

**PLANNING COMMITTEE – 8 DECEMBER 2022****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 19/502969/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a new food store with associated parking, servicing, landscaping, and new vehicular access		
<b>ADDRESS</b> Land to the East of Queenborough Road Queenborough Kent ME12 3RH		
<b>RECOMMENDATION</b> Refuse, for reasons as set out.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The retail impact of the scheme has been independently assessed and the advice provided is that the proposal would give rise to a significantly adverse impact upon Sheerness town centre. Harm is also identified upon the setting of a designated heritage asset. On balance, these harms would not be outweighed by the benefits of the proposal, primarily in respect of the economic benefits and job creation.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Significance (as Members have previously resolved to approve the development)		
<b>WARD</b> Queenborough and Halfway	<b>PARISH/TOWN COUNCIL</b> Queenborough	<b>APPLICANT</b> ALDI Stores Ltd <b>AGENT</b> Planning Potential Ltd
<b>DECISION DUE DATE</b> 24/09/19	<b>PUBLICITY EXPIRY DATE</b> 08/09/20	<b>CASE OFFICER:</b> William Allwood

**Planning History**

22/504107/ENVSCR - Environmental Screening Opinion-Erection of a new foodstore with associated parking, servicing, landscaping and new vehicular access. Decision – Environmental Impact Assessment not required.

(Adjacent site) 17/501010/FULL - Construction of a new two storey building comprising a manufacturing and distribution facility complete with administrative offices and associated access, parking and servicing areas etc. all for Use Classes B2 (with associated B1 administrative office space) and B8 on land that is currently vacant and used for grazing. Approved 12.04.2019.

(Adjacent Site) 20/506001/FULL Commercial development comprising of 7 no. terraces of small business units, 1 no. terrace of larger business units, 1 no. self-storage unit and 3 no. office buildings. Approved 14.04.2022

(Adjacent Site - Lidl) 22/504598/FUL Erection of Class E(a) retail store with associated parking, access, servicing and landscaping. Current application not determined

SW/98/0509 - Change of use to open storage with creation of a hard surface, permanent fence, lighting towers and landscaping for vehicles imported or exported through the port of sheerness – Approved 05.05.1999.

SW/98/0462 - Outline application for the erection of dewax bays, PDI building and offices for use in connection with the storage and distribution of vehicles imported and exported through the port – Approved 05.05.1999.

SW/95/0100 - Outline application for industrial and business park – Never determined.

The applications submitted under SW/98/0509; SW/98/0462; and SW/95/0100 covered a much wider area than the site relevant to the current application.

## **1. DESCRIPTION OF SITE**

- 1.1 The application site measures 1.23 hectares and is comprised of undeveloped grassland. It is sandwiched between Queenborough Road and the A249, immediately to the north of the A249 / Thomsett Way roundabout which provides access to Neatscourt Retail Park (which sits on the opposite side of the A249 to the application site). The site is largely flat, located at Ordnance Datum and covered in low level vegetation. There are no trees on the site. Ditches, which makes up part of a wider network, are located centrally, in the north-western and the southwestern part of the site. Two mains' pipes (gas and water) run beneath the site.
- 1.2 The site is of an irregular shape, measuring 120m x 150m at its largest, and wraps around, on two sides, an existing residential property, known as 'The White House', which fronts onto Queenborough Road. On the adjacent site immediately to the north-west (known as 'Medichem'), planning permission has been granted for B class employment uses, although the permission has not been implemented and the site remains undeveloped grassland.
- 1.3 The grade II listed Neats Court Manor lies approximately 85m to the east of the application site. Neats Court Manor is a two-storey property and is currently in residential use. Several disused outbuildings lie to the east of the listed building. To the south of the site (on the opposite side of the A249) sits a very large regional distribution centre, also operated by Aldi.

## **2. BACKGROUND**

- 2.1 Members may recall that this proposal was presented to them at the 16<sup>th</sup> November 2020 Planning Committee meeting. The report that was presented at that time recommended approval for the scheme and Members resolved the following:

*“That application 19/502969/FULL be delegated to officers to approve subject to conditions (1) to (35) in the report as amended by the tabled update dated 12 November 2020; and subject to agreement with Ward Members and Chair of Planning Committee regarding a footpath/cycle route from Cowstead Corner to Queenborough Corner; and a route from the application site to the existing retail area at Neats Court and enter into the requisite agreement or secure an appropriate condition as necessary.”*

- 2.2 Discussions regarding the above subsequently took place and both the Ward Members

and Chair of Planning Committee agreed to the matters as required by the resolution. On this basis planning permission was granted on 7<sup>th</sup> January 2021.

- 2.3 Following this, on 1<sup>st</sup> February 2021, the Council received from legal representatives acting for Tesco Stores Limited, a letter pursuant to the Pre-Action Protocol for Judicial Review, challenging the decision of the Council to grant planning permission. The challenge was submitted on three grounds, which in summary were 1) related to the assessment of retail impact carried out by the Council's retail consultant to be based on an erroneous interpretation of the defined 'town centre'; 2) the permission having been granted without the matters required by the resolution having been agreed; 3) the failure to screen the development to consider whether it was EIA development.
- 2.4 The Council sought legal advice on the above matters, and it was concluded that on the basis of grounds 1 and 3, it would be difficult to defend the challenge. As a result of this the Council conceded on these points. As a result of this, on 4<sup>th</sup> August 2021 a Consent Order was issued by the High Court of Justice (Planning Court) which quashed the planning permission. Therefore, the application is required to be reconsidered. Members should note that in respect of ground 3, a Screening Opinion has now been issued by the Council which concluded that an Environmental Impact Assessment was not required.

### **3. PROPOSAL**

- 3.1 This application seeks planning permission for a foodstore of 1,933 sqm (gross) / 1,315 sqm (net) and is roughly rectangular in shape. At its largest, the footprint of the store will measure 37m x 64m. The foodstore will feature both curved and flat roof elements, measuring 9m in height to the highest point of the roof and 5.2m to the lowest part. The materials proposed are a mixture of facing brickwork and cladding. The foodstore will be in the southern portion of the site with the car park in the western part. In the north-western area of the site an ecological mitigation area is proposed, which will provide habitat required to support both this site and the adjacent site, which already benefits from planning permission under ref 17/501010/FULL, as set out in the history section above.
- 3.2 Vehicular access to the site is proposed to be provided by a new arm to the existing A249 / Thomsett Way roundabout. A new junction will then be provided to allow for access to the site. The car park will include a total of 143 spaces, 8 of which will be disabled spaces, 15 for parents with young children and 9 staff parking spaces. The delivery / service area is proposed on the north-eastern elevation of the store with the main entrance located on the north-western elevation, facing the car park.
- 3.3 Off-site highway works are also proposed which would provide a footpath along Queenborough Road from the A250 Queenborough Corner junction to Neats Court Farm. A contribution towards funding the continuation of this footpath has been secured via an application further to the east for employment uses, approved under ref. 20/506001/FULL. In addition to this, having discussed the matter with KCC Highways & Transportation, either contributions to or requirement to deliver the remainder of the route to Cowstead Corner will be sought from developers of additional sites.
- 3.4 In respect of the landscaping, a line of tree planting is proposed close to the southwestern elevation of the foodstore, which will be visible from the A249 / Thomsett Way roundabout. Further to this, tree planting is proposed on both sides of the newly created

access within the site, including a planting buffer close to the boundary that the site shares with the existing residential property – The White House. Further tree planting is proposed along the western boundary of the site, within the car park and within the ecological mitigation area. Hedges, wildflowers, and bulb planting are also proposed, predominately close to the margins of the site.

- 3.5 The application sets out that the existing store in Sheerness no longer meets the trading needs of the operator and that there is no scope to expand the store and as such, regardless of whether this application is approved, it would be required to close. However, Members should note that regardless of whether this application is approved or refused, the decision would not require the existing store to close, this would be a separate commercial decision taken by the operator.
- 3.6 The development will create a total of 50 jobs, which will be a mixture of full and part time roles, equating to approximately 25 full-time equivalent jobs.
- 3.7 As the original planning permission was quashed, in part due to the way in which the assessment of the retail impact of the scheme was carried out, the Council instructed an alternative a retail consultant (Lambert Smith Hampton (LSH)) to provide independent advice in respect of the sequential retail impacts and those effects of the proposal upon the vitality and viability of existing centres.

#### Statement on behalf of applicant

##### *“Retail Considerations*

- 3.8 *As officers are aware, there has been extensive exchange of correspondence between ourselves and Lambert Smith Hampton (LSH) and it is disappointing to note their ‘on balance’ view expressed in the 05.10.22 response that the proposals could have an adverse impact on Sheerness town centre. Whilst we respectfully disagree with LSH, we recognise that in order to move forward there are certain aspect on which we may need to ‘agree to disagree’.*
- 3.9 *In this respect we do not intend to provide a ‘line by line’ rebuttal to LSH’s response, but instead highlight fundamental points that, throughout the process LSH do not adequately address and that are material considerations to be given weight in support of the application.*
- Future of existing Aldi store. It is important to reiterate the background to the proposals and the key objective of maintaining and retaining Aldi’s presence on Sheppey. We have made clear from the outset the considerable challenges with the existing Sheerness store and that continued trading from the premises is not possible in the long term. Notwithstanding, LSH have throughout questioned Aldi’s motives and suggested that more could be done to continue trading at the existing store. We do not intend to repeat the reasons why the existing site no longer meets Aldi’s requirements (this is comprehensively set out within the various application documents), other than to confirm, once again, that the store will close. Indeed, we are grateful that, at the 07.11.12 meeting, officers recognised that the Sheerness store is substandard and that continuing was not sustainable. In this context, we have already drawn officer’s attention to Paragraph 93 of the NPPF, which states that, “...established shops,*

*facilities and services are able to develop and modernise, and are retained for the benefit of the community [emphasis added]”. This principle is firmly reflected in Aldi’s commitment to retaining their presence on Sheppey and is a point that LSH do not appear to have considered*

3.10 (**Officer comments:** Aldi have secured a deal to let the vacated unit in Sheerness to Home Bargains. This will represent a new retailer locating on the island with the nearest currently being in Sittingbourne. The proposed occupation will bring a new mixed-use retailer into the centre, creating the potential for linked trips and also create additional job opportunities. Home Bargains operation within the discount or value retail centre. Approximately 70% of the stock is regular lines with 30% continually changing. The principal product range includes:

- Health and beauty products;
- Medicines;
- Baby products;
- Household products;
- Toys and games;
- Pet food;
- Home furnishings and ornaments;
- Seasonal products;
- Food and drink products; and
- Limited clothing and footwear range.)

• Turnover of existing Aldi Store – within our May 2022 Retail Addendum (RA), we drew attention to the inflated turnover of the existing Sheerness Aldi as derived from the telephone survey results (circa £22m p.a.) compared to the store’s actual trading figures (£12.9m p.a.). However, given that we were unable to obtain actual trading figures from other stores (e.g. Tesco and Morrisons, and as neither operator in their objections has provided alternative figures), we produced an analysis based on the telephone survey results (i.e. the higher Aldi turnover) to enable a ‘like for like’ assessment. However, once again LSH have given very little weight, if any, to this anomaly and indeed appear to question the validity of the claim. We have provided written confirmation from Aldi as to the actual annual turnover of the store (see Appendix 1 of the May 2022 RA, attached again for ease of reference) and respectfully question what more proof the Council requires. It necessarily follows that if the true figure were applied, then potential impacts would be significantly reduced. The analysis is therefore based very much on a worst-case scenario, which in reality is likely to be a significant overestimation and will, in any event, be offset by other benefits.

Impact on Sheerness Town Centre – we have consistently highlighted that it is relevant to consider the existing Aldi store is already attracting local trade. Regardless of what this represents as a monetary figure, this is a percentage of local people who currently choose to shop and spend money at Aldi now and will continue to do so once the store relocates. LSH’s approach suggests any money being spent at Aldi has to be factored in when assessing the wider impact on Sheerness Town Centre, albeit in reality this is not an actual reflection on potential ‘knock on effects’ of the proposals elsewhere. Irrespective of whether those trips take place at the existing store, or the relocated store, it is still money being spent at Aldi and this situation does not change.

*The more relevant impact to assess are the potential consequences for the wider town centre, for example as a result of a loss of linked trips. Our analysis considers this approach and concludes that potential impacts would be circa 3.6%. In this context, we would also draw attention to (5.1 – 5.11) of our August 2022 Response for fuller commentary on this matter. It is also noted that, with the exception of Tesco and Morrisons, no other businesses on Sheppey (including, specifically, shops and services in Sheerness Town Centre), have raised objections to the proposals*

- *Reoccupation of existing Aldi store – we have confirmed that terms have been agreed with Home Bargains to re\_occupy the existing store. LSH question the extent to which reoccupation of the existing Aldi store will offset potential negative impacts as a result of Aldi relocating. Again, this conclusion is reached having regard to the existing Aldi store’s inflated survey derived turnover compared to the company average estimate that Home Bargains is expected to achieve, which is significantly lower. Nevertheless, we have drawn attention to the fact that Home Bargains would not only enhance Sheerness’ non-food offer, but also would help to offset some of the linked trips lost as a result of Aldi’s relocation. Again, this is a point that LSH do not consider in depth and with respect underestimate the offsetting that reoccupation of the existing store will bring.*

- *Wider benefits of the proposals – LSH ultimately conclude that “on balance” their recommendation is permission is refused due to the potential unacceptable impacts that, in their view, could arise. As noted above, in reaching this conclusion LSH have not fully considered a number of factors that, if applied, would necessarily mean that such impacts would be reduced and indeed in our view fall within acceptable tolerances and could even be fully offset. Notwithstanding and without prejudice, even if LSH’s on balance worst case impacts are accepted, there are other policy and material considerations associated with the proposals that must also be taken into account (LSH themselves acknowledge that they have not considered such factors). This position is entirely consistent with the requirements of s.38(6) of the Planning and Compulsory Purchase Act 2004 and the NPPF. In this respect it is helpful to note the following commentary in *Asda v Leeds City Council* ([2019] EWHC 3578).*

*“The NPPF has to be read as a whole, and in a way that makes sense of the document as a whole. In para 11-14 of the NPPF the Secretary of State has used the specific term “presumption” in relation to sustainable development and has set out a structure by which that presumption is to be applied, and in particular circumstances outweighed. This includes footnote 6 which explains how the presumption works in particular types of case (not including those that fall within para 90)” [emphasis added].*

*“By contrast in NPPF90 the word “presumption” is not used, nor is there any suggestion of a tilted balance; or any attempt to tell decision makers that they should put more weight on one factor rather than another. It is not entirely clear whether the Secretary of state could lawfully mandate a decision maker to accord a particular factor particular weight, given the words of s.38(6) and the judgement of Lord Hoffman in *Tesco Stores*, that weight is always a matter for the decision maker. However, the breadth of that issue is not before me in this case. What is clear is that the Secretary of State has not tried to do so in NPPF90. It is again notable that there are paragraphs in the NPPF where the Secretary of State does say, as a matter of policy, that particular*

*weight should be given to particular matters, e.g. para 80 where significant weight is to be accorded to economic growth” [emphasis added].*

3.11 *There considerations are similar to current application proposals, including, specifically the economic considerations associated with the proposals, which carry ‘significant weight’. In this context, we have set out below some of the many benefits that the proposals will secure:*

- *The proposals will help to maintain and enhance the retail shopping offer on Sheppey. This is in accordance with paragraph 93 of the NPPF, which states that, “...established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community” [emphasis added], and also para. 81, which advises that, “decisions should help create the conditions in which businesses can invest, expand and adapt”. Para. 81 continues that “significant weight” should be attached on supporting economic growth.*
- *The enhanced Aldi offer will create an uplift in 20 new jobs. This is afforded significant weight by paragraph 81.*
- *The proposals will bring forward an allocated site for employment generating development. In addition, it should be noted that the proposed access will not only serve the proposed Aldi but will also link to the neighbouring plot of land to the southeast and in turn help to unlock that for future development proposals. This is afforded significant weight by paragraph 81.*
- *As part of the proposals, Aldi will be responsible for delivering a new pedestrian and cycle way along approximately half of the Queenborough Road. This will in turn link with further enhancements being brought forward on future schemes on land to the south of the site. This will not just benefit Aldi but is putting in place important infrastructure for future businesses and residents in accordance with para. 104 of the NPPF.*
- *Throughout the course of the last few years’ discussions, Aldi have worked closely with the council to bring forward a building that is a landmark design for the site, fully benchmark for others to follow. This is in accordance with para. 126 of the NPPF including helping to create, “...better places in which to live and work and helps make development acceptable to communities”.*

3.12 *In all other respects, the proposals have not raised objections from any statutory consultees, who have all recommended that permission is granted, including subject to conditions, which Aldi are willing to accept.*

#### *Biodiversity Net Gain*

3.13 *We have also been asked to clarify the position in respect of biodiversity net gain. At present, submission of a metric is not currently part of the development plan, whilst further regulations are required under the Environment Act 2021 before BNG becomes a mandatory requirement. The scheme before the council has effectively been in place for almost 3 years now and was not designed with such specific considerations in mind.*

- 3.14 *Nevertheless, whilst a specific assessment against the metric is not required, the proposals will nonetheless result in biodiversity and ecological enhancements in other ways. The application is accompanied by a detailed ecological and enhancement strategy, which includes a dedicated new grassland area to be sown with coastal wildflower mix and shall be managed to provide opportunities for reptiles and other wildlife whilst elevating the on-site floristic diversity from a predevelopment position. Additional measures such as log piles and hibernacula will provide further new habitat features to enhance its potential.*
- 3.15 *The overall mitigation strategy also includes utilising the Natural England District Licensing Scheme. The district licence focuses on the provision of Great Crested Newt habitats where surveys show it will be most effective to connect and expand Great Crested Newt populations, through financial contributions made by developers to facilitate habitat provision and long-term management. Under the scheme, for every pond that is known to support Great Crested Newts that is to be lost to the development, four new compensatory ponds will be created. The newly created ponds will be monitored and maintained for no less than 25 years from the point of impact.*
- 3.16 *The mitigation measures associated with both schemes will offer new compensatory habitats including ponds, wet ditch, grassland, hedgerow, hibernacula and log piles both within the site and wider area, and combined results in significant improvement to the habitat quality. Additional elements such as bird and bat boxes shall provide further opportunities. The provision of such measures ensures the proposed development accords with current planning policy.*
- 3.17 *The overall development is also complemented by dedicated planting and soft landscaping areas. This again includes native planting and new hedgerows, which is a further net ecological benefit of the proposals. Such matters can also be secured through appropriate worded conditions.*
- 3.18 *In summary, I trust the above is helpful in terms of providing some further context in respect of retail matters and BNG considerations. We have highlighted that potential retail impacts have been assessed on a worst-case scenario and has overlooked key considerations, for example in respect of the actual turnover of the existing Aldi store. However, even if the worst-case is accepted, as the council's own consultants have acknowledged this is 'on balance' and must be assessed against the many benefits that the proposals will bring. We trust officers find this correspondence helpful and enables them to progress with a positive recommendation for the application."*

#### **4. PLANNING CONSTRAINTS**

- 4.1 Potential Archaeological Importance
- 4.2 Environment Agency Flood Zone 3 (high flood risk)
- 4.3 Affects the setting of grade II listed Neats Court Manor
- 4.4 Ecology - given the proximity to national and international designations



## 5. POLICY AND CONSIDERATIONS

### 5.1 The National Planning Policy Framework (NPPF)

Chapter 7 of the NPPF is entitled ‘Ensuring the vitality of town centres’ and is central to the consideration of this application. Within chapter 7, in respect of the sequential test, paragraphs 86 and 87 state the following:

- “86. *Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*
87. *When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.”*

Whilst in terms of the impact assessment, paragraph 89 sets out:

- “89. *When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace). This should include assessment of:*
- 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 goes on to state:

- “90. *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.”*

In addition, paragraph 93 states:

- “93. *To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:*
- a) *plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural*

*buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*

- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;*
- c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;*
- d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and*
- e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services”.*

Other relevant policies in the NPPF are as follows:

Paragraphs 2 (determination of applications), 7 (sustainable development), 8 (the three objectives of sustainable development), 10 (presumption in favour of sustainable development), 54-57 (use of conditions and planning obligations), 80 (building a strong economy), 85-90 (ensuring the vitality of town centres), 108-111 (sustainable transport), 117-121 (Making effective use of land), 124-131 (good design), 149-154 Planning for climate change, 155-165 (flood risk and drainage), 174-177 (biodiversity), and 189, 192, 193-196, & 202 (Heritage assets).

## 5.2 National Planning Practice Guidance (NPPG)

Air Quality; Climate Change; Design: Process and Tools; Determining a planning application; Historic Environment; Noise; Renewable and low carbon energy; Town centres and retail; Travel Plans, Transport Assessments and Statements; Use of planning conditions.

## 5.3 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017

The parcel of land upon which the application site is located is allocated under policy A 1 (Existing committed employment locations) which states:

*“Planning permission will be granted for land allocated for 'B' class employment uses, as shown on the Proposals Map, at:*

- 1. Ridham and Kemsley, Sittingbourne; and*
- 2. Neatscourt, Isle of Sheppey.*

*Development proposals will accord with the approved development briefs for the sites and satisfactorily address landscape, biodiversity, archaeological and existing power line issues.”*

The supporting text to this policy at paragraph 6.2.4 sets out that *“Recent development has seen the emergence of the area as a retail centre to complement Sheerness town centre, but it is important that any further proposals for retail uses do not undermine*

*the role and retail functioning of the town and other local centres or the role of this site in meeting the Island's (and Swale's) industrial floorspace needs for the plan period.”*

5.4 Policy DM 2 (Proposals for main town centre uses) relates to retail development as proposed in this application. The policy states “Planning permission will be granted for main town centre uses subject to:

1. *“Taking into account the scale and type of development proposed in relation to the size, role and function of the centre,*
2. *Being located within the town centres as defined on the Proposals Map; or*
3. *Where demonstrated that a town centre site is not available, being located on a site on the edge of a town centre, subject to criteria 4a to 4c; or*
4. *Where demonstrated that there are no suitable sites available at locations within 2. and 3. above, proposals elsewhere within the built-up areas of Faversham, Sheerness and Sittingbourne, as shown on the Proposals Map will only be permitted if:*
  - a. *it is demonstrated by an impact assessment (when the proposal is above the defined floorspace threshold in national planning policy) that it would not individually, or cumulatively with those trading or proposed, undermine the vitality and viability of existing town centres, or of other local centres and the facilities and services of other locations;*
  - b. *it does not materially prejudice the provision of other land uses, particularly the supply of land for 'B' use class uses, housing, community use and open space; and*
  - c. *it is well located in relation to the main road network and easily accessible by public transport, pedestrians and cyclists.*
5. *Elsewhere, proposals will be permitted where they address the tests set out in national policy and accord with criteria 4a to 4c.”*

5.5 Other policies in the Local Plan which are relevant to this application are as follows:

- ST 1 (Delivering sustainable development);
- ST 2 (Development targets for jobs and homes 2014-2031);
- ST 6 (The Isle of Sheppey area strategy );
- CP 1 (Building a strong, competitive economy);
- CP 4 (Requiring good design);
- CP 8 (Conserving and enhancing the historic environment);
- Regen 2 (Queenborough and Rushenden: Regeneration Area)

This Policy states that:

*A regeneration area for Queenborough and Rushenden is designated as shown on the Proposals Map. Within this area, proposals will support the objective of regenerating the area for residential, employment and community uses to achieve the integration of communities. Development proposals will, as appropriate:*

- 1. Accord with the adopted Masterplan Supplementary Planning Document and its addendum;*
- 2. Contribute towards the creation of a distinctive sense of place for the planned new settlement that also reflects the area's waterside location and historic environment;*
- 3. Demonstrate sensitive and innovative design, which responds to the challenge of creating new townscape and be subject to scrutiny by the Swale Design Panel;*
- 4. Achieve high standards in terms of sustainable design and construction, including the design and specification of the buildings and sustainable urban drainage;*
- 5. Accord with an integrated landscape strategy through the creation of a new landscape structure for the area, supporting the creation of a network of areas for play, walking and informal recreation, as well as achieving a net gain in biodiversity overall;*
- 6. Assess biodiversity interests, including a Habitats Regulations Assessment. Proposals will ensure that, through both on and off site measures, any significant adverse impacts on European sites through recreational pressure will be mitigated in accordance with Policies CP 7 and DM 28, including a financial contribution towards the Strategic Access Management and Monitoring Strategy;*
- 7. Improve the quality of the environment and housing choice to restore the local housing market area;*
- 8. Achieve a mix of housing in accordance with Policy CP 3, including provision for affordable housing, in accordance with Policy DM 8;*
- 9. Provide, at Neatscourt, commercial floorspace unless this would adversely impact upon the vitality of Sheerness town centre or compromise the achievement of meeting industrial floorspace needs as required for the Local Plan period;*
- 10. Secure those improved services and facilities necessary for a sustainable community;*
- 11. Where appropriate, assist with alternative accommodation for the displacement of existing businesses;*
- 12. Through physical, environmental and economic measures, integrate the existing and new communities;*
- 13. Assess the need for, and provide such transport initiatives and improvements as are necessary;*
- 14. Assess and respond to any risk from flooding; and*

15. *Provide infrastructure needs arising from the development, including those matters identified by the Local Plan Implementation and Delivery Schedule, in particular those relating to transport, education and health.*

- DM 1 (Maintaining and enhancing the vitality and viability of town centres and other areas);
- DM 6 (Managing transport demand and impact);
- DM 7 (Vehicle parking);
- DM 14 (General development criteria);
- DM 19 (Sustainable design and construction);
- DM 21 (Water, flooding and drainage);
- DM24 (landscape)
- DM 28 (Biodiversity and geological conservation);
- DM 29 (Woodlands, trees and hedges);
- DM 32 (Development involving listed buildings).

#### Queenborough and Rushenden Masterplan

5.6 The Queenborough and Rushenden Regeneration will provide new homes and flats for a wide range of people, community facilities and services, a school, jogs, employment space, new open spaces, pedestrian parks and a new marina. It will be located between Queenborough and Rushenden, on the former Caradon Works site and on Sheppey Industries land (Klondyke).

#### Swale BC Landscape and Biodiversity SPD

5.7 Identifies the application site within the *Elmley Marshes*, which has the following key characteristics:

- Flat alluvial marshland with sinuous reed filled ditches. Traditional gates and fences leading into ditches prevent cattle crossing into other fields
- Atmospheric and tranquil landscape with large open and often dramatic skies
- Rough grassland largely used for cattle and sheep grazing
- Important wetland habitats designated for their internationally important assemblages of wildlife.
- Important transport routes A249, railway and link bridges onto island
- Large-scale landscape with little sense of enclosure
- Boats in the Swale

- Strong sense of place, remote and isolated

## 6. LOCAL REPRESENTATIONS

6.1 When the application was originally submitted the application was publicised via letters sent to neighbouring occupiers, a site notice and a press advert. A total of 5 objections were received, 3 of these from neighbours and 2 from agents acting on behalf of Morrisons and Tesco. I also received 5 letters of support and 1 making general comments. I will firstly summarise the objections from residents:

The proposal would be detrimental to the economy of Sheerness;

- A number of people including the elderly, those without cars and parents with young children who walk to this store would be required to rely on Tesco;
- A number of people visit Aldi and also visit other shops and services in the town centre;
- The proposal will cause a negative impact upon community spirit;
- The foot / cycle path provided between the store and Queenborough Road will be used as a 'drop off point' – the highway is not wide enough to deal with cars stopping and will give rise to highway safety impacts;
- There should be access from the site to the existing Neats Court development where there are existing onward travel options;
- The proposals use a proportion of the same land designated for ecological mitigation as the scheme granted consent on the adjacent site under ref 17/501010/FULL, however, there is a foot / cycle path running through this land;
- The foot / cycle path is located along the boundary with the neighbouring residential property ('The White House') and should be located significantly further away;
- The proposal to include a 1.8m high fence along the boundary with 'The White House' will not be sufficient to address overlooking and privacy issues;
- The development will give rise to unacceptable harm to the residents of 'The White House' on the basis that the submitted noise report outlines that noise levels will be above WHO [World Health Organisation] night time guidelines.
- The site should not be considered in isolation but as part of the wider context;
- Consideration should be given to altering the current Local Plan so that it reflects the contents of the "Sheerness, Queenborough and Minster Local Plan" (adopted January 1988);
- The supporting documents have reached the conclusion they do as they are being employed directly by the applicant;
- The existing Sheerness store should be remodelled;
- The details of pedestrian links outside of the site have not been provided;
- The site should be retained in its current undeveloped form;
- The site is not appropriate for pedestrians and cyclists;
- There is no detail of the proposed opening hours;
- Regular checks of vehicle noise should be undertaken within the vicinity of the site;
- Figures provided in the 'Statement of Community Involvement' are dubious;
- Has a strategy been put forward to access the water or gas mains within the site if the need ever arose;
- There are inconsistencies and unanswered questions relating to surface water drainage;

- Flood risk as a result of the development to surrounding land has not been addressed or considered;
- There are longstanding and on-going drainage issues affecting the surrounding area which have not been resolved;
- Development of the site will have net negative effects upon wildlife;
- The Heritage Statement has not properly considered the history of the listed Neats Court Manor and is not a fair assessment of the impact of the proposal on the listed building;
- A number of the heritage assets have been left to deteriorate which is advantageous for the applicant in considering the impacts on these buildings;
- The authors of the Heritage Statement did not contact the occupier of the grade II listed Neats Court Manor to provide further historical background;
- The Neats Court Manor farmstead appears on the ‘List of Buildings of Special Architectural or Historic interest’ and no reference is made to this in the heritage Statement;
- If the connection to the public sewer be denied then there appears to be no other alternative;
- This section of Queenborough Road is unsafe;

6.2 As set out above, objection letters were also received from agents acting on behalf of Morrisons (x2) and Tesco (x1). I firstly summarise the points made in the initial letter from the agent acting on behalf of Morrisons:

- *“it is contrary to the statutory development plan, which allocates the Application Site for ‘B’ class employment uses and seeks to protect Sheerness town centre and other centres of acknowledged importance;*
- *additional shopping provision of the proposed nature and scale, alongside the established Morrisons and Iceland stores, would effectively create a critical mass of ‘self-sufficient’ food retailing in an out-of-centre location that would primarily serve car borne shoppers. This would negate the need to visit Sheerness town centre and other centres of acknowledged importance, and it would have ‘real’ implications for the Council’s sustainability objectives;*
- *allied to this, the relocation of the Aldi store would draw shoppers and trade away from Sheerness town centre to an out-of-centre location and would have a significant adverse impact on its overall health, performance and prospects at a time of economic uncertainty; and*
- *the failure of the Applicant to submit a retail impact assessment runs directly contrary to the requirements of the pre-application advice and Council’s Retail and Leisure Needs Assessment.”*

The second letter submitted by the agent acting on behalf of Morrisons objects to the application for the following summarised reasons (the letter also reiterates the matters set out above):

- The independent audit carried out by White Young Green (WYG) on behalf of the Council notes the failure of the applicant to provide a detailed retail impact assessment

and offer any meaningful justification – in terms of the sequential approach and retail impact - for relocating the town centre store to an out of centre location;

- The applicant has failed to address questions in respect of minimum site size requirements; average Aldi store sizes; evidence regarding the capacity issues of the car park or the need for it to be a certain size; and evidence regarding conflict between cars and service vehicles;
- In respect of the sequential assessment, the applicant has not demonstrated the necessary flexibility on issues such as format and scale so that opportunities to utilise suitable town centre or edge of centre sites are fully explored. The application should be refused for failing to satisfy the sequential test;
- The store on the existing site could be extended upwards and the internal layout re-configured;
- Aldi operate a number of stores on plots of a similar size, configuration and layout;
- The car parking issue can be resolved by parking controls;
- The existing store promotes sustainable travel patterns by being located in an area which maximises opportunities to use public transport, cycling and walking. This reduces dependency on the private car, meeting the challenge of moving to a low carbon future;
- The WYG audit makes a 'judgement' on the potential retail impacts, however, without any information being provided by the applicant there is no certainty as to whether it would have a significant adverse impact;
- The applicant has 'threatened' that if they do not obtain planning permission then they will close their existing store, removing their offer from the Isle of Sheppey – 'this is nonsense'.

6.3 The objection letter received from the agent acting on behalf of Tesco made the following summarised points:

- Tesco has a well-established presence in Sheerness and includes a wide range of food and other facilities. The store draws a number of customers into the town centre from beyond Sheerness and encourages linked trips with other town centre stores and facilities;
- In contrast to the above, Aldi's proposal relates to an out of centre site, with few links to the surrounding area. The store will primarily be reached by car on single purpose journeys;
- The application is not supported by a retail impact assessment and although the NPPF sets a threshold for requiring one at 2,500sqm (which this proposal falls below), paragraph 90 of the NPPF states that if a proposal is likely to have a significant adverse impact on the vitality or viability of a retail centre, then it should be refused;
- The Council's Retail and Leisure Needs Assessment recommends that a local threshold for retail impacts should be set at 500sqm – this indicates that proposals larger than this



could have an adverse significant impact on existing centres. The proposal is considerably larger than this and therefore, according to the assessment, presents a risk;

- WYG, in reviewing this application does not raise the issue that the Retail and Leisure Needs Assessment sets a lower threshold and instead relies on their 'judgement';
- WYG's appraisal of the application is fundamentally flawed, as it only reviews the effect of the uplift in floor area rather than the total floor area of the replacement store. This approach may be appropriate if the existing store was out-of-centre and proposed to be enlarged. However, in the circumstances the loss and the uplift in floor area should be taken into account, as they both impact upon the town centre. On this basis the Council should review the advice given and if necessary secure future independent advice;
- In respect of the sequential test, no information is provided confirming that the immediately adjacent land is not available [n.b this land includes public highway and the Sheerness Jobcentre];
- Policy A 1 of the Local Plan allocates the site for B class employment uses with the aim to address the local need for industrial floorspace and provide new jobs – compelling reasons should be provided as to why the site should not be brought forward for employment uses;
- The lack of an objection from the Council's Economic Development Officers regarding the loss of employment land does not overcome the policy requirements;
- This development will deliver very few new jobs;

#### 6.4 The letters of support raised the following summarised points:

- The store will provide an improved range of products;
- Access to the site will be easier than the current location;
- This proposal will reduce congestion in the town centre;
- This is a better site for delivery vehicles;
- There are good bus routes to the site;
- Increased amounts of parking is welcome;
- The development will provide much needed jobs;
- This proposal will increase competition between retailers which will be good for the shopping experience [the letter which provides this comment also sets out that there should be a pedestrian link between the site and the A249 in order to allow for easier connections];
- Sheppey needs a superstore that offers us better prices with improved facilities;
- One of the letters states that they support the proposal for a larger store but should keep the Sheerness store open as some customers of the existing store would be unable to visit the proposed location.

#### 6.5 The response which did not explicitly state whether they were objecting to, or supporting the scheme, commented that although they support the applicant's offer in general, they wished for the existing Sheerness store to remain open. The reason for this is proximity to the site, limited public transport options and the mobility of the author of the comments.

- 6.6 In addition to the above, after the planning permission being quashed, the application was republicised via letters to neighbouring occupiers, a press advert and a site notice.
- 6.7 In response to this consultation, a letter was received from the agent acting on behalf of Morrisons, making the following summarised points:
- 1) non-compliance with the site allocation in the statutory development plan
  - 2) undermining the role and retail functioning of Sheerness town centre
  - 3) failure to satisfy the sequential test
  - 4) significant adverse impact
  - 5) non-sustainable development.

## 7. CONSULTATIONS

- 7.1 Queenborough Town Council – *“object to the proposals for planning application SW/19/502969/FULL in respect of public safety.*

*There is no pedestrian pathway or cycle link between the A250 Junction at Queenborough Corner and the A2500 Junction at Cowstead Corner, along the entire length of Queenborough Road between these junctions.*

*There is no pedestrian pathway or cycle link between the Neat's Court Retail Park and the proposed site.*

*There is no pedestrian crossing in the proximity to any access area, of the planned site.”*

- 7.2 KCC Minerals and Waste – No comment.
- 7.3 Kent Police – Request that an informative is included to address the points that the agent has made in the Design and Access Statement and to deal with issues such as boundary details; lighting and CCTV; doorsets and roller shutters; meeting ‘Secure by Design’ guidelines and the need for a further application if a cash machine is proposed.
- 7.4 Southern Water – There is a public water main which crosses the site - *“All existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works. No excavation, mounding or tree planting should be carried out within 6 metres of the public water main without consent from Southern Water. No new soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of a public water mains.”* A condition is recommended in respect of measures to protect the public water supply main. In addition an informative is recommended setting out the requirement for a formal application for connection to the public sewerage system.
- 7.5 Environment Agency – *“We have reviewed the submitted information and have no objection to the proposal. The site is located within flood zone 3, and at risk of tidal flooding. However existing flood defences protect the site to a 1 in 200 year standard of protection. We hold modelling of a breach / Queenborough Barrier failure scenario. This shows the residual risk to the site to be low.”*

7.6 Natural England – “Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.”

7.7 Highways England [now known as National Highways] – Initially raised the following points that will be required to be addressed / provided:

- There are discrepancies in the details provided regarding the number of parking spaces;
- The Transport Assessment (TA) needs to be undertaken in accordance with the correct policies;
- Further details required as to how the development will prevent queuing onto the SRN related to deliveries and car park capacity;
- Raw data of the traffic assessment and junction modelling has not been provided;
- Details as to how the new arm from the A249 / Thomsett Way roundabout will link in with the rest of the network is not provided;
- Details of lighting will be required to be provided;
- Full drainage details will be required to demonstrate that no connections are made to Highways England drainage or allow surface water to drain to it;

I provided the above comments to the agent and following this the applicant's Transport Consultant provided a Technical Note in response and an updated TA. On this basis I re-consulted with Highways England who commented as follows:

- Although the TA has been revised, it will need to be further amended to take into account the Highways England publication: *Planning for the Future – A guide to working with the Highways England on planning matters* (September 2015);
- The further details provided demonstrate that queues caused by deliveries / car park capacity will not require vehicles to wait on the SRN [Strategic Road Network];
- The raw data has been provided in respect of the traffic assessment and this is considered acceptable;
- Further information has been provided in respect of junction modelling, however, Highways England require further time in order to audit the traffic models that have been provided;
- The Stage 1 Road Safety Audit (RSA) and Walking, Cycling and Horse-Riding Assessment and Review (WCHAR) has been provided but not carried out in accordance with the relevant standards, this will be required after the access design has been agreed;
- Still unable to tell how the new arm from the A249 / Thomsett Way roundabout will link in with the rest of the network;
- Still require details of lighting;

- Although the applicant has indicated that the ditch into which site drainage is shown to outfall is within the site boundary – there is no information to show whether the outfall would connect to Highways England drainage.

I provided the above comments to the agent and in response the applicant's Transport Consultants provided a Highways Drainage Note; a Highways Technical Note in response to the comments; RSA Audit Brief; a revised TA and a WCHAR. On this basis I re-consulted with Highways England who commented as follows:

- The revised information in respect of trip generation, traffic assessment and site access has answered the questions set by Highways England. The details indicate that there will be *“an increase in the volume of traffic associated with the A249 and the proposed development.”* This traffic, along with predicted growth *“indicates that the northern arm of the A249/A2500 Lower Road Roundabout will be likely to exceed operational capacity by the year 2024 + baseline and committed development traffic during all peak periods and exceeding the recommended level of service. This is also applicable to the A2500 Lower Road/Sheppey Way Roundabout junction, which exceeds capacity and level of service for the same time period onwards. The evidence means that the applicant needs to provide a nil-detriment scheme for the proposed development at the identified junctions above.”*
- An updated RSA and WCHAR is required which Highways England will then appoint an audit team to carry out an assessment.
- Further information in respect of drainage is currently being reviewed.

On the basis of the above the Stage 1 RSA and the WCHAR was updated and provided to Highways England. Highways England provided the following comments:

- Further investigation has demonstrated that with the agreed access and taking into account other mitigation on the Kent road network, *“the overall safety and operation of the A249/A2500 Lower Road Roundabout would not be materially worsened by the proposed development, if permitted.”*
- The RSA and WCHAR have been completed and are agreed. It is considered that the proposed access *“will not materially, adversely affect the safety or operation of the proposed access nor the A249.”*
- The drainage ditch running alongside the A249 is part of previously agreed environmental compensation, therefore no connection to or reliance upon the drainage ditch can be made by the development.
- A statement has been provided in respect of luminance levels;
- *“Having assessed the application and agreed necessary mitigation, Highways England is now content that, subject to the imposition of conditions, the development will not materially affect the safety, reliability and / or operation of the SRN”.* These comments are subject to conditions relating to a construction management plan; completion of the site access; provision for vehicle loading, unloading and turning; external lighting and no surface water run off to the highway or any highway drainage system.

- Further to the above, the issue regarding the drainage condition has been raised again by Highways England who have required confirmation in terms of the location of a drainage ditch and within who's ownership it falls. It has been clarified that it falls within the application site and Highways England have accepted this. Highways England have also requested confirmation that the water vole mitigation will be carried out, which is covered by separate conditions, discussed below.

7.8 KCC Highways & Transportation – Initially raised the following points:

“Highway Impact of Development

*Having examined the Traffic Assessment, I would need to draw attention to previous advice given on trip attraction and question the uninterrogated application in section 4.5.1 of the sub land use 'discount food stores' from the TRICS database. From the outset we were of the view that Aldi may not sit squarely in that historical category now as they continue to expand and enlarge their store formats and the use of this data subset would require careful scrutiny and justification. I also note that this category does not possess any free-standing sites among their surveys and instead the extracted data relies upon surveys from suburban and edge of town locations, which I do not consider to be representative of this particular site, being relatively remote from the closest residential areas and the nearest bus stops. A recent Transport Assessment carried out for the development of an Aldi store on the A251 at Faversham has utilized data for the 'food superstores' sub land use from the TRICS database and this was considered acceptable by us. In order to create a more robust base for a thorough assessment of traffic impact I am of the view that this site is treated in the same manner and that the following parameters are therefore applied in TRICS:*

- Sites in England, outside of Greater London
  - Gross Floor Area up to 6,000 sqm
- No surveys earlier than 2010
- Edge of town, suburban or neighbourhood centre locations

*I note that further to our request for the junction of the A250 Halfway Road/B2008 Minster Road to be included in the Traffic Assessment, the only data provided relates to 'net traffic effect' and it has not been included in the Junction Capacity Analysis. This would also need to be included, once the more robust methodology suggested above has been applied to trip generation.*

Accident Report

*The Transport Assessment demonstrates that the frequency of personal injury collisions at roundabouts that fall within the study area are below the national average for comparable junction configurations. The study also shows that the one accident classified as fatal, and the remaining serious accidents do not evidence a pattern that can be attributed to road layout deficiencies.*

Site Access

*The proposed vehicular route on drawing 2435-CHE-109 shows the site being served off a new section of road constructed to serve the wider development parcel north of the A249 Brielle Way, which would be accessed in turn via a new fourth arm of the existing A249 Brielle Way/Thomsett Way roundabout. It is not likely that KCC would wish to adopt this new road as it would not connect to any of our existing network, the A249 being administered by Highways England. The land parcel this new road would serve is also allocated in the local plan for commercial and industrial uses, which would be another reason for us not seeking to adopt it. Having examined the submitted plans, however, I am satisfied that the access arrangements as proposed should be able to meet relevant standards for visibility and road geometry. The design of the new roundabout arm, its impact on their highway and the interaction of the new road with the A249 will need to be assessed by Highways England who are the statutory authority in this instance.*

*I note that servicing is also being proposed now via this same access which I assume is in order to facilitate the turning and safe egress of delivery vehicles from the service yard. My concern with the current plan is that HGV movements will come into conflict with the proposed pedestrian crossing, which forms part of a wider link through the site from Queenborough Road and follows a natural desire line to the proposed store. The Transport Assessment proposes the use of a 'Pedestrian Marshall' in section 3.4.10 but it is my view that ensuring this is consistently applied each time a delivery vehicle seeks to encroach onto the pedestrian crossing will prove difficult to manage in the long term. Our preference would be to ensure that such conflict is designed out.*

#### Parking

*I am generally satisfied with the amount and quantum of vehicle parking spaces provided but with reference to section 3.7 of the Transport Assessment, disability parking provision in SPG4 is a minimum standard, which would require the provision of at least one additional disability bay within the parking layout. Cycle parking provision appears to be in line with our standards.*

*I am also satisfied that the dimensions and layout of the parking area also adheres to current design guidance as given in SPG4.*

*We have begun to engage with new developments over the inclusion of electric vehicle (EV) charging facilities, where for a development of this type we would typically want to provide 10% of the total parking provision as EV bays. The installation of rapid car chargers would make this a viable and attractive option for shoppers and given the more remote location of this site would enhance its sustainability credentials.*

#### Off-site Improvement Works

*The proposals offer to provide a pedestrian/cycle link along Queenborough Road between the site and the A250 junction. The sustainability of the store however needs to be considered in the wider context of developer funded pedestrian/cycle provision currently being implemented along the A2500 Lower Road as far as Cowstead Corner and the opportunity this creates to extend this link along the whole length of Queenborough Road. We now have a fully costed scheme to complete the link with the A250 junction, amounting to a total of £132,426.31, which we would ask this development to cover the full cost of. This link would greatly enhance access from existing and planned*

*communities to the east and the overall sustainability of the site. We would therefore request as a condition on this application coming forward that this sum be secured by way of a Section 106 agreement, (if approved).*

*Additionally, we would, in consultation with Highways England, strongly encourage the creation of a pedestrian crossing in the proximity of the existing A249/Thomsett Way roundabout, in order to facilitate access from Neats Court Retail Park and the Aldi RDC. The Transport Statement includes linked trips with Neats Court in its assessment and this would only prove fully viable with the implementation of a controlled crossing linking the two, along with associated linkages to the respective stores either side.*

#### Other Matters

*The on-site section of the proposed pedestrian/cycle link that runs alongside open land does not yet have any details for lighting and I would consequently need to see this detailed on a plan.*

*It is noted that a workplace Travel Plan has not been submitted with the application. It is therefore requested that this is provided by way of an appropriately worded condition in due course.”*

In response to the above comments, the applicant’s Transport Consultants provided a Technical Note. This prompted further comments from KCC Highways & Transportation stating that there was general satisfaction regarding the majority of the points made above, aside from the Junction Capacity Analysis had not been updated in accordance with the relevant assessments. In addition, a further assessment of the A250/Queenborough Road and Halfway junction was requested and that this should be integrated with data regarding Sheerness residents who would now visit this store.

Further to the above, the applicant’s Transport Consultants provided a further Technical Note in response. As a result, I re-consulted with KCC Highways & Transportation who commented as follows:

*“1) The updated Transport Assessment has demonstrated that the net effect of development on the assessed junctions is marginal compared with background growth and committed development. Additional assessment was sought for the A250/B2008 Halfway junction which has also concluded that development impact on that junction is marginal, with a demonstrated 11 additional vehicle movements in the AM peak, 25 in the PM peak and 31 in the Saturday peak. This represents an additional vehicle movement approximately every 5 1/2 minutes, 2 1/2 minutes and 2 minutes respectively at this junction.*

*2) Our initial consultation response encouraged the creation of a pedestrian crossing on the A249, in order to facilitate access from Neats Court Retail Park and the Aldi RDC, although it was noted that Highways England would need to be consulted on this matter, the A249 being part of their network and administered by that authority. Consultation was conducted and this option was subsequently ruled out by Highways England.”*

As a result of the above no objection is raised subject to conditions relating to a Construction Management Plan; provision and retention of the parking spaces, loading

areas, cycle facilities and electric vehicle charging points; lighting detail for the pedestrian link; implementation of the travel plan and provision of off site highway works.

- 7.9 SBC Climate Change – Initially responded setting out that although the intention is to achieve BREEAM ‘very good’, the pre-build assessment is very close to the lower end of the range for this rating. This was raised with the agent who provided a response to the points. On this basis I re-consulted with the Climate Change Officer who considers that the points have been suitably argued. As a result of this, on the basis that the intention is to achieve BREEAM ‘very good’ this is acceptable. Requests a condition requiring this is met, including the requirement for post construction certification.
- 7.10 Lead Local Flood Authority (KCC) – Initially raised a number of points leading to a holding objection which required addressing. These related to conflict with paragraph 165 of the NPPF and the lack of information setting out through evidence why a sustainable drainage system is inappropriate; the proposed infilling of two ditches on the site which would only be accepted with the agreement of the Lower Medway Internal Drainage Board; although a petrol interceptor is proposed to remove oils, it is not evident which other control methods will be incorporated to remove other pollutants and contaminants – all pollution control methods are required to be submitted; it is proposed to pump surface water which should only be carried out if expressly demonstrated to be necessary; the site falls within the jurisdiction of the Drainage Board and any works whatsoever that may have the potential to affect any adjacent watercourse (or the network’s ability to convey water) will require their formal prior written permission.

As a result of the above a ‘Sustainable Drainage Note’ and an ‘Indicative Drainage Layout’ was submitted to address the points made. As a result, I re-consulted with the Lead Local Flood Authority who responded as follows:

*“It is noted from the Sustainable Drainage Note that consideration for further SuDs features were considered however, the ecological area has already been agreed and therefore larger scale SuDs features cannot be accommodated. It is welcomed that permeable paving is to be incorporated into the parking bays and the off site discharge rate has been lowered 2 litres a second. Both of these alterations are welcomed and will provide both additional pollution controls and reduce the pressures on the receiving watercourse network.*

*As mentioned within our previous response, the LLFA resists the infilling of ditches on site. It is highlighted from Stirling’s note that the infilling of these ditches is the only practicable way of delivering this scheme on site. The LLFA accepts this and welcome that discussions have taken place between the Internal Drainage Board and the consultants. Please note that the works to the watercourses will require a consent process through the IDB that is separate from the planning process. As always, we would advise that this is done so as soon as possible.*

*With all major developments, the LLFA would require full drainage details, construction/layout drawings and supporting calculations to be provided. To facilitate the submission of this further information, we would advise the detailed design condition be attached to the application.”*



As a result of the above conditions are recommended requiring a detailed sustainable surface water drainage scheme, and a verification report.

- 7.11 Lower Medway Internal Drainage Board (LMIDB) – Initially objected to the application for the following reasons:

*“I am a little concerned that there will be a loss of natural surface water storage ditches within the boundary of the site. I would like to see these ditches replaced elsewhere.*

*I also have concerns the southern boundary ditch which is being retained has no access strip for future maintenance because the ditch is sandwiched between the A249 and the boundary fence. It means should the boundary ditch ever require to be dredged out there is no room for a machine.*

*The applicant will need to apply for Land Drainage Consent from the LMIDB to get permission to move or remove or infill any current ditches and to discharge any surface water into them.”*

Discussions continued to take place between the applicant and the LMIDB, and further to updated details being provided I received further comments as follows:

*“I am writing to officially announce that the LMIDB is removing it’s holding objection on the planning application 19/502969, Aldi development, Neats Court, Sheppey.*

*We have recommended that the developer continues to work with the KCC SuDS team as the planning phase progresses in order to search out potential areas for improvement to the proposed system. This would be especially welcome in areas that could retain natural watercourse where possible.*

*However, we are now satisfied that ecological, flood risk and maintenance issues presented by Mike Watson and Peter Dowling on behalf of the LMIDB have been addressed under the plans presented. This does not represent consent from the LMIDB regarding discharge, as this is a separate issue that will be addressed in the future.”*

- 7.12 SBC Environmental Protection Team – *“Having reviewed this application, I have paid particular attention to the Sharps Redmore Noise Report submitted with the application, and the recommended mitigation measures contained therein. I have previously worked on similar applications by Aldi where nearby residential properties were potentially affected, whereby a Delivery Management Plan was submitted, detailing all the measures to be imposed to prevent noise nuisance to neighbouring premises from the service/delivery area. As the noise report recommends a number of specific measures, along with the production of a Delivery Management Plan itself (details can be found in para 6.13) I have recommended that such a document be submitted by condition.”* Conditions recommended relating to hours of construction; details of any mechanical ventilation system; code of construction practice; details of acoustic barrier; and a delivery management plan.

- 7.13 KCC Archaeology – Advised that with respect to buried archaeology, we would have expected the application to include a desk-based assessment to explain the potential impact on archaeological remains. An assessment has however been previously provided for the adjacent Medichem development proposals and the archaeological potential of the

present site is similar. The site lies on the former shoreline of Sheppey on the edge of the former marshlands. These have been exploited since prehistoric times and excavations both for the construction of the Queenborough bypass and the business and retail development at Neats Court to the south and southeast have identified a range of important archaeological remains of Bronze Age, Iron Age, Roman, Saxon and medieval date. These included a rare, submerged Bronze Age barrow with Iron Age burials inserted and clusters of Iron Age and Roman cremations on the former shorelines.

My advice, as for the adjacent site is that a staged programme of archaeological investigation is an appropriate response and that can be secured through an appropriate condition for a programme of archaeological work. The archaeological programme should commence with a stage of trial trenching which would inform subsequent stages of the programme of mitigation.

- 7.14 KCC Ecology – Initially advised *“that that there is a need for additional information to be submitted prior to determination of the planning application.*

*The submitted ecological information has detailed the following species are present/likely to be present within the site: • Water vole • Slow Worms and Common Lizards • Great Crested Newts • Foraging/commuting Bats • Breeding and Wintering Birds • Hedgehogs (likely) • Invertebrates (Likely)*

*A joint ecological mitigation strategy has been produced in conjunction with the adjacent development 17/501010/FULL. During the determination of planning application 17/501010/FULL we had detailed discussions with the ecologist and we agreed that the proposed joint mitigation approach was acceptable.*

*We have re-reviewed the Ecological Mitigation Strategy (Native Ecology; February 2019) and we highlight that the layout within the mitigation strategy does not match the site layout for this application – in particular this application is proposing to create a footpath along the eastern boundary of the mitigation area and therefore reducing the mitigation area.*

*We advise that the principle of the ecological mitigation is still acceptable, but we advise that it must be updated to take in to account the revised site plan for this application OR the site plan must be revised to reflect what is detailed within the ecological mitigation strategy.*

*We highlight that if the option of updating the ecological mitigation strategy is implemented there may be a need for additional enhancements to be incorporated into the mitigation area and wider site to increase the carrying capacity of the receptor site. We highlight that from reviewing the site plan there are opportunities within the wider site to include enhancements – particularly along the northern boundary where currently it is proposed to have amenity grassland.*

*Prior to determination we advise that there is a need for an updated Ecological Mitigation Strategy and/or Site plan to be submitted to demonstrate that the proposed mitigation can be implemented.”*

As a result of the above a further Ecological Assessment and Ecological Mitigation Strategy was submitted. On this basis I re-consulted with KCC Ecology who commented as follows:

*“We previously raised concerns about the proposed water vole mitigation as the main water vole mitigation is to be carried out as part of application 17/501010/FULL which has yet to be implemented.*

*The submitted information has detailed that any water voles in ditch 1 will be moved into the adjacent habitat (not within the applicant’s ownership) – to address this concern the ecologist has provided the following information:*

[Applicant’s ecologist] *“The development will result in the loss of approximately 36 metres of ditch D1. The aim of the displacement exercise is to encourage any Water Vole present within the development site into the remaining 183 metres of ditch D1 present off-site.*

*Ecology Solutions conducted an update Water Vole survey on 4th June 2020 with an employee from Derek Gow Associates (DGA) to determine the size of the Water Vole population present on site, and the level of mitigation required. All ditches across the site (and adjacent area) were reviewed and surveyed for the presence of Water Voles.*

*Both of the on-site ditches, along with the ditch adjacent to the southern boundary were dry - and although there was some old evidence of feeding and a potential old burrow - there was no recent field signs to suggest that Water Voles are using the ditches at this time.*

*If Water Vole repopulates the ditches over the course of 2020, it is not considered likely to be at a level that cannot be accommodated within the off-site length of ditch D1. This is also the assessment of DGA and shall ensure the loss of the ditch on site can be complete under their licence.*

*The surveys and assessment of the ditch and particularly the lengths that will be affected by the proposals demonstrates these are not of high importance to any local Water Vole population and potentially only used as their suitability with high levels of precipitation occurs. If the adjacent scheme comes forward then they shall implement the necessary mitigation as required to ensure the favourable conservation status of the local Water Vole is maintained if this does not come forward the loss of the small section of ditch from the ALDI site would have a negligible impact on the Water Vole population.”*

[KCC Ecology] *We have reviewed the additional information and we are satisfied that the proposed mitigation is appropriate. We advise that if planning permission is granted the water vole mitigation detailed within the Ecological Assessment, Ecology Solutions, October 19 is implemented prior to any works commencing.*

*Evidence of water vole were recorded in ditch 2 - We acknowledge that the proposal will result in enhancements to ditch 2 however it is directly adjacent to the A249 and therefore there is a need to ensure that any enhancements implemented will not be impacted/lost by ongoing highways maintenance requirements.*

*Therefore, to address this point we suggest that any enhancements implemented are designed to ensure they will not be impacted by highways maintenance, and we are satisfied that this can be provided via a condition.*

*We previously raised concerns about the proposal to displace the reptiles to the southern boundary which may be impacted by on going highways maintenance. To address this point the applicant has provided the following information confirming that a reptile translocation will be carried out and moved to the onsite receptor site.*

*[Applicant's Ecologist] "Although the Ecological Assessment recommends passive displacement as the most suitable mitigation measure at the time of writing, it goes on to say that - However, it is possible that passive displacement may not prove to be the most appropriate method in all circumstances, for example if the direction of displacement would not encourage reptiles to move into areas of larger suitable habitat, or where fragmentation is an issue. In such cases a more formal capture and translocation exercise will be undertaken - We have already taken the view that a full translocation will be required with the receptor site being isolated from the wider grazing regime to ensure a suitable sward structure can and will develop."*

*[KCC Ecology] We advise that this information has address our concerns but advise that since it's unclear within the Ecological Assessment an updated mitigation strategy must be submitted, and it must demonstrate that it will be capable of supporting the reptiles when they are translocated. We are satisfied that this can be provided as a condition.*

*We previously raised concerns about the proposed landscaping plans for the receptor site and our concerns that there were too many trees/shrubs are to be planted within the ecological mitigation area within the NW of the site.*

*[Applicant's Ecologist] "We have reviewed the proposals and count six trees and no shrubs in the mitigation area on the Landscape Plan. All other symbols are hibernacula and log piles. We were consulted during the design of the area and will ensure it is fit for purpose for supporting the moved reptiles. As you will note this is connected to the wider area and until the adjacent scheme comes forward and delivers its own mitigation any reptiles will have sufficient habitat provision to ensure they are maintained at a favourable conservation status."*

*[KCC Ecology] Based on this information we are satisfied that the proposed landscaping plan is appropriate.*

*We advise that the site must be managed appropriately to retain the ecological interest of the site. If planning permission is granted there is a need for simple management plan to be produced if planning permission is granted.*

*There is suitable habitat for foraging/commuting bats within the site. Therefore, we recommend that any lighting condition requires the lighting plan to demonstrate the recommendations within the Bats and artificial lighting in the UK document (Bat Conservation Trust and Institution of Lighting Professionals) have been implemented."*

## **8. BACKGROUND PAPERS AND PLANS**

8.1 The application is supported by the following documents:

- BREEAM Pre Assessment;
- Design and Access Statement
- Heritage Statement and Addendum
- Ecological Assessment;
- Economic and Retail Statement;
- Employment Note
- External Lighting Plan
- Environmental Noise Report;
- Flood Risk Assessment;
- Statement of Community Involvement;
- Sustainability Statement;
- Transport Assessment;
- Travel Plan;
- Landscape Plans,
- Site Layout Plan;
- Elevations and Floorplans.

## **9. APPRAISAL**

### Principle of Development

- 9.1 The application site lies within the built-up area boundary, the Queenborough and Rushenden regeneration area (policy regen 2 of the Local Plan) and on land allocated for employment uses (policy A 1 of the Local Plan).
- 9.2 Although the parcel of land subject to this application is an undeveloped greenfield site, the allocation of the land for development, whilst also being located within the built-up area boundary means that the principle of development is accepted.

### Site Allocation and Retail Impact

- 9.3 Notwithstanding the points made above regarding the principle of development, as also referred to, the site is allocated for employment uses under policy A 1 of the Local Plan. The policy states that planning permission will be granted for 'B' class employment uses, and notwithstanding that the use classes order was amended on 1<sup>st</sup> September 2020, this would relate to offices, research and development, industrial processes, general industrial uses and storage and distribution. The application proposes a retail use and as such in

this respect would not accord with the aims of the policy. Having said this, I note the supporting text to the policy at paragraph 6.2.4 which states:

*“Recent development has seen the emergence of the area as a retail centre to complement Sheerness town centre, but it is important that any further proposals for retail uses do not undermine the role and retail functioning of the town and other local centres or the role of this site in meeting the Island's (and Swale's) industrial floorspace needs for the plan period.”* [my emphasis]

As a result of the above, I am therefore of the view that to understand fully whether the proposal would give rise to unacceptable harm in respect of this policy that the following two issues will need to be assessed:

- whether the introduction of a retail use upon this site would undermine the vitality and viability of existing centres.
- whether the introduction of a retail use on this site would undermine the ability to meet the Isle of Sheppey and Swale's industrial floorspace needs for the plan period.

9.4 In terms of the first point, both the NPPF and policy DM 2 of the Local Plan seek to protect the vitality and viability of existing centres. In terms of the process for assessing this, firstly proposals for main town centre uses should follow a sequential test to assess potential town centre or edge of centre sites, and secondly, where the proposed floorspace is above a certain threshold, include a retail impact assessment to demonstrate what the impact of the retail development would be on the vitality and viability of an existing centre. Policy DM 2 uses the NPPF threshold that a retail impact assessment should be provided if the development exceeds 2,500sqm of gross floorspace.

9.5 A 'Planning, Economic and Retail Statement' was submitted in support of the planning application which includes a sequential approach. The sites and their assessment were as follows (n.b. the definition of 'edge of centre' is within 300m of the primary area – as defined by the Local Plan proposals map):

- Rose Street and Rose Street South Car Parks, Sheerness (edge of centre) – these sites were discounted as they were not available due to being in use as car parks and not suitable as they are too small and dissected by Rose Street. The site is also used for Sheerness Market.
- Cross Street Car Park, Sheerness (edge of centre) – this site was discounted as it is not available due to being used as a car park and is not suitable as it is too small.
- Land at Trinity Road, Sheerness (edge of centre) - this site was discounted as it is not available due to planning permission being granted for residential development and not suitable as it is too small.
- Tesco Car Park, Bridge Road, Sheerness (edge of centre) - this site was discounted as it is not available due to its continued use as the car park for Tesco, regardless that it is considered suitable.

- Arriva Bus Depot, Bridge Road, Sheerness (edge of centre) - this site was discounted as it is not available as it is in continued use as a bus depot and not suitable as it is too small.
  - Existing Aldi store, Millennium Way, Sheerness (edge of centre) – although the site is available on the basis that it is operated by the applicant, the site was discounted because it is too small for the operator’s modern business requirements.
- 9.6 To assess the applicant’s approach to the sequential assessment, a retail consultant (Lambert Smith Hampton (LSH)) was employed to firstly advise on this matter, but also to provide advice in respect of the retail impact of the proposal upon the vitality and viability of existing centres.
- 9.7 Officers considered that the site search parameters in respect of Sheerness and the town centre, in line with policy DM 2 was appropriate.
- 9.8 As advised, LSH were tasked to review the applicant’s Retail Impact Assessment by Planning Potential (PP), and in December 2021 provided Swale Borough Council with their initial findings, and concluded that:
- The Sequential Test had been passed
  - The applicant is seeking permission for a new Class A1 ‘Limited Assorted Discounter’ (‘LAD’) store of 1,933 sqm gross to be operated by ALDI. The proposal will facilitate the relocation of Aldi from its existing store in Sheerness to Neatscourt.
  - Our review has focused on the impact assessment prepared by Planning Potential (‘PP’) on behalf of the applicant and set out in their ‘Planning and Economic Retail Statement’ (‘PERS’). The review has been prepared in the context of national and local plan policy. We have also taken account of other important material considerations (including evidence-based studies).
  - Based upon our detailed review and appraisal of the retail planning evidence submitted by the PP in support of their impact assessment, we have concerns that PP have not fully explored the potential impact of the proposed scheme, particularly in respect to:
    1. the sales densities applied to estimate the uplift in convenience goods floorspace, which we consider to be undervalued.
    2. no attempt to estimate the total comparison goods turnover of the proposed store and associated trade diversion and impact.
    3. no consideration on the potential for the proposed store to draw trade from other centres in the retail catchment through an uplift in market share; and
    4. not undertaking a new assessment on the impact of the proposal on linked trips with town centre businesses.
  - However, the assessment as it stands already points to a significant adverse impact on not just the convenience goods turnover of Sheerness Town Centre, but also its total retail turnover. Therefore, at this stage we recommend that planning permission is

refused on the basis that the proposal would lead to an unacceptable and significantly adverse impact on Sheerness Town Centre in line with para. 90b and 91 of the NPPF. However, we consider that the applicant and PP should be given the opportunity to respond to the comments raised in this appraisal before a final recommendation is made by officers.

- Finally, as the decision-taker in this case the local planning authority will have to apply the planning balance and weigh our advice against any wider impacts and/or benefits arising from the planning application.

9.9 Subsequently, the applicant produced Addendum Reports in May and August 2022, which were again reviewed by LSH, and in October 2022 advised (see section 6 of the report, which is attached in full as Appendix 1 to this Report):

- In LSH's Appraisal we highlighted that Sheerness Town Centre serves an important food shopping role. At the time, the market share evidence from the Swale Borough Council Retail and Leisure Needs Assessment 2018 ('RLNA') showed that convenience goods turnover accounted for 61% of the town's total retail turnover in 2021. PP's updated market share assessment informed by a new HTIS shows that convenience goods turnover accounts a higher proportion of total retail turnover in 2022 at 64%.
- Foodstores have a very important role in supporting footfall in town centres and there are many examples where the loss of foodstore anchors to out of centre locations has undermined the vitality and viability of a town centre.
- We do not accept PP's position that the displacement of Aldi Sheerness's turnover from Sheerness Town Centre does not represent an impact. This turnover or catchment expenditure captured by Aldi forms part of the town's overall economy. It represents retained expenditure that could move between different stores.
- The HTIS has identified linked trips, but only assessed those linked to trips made by respondents who choose Aldi as their first-choice store for main food shopping. It does not take account of linked trips made by other customers and it does not take account of the value that other businesses place on having Aldi as trading partner in the town centre. The relocation of Aldi to an out of centre location some 2.5 miles from the town centre could impact investor confidence in the town centre. The intention for Home Bargains to open in the town centre will provide some mitigation in respect of investor and shopper confidence but it does not have the same brand impact and does not make up for the town centre losing a top four grocery retailer.
- It has been highlighted that based on data contained in the revised RIA in the RA that the relocation of Aldi will result in an impact of a around third on Sheerness' convenience goods turnover even after allowing for potential uplift in town centre turnover from Home Bargains. Given that the majority of town centre's retail turnover is supported by convenience retail it is material to consider impact on the town's convenience turnover separate from total turnover. On that basis we consider that impact associated with the relocation of Aldi to Queenborough Road will have a significant adverse impact on Sheerness Town Centre.
- Turning to impact on total turnover, the level of impact remains significantly high and



reducing only slightly if Home Bargains occupies Aldi's existing unit.

- Aldi has stated their intention to close their store in Sheerness if planning permission is not obtained. While this would still result in an impact on the town center's retained turnover it is reasonable to expect there would be a better opportunity for existing stores in Sheerness to capture Aldi's market share of catchment expenditure than if Aldi relocates to Queenborough Road.
- While Sheerness Town Centre appears to be performing adequately based on the findings of the health check assessment (contained in the PERS), the application is being considered at a time when town centre economies are particularly vulnerable to economic uncertainties. Many businesses are still recovering from the impact on trade from the Government's response to the COVID-19 pandemic, while the cost-of-living crisis and rise in interest rates is impacting household expenditure. Even putting these cautions aside, we consider that the monetary and percentage impact levels on Sheerness's total retail turnover (and particularly more critically on convenience goods turnover) represents a significant adverse impact on consumer choice and threatens the vitality and viability of Sheerness Town Centre.
- Therefore, on balance we recommend that planning permission is refused on the basis that the proposal would lead to an unacceptable and significantly adverse impact on Sheerness Town Centre in line with paragraph 90b and 91 of the NPPF.
- Finally, as the decision-taker in this case the local planning authority will have to apply the planning balance and weigh our advice against any wider impacts and/or benefits arising from the planning application.

Queenborough and Rushenden: Regeneration Area and Queenborough and Rushenden Masterplans

- 9.10 As set out above, the site also lies within the Queenborough and Rushenden Regeneration Area (policy regen 2). The supporting text to this policy sets out that *"Recent development has seen the emergence of the Neatscourt area as a retail centre to complement Sheerness town centre. However, it is important that if further proposals for retail uses are brought forward, they do not undermine the role and retail function of Sheerness town centre and other local centres or undermine the ability of the site to meet the identified needs for industrial floorspace for Sheppey (and the Borough) for the local plan period."*
- 9.11 Considering the assessment carried out above, I have concluded that the proposed development would give rise to significant harm to existing centres (notably Sheerness)
- 9.12 However, the proposal would not give rise to material harm in respect of allowing industrial floorspace needs to be met. The policy itself includes very similar wording where it states, *"proposals will, as appropriate provide, at Neatscourt, commercial floorspace unless this would adversely impact upon the vitality of Sheerness town centre or compromise the achievement of meeting industrial floorspace needs as required for the Local Plan period."* As such, I am of the view that the proposal would be in accordance with this aspect of the policy. There are other matters required to be addressed as part of this policy, such as design, sustainable design and construction, landscaping and

biodiversity which will be explored in further detail below, however, subject to these matters being considered acceptable I can identify no conflict with this policy.

- 9.13 These proposals would also prejudice the Queenborough and Rushenden Masterplans, which do not include retail development.

#### Visual Impact

- 9.14 Policy CP 4 of the Local Plan requires that development proposals should be of high-quality design, appropriate to their surroundings, deliver safe attractive places, promote / reinforce local distinctiveness, make safe connections, and provide high standard of planting and trees. The NPPF also states that good design “*is a key aspect of sustainable development*”, also setting out amongst other matters that decisions should ensure that developments add to the quality of the area; are sympathetic to local character and history, including the built environment and landscape setting.
- 9.15 Upon submission of the application, I was disappointed with the design of the building on the basis that, in most respects, it was what I considered to be the applicant’s standard approach to new development. The site is prominent in views from public vantage points and is of a scale that it will be readily noticeable. Therefore, I considered that the proposal fell short of the overarching aims of policy CP 4 and the NPPF. My concerns related to how the design failed to respond to the surrounding patterns and form of development including the use of materials, and also how the site responded to the local landscape character. As a result, I informed the agent of my concerns and requested amendments to address these.
- 9.16 Following the above assessment, a significant amount of discussion has taken place between the agent, the applicant’s architect, and Officers. Initially, an attempt was made to justify the development which had been submitted, without seeking to make substantial changes. I was not convinced by the arguments put forward and reiterated that the design should promote local distinctiveness, paying attention to design cues from surrounding built development and the form of the landscape in respect of Furze Hill. I was also of the view that the building should have a horizontal emphasis. Further to detailed discussions regarding this point, a substantial amendment was made to the design of the building. Most noticeably, a curved roof element has been introduced over approximately 40% of the building. The curved roof element is located on the south-western side of the building, and as such will be readily seen when passing the site from the A249, in either direction. I believe that this is appropriate as it relates to existing patterns of development in the vicinity of the site and the landscape character in terms of Furze Hill. In relation to the horizontal emphasis, this has been reinforced by the introduction of vertical coloured banding and is in my view much more responsive to the site context. In respect of materials, a mixture of brickwork and cladding is proposed. I consider this to be appropriate. Overall, I am of the view that the design of the building, based on the amendments received, now performs well in respect of the requirements of both national and local policy, including the requirements for the Queenborough and Rushenden regeneration area as discussed above.
- 9.17 As set out above, aside from the building itself, the site includes a dedicated surface level car park and areas of landscaping. Upon receipt of the original application, I raised

several points in respect of the landscaping details and considered that additional landscaping should be introduced within and around the car park, along the eastern boundary of the main access road and to the rear of the building. I also took the view that some of the species should be amended to reflect the surrounding landscape character more appropriately and to ensure the long-term benefits of the planting.

- 9.18 Several amendments have been made to the landscaping proposals and most of the points raised have in my opinion been addressed satisfactorily. A mixed species native hedge runs around the perimeter of approximately 75% of the store, along the western side of the car park, around much of the ecological mitigation area (discussed in more detail below) and the northern boundary of the site close to access road. There is additional tree planting along the western boundary of the site, close to the store on the eastern boundary and lining either side of the access road providing the route from the existing roundabout to the service area and the car park. There is also a substantial amount of buffer planting close to the boundary with the adjacent residential property. In total 48 trees are proposed along with hedges, buffer planting and wildflowers.
- 9.19 Having said the above, as set out, I did seek additional planting in the car parking and along the boundary of the site adjacent to the A249. Apart from the existing landscaping along the boundary of the site, and a section of proposed hedge adjacent to the boundary of the existing store there is no additional planting in this area. The agent has set out that this is due to the drainage ditch which runs along this part of the site, and the restrictions in terms of planting in this area. Although this would appear to be a reasonable argument, this does leave the site, and in particular the car park quite visually exposed from the south-west. Furthermore, in terms of planting in the car park, there have been a limited number of trees and a landscaping bed introduced. This provides some softening of this hard landscaped area, but I believe that the proposals could have gone further in this regard. The agent's reasoning for not providing more is due to the service margins within the site (gas pipeline and water mains) and the requirement for the below ground drainage attenuation tank. Although this is the case, the car park will introduce a large expanse of hardstanding with limited planting.
- 9.20 Overall, I am of the view that the planting in many parts of the site has been well considered and will provide for both benefits in respect of visual amenities and biodiversity. However, I have identified some harm caused by the areas of the site where I consider that, although quite possibly for understandable reasons, there is a lack of planting. Taking these on balance I believe that the positive aspects of the landscaping outweigh the harm that has been identified. Furthermore, taking the site in respect of the design of the building and the landscaping I believe that many of the aims of local and national policy regarding these issues have been satisfied. Therefore, on balance I consider the proposals to be acceptable in this regard.

#### Landscape Impact

- 9.21 In terms of landscape Impact, there are Areas of High Landscape Value (AHLV) within close proximity of the applications site, and in this regard, Policy DM24 of the adopted Local Plan seeks to conserve and enhance these valued landscapes; in addition, paragraph 174 of The National Planning Policy Framework establishes the same principles as Policy DM24.

- 9.22 In terms of the impacts of the proposed development upon the AHLV, the site is situated approximately 500 metres to the north of the nearest point of the landscape area. The proposal would therefore have a neutral impact upon the sensitivities of the Areas of High Landscape Value, consistent with the provisions of Policy DM24 of the adopted Local Plan and paragraph 174 of the National Planning Policy Framework.
- 9.23 The proposal has also been assessed against the Swale BC Landscape and Biodiversity SPD as set out in paragraph 5.7 of this Report, as again, is considered to have a neutral impact upon the sensitivities of the *Elmley Marshes*.

#### Residential Amenity

- 9.24 As set out above, the site wraps around on two sides an existing residential property, known as 'The White House.' The next closest residential property is Neats Court Manor, approximately 85m to the east of the application site and then immediately to the east of this property a further six dwellings fronting Queenborough Road.
- 9.25 The closest part of the proposed foodstore lies approximately 40m from the closest residential property. The foodstore is 9m in height to the highest point of the roof and 5.2m to the lowest part. The lowest part of the roof is the part of the proposed building with the closest relationship to the residential property. However, due to this separation distance I do not believe that the proposal would give rise to harmful impacts in respect of overshadowing or loss of light.
- 9.26 I do note the objection that has been raised in respect of the proposed 1.8m fence along the boundary with the adjacent residential property and that the foot / cycle path should be located further away. The path is located, at its closest point, 4m away from the boundary of the property. The fence is in my view of a standard height. The path, if it was located further away would be located towards the centre of the ecological mitigation area, the location of which has already been agreed in conjunction with the planning permission issued for the neighbouring site. However, I consider the distance, combined with the height of the fence to be sufficient to limit any overlooking opportunities.
- 9.27 An objection has also been raised on the basis that noise levels will be above WHO [World Health Organisation] guidelines and therefore give rise to unacceptable harm. In respect of this issue, a noise assessment has been submitted in support of the application and considers that there are three main noise sources associated with the development. These are car parking activity; fixed mechanical plant noise; and the service area / deliveries. Current noise levels have been measured, which predominately relates to traffic noise from the A249, and an assessment made of the predicted noise levels caused by the activities associated with the development. The conclusion drawn is that the noise from car parking activity will be below both day and night time guidelines, the plant noise could be controlled by condition requiring details and the noise from deliveries will be acceptable if they are restricted to the following hours – Monday to Friday 0600-2300; Saturday and Sunday 0700-2300). In addition to this, a Delivery Management Plan is recommended by the report, to ensure there is no use of tonal reversing alarms, switching off refrigeration units, no use of roll cages and no more than 1 delivery vehicle in the service yard at one time. An acoustic fence, 1.8m in height has also been proposed along the boundary of the site with the adjacent residential property.

- 9.28 To reach a view on the above assessment I have consulted with the Council's Environmental Protection Team. Very careful attention has been paid to the contents of the noise assessment. The conclusions drawn by the Environmental Protection Team are that any permission granted should be subject to a number of conditions, if approved. This will enable the noise elements of the development to be controlled. The conditions relate to construction hours, details of mechanical ventilation, a code of construction practice; details of the acoustic fence; delivery hours and a Delivery Management Plan to include details of the specific measures as set out in the noise assessment.
- 9.29 In terms of the store opening hours, these were not set out when the application was first submitted. I have subsequently discussed this with the agent who has sought opening hours of 8am to 10pm on Monday to Saturdays, Bank Holidays and Public Holidays, and on Sundays, any 6 hours between 10am and 6pm. On this basis I have liaised with the Council's Environmental Protection Team who believe that considering the conclusions of the noise assessment that this would be acceptable. I have also discussed the requested code of construction practice condition with the Council's Environmental Protection Team. I was of the view that several the measures were either unnecessary due to the context of the development (such as a programme for carrying out the work) or would be dealt with by separate consultees (such as surface water).
- 9.30 Considering the above assessment, I am of the view that the proposal, would not give rise to significant harm to residential amenities.

#### Highway Impacts

- 9.31 Policy DM6 of the Local Plan requires developments that generate significant traffic to include a Transport Assessment with any application. Where impacts from development on traffic generation would be more than the capacity of the highway network, improvements to the network as agreed by the Borough Council and Highway Authority will be expected. If cumulative impacts of development are severe, then the development will be refused.
- 9.32 Policy DM6 also requires developments to demonstrate that opportunities for sustainable transport modes have been taken up. Developments should include provision for cyclists and pedestrians and include facilities for low emission vehicles.
- 9.33 In this case, the application proposes that vehicular access to the site is provided by a new dedicated arm from the Thomsett Way / A249 roundabout. Due to the location of the site, there are potential impacts upon both the local and strategic highway network. As a result of this I have consulted with both KCC Highways & Transportation and Highways England.
- 9.34 In terms of the local road network, further to additional information being provided, as set out in the consultations section above, KCC Highways & Transportation consider that the net effect of the development on the assessed junctions is marginal compared with background growth and committed development.
- 9.35 There was an initial request for an additional pedestrian crossing point being provided across the A249 from this site to the existing retail units at Neats Court, a point which I note that Queenborough Town Council also raised in their objection. However, Highways

England have ruled out this possibility and as such it has not been pursued. There is however provision for a foot / cycle path running from Queenborough Corner to Neats Court Farm. This corresponds with the extent of the link which was agreed by the Chair of Planning Committee and the Ward Members as per the resolution when the proposal was previously reported to Planning Committee.

- 9.36 I also note that the Town Council have objected on the grounds that *“There is no pedestrian crossing in the proximity to any access area, of the planned site.”* I have assumed this to mean to the foot / cycle path on the opposite side of Queenborough Road. I have raised this with KCC Highways & Transportation who do not believe that a controlled crossing is required. The reason for this is due to the levels of visibility along Queenborough Road and the width of the carriageway that uncontrolled crossing is acceptable in respect of highway safety. It should be noted that outside of the planning process it is proposed to reduce the speed limit along Queenborough Road from 40mph to 30mph. This will in my opinion make the situation safer, however, KCC Highways & Transportation have confirmed that even if it were to remain at 40mph, there would still not be a requirement for a controlled crossing from a highway safety perspective.
- 9.37 KCC Highway & Transportation also initially raised the potential for conflict between delivery vehicles and the pedestrian crossing point within the site. However, further details have been provided in that it would take the delivery vehicle less than 1 minute to complete the required manoeuvre impacting upon this part of the site. KCC Highways & Transportation accepted that the occasions upon which pedestrians would have to wait would be limited and were satisfied on this point. Upon first submission of the scheme KCC Highways & Transportation also took the view that the number of parking spaces was acceptable aside from there needing to be an additional disabled space. This has now been provided and as such this element of the scheme is considered acceptable. Upon assessment of the access details, it has also been confirmed that these meet the relevant highway standards in terms of highway amenity and safety.
- 9.38 A discussion has taken place in respect of electric vehicle charging points and KCC Highways & Transportation initially requested that 10% of the spaces are provided with electric vehicle charging points. The applicant’s Transport Consultant disputed this on the basis that Aldi customers usually come from within a 5-minute drive and the length of time that customers are in the car park is not sufficient to make this worthwhile. In addition, it is considered that the power required to supply 10% of the spaces would be in excess of the power supply required for the entirety of the store. As such the applicant’s Transport Consultant considered that the requirement for 10% was unnecessary and unreasonable, and therefore did not meet the tests for a planning condition to be imposed. They were however, prepared to provide 2 electric vehicle charging points. KCC Highways & Transportation agreed with this assessment and recommended a condition on this basis.
- 9.39 Having considered this, I firstly consider Swale’s adopted (May 2020) Parking Standards SPD. This sets out that for non-residential uses, 10% of spaces will be provided with electric vehicle charging facilities. I also recognise that there is technology which allows for faster charging times and that it is reasonable to assume that technology will develop in this respect. On this basis, I believe that this matter could be dealt with via a condition, if necessary and approved.

- 9.40 Overall, I note that KCC Highways & Transportation raise no objection subject to several conditions. On this basis I do not believe that the proposal would give rise to unacceptable impacts upon the safety or amenity of the local highway network.
- 9.41 As stated above, I have also consulted with Highways England. As set out in the consultation section above, there has been a detailed assessment carried out on the impact of the proposal upon the SRN. Highways England have, further to the submission of revised technical information considered that subject to conditions, the impact upon the safety, reliability and operation of the SRN would not be unacceptable.
- 9.42 After Highways England providing their comments, further points of clarification have been required in respect of the ownership of a drainage ditch, close to the boundary with the A249. Further to detailed discussions between the parties it has been confirmed that the ditch lies within the application site (and I have not received an objection from the Lead Local Flood Authority KCC who are the statutory consultee for these matters). Highways England have also requested a condition requiring that no surface water shall run off the site onto the highway or onto any drainage system connected to the highway.
- 9.43 In addition, , Highways England also raised the point that they have maintenance responsibilities in respect of water vole habitat in the ditch referred to above (which it has been confirmed lies within the site boundary). KCC Ecology have assessed this point and consider that although there is evidence of water vole in this ditch, the proposal will result in enhancements. Conditions have been recommended in this respect, in addition to a condition which will require the applicant to carry out the long-term management of the ditch in question. The applicant accepts this requirement. As a result, I am of the view that the relevant consultees have provided the responses necessary for me to conclude that this issue has been satisfactorily dealt with.

#### Impact upon designated heritage assets

- 9.44 The application site lies approximately 85m away from the grade II listed Neats Court Manor. The listed building is a two-storey dwelling of red brickwork (browns, reds and touches of cream polychromatic brickwork laid in Flemish bond) on an L-shape plan with a red tiled roof with shallow eaves, having two small rooftop chimneys positioned symmetrically to each gable end. The Council has a statutory duty which is also reflected in local and national policies to preserve the setting of the listed building.
- 9.45 A Heritage Statement was submitted in support of the application and having considered the details I was of the view that further information should be provided in respect of the buildings which surround the heritage asset; a visual impact assessment of the development in the context of the heritage assets and further details in respect of whether any of the surrounding buildings are curtilage listed.
- 9.46 The Heritage Statement submitted with the application concluded that the impact upon the setting of the listed building would be 'negligible'. However, based upon the scale, but more importantly the standardised approach to design I considered at this point that the proposal, in line with paragraph 196 of the NPPF, would give rise to 'less than substantial' harm to the setting of the listed building. Based on the above, a response from the agent was provided setting out that not only is the site allocated for large scale employment uses, but land closer to the listed building is also allocated for the same uses. As a result,

the Council has already undertaken a significant assessment as to the principle of development coming forward in these locations in terms of the impact upon the heritage asset.

- 9.47 Although the principle of development on this site is recognised, I remained of the view that the further information set out above should be provided and reiterated this. As a result, an addendum to the Heritage Statement was submitted. This provided more information regarding the buildings surrounding Neats Court Manor, although not to the extent that had originally been requested. Notwithstanding this, the visual impact assessment submitted leads me to conclude that I remain of the view that the proposal would lead to 'less than substantial harm' to the setting of the listed building.
- 9.48 Further to the above, the design of the building and the landscaping has been amended as discussed above. Although, on balance, I believe that the harm has reduced further, I still believe it lies within the definition of 'less than substantial'. As a result, this would, as required by paragraph 196 of the NPPF be required to be balanced against public benefits of the scheme. In relation to this, I believe that whilst the job creation should be given weight in this context, this does not outweigh the "less than substantial harm" to heritage assets locally.

#### Biodiversity

- 9.49 As described above, the application site is comprised of undeveloped grassland, there are also ditches passing through the site. The ecological information provided demonstrates that several species – water vole; slow worms and common lizards; great crested newts; foraging / commuting bats; breeding and wintering birds; hedgehogs; invertebrates - are either present, or likely to be present within the site. The application site includes a receptor site, intended to provide a joint mitigation strategy for both this site and the adjacent parcel of land (approved under ref 17/501010/FULL) to support any protected species on the site(s). Detailed discussions were held at that time, including with the Biodiversity Officer at KCC who still considers that this approach is acceptable. However, when this application was first submitted, it was noted that there was a discrepancy between the layout of the receptor area as agreed and the site layout for this scheme. As such, further information was required in respect of being able to demonstrate that the proposed mitigation can be implemented.
- 9.50 Further supporting information was provided and set out that the discrepancy has occurred due to the requirement for a footpath within the site (which sits inside the receptor site). As a result of this, further measures, such as additional hibernacula within the receptor site will ensure that although there is a slight reduction in the footprint, it retains the same habitat capacity for the number of species required. This will also allow either this development (or the development on the adjacent site) to come forward independently of one another. The details also set out that there will be enhancements to the ditch adjacent to the A249.
- 9.51 The Biodiversity Officer considers the above approach to be appropriate. In assessing the impact upon the species listed, the view reached is that subject to several conditions, including a management plan, that the impact upon protected species will be acceptably mitigated. As discussed in more detail above, there is also a range of planting proposed



on various parts of the site. As a result, I am of the view that overall that the approach to protected species and landscaping and the resultant impact upon biodiversity will be acceptable in respect of policy DM 28 and the requirements of the NPPF.

### Drainage

- 9.52 As stated, the site includes ditches, and it is proposed to infill two of these. This would generally be sought to be avoided, on the basis that it would provide natural drainage features which would also offer other benefits including from a biodiversity and visual perspective. As a result, I note that the Lead Local Flood Authority (LLFA) initially questioned the need for this. The response received was that as the location ecological receptor site was fixed, and the ditches in question were not simply confined to the perimeter of the site, development would be undeliverable on this parcel of land if the ditches were to be retained.
- 9.53 The LLFA accepted this view and having assessed the location of the ditches, although unfortunate, I also consider it to be a reasonable conclusion to draw and note that the ditch being retained is to be enhanced (as discussed in the Biodiversity section above). It should also be noted the LMIDB would need to give their consent (outside of the planning process) for these works, although as per the consultation section above, they do not raise an objection to the proposal. Aside from this, the drainage strategy is to provide permeable paving within the car park and a below ground storage tank. The scheme would also lead to the reduction in off site discharge rates, which the LLFA welcome. It is noted that the LLFA, on the basis of the receipt of further information do not object to the scheme and have requested conditions. As such consider that the proposal is acceptable in this regard.
- 9.54 Southern Water have commented that there is a public water main which crosses the site. They set out the requirements in respect of this and also recommended a condition. On this basis, consider this matter to be satisfactorily addressed.

### Sustainable design and construction

- 9.55 Policy DM 19 of the Local Plan sets out that *“All new non-residential developments over 1,000 sq m gross floor area should aim to achieve the BREEAM “Very Good” standard or equivalent as a minimum.”*
- 9.56 A Sustainability Statement has been provided with the application which sets out a number of ways, including building fabric performance; air permeability; ventilation; heating; lighting; re-usable energy and building materials as to how a BREEAM ‘very good’ rating will be achieved.
- 9.57 I have consulted with the Council’s Climate Change Officer who initially considered that information should be provided as to why the ‘very good’ score provided in the pre assessment could not be higher. The agent provided a response setting out that as the land is undeveloped and in an area of higher flood risk, credits are difficult to achieve for these aspects. In addition, the BREEAM requirements changed after the applicant had carried out their own public consultation exercise, which meant that credits were lost as the applicant was working to the previous requirements. As a result, the agent considered that the physical aspects of the building will achieve a higher score than

demonstrated in the statement submitted. On this basis the Council's Climate Change Officer considered the point to have been acceptably addressed. However, to ensure the required 'very good' rating is met, a condition would be needed to require evidence of this in the form of the relevant certification. On this basis I consider that the application is compliant with policy DM 19.

#### Archaeology

9.58 Although a desk-based assessment was not provided, the KCC Archaeological Officer notes that an assessment has been carried out for the adjacent site which will have similar archaeological potential. As a result of this, and other developments in close proximity a range of important archaeological remains of Bronze Age, Iron Age, Roman, Saxon and medieval date have been identified. Due to this, the KCC Archaeological Officer has advised that a staged programme of archaeological investigation is appropriate and has recommended a condition requiring a programme of archaeological work. As such consider that this matter has been acceptably dealt with.

### **10. OVERALL PLANNING BALANCE AND CONCLUSION**

10.1 In summary, I have been able to identify significant harm in respect of the impact of the development on the vitality and viability of Sheerness town centre, and as set out in the Heritage section above, it is considered that the proposal would cause 'less than substantial' harm to the setting of the listed building, although I believe that as assessed, on its own, this would not be outweighed by the public benefits, including job creation

10.2 The application will, however, very likely lead to the closure of the existing foodstore operated by the applicant at Millennium Way in Sheerness, however, the applicants have lined up a new retailer to potentially take the unit on.

10.3 In concluding, I have been able to identify clear conflict with the adopted local and national policies. I believe that there is some harm caused by the closure of the existing store and the impact upon the setting of the listed building, as identified above, I take the view that the benefits of the scheme, including job creation, would not outweigh these. As a result, having taken all relevant matters into consideration I recommend that planning permission is refused

### **11. RECOMMENDATION**

REFUSE, for the following reasons,

1. The proposal would lead to an unacceptable and significantly adverse impact on Sheerness Town Centre contrary to Policies A1 and DM2 (Parts 4a & b) of the Adopted Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017, and in line with paragraph 90b and 91 of the National Planning Policy Framework 2021.
2. The proposal would result in the "less than substantial harm" to the heritage assets locally in the building included in the List of Special Architectural or Historic Interest as Grade II at Neats Court Manor, contrary to Policy CP 8 (Parts 1 & 2) of the Adopted Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017, together with paragraph 196 & 202 of the National Planning Policy Framework 2021.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

