Centre and Linkage

The definition of edge of centre locations in the NPPF is clear in stating that an edge of centre site should be "well connected and up to 300m" from the centre. This point was made in respect of the previous application and we maintain that the proposed site should be considered as an out of centre location.

It is stated by the applicant that the proposal is in an edge of centre location, on the basis of being around 250 to 300m to the east of the Salendine Nook Local Centre. It is acknowledged practice that when considering the distance of a proposal from a town centre, the relevant measurement is from the nearest point of the centre to the entrance of the

proposed store. In this instance, we calculate the relevant distance to be approximately 350m.

With regard to being "well connected", we note that the section of New Hay Road rises some 20m between the application site and the Sainsbury Store, equating to a gradient of some 6.6%. Such a significant difference in level would have a clear inhibiting effect on the propensity for linked trips between the application site and the local centre.

This issue has previously been considered in an appeal in Craven District, where the distance between the appeal site and the town centre was 285m and the overall gradient between the sites was lesser, at about 2.6%. In that instance the appeal inspector concluded that:

"This may be almost imperceptible when driving but, to an older person carrying shopping, might be regarded as a disincentive to linked trips"
(T/APP/C2708/A/98/292259/P4).

The site is well beyond the threshold of "up to" 300m from the centre and the effect of the gradient along New Hay Road means that the site is also not "well connected" to the centre. Therefore, the application site should be considered out-of-centre rather than an edge-of-centre location.

The potential for linkage between the site and the local centre would be low. Although linkage opportunities are suggested by the applicant, the retail assessment provides no evidence of any prospective uplift in turnover at the centre as a result of linked trips. It is unlikely that the local centre will benefit from linked trips and this would not offset the likely loss of trade which will arise.

Turnover of existing retail provision and Retail Capacity

As noted above, the quantitative assessment made by the applicant relies on the findings of the same household survey as for the previous application. As we noted on the previous application, it is considered that the findings of this survey are fundamentally flawed, as a number of the resultant store turnovers simply lack credibility and the application has made no attempt to sense check these findings. For example, the suggested turnover for the Sainsbury Store at Salendine Nook exceeds the company average trading level by some 250%. In contrast it is concluded that the Tesco Express store at Birchencliffe would have an annual turnover prior to development in 2020 of only £757,000, approximately 20% of the company average turnover.

In respect of retail capacity, the applicant's assessment states at paragraph 5.26 that there are no foodstores of any significant size in the area, with the exception of the Sainsbury store at Salendine Nook. This negates the fact that the Sainsbury store is located within an existing local shopping centre, a sequentially preferable location to the out of centre proposal and a location which is afforded policy protection from significant retail impact from out of centre development.

The applicant's statement in respect of capacity for new development also dismisses the role which the new Aldi proposal at New Hay Road will have in meeting any requirement which the applicant has identified for a new retail food store. Planning conditions relating to the implementation of the new Aldi proposal have been addressed and it is understood that construction has commenced. It is clear that the Aldi store will be developed shortly, as confirmed by comments on the current application made by both Aldi and the developer. This will more than adequately address any requirement for additional retail provision.

A further consideration in regard to the need for additional foodstores in the area is the planning application for the redevelopment of the Kirklees College site (Application ref 2018/62/92647/W). The Council confirmed at the recent planning committee on 24 February that they are minded to grant planning permission subject to the completion of a legal agreement. This new store will add to the overall foodstore provision in Huddersfield and needs to be viewed in the context of the assessment made in the Local Plan that there is no requirement for further foodstores. It is also noted that whilst Lidl are suggesting that the proposal on the college application site will be a replacement for their store at Castlegate, there are no provisions requiring that the existing store will not be retained or occupied by an alternative food retailer.

The new foodstores at New Hay Road and the College site are significant additions to the local foodstore provision and it is questionable whether once these stores are open there will be a need for any further provision. These stores will directly address many of the comments made by residents on the current application. The case for additional retail was considered during the preparation of the local plan and it was determined that the committed and existing provision was sufficient, even taking into account the allocated additional housing in Kirklees.

Impact of the proposals

The applicant's impact assessment indicates that the impact on Salendine Nook Local Centre would be in the region of 13% from the solus application scheme, and some 21% when considered cumulatively with the proposed Aldi Store at the former Oakes Mill site on New Hay Road. This is an impact as a proportion of the survey-based turnover, which as stated above is considered to be inflated. If a lower, actual turnover were adopted then the impact of the trade diversion would increase.

Notwithstanding our view that the impact suggested is understated, even accepting the applicant's figures, the level of impact projected is little different from that envisaged in the assessments undertaken for the previous refused planning application. As previously noted in our objections on the earlier scheme, such a level of impact would be considered a significantly adverse impact. It is notable that in assessing retail impact of a proposal at Cribbs Causeway in Bristol in 2018 the secretary of state has endorsed a planning inspector's view that a "6.4% solus comparison goods impact would be likely to result in a significant adverse impact on the vitality and viability of Bristol city centre" (PINS ref. APP/P0119/V/17/3170627). Clearly therefore the level of impact of the proposed scheme may be considered significantly adverse, on both a solus and cumulative basis.

A significant occurrence since the consideration of the previous planning application is the Covid-19 pandemic. This has had very wide-ranging effects on the way people have lived and shopped in the past 12 months. It is not clear whether these changes will be permanent and how people's shopping patterns will adapt as the economy emerges from the pandemic. In terms of food retailing there has been a change towards more on-line and local shopping. This has intensified the need to protect local shopping provision such as that at Salendine Nook Local Centre and brings into question the requirement for additional stores such as that being proposed by Lidl.

The Council's local plan policy takes a precautionary approach protecting local centres by requiring impact assessment of considerably smaller proposals, with lower impact than the current applications. This emphasises the degree of protection which the up-to-date and recently examined Local Plan requires.

The Council maintained this position in respect of the previous planning application in refusing the application on the basis of the impact on existing centres. The applicant has provided no new retail evidence to change this view.

Housing Allocation

As noted above, the site is currently allocated for residential development in the Local Plan and the previous planning application was refused on the basis of being contrary to this policy.

The results of the 2019 Housing Delivery Test (published in August 2020) show that housing delivery in Kirklees over the period 2016-2019 was 82% of the number of homes required by the test. As a result, the Council were required to produce a Housing Delivery Action Plan. The Action Plan identifies that the Council will tackle site specific delivery issues and seek to explore and resolve the delivery of stalled sites. This includes continuing to promote development of sites allocated for residential development in the local plan and the importance of retaining a range of sites of various sizes.

The refusal of planning permission for the previous application confirmed the Council's position that the development of an allocated housing site for other uses is in conflict with the Local Plan, counter to the actions set out in the Housing Delivery Action Plan and will further restrict the District's ability to meet the requirements of the Housing Delivery Test.

Design Considerations

As noted above the third reason for refusal of the earlier planning application related to design and the unacceptable impact on prevailing character of the area and harm to visual amenity. The revised submission has not adequately addressed these issues and it is noted that this has been confirmed by the consultation response and recommendation of refusal made by the Council's conservation and design officer.

Conclusions

The Planning Acts make clear the weight to be accorded to the development plan policies. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Of particular relevance are policies LP13 and HS38 of the Local Plan.

The proposal does not comply with Policy LP13 and conflicts with allocation HS38. Local and National Policy seeks to protect the vitality and viability of designated centres and it is considered that this application would have a significantly adverse impact on the Salendine Centre for the reasons set out above.

Paragraph 90 of the National Planning Policy Framework states that:

*"Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be **refused.**"*

It is also considered that the development of the site for housing, in line with its allocation, would make an important contribution to the District's housing supply which is currently marginal and delivery is struggling to meet the Government's tests. In this regard the proposal represents a departure from the recently adopted plan.

The Council refused the previous planning application for sound reasons and the applicant has not provided a justification for coming to a different decision.

The suggested impact of the proposal is understated and even at the level suggested would represent a significant adverse impact on existing centres. The proposal is clearly contrary to the allocation for development of the site included in the local plan. Accordingly, the application should be refused planning permission.

We trust these comments will be considered in determination of the planning application.