

Planning Services
Kirklees Council
PO Box B93
Civic Centre III
Market Street
Huddersfield
HD1 2JR

By Planning Portal Only

Date: 17 May 2024

Our ref: 62129/03/CD/KJ/29672686v3

Your ref: PP-12787009

Dear Sir/Madam

Application to Vary Conditions 2, 3, 4, 5, 6, 15 and 29 of Planning Permission 2021/62/92528/E under Section 73 of the Town and Country Planning Act 1990 at Land off Bankwood Way, Birstall Retail Park, Birstall, Batley, WF17 9DT

On behalf of our client, Lidl GB Limited ("Lidl"), please find enclosed an application submitted under Section 73 of the Town and Country Planning Act 1990 (as amended) in order to vary conditions 2, 3, 4, 5, 6, 15 and 29 of detailed planning permission 2021/62/92528/E.

Application Submission

The Section 73 application was submitted via the Planning Portal (**PP-12787009**) and comprises the following information:

- 1 Completed Application Form and Ownership Certificates;
- 2 Planning and Retail Statement Addendum, prepared by Lichfields;
- 3 Original Planning and Retail Statement dated June 2021 (for reference);
- 4 Original Addendum to Planning and Retail Statement dated December 2021 (for reference);
- 5 Design and Access Statement Addendum, prepared by Lichfields;
- 6 Original Design and Access Statement (for reference);
- 7 Original Community Consultation Statement (for reference);
- 8 Original Rapid Health Impact Assessment (for reference);
- 9 Transport Statement, prepared by Bryan G Hall;
- 10 Original Transport Assessment (for reference);
- 11 Original Travel Plans for both Lidl and the Retail unit (for reference);

- 12 Planning and Landscape Drawings (see Annex 1);
- 13 Noise Impact Assessment, prepared by Environmental Noise Solutions Limited;
- 14 Arboricultural Report & Impact Assessment, prepared by AWA Tree Consultants;
- 15 Biodiversity Net Gain Technical Note, prepared by Tyler Grange;
- 16 Original Biodiversity Net Gain Technical Note (for reference);
- 17 Original Ecological Impact Assessment (EcIA) (reference 13438_R01a_EcIA_AS_MM_260321 dated 26th March 2021) (for reference);
- 18 Air Quality Assessment Emissions Mitigation letter ref, PT/MTW/GM13180/002 dated 26th March 2024, prepared by Wardell Armstrong;
- 19 Original Air Quality Assessment (REF: GM11587/001/FINAL) (for reference);
- 20 Original Flood Risk Assessment (for reference);
- 21 Original Ground documents submitted for reference:
 - i Combined Phase 1 and Phase 2 Ground Investigation Report dated 12th May 2021 by Curtins;
 - ii Sirius Coal Mining Risk Assessment Rev B dated 28th October 2021;
 - iii 09-148-DOCO03A Lidl Birstall Ground Engineering etc Philosophy;
 - iv G B Card and Partners letter Rev 1 dated 29th October 2021;
 - v Technics Topographical Survey Drawing 5038-1120-01B_Final;
 - vi G B Card and Partners letter dated 11th December 2020; and
 - vii Geo-Environmental Assessment (24th July 2018) by Delta Simons

The requisite planning application fee of £293, and the associated administration fee, has been paid directly to the Planning Portal.

Background and Site Context

On 21 November 2023, detailed planning permission was granted for the “*Erection of retail development, associated parking, servicing areas and landscaping*” (ref: 2021/62/92528/E).

Following the grant of planning permission, it was established that there are a number of discrepancies in the decision notice to plan and document references listed in conditions and the plans schedule.

These discrepancies are where the decision notice refers to earlier versions of plans or documents, which were subsequently updated to reflect consultee comments and importantly issued to the Council prior to the application being considered at planning committee. A non-material amendment application to amend the decision notice to correct the plan references was approved on 29 April 2024 (ref: 2024/NMA/90400/E).

Following the grant of detailed planning permission, Lidl seeks to make minor amendments, principally to bring the approved scheme in line with Lidl’s latest specification. The foodstore would be updated to the latest store format. The external appearance of the store would remain materially the same as that previously approved, however, it would result in the GIA of the store decreasing by 28 sqm and the net

sales area increasing by 102 sqm (a decrease of 1.3% and an increase of 7.2% respectively when compared to that previously approved). The GEA has decreased slightly from 2,331 sqm to 2,290 sqm.

The size and layout of the Home Bargains and garden centre unit remains largely the same as approved. This application includes updated floorplans and elevations to reflect minor alterations to the internal layout of the Home Bargains store and garden centre resulting in a slight re-positioning of some of the service doors.

The application site extends to approximately 1.57 hectares (this is a slight increase from the 1.53 ha in the recently approved permission due to aligning the red line boundary with the title plan). This revision does not materially affect any other interested party and all land is within the control of the applicant.

The revised layout will result in a slight reduction in spaces overall, however there will be an increase of 10 EV spaces, and there will be no change to the number of accessible spaces and parent and child spaces.

The principle of development of a Lidl store on this site has been established by the previous approval, with only minimal changes proposed as part of this S73 application. Therefore, the submitted Planning and Retail Statement Addendum does not seek to repeat elements of the previous statement which remain unchanged and should be read alongside the S73 application, but rather addresses any new planning considerations arising from the revised store format. This includes an update of the previous retail impact assessment to reflect the minor increase in net sales area that arise from the new store format.

Proposed Variations

This S73 application seeks to vary conditions 2, 3, 4, 5, 6, 15 and 29 of Planning Permission 2021/62/92528/E. The changes are outlined in further detail below.

Condition 2

Condition 2 requires the development to be carried out in accordance with the approved plans. This application seeks to vary Condition 2 by updating the previously approved plans and reports. A schedule detailing the approved plans being superseded by this submission is included at Table 1. The approved documents being superseded are included at Table 2.

Table 1: Application Drawings

Approved Drawings 2021/62/92528/E	Reference	S73 Proposed Drawings	Reference
Location Plan	7404 - SMR - 00 - ZZ - DR - A - 2001 - S3 - P2	Location Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2001 - A3 - C5
Existing Site Plan	7404 - SMR - 00 - ZZ - DR - A - 2002 - S3 - P2	Existing Site Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2002 - A3 - C5
Proposed Site/Surfacing Plan	7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C2	Proposed Site/Surfacing Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C9
Proposed Elevations – Lidl	7404 - SMR - 00 - ZZ - DR - A - 2103 - S3 - P4	Proposed Elevations	7404 - SMR - 00 - ZZ - DR - A - 2302 - A3 - C2

GA Roof Plan – Lidl	7404 - SMR - 00 - ZZ - DR - A - 2102 - S3 - P4	Proposed Floor and Roof Plans	7404 - SMR - 00 - ZZ - DR - A - 2301 - A3 - C2
GA Ground Floor Plan – Lidl	7404 - SMR - 00 - ZZ - DR - A - 2101 - S3 - P3		
Proposed Boundary Treatments	7404 - SMR - 00 - ZZ - DR - A - 2008 - A3 - C4	Proposed Boundary Treatments - Planning	7404 - SMR - 00 - ZZ - DR - A - 2008 - A3 - C8
Proposed Site Sections	7404 - SMR - 00 - ZZ - DR - A - 2007 - A3 - C4	Proposed Site Sections - Planning	7404 - SMR - 00 - ZZ - DR - A - 2007 - A3 - C9
Landscape Details	R/2459/1G	Landscape Details	R/2459/1K
Proposed Lighting Layout DWG 01	Rev 0	Proposed Lighting Layout DWG 01	To follow
GA Ground Floor Plan – Retail Unit	7404-SMR-00-ZZ-DR- A2201-S3 rev. P4	GA Ground Floor Plan - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2201 - A3 - C2
GA Roof Plan – Retail Unit	7404-SMR-00-ZZ-DR- A2202-S3 rev. P4	GA Roof Plan - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2202 - A3 - C2
Proposed Elevations - Retail Unit	7404-SMR-00-ZZ-DR- A2203-S3 rev. P5	Proposed Elevations - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2203 - A3 - C2

Table 2: Approved Documents

Approved Documents 2021/62/92528/E	Reference	S73 Proposed Documents	Reference
Design and Access Statement	May 2021	Design and Access Statement	May 2024
Transport Assessment March 2021	20-270-002.02	Transport Statement February 2024	20-270-005.03
LiAS Design Notes & Luminaire Schedule	DWG 00 Rev 1	LiAS Design Notes & Luminaire Schedule	To follow
Proposed Lighting Layout	DWG 01 Rev 1	Proposed Lighting Strategy	To follow
Noise Impact Assessment	NIA/9358/20/9382/v2/Lidl Birstall	Noise Impact Assessment	NIA/9358/20/9382/v4/Lidl Birstall
Arboricultural Report & Impact Assessment March 2021	AWA3591	Arboricultural Report & Impact Assessment January 2024	AWA5815
Biodiversity Net Gain Technical Note April 2021	13438_R02a_AS_CW	BNG Technical Note	13438_R02h_EG_AHS
Air Quality Assessment January 2021	GM11587 001 V0.3	Air Quality Assessment Technical Note	PT/MTW/GM13180/002
Flood Risk Assessment with Detailed Drainage Strategy; Flood Exceedance Plan; and Detailed Drainage General Arrangement	09-148-DOC-001C	Foul & Surface Water Layout	24062-SDS-00-SL-DR-C-3021 Rev. T3
	09-148-505 Rev B		
	09-148-501 Rev. B		

Condition 3

Condition 3 relates to the gross internal floorspace which is restricted to 2,231 sqm for Unit 1 and 2,280 sqm for Unit 2 as shown in the GA Ground Floor Plan - Retail Unit (ref: 7404-SMR-00-ZZ-DR-A-2201-S3-P4).

The Lidl foodstore will be updated to the latest store format. Whilst this mainly relates to internal changes – and the external appearance of the store would remain materially the same as previously approved – it would result in the GIA of the store decreasing by 28 sqm (a decrease of 1.3% compared to previously approved). The condition wording should therefore be updated to reflect the new GA Ground Floor Plan and the change in floorspace, as follows:

*“The quantum of gross internal floorspace in Use Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended) within the two retail units hereby approved on the application site, as shown on drawing number ~~7404-SMR-00-ZZ-DR-A-2201-S3 rev. P4~~ **7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C9**, shall not exceed the following:*

- Unit 1 – ~~2,231~~ **2,203** sqm
- Unit 2 – 2,280 sqm (plus the associated garden centre of 513 sqm)”.

Condition 4

Condition 4 relates to the net sales area. The Lidl foodstore will be updated to the latest store format which would result in the GIA of the net sales area increasing by 104 sqm (an increase of 7.4% when compared to that previously approved). Condition 4 should therefore be updated as follows:

*“The net sales area devoted to the sale of convenience and comparison goods, within Use Class E(a) of the Town and Country Planning (Use Classes) Order 1987 (as amended), within the two retail units and associated garden centre (unit 2) hereby approved on the application site, as shown on drawing number ~~7404-SMR-00-ZZ-DR-A-2003-A3-C2~~ **7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C9** shall not exceed the following:*

Convenience Goods:

- Unit 1 – ~~1,131~~ **1,213** sqm
- Unit 2 – 906 sqm

Comparison Goods:

- Unit 1 – ~~283~~ **303** sqm
- Unit 2 – 1,108 sqm
- Unit 2 Garden Centre – 513 sqm”

Condition 5

Condition 5 refers to the superseded layout plan. The condition should be updated to reflect the latest site layout plan (ref: 7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C9).

Condition 6

Condition 6 should be updated to reflect the updated boundary treatments plan (ref: 7404 - SMR - 00 - ZZ - DR - A - 2008 - A3 - C8).

Condition 15

A revised Biodiversity Net Gain accompanies this application. This confirms that the development proposals will result in a net loss of 62.03% in biodiversity value, compared to a loss of 82.33% as set out in the approved application. The recommendations of this report remain as previously approved, including the inclusion of bat roost and bird nesting features to provide enhancements. Condition 15 should be updated to reference the revised biodiversity values, as shown in the accompanying BNG Technical Note (13438_Ro2h_EG_AHS).

Condition 29

Condition 29 requires a scheme detailing fully costed air quality mitigation measures, based on the cost damage calculation referred to in the Air Quality Assessment by Wardell Armstrong dated January 2021 (ref: GM11587) to be submitted prior to commencement of development.

An updated Air Quality Assessment Emissions Mitigation letter (ref. PT/MTW/GM13180/002) has been prepared and accompanies this application. This letter sets out an updated cost damage calculation which reflects the slightly reduced number of vehicle movements associated with the revised proposals. The letter concludes that suitable mitigation measures are included within the Travel Plan and estimated costs for each measure provided. The proposed mitigation measures from the Travel Plan exceed the damage cost value calculated in the emissions mitigation assessment and therefore there is no need to provide any further financial contributions as part of a section 106 agreement for other additional mitigation measures.

Condition 29 should therefore be updated to reflect the updated Air Quality Assessment Emissions Mitigation letter (ref: PT/MTW/GM13180/002) and assuming this information is acceptable, then the condition could be re-worded to a compliancy condition as follows:

29. The development shall be carried out and operated in accordance with the approved Amendment to Air Quality Assessment Emissions Mitigation letter ref.

PT/MTW/GM13180/002 dated 26th March 2024 ~~Prior to the commencement of development, a scheme detailing fully costed air quality mitigation measures, based on the cost damage calculation as detailed in the Air Quality Assessment by Wardell Armstrong (ref: GM11587) (dated: January 2021) section 5.2.26 of the report, shall be submitted to and approved in writing by the Local Planning Authority. In the absence of acceptable proposals for Low Emission Mitigation Measures of sufficient value, a Section 106 agreement may be required for the amount up to the estimated damage cost made available to the local authority to spend on air quality improvement projects within the locality. Following completion of the agreed air quality mitigation measures a verification report detailing a breakdown of costs shall be submitted to and approved in writing by the Local Planning Authority. The report shall detail the expenditure of each of the mitigation measures agreed, and this should reflect the total sum of cost damages that have been calculated for the~~

development. The mitigation and measures required by the report will be implemented prior to the retail use of the site commencing.

Reason: For promoting sustainable development and transport and conserving the natural environment in accordance with guidance within the National Planning Policy Framework and Policies LP20, LP24, LP47 of the Kirklees Local Plan.

Summary

Only minimal alterations are proposed as part of the revised layout which does not affect the principle of the previously approved scheme. Updated reports have been submitted as part of this application which reflect any changes as a result of the revised layout.

We look forward to receiving confirmation that the application has been validated and trust that you have all the information required to positively determine the application.

If you have any questions regarding the submitted documents, please do not hesitate to contact me or my colleague Chris Darley.

Yours faithfully



Lucy Sime

Senior Planner

BA (Hons) MSc MRTPI

Annex 1: Drawing Schedule

Drawing name	Drawing Number	Rev	Scale
Location Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2001 - A3 - C5	C5	1:1250
Existing Site Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2002 - A3 - C5	C5	1:500
Proposed Site/Surfacing Plan - Planning	7404 - SMR - 00 - ZZ - DR - A - 2003 - A3 - C9	C9	1:500
Proposed Elevations	7404 - SMR - 00 - ZZ - DR - A - 2302 - A3 - C2	C2	1:100
Proposed Floor and Roof Plans	7404 - SMR - 00 - ZZ - DR - A - 2301 - A3 - C2	C2	1:200
Proposed Boundary Treatments - Planning	7404 - SMR - 00 - ZZ - DR - A - 2008 - A3 - C8	C8	1:500
Proposed Site Sections - Planning	7404 - SMR - 00 - ZZ - DR - A - 2007 - A3 - C9	C9	1:200 & 1:500
Landscape Details	R/2459/1K	Rev K	1:200
GA Ground Floor Plan - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2201 - A3 - C2	C2	1: 100
GA Roof Plan - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2202 - A3 - C2	C2	1:100
Proposed Elevations - Retail Unit	7404 - SMR - 00 - ZZ - DR - A - 2203 - A3 - C2	C2	1:100 & 1:500
Proposed Lighting Strategy	LiAS Design Notes & Luminaire Schedule DWG 00 and Proposed Lighting Layout DWG 01	To follow	1:250
Foul Sewer & Surface Water Layout	24062-SDS-00-SL-DR-C-3021	T3	1:250
Swept path analysis of max legal HGV accessing service yard	20/270/ATR/009	Rev B	1:500