

PLANNING COMMITTEE – 6TH MARCH 2025**PART 2**

Report of the Head of Planning

PART 2Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 22/504598/FULL		
PROPOSAL Erection of Class E(a) retail store with associated parking, access, servicing and landscaping.		
SITE LOCATION Land At Queenborough Road, Isle of Sheppey, Kent, ME12 3RJ.		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions with further delegation to the Head of Planning) to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Large Major Retail Distribution/Serviceing		
REASON FOR REFERRAL TO COMMITTEE - Sheerness Town Council Objection		
WARD Queenborough and Halfway.	PARISH/TOWN COUNCIL Queenborough	APPLICANT Lidl Great Britain Ltd AGENT Carney Sweeney
DATE REGISTERED 14/10/2022	TARGET DATE 30/01/2023	CASE OFFICER Joanna Dymowska
BACKGROUND PAPERS AND INFORMATION: Documents referenced in the report are as follows:- All drawings submitted All representations received The full suite of documents submitted pursuant to the above application are available via the link below:-		

<https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RIKFCRTYI4800>

1. BACKGROUND

- 1.1 This application has been presented to Members on two previous occasions; first on the 17th of July 2023 and secondly on the 11th of January 2024, both at meetings of the Planning Committee. In both cases, the recommendation of the Officer was to grant planning permission subject to safeguarding conditions. Members resolved to grant planning permission subject to recommended conditions.
- 1.2 Following the issue of the decision notice, the Council received legal representations challenging the decision. The Council agreed to quash the permission (twice) on the ground that it had failed to properly apply the statutory test relating to the impact upon heritage assets and, more specifically, nearby listed buildings.
- 1.3 For completeness, Members are informed that challenges related to more than one ground, as set out below:-
- 1) The Council failed to apply the statutory test on the listed building nearby,
 - 2) The Council failed to take account of traffic counts,
 - 3) The Council took account of immaterial consideration relating to the 'non-existent fallback' position,
 - 4) The Council took into account immaterial considerations relating to biodiversity net gain,
 - 5) The Council misapplied the Habitats Regulations, and
 - 6) The Council stipulated unlawful planning conditions.
 - 7) The Council did not take account of the impacts if the Aldi store did not relocate from Sheerness Town Centre,
 - 8) The Council failed to have regard to Paragraph 122 of the NPPF relating to alternative use (now paragraph 127).
- 1.4 The High Court, by consent, quashed the most recent permission on 1st October 2024. Subsequently, the application is to be redetermined following thorough assessment.
- 1.5 This report and recommendation takes all material considerations into account and comprehensively reassess the application for planning permission, independently of the assessment set out in the previous reports.

SITE LOCATION AND DESCRIPTION

- 1.6 The application site measures 1.16 hectares and is comprised of undeveloped grassland. It is located between Queenborough Road and the A249, immediately to the west of the A2500 (Lower Road) roundabout and opposite Cowstead Cottages on Queenborough Road. The site is referred to in the planning history as Cowstead Corner. It is mainly flat and enclosed by a post-and-wire fence. Adjoining the site to the west is a recent development - a battery storage facility. To the north and east is the countryside and open landscape. Further beyond are the settlements of Minster (north-east) and, Eastchurch (east), Sheerness (north). To the south is Isle of Sheppey bridge and settlements of Iwade and Kemsley (although at a considerable distance from the application site).
- 1.7 The large Aldi Regional Distribution Centre is situated to the southwest of the application site and along the A249. Further to the west is Neats Court Retail Park.
- 1.8 The site is adjacent to, but falls outside of the Queenborough & Rushenden Regeneration Area. It is located within the eastern edge of the Sheerness built-up area and outside of the Important Countryside Gap. The site is currently allocated for a development for a hotel under policy A4 of the Swale Local Plan 2017. Neats Court, a Grade II Listed Building, together with the surrounding curtilage listed outbuildings, lie approximately 500m to the northwest of the site on Queenborough Road. Public Right of Way (PRoW ZS11) runs to the north of the site.

2. PLANNING HISTORY

Application site

- 2.1 **23/502916/ENVSCR**: Environmental Screening Opinion for 22/504598/FULL, where it was determined that EIA is not required.
- 2.2 **SW/09/0185**: Planning permission refused on 09.06.2009 for the use of trunk road service area, consisting of petrol filling station with petrol and heavy goods vehicle forecourts, carwash and single storey sales building, 44 bedroomed, two-storey hotel with restaurant. Car and heavy goods vehicle parking areas.

Neighbouring sites

- 2.3 **17/503032/FULL**: Planning permission granted on 30th October 2018 for the installation of an electricity battery storage facility within a new steel-framed portal building and ancillary infrastructure, including surface water attenuation. This permission has been implemented. It is noted that subsequently from grant

of permission for this site, there were other applications submitted (s.73 applications) that related to this permission.

- 2.4 **19/502969/FULL**: Planning permission granted on 22nd December 2023 for the erection of a new food store with associated parking, servicing, landscaping and new vehicular access (Aldi Store). This permission has been implemented and the store is now occupied and operational.

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for a food store of 1,906 square meters comprising 1266 sqm sales area with a 423sqm warehouse (including freezers/chillers and storage) and 217sqm ancillary staff facilities including a bakery, entrance lobby and a disabled WC. The proposed store is to operate as 'LAD' - Limited Assortment Discounter shop, currently proposed for operation by Lidl.
- 3.2 The proposed building is roughly rectangular in shape and single-storey in nature. It would be of contemporary design and feature both curved and flat roof elements, measuring 8.8 meters in height at the highest curved point of the roof and 7 meters to the lower flat part to the rear (north). The materials proposed are a mixture of brickwork, glazing and timber-effect cladding. The building would be positioned close to the western boundary (near a battery storage building), whereas the parking court would be located at the eastern portion of the site. In the east and southern areas of the site, landscaped buffer areas are proposed to deliver biodiversity and ecological mitigation, as discussed later in the report.
- 3.3 A single vehicular access is proposed onto Queenborough Road, opposite Cowstead Cottages. The new junction will incorporate a new crossing with tactile paving and a small island at the vehicular access to ensure safe crossing point. The integral car park will include 119 parking spaces, 6 of which will be disabled spaces, 8 for parents with young children, 11 EV charging parking spaces, 7 motorcycle spaces, and 12 cycle stands. The delivery/service area is proposed to be at the rear (north) of the store elevation, facing the car park.
- 3.4 Off-site highway works are incorporated into the proposed development. These will include improvements to the footway along Queenborough Road, comprising the provision of a shared cycle/footway linking the existing footway near Cowstead Cottages up to the footway provided as part of Aldi planning permission, ref. **19/502969/FULL**. The off-site works proposed under current application will be secured by and delivered under an S.278 agreement, which includes a requirement for the detailed approval by the Highways Authority.

- 3.5 In terms of landscaping and boundary treatment, the application site would be surrounded by landscaped edges comprising tree planting, lawns, planting beds and hedges on the sides of the site facing Queenborough Road, B2231 and part of the site facing A249. Tree planting is also proposed within the car park. Hedging is also proposed to enclose the car park to the eastern edge and to the front of the store in the south. A public art feature is also proposed to the southern part of the site, adjacent to the A249 frontage, as indicated on the proposed site plan (ref. AD_110 rev. G) and would be secured by condition.
- 3.6 The proposed landscaping areas will be enclosed by a 1.1m high post and rail perimeter fence around the south-east boundaries of the site. This will enable the landscaped areas to be visible from the A249 and Lower Road. A 2m high 'paladin' metal fence borders the battery plant to the west, whereas a 3m high acoustic fence would be located to the northern boundary and screened by tall landscaping features.
- 3.7 The development will create 40 jobs, a mixture of full-time and part-time roles, equating to approximately 23 full-time equivalent jobs.

4. CONSULTATION

- 4.1 One round of consultation with neighbours has been undertaken in letters sent to neighbouring occupiers. Site notices were displayed twice at the site, and the application has been advertised twice in the local press in accordance with statutory requirements. The application was advertised as constituting a departure from the Local Plan.
- 4.2 Full details of all comments are available online. To date, 38 letters/online responses have been received. 29 support the application on the following grounds:-
- Retail shop with affordable prices will be an asset for residents,
 - More workplaces for the area,
 - Lidl on the Island will reduce trip generation to Sittingbourne,
 - Accessible location,
 - Competition will contribute to economic growth.
- 4.3 9 objections have been received, raising the following concerns: -

Comment	Reference in the report
Adverse traffic impact and road safety concerns	6.54 – 6.61
A2500 should be made a dual	6.57

carriageway	
Aesthetic/Visual Impact, as the design is boring	6.33
Pedestrian safety with limited footway in Queenborough Road	6.55
Traffic assessment, and collision data inadequate	6.56, 6.59
Non-car accessibility is poor and the current footways are insufficient	6.27
Retail impact on the town centre	6.23
Conflict with site allocation	6.29 – 6.30, 7.2 – 7.5
Harm to heritage asset – Neats Court	6.72 – 6.79
Disabled parking should be closer to the entrance	6.62
Transport Assessment does not mention National Highway or their policies	6.59 – 6.61

4.4 **Minster-on-Sea Parish Council** supports the proposal, acknowledges the benefits of the scheme, and supports the creation of jobs. The Parish Council comments that: -

- Keen to ensure that the proposal meets the strategy criteria laid down by the Local Plan policy and National Planning Policy relating to the location of retail and impact upon the viability of town centers (Sheerness) and the design and landscaping to create a gateway site.
- The site is subject to a Sequential Test.
- Off-site improvement works also provide a safe environment for pedestrians and cyclists from nearby housing in Queenborough Road, Rushenden, Thistle Hill/Barton Hill Drive. A footpath on the north side of Queenborough Road from Cowstead Cottages to Neats Court Cottages should be carried out under a S278 Agreement.

4.5 **Sheerness Town Council** have objected to the application on the following grounds:

Comment	Reference in the report
No benefit to the population with no proposed public transport	6.27, 7.2-7.4
Contrary to site allocation	6.29 – 6.30, 7.2 – 7.5
No provision for active travel from Sheerness or Rushenden	6.27, 7.3-7.4
No mitigation for social and economic impact on Sheerness	6.23
Traffic congestion and impact on highway safety	6.54 – 6.61
Sheerness will lose out on job opportunities and low paid worker options	7.4

4.6 **Queenborough Parish Council** have been formally consulted, but no reply has been received to date.

REPRESENTATIONS

4.7 **Heritage Advisors:** No objections on the basis that the proposal is considered to have no harmful impact on listed buildings.

4.8 **SBC Tree Officer (Landscaping):** No objections.

4.9 **SBC Climate Change Officer:** No objection subject to a condition to achieving BREEAM 'very good' accreditation.

4.10 **Air Quality Officer:** No objections raised, the documents demonstrate that the proposed development would mitigate its impact upon air quality. Mitigation should be secured through planning.

4.11 **Mid Kent Environmental Health:** No objection subject to conditions on land contamination, noise mitigation and construction method statement.

4.12 **KCC Ecology:** No objection subject to safeguarding condition requiring ecological mitigation strategy, details of lighting, landscape environment management plan detailing BNG, details of ecological enhancements.

- 4.13 **KCC SUDs:** No objection subject to conditions
- 4.14 **KCC Archaeology:** No objection subject to condition
- 4.15 **KCC Highways:** No objection raised, subject to safeguarding conditions requiring submission of Construction Management Plan, provision of car parking spaces, vehicle loading/unloading facilities, cycle parking, provision and retention of EV charging, provision of off-site improvements including footway/cycleway along Queenborough Road, as indicated on SCP/21-746/D05 in accordance with details submitted for approval in writing. Confirms that the Highways Authority is in agreement with the methodology and data gathering used within the Transport Assessment and considers that this is representative of the highway conditions and is suitable for the use in the assessment; the data provided is robust and appropriate.
- 4.16 **National Highways:** No objection subject to conditions
- 4.17 **Natural England:** No objection
- 4.18 **Environment Agency:** No comments to make.
- 4.19 **Lower Medway Internal Drainage Board:** No objection to principle of discharging of both surface water and treated foul water into the LMIDB drainage district and to consent these discharges subject to further detail including the location of the discharge point. The developer will need to make an application for land drainage consent to the Board after the detailed drainage design has been undertaken and there is a high degree of certainty that the scheme will remain unchanged.
- 4.20 **Kent Police (Design Advisor):** No objection.
- 4.21 **Southern Water:** No objection.

5. DEVELOPMENT PLAN POLICIES

National Planning Policy Framework (NPPF)

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

- **ST 1** (Delivering sustainable development);
- **ST 2** (Development targets for jobs and homes 2014-2031);
- **ST 3** (The Swale settlement strategy)

- **ST 4** (Meeting the Local Plan development targets)
- **ST 6** (The Isle of Sheppey area strategy);
- **A4** (Land At Cowstead Corner, Queensborough)
- **CP 1** (Building a strong, competitive economy);
- **CP 4** (Requiring good design);
- **CP 8** (Conserving and enhancing the historic environment);
- **DM 1** (Maintaining and enhancing the vitality and viability of town centres and other areas)
- **DM 2** (Proposals for main town centre uses);
- **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);
- **DM29** Woodlands, Trees and Hedges
- **DM 32** (Development involving listed buildings).
- **DM 34** (Scheduled ancient monuments and archaeological sites)

Supplementary Planning Guidance/Document:

- Swale Landscape Character and Biodiversity Appraisals SPD,
- Swale Parking Standards SPD,
- Developer Contribution SPD.
- Queenborough and Rushenden Regeneration Masterplan SPD

Other material considerations:

- Air Quality and Planning Technical Guidance
- National Planning Policy Guidance
- Swale Retail & Leisure Needs Assessment (2021) and Swale Retail & Leisure Needs Assessment 2023 Capacity Update
- Local Plan Panel March 2019 – adoption of 500sqm local impact assessment threshold for retail and leisure uses.

6. ASSESSMENT

6.1 This application is reported to the Committee due to Sheerness Parish Council's objection being contrary to the Officer's recommendation. Considering these comments and the proposal that has been submitted, the main considerations in the assessment of the application are:-

- **Principle**
- **Design**
- **Landscape**

- **Living conditions**
- **Highways**
- **Impact on heritage**
- **Archaeology**
- **Biodiversity**
- **Drainage and Flood Risk**
- **Sustainable Construction**
- **Air Quality**
- **Contamination**

Principle

- 6.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The site is the subject of a specific allocation policy in the Local Plan, namely policy A4. This is policy and its application is addressed further below.
- 6.3 The National Planning Policy Framework (NPPF) states that new applications should be considered in the context of the presumption of sustainable development. Section 7 of the NPPF seeks to ensure the vitality of town centres. Paragraphs 90-95 set out the requirements for both a sequential test and impact assessments where a main town centre use (such as food retail) would be located out of the centre and where the floorspace involved exceeds 2500 m². The Swale Borough Council adopted a material consideration for the local threshold of 500 sqm to be applied to planning applications on 20 March 2019, so this lower threshold is to be applied instead. Consequently, the Retail Impact Assessment is required for this application.
- 6.4 The NPPF confirms that permission should be refused where an application fails to satisfy the sequential test or would likely significantly adversely impact investment or vitality and viability in nearby town centers.
- 6.5 Paragraph 127 of the NPPF states that planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:
- a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

- b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

6.6 Policy ST3 of the Local Plan sets out the settlement strategy for the district, prioritising the use of previously developed land within defined built up area boundaries and on sites allocated by the Local Plan in accordance with the hierarchy set out. The policy goes on to identify that the main urban centre of Sittingbourne is the primary urban focus for growth. Criteria ST3(2) is considered to be of some relevance to the location of this site. ST3(2) provides as follows:

'The other borough urban centres of Faversham and Sheerness will provide the secondary urban focus for growth at a scale and form compatible to their historic and natural assets and where it can support their roles as local centres serving their hinterland. Additionally, at Sheerness, its role and functioning will be supported by the other urban local centres within the West Sheppey Triangle to meet the Island's development needs on previously developed sites or at existing committed locations and allocation well related to the urban framework and strategic transport network.'

6.7 The application site lies within the built-up area of Sheerness, as identified on the adopted Local Plan 2017 map. Policy ST3 (2) identifies the urban centres of Sheerness as a secondary urban focus for growth which accords with the considerations set out in that paragraph. As such, new development within the built up area of Sheerness of a scale and form which meets ST3(2) would accord with the settlement strategy set out in the Local Plan. However, as is plain from the first sentence of policy ST3, that policy and the strategy which it introduces is seeking to prioritise new development to previously developed land and to sites allocated by other policies of the Local Plan. The application site is not previously developed land and, although allocated for development (by policy A4), that allocation is not for retail development but for a hotel (as is addressed in detail below). As such, policy ST3 does not provide support for the proposals, albeit it is reasonable to have some regard to the fact that the application site is within the built up area of Sheerness and is thus within tier 2 of the hierarchy of settlements within ST3. As such the application site is in a general location where some new development is envisaged to take place in accordance with the settlement hierarchy and as provided by policy ST3.

6.8 As per the Local Plan Proposals Map and the masterplan contained within the Queenborough and Rushenden Masterplan SPD (2010), the site is situated outside but is immediately adjacent to the boundary of the designated

Queenborough and Rushenden Regeneration Area. The Queenborough and Rushenden Regeneration Area is designated through Local Plan policy Regen 2, which sets out a policy framework for regenerative development within that designated area, in particular new residential, employment and community uses. The Queenborough and Rushenden Masterplan SPD (2010) and accompanying Masterplan Addendum (2014) both pre-date the adoption of the Local Plan 2017, but nonetheless set out indicative parameters and aspirations for the masterplan area. Whilst the proposals are located outside of the designated Regeneration Area as shown in the proposals map, their immediate proximity to the area are such that the economic benefits arising from the proposals would be complementary to and supportive of the regeneration that policy Regen 2 of the Local Plan is actively seeking to deliver in the designated Area.

- 6.9 The policy A4 of the Local Plan 2017 is applicable to this application, as it allocates the land subject to this application as it follows:-

Planning permission will be granted for employment uses on sites north and south of the A249 at Cowstead Corner, as shown of the Proposals Map. The northern site [application site] is allocated for a hotel (use class C1), whilst the southern site is for use classes B1, B2 and B8. Development proposals will

1. North of the A249 [this application], satisfy the Council that the design and landscape framework for the site and buildings reflect their prominent gateway location and does not include facilities associated with roadside services;

2. South of the A24, secure vehicle access from the adjacent employment land and achieve significant landscaping reflecting the sit's prominent gateway location;
3. Undertake archaeological evaluation and mitigation of impacts prior to development of either site; and
4. Be complementary to the provisions of the Queenborough/Rushehnden Masterplan SPD.

- 6.10 Given that the proposal is for retail use, it is clear that the proposed use conflicts with the allocation A4 in that the application does not propose a hotel use. A hotel marketing assessment, which surveyed 27 hotel operators, has been submitted with the application. None of the major or minor hotel operators have expressed any interest in the site, as they require town centers or more affluent locations or did not see a demand for a hotel in this location. Certain of the operators who were approached did not respond to the Applicant's enquiries and so it can reasonably be accepted that these operators are not interested in bringing forward the site for hotel use.

- 6.11 Some concerns were raised during public consultation, suggesting the content of the Applicant's letter was insufficient. Whilst the lack of copies of correspondence from operators who were contacted is noted, the information provided, although concise, is generally consistent with the lack of any applications or expressions of interest coming forward to the local planning authority for the provision of the hotel in this location, either through pre-application, formal applications, or call for sites process, through emerging local plan preparation work.
- 6.12 In light of the information provided, together with the lack of any application coming forward or interest being expressed since the adoption of the Local Plan (which has now been in excess of seven years), Officers consider it reasonable to conclude that there is no reasonable prospect of a hotel development coming forward on the application site. Officers consider that this significantly reduces the weight to be attached to the conflict with policy A4.
- 6.13 Turning to criteria 4 of policy A4, the proposed development, by virtue of its commercial nature and provision of services to a wider locality, can be considered to support broader objectives and a long-term vision for the area covered by the Queenborough/Rushenden Masterplan SPD in that it would contribute to providing services necessary for the creation of sustainable communities. Criteria 3 of policy A4 is complied with and further assessed in the archaeology section of this report.
- 6.14 At the next round of local plan making, the allocation for the site will need to be reconsidered and revised, as advised by NPPF para.127(a). In respect of para.127(b), for reasons set out in the report, the proposal is for a new retail store rather than housing or other development for which there is a demonstrable unmet need. As such, the proposal is not fully aligned with or in conformity with the approach set out in NPPF para.127(b). The proposal will nonetheless bring forward several benefits which, together with the lack of prospect of delivery of a hotel, are matters which weigh in favour of the grant of planning permission. The conflict with NPPG 129(b) is considered against the benefits that the proposal delivers within the overall planning balance later in this report.

Retail Impact and Sequential Test

- 6.15 The NPPF and policy ST1 of the Local Plan 2017 seek in effect to protect the vitality and viability of existing centres. In terms of the process for assessing this, proposals for main town centre uses should first follow a sequential test to assess potential town centre or edge-of-centre sites. As explained in policy DM2, part 4 of the Swale Local Plan 2017, where it is demonstrated that there are no suitable sites available at the sequentially preferable locations referred

to above, proposals elsewhere within built-up areas would be permitted if:-

- It is demonstrated by an impact assessment (when the proposal is above the defined floorspace threshold in NPPF) that it would not, individually or cumulatively, undermine the vitality and viability of existing town centres or other local centres and facilities and services of other locations;
- It does not materially prejudice the provision of other land uses, particularly the supply for land for 'B' uses, housing, community use and open space;
- It is well located in relation to the main road network and easily accessible by public transport, pedestrians and cyclists;

6.16 The NPPF, at paragraph 94, sets out that the Retail Impact Assessment to be 2,500 sqm, if there is no local threshold set. The assessment should include an assessment of:

- The impact of the proposal on existing, committed and planned public and private sector investment in a centre or centres within the catchment area of the proposal; and
- The impact on town centre vitality and viability, including local consumer choice and trade in the centre and wider area.

6.17 Policy DM2 requires a retail impact assessment for proposals elsewhere outside of the defined town centres, in accordance with the nationally set thresholds. Whilst there is not a local planning policy requiring a lower threshold, the Local Plan Panel adopted, as a material consideration, a local threshold of 500 square metres for retail/leisure floorspace proposals outside of designated centres in March 2019. Taking this material consideration into account, despite the scheme being below the 2,500 sqm threshold as required in the currently adopted local plan policy DM2, a RIA has been submitted in support of the scheme.

6.18 The application proposes retail use outside of the designated Town Centre boundaries and is not on the edge of the town centre and it is not allocated for retail use (as set out above, the site is allocated for hotel use through policy A4 of the Swale Local Plan 2017). The supporting text of the Local Plan, at paragraph 6.2.4 recognises that recent development has seen the emergence of a retail centre that complements Sheerness Town Centre at Neats Court Retail Park, located in close proximity and to the east of the application site, but acknowledges that any further proposals for retail uses should 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. The proposed development would appear as an extension to that commercial park. Notwithstanding, it is important and necessary to ensure that future retail proposals do not undermine the role and retail function of Sheerness Town Centre and other local centres. This is an important factor in the consideration of this application, and the impact on the vibrancy and vitality of the Sheerness Town Centre and other local centres needs to be thoroughly assessed. Therefore, notwithstanding the emergence of the Neats Court Retail Park nearby, the requirements of policy DM2 and of the NPPF concerning new retail development must be considered and applied to the current proposal.

6.19 A 'Planning and Retail Statement' (the Retail Impact Assessment - RIA) was submitted in support of the proposal, which includes the following: -

- Sequential Test
- Retail Impact Assessment reviewing the impact on Sheerness Town Centre, Neats Court Retail Park and wider catchment areas of Minster-on-Sea, Sittingbourne Town Centre, Halfway House and Iwade Local Centres.

6.20 Independent retail consultants Lambert Smith Hampton were engaged to review the submitted assessments and advise the Council on the validity and robustness of the findings. This independent review is available online and concludes that the site search parameters were in line with the NPPF and Policy DM2. It is noted that the RIA report and update letter considered two scenarios, one with Aldi store trading from town centre and a second scenario with the Aldi relocating to Queenborough Road and Home Bargains occupying the existing town centre unit.

6.21 Since the time of the assessment, the Aldi shop has already relocated and opened its new premises. Furthermore, a Town Centre former Aldi shop has now been fully occupied by Home Bargains and opened for trading. As stated above, this scenario has been considered as part of the Retail Impact Assessment submitted and as such, despite passage of time, Officers are of the view that the conclusion of the retail assessment and its independent review remain up-to-date and valid. The conclusions of the assessment can be summarised as follows:-

- The proposed development passes the sequential test, in line with the NPPF and Policy DM2 of the Local Plan.
- The level of impact upon existing, committed and planning public/private investment is acceptable;

6.22 The applicant submitted a Sequential Test which has considered six alternative sites that were also considered as part of the assessment of the previous Aldi

permission, including the previously vacant Aldi site (that is now in operation as Home Bargains so is no longer available). The applicant's Sequential Test was appraised by independent retail consultants Lambert Smith Hampton who agree with the conclusions of the Sequential Test that none of the alternative sites are suitable and/or available. Officers concur with the view of the independent retail consultants and therefore conclude that the Sequential Test is passed.

- 6.23 Turning to the impact of the proposed development on town centre viability and vitality, including consumer choice and the wider retail catchment area, the submitted independent review of the Retail Impact Assessment concludes that the solus impact on convenience turnover for Sheppey's smaller centres and for Sittingbourne is within an acceptable range and is unlikely to lead to the closure of key foodstores and convenience stores in any of the assessed centres. Officers are satisfied that the impact assessment considered the range of impacts on any relevant local centres in a sufficiently comprehensive way.
- 6.24 Regarding the cumulative impact upon the vibrancy and vitality of town centres (arising from Lidl and Aldi together), the review concluded that the proposed Lidl store will add to the overall trade diversion from Sheerness (and other centres) that will be established from the Aldi scheme. The majority of the impact upon Sheerness Town Centre has resulted from an already consented retail scheme for the new Aldi store and any adverse impacts would be driven by the relocation of Aldi rather than the uplift in cumulative impact associated with the proposed additional retail unit.
- 6.25 An updated health check of Sheerness Town Centre confirms that the town is vital and viable. Both RIAs concluded that the town centre can absorb the impact associated with the Lidl store which will mainly draw trade from the relocated Aldi store, located also on Queenborough Road and outside of town centre. For cumulative impact arising from both stores, whilst there would be an impact upon the Sheerness Town Centre, the impact principally relates to the existing out-of-centre Aldi shop, rather than the significant uplift in cumulative impact and additional diversion of trade from Sheerness to the proposed site.
- 6.26 On the basis of the above and given that the main impact relates to the already consented Aldi out-of-centre retail store, the proposed development is considered to have an acceptable impact upon the vibrancy and vitality of the Sheerness Town Centre as well as that of other local centres and thus, would comply with the policy DM2 (4)(a) of the Local Plan and the NPPF. Officers are satisfied also that the proposed development would not undermine the vitality and vibrancy of facilities and services of other locations, in line with policy DM2 of the Swale Local Plan 2017.

- 6.27 Turning to the consideration of policy DM2(4)(b), the proposed development is not allocated for housing, employment, community use or open space nor has there been any interest in development of the site for such uses. Consequently, the proposed retail use would not prejudice the provision of other uses either on the site or indeed elsewhere. For completeness and as explained above, it is not considered that a hotel development on the site is likely to come forward for the reasons stated. The site is very well located to the main road network, at the junction within of a transport corridor. With the proposed off-site improvements, it would allow and encourage sustainable movement and will result in the proposals being easily accessible by those walking or cycling, thereby complying with that part of policy DM2(4)(c) which concerns pedestrian and cycle access. However, the site and therefore the proposals will not be easily accessible by public transport. As such, that part of policy DM2(4)(c) which provides that new retail development on sites such as the application site will only be permitted if the proposals is “easily accessible” by public transport, will not be met. In terms of public transport accessibility, the NPPF recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural locations, and this should be taken into account in the decision making process. The application site is not a rural location but is an out of town centre location on the very edge of the built-up area of Sheerness. As such, opportunities of public transport can be expected to be and will be limited. However, and be that as it may, it is the case that the proposals are not fully in accordance with DM2(4). This is considered further in the planning balance section below.
- 6.28 If the Council are minded to grant planning permission, the Independent Assessment strongly advises that appropriate planning conditions are put in place that restricts the occupation of the foodstore for a LAD (Limited Assortment Discounter), as this is basis of the appraisal of the retail planning merits of the proposal and a different form of retailing (including a different form of convenience retailing) may give rise to different impacts, not assessed in the retail assessment. The store size, including the split between convenience and comparison goods sales area proposed should also be secured by condition. The proposed conditions are necessary, enforceable and are considered to pass conditions tests and consequently have been included in the recommendation.
- 6.29 It is acknowledged that a retail store would be a departure from the Local Plan allocation policy A4 for the site as it does not propose a hotel use. As such, conflict with policy A4 is identified as well as with NPPF para.127(b), and it has to be considered whether there are other material planning considerations that would outweigh the conflict with these policies. However, as advised above, it is considered that there is currently no apparent or likely demand for hotel use

in this location and no application or enquiry has been put forward for such use since the adoption of the development plan. As such, the conflict with policy A4 should be given limited weight. Set against this, the proposed development would have positive economic and other impacts, in terms of job creation and expenditure, as it would provide 40 jobs at the store with associated additional employment generation. e.g., delivery drivers, cleaners, building and grounds maintenance, construction workers. The need for additional workplaces on the Island has been widely reported in the public consultation as well as in the aims and objectives of the Local Plan, for example, in policy ST6, which aims at bringing forward economic development on allocated sites as available on the Island. An assessment of overall compliance with the development plan and the application of the s.38(6) test is addressed below.

- 6.30 In conclusions, the submitted documents, concurred with by independent retail assessment, demonstrate that there are no other alternative sites that could accommodate the proposed development and the Sequential Test is therefore passed. Furthermore, following the independent assessment of the Planning and Retail Assessment, it has been successfully demonstrated that the introduction of retail use in this location will not unacceptably undermine the vitality and viability of the nearby town and local centres and will allow healthy competition between some retail providers. On this basis, the proposed development complies with policy DM2 of the Local Plan 2017. On the basis of the information available, it is accepted that the prospect of a hotel coming forward in the foreseeable future since the Local Plan allocation is unlikely, and there is no evidence to demonstrate to the contrary. Moreover, the proposed development would contribute in a positive way to creating sustainable communities and allowing retail provision within accessible distance to Minster-on-Sea and surrounding settlements. There are also additional benefits arising from the proposed development in the form of permanent employment opportunities and short-term construction employment, as discussed above. The economic benefits of the scheme are afforded significant weight and discussed further in the planning balance.

Design and Visual Impact

- 6.31 Policies CP4 and DM14 of the Local Plan require that development proposals should be of high-quality design, appropriate to their surroundings and to deliver safe, attractive places, promote / reinforce local distinctiveness, make safe connections, and provide a high standards of planting and trees.
- 6.32 The NPPF also states that the creation of high-quality, sustainable buildings and places is fundamental to what the planning and development process should achieve, as set out in chapter 12. Paragraph 135 sets out that planning decisions should ensure that developments will function well and add to the

overall quality of the area, are visually attractive, are sympathetic to local character and establish or maintain a strong sense of place.

- 6.33 The site is prominent from the surrounding roads and forms a 'gateway location' as set out in policy A4. Upon review of the originally submitted scheme, the proposal fell short of the overarching aims of policy CP4, A4 and the NPPF. Whilst the proposed architectural detailing incorporates typical branding designed required by a discount retailer requirements, the revised design incorporated some elements of high-quality development, such as a unique public art feature adjacent to the south elevation of the building and a generous landscaping scheme that adds to the quality of the area. During the lifetime of the application, a series of design discussions took place with the applicant to refine the proposal resulting in the introduction through amendment to the proposal of brick piers in a contrasting engineering brick to provide texture and profile to the elevations, larger window openings to the staff facilities facing the car park to the east, with additional planting within the car park and frontages and appropriate boundary treatment. The final design approach pursued, following amendments, is considered to represent high-quality design, compliant with local and national planning policies. The proposed development, its scale and layout is considered designed appropriately for its gateway location. Details of the public art feature and its installation is recommended to be dealt with by means of a planning condition.
- 6.34 It is also noted that several amendments have also been made to the landscaping proposals and the Swale Tree Officer and KCC Ecology concerns for native planting have been addressed satisfactorily. The planting in many parts of the site has been well considered and will provide benefits in respect of both visual amenity and biodiversity.
- 6.35 Overall, the design of the building in its final form is considered to achieve a sufficiently high standard that is compliant with the requirements of policies CP4 and DM14 and Chapter 12 of the NPPF.

Landscape Impact

- 6.36 Policy CP7 of the Local Plan states that the Council will work with partners and developers to ensure the protection, enhancement, and delivery, as appropriate, of the Swale natural assets and green infrastructure network. This includes strengthening green infrastructure and biodiversity.
- 6.37 Policy DM24 of the Local Plan states that the value, character, amenity, and tranquility of the Borough's landscapes will be protected, enhanced, and, where

appropriate, managed. The policy requires the scale, layout, build, and landscape design of development to be informed by landscape and visual impact assessments. Part B of this policy, applicable to proposals, states that non-designated landscapes will be protected and enhanced, and planning permission will be granted subject to:

1. The minimisation and mitigation of adverse landscape impacts,
2. When significant adverse impacts remain, the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area.

6.38 The application site is not located within or immediately adjacent to any designated landscape of national or local importance. It is, however, within a currently undeveloped plot of land on the edge of Queenborough and Minster-on-Sea and in majority forms part of the low-lying landscape character area 'LCA Central Sheppey Farmlands' on the western fringe, as defined within the Swale Landscape Character and Biodiversity Appraisal SPD (2011). Due to the proximity of the existing and proposed commercial development, it has a closer relationship with the character of the urban landscape. To the north, there is an Important Countryside Gap designation, but it is confirmed that the site is outside it and falls within the boundary of the built-up area.

6.39 The Swale Landscape Character and Biodiversity Appraisal states that the condition of the LCA is poor as the landscape has *"an exposed and denuded character, with fragmented shelterbelts and hedgerows scattered across the open arable fields."* It also states that the landscape character is moderately sensitive, though the rural character is *"affected by insensitive and very prominent development"*. It suggests that *"further limited development could be absorbed but should be well integrated and make a positive contribution to the coherence of the landscape"*.

6.40 In terms of the impact of the proposed development, the submitted LVIA assesses the landscape value of the site to be low to medium. It goes on to explain that its value mainly arises by providing a rural setting to the existing commercial development. Officers agree that the spacious and open qualities of the plot positively contribute to the rural setting of the surrounding area, but equally the site has character of the settlement fringe. For these reasons, the LVIA concludes that the landscape impacts would not be significant.

6.41 Officers agree with the above conclusions and it is considered that the proposed development would have a low impact on the local landscape character, given the commercial context of the surroundings. It is therefore considered that the proposal, which involves the development of a currently undeveloped site (albeit one which is allocated for development in the Local Plan), would be seen as an extension to development under construction and

would therefore have a neutral impact upon the landscape setting. The proposed layout, sensitive scale and footprint of the proposed building (in context of the size of the plot of land), is considered to be well thought-through and to reinforce the open qualities of the site and its open character, through retaining generous landscaping strips and locating buildings close to existing buildings. The proposed landscape strategy will ensure that it would be seen as in keeping with the area, thus not resulting in harm to the landscape, in line with policies CP4, DM24 and CP7 of the Local Plan 2017 and the National Planning Policy Framework.

Living conditions

- 6.42 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight.
- 6.43 The site sits opposite Cowstead Cottages, on the north side of Queenborough Road which are the nearest neighbours located approximately 25m from the site boundary (56m from the nearest point to the rear of the store). Given the sufficient separation, the proposal would not result in any harmful impact in relation to overshadowing, overbearing, overlooking, enclosing effects or loss of light/privacy. Loss of view is not a material planning consideration, and as identified above, these properties would continue to benefit from sufficient light and an unenclosed outlook.
- 6.44 Turning to other residential properties, it is noted that Neats Court is situated to the west, but given the substantial separation distance of approximately 500m, there would be no adverse impact on the living conditions of these properties.
- 6.45 Turning to the potential noise and disturbance impacts, the application is accompanied by a Noise Impact Assessment, which has been reviewed by the SBC Environmental Health Team. The submitted NIA assessed the impacts upon potential sensitive receptors, including residential properties to the north of the site at Cowstead Cottages. Given their distance to the plant area, the NIA recommendation is to incorporate a 3-meter-high wooden and acoustic fence along the northern boundary, that is formally part of the proposed development. With this mitigation, the noise impacts associated with the

proposed development would not be clearly distinguishable over the residual noise climate. Consequently, it is therefore considered that with mitigation measures, the proposed development would not result in any adverse noise levels and would comply with the noise levels as set out in British Standards. The proposed fence would be located behind a landscaping strip along the road edge to ensure its visual impact is softened so as to be acceptable. It's installation will be secured via condition.

- 6.46 The proposed opening hours are 07:00-22:00 Monday to Saturday and Bank Holidays and either 10:00-16:00 or 11:00-17:00 on Sundays). The proposed opening hours are considered reasonable, and the SBC Environmental Health Officer considers this acceptable when combined with the mitigation measures identified above.
- 6.47 Consequently, subject to conditions controlling construction hours, implementation of acoustic measures, control over the timing of deliveries, details of mechanical ventilation and a Delivery Management Plan, the proposed development is considered acceptable on noise grounds, and the existing dwellings would not be subject to any unacceptable harmful noise impacts arising from the proposal.
- 6.48 In view of the above, it is considered that the proposal, would not give rise to significant harm to living conditions of nearby dwellings and as such would accord with Policy DM14.and Chapter 12 of the NPPF.

Highways Impacts

- 6.49 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. The NPPF sets out that development proposals should identify and pursue opportunities to promote walking, cycling and public transport use. The NPPF also states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios” .

- 6.50 Local Plan policies CP2 and DM6 promote sustainable transport through utilising good design principles. Policy DM6 sets out that proposals will need to mitigate harm where highway capacity is exceeded and/ or safety standards are compromised.

- 6.51 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.
- 6.52 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 facilities for low-emission vehicles. The applicant has submitted a Transport Assessment with a Travel Plan and updated technical notes for additional clarification to both KCC and National Highways.
- 6.53 The application proposes new vehicular access (priority junction) to the site off Queenborough Road and to the west of Lower Road (A2500). The access point would be 13m wide to facilitate two lanes and a 2m pedestrian refuge centrally. In addition, the application demonstrates that sufficient visibility splays will be achieved. The submission has also been accompanied by the swept path analysis of a 16.5m long articulated lorry entering the servicing area from the access road, turning within the dedicated area, reversing into the service area and then exiting the site in a forward gear back onto the access road. Pedestrian links will also be provided within the site and from the site to the surrounding areas, to improve existing footway network and provide better connection. Both KCC Highways and National Highway are satisfied with the proposed access arrangement.
- 6.54 Due to the site's location, the proposal has the potential to impact both the local and strategic highway networks and this needs to be thoroughly examined. KCC Highways and National Highways (NH) have been consulted on this application.
- 6.55 In terms of the local road network, KCC Highways considers that the net effect of the development on the assessed junctions is marginal compared with background growth and committed development. KCC initially challenged the trip generation rates reported within the Transport Assessment, but this Assessment has been updated in the Highways Technical Note to reflect the criteria required by KCC Highways and subsequently considered robust and appropriate by KCC Highways. The Highways Authority has sought off-site improvements to extend the footway on Queenborough Road from Cowstead Cottages to Neats Court. Approximately 190m in length of new or improved footway on the north side of Queenborough Road is to be secured via a S.278 agreement and its implementation will be secured via planning condition. The

applicant has agreed to the off-site highway works and confirmed with KCC Highways that they will be delivered prior to the first use of the retail unit. This would address the concerns expressed by Minster-on-Sea Town Council as referred to above and accessibility concerns raised by Sheerness Town Council and during the public consultation process.

- 6.56 During the public consultation, officers' attention was drawn to conflicting traffic data between the surveys submitted in support of other planning applications in the area (Aldi store) and the details submitted currently, as well as lack of references to relevant planning policies. The Transport Assessment (TA) submitted with this application included traffic surveys in November 2021, which showed lower flows during all peaks in the post-pandemic era. The evidence shows that traffic flows are less in the post-pandemic era. The data collected for the same junctions for residential development applications submitted around February 2022 is almost identical to the traffic counts of 2021. KCC Highways have been requested to thoroughly consider the traffic count and whether the application is robustly identifying the likely impact arising from this development. KCC Highways is satisfied that the methodology and data gathering used within the submitted Transport Assessment are representative of the highway conditions and suitable for use in the assessment. Consequently, the submitted information is considered robust, reliable and appropriate.
- 6.57 It is noted that some of the representations received suggest the upgrade of A2500 to dual carriageway. Such a measure would go significantly beyond the scope of impacts generated by this specific development and was not identified as necessary, related in scale and kind to the development in question and was not required as part of consultation with KCC Highways and National Highways. As such, it would be unreasonable to require applicant to provide such mitigation.
- 6.58 KCC Highways have also confirmed that the additional information submitted by the applicant, including revised plans to demonstrate turning areas and the provision of 11 EV charging parking spaces, is satisfactory and would not adversely impact highway safety. No objection is raised to the proposal subject to the conditions requiring submission of Construction Management Plan, provision of car parking spaces, vehicle loading/unloading facilities, cycle parking, provision and retention of EV charging, provision of off-site improvements including footway/cycleway along Queenborough Road, as indicated on SCP/21-746/D05 in accordance with details submitted for approval in writing.
- 6.59 National Highway (NH) have also considered the transport and highway impact of the proposal on the strategic road network, in this case relating to the impact

upon A249. National Highways initially raised further questions relating to the traffic data, method of calculation of trip distribution, and the list of committed developments and provided critiquing commentary about methodology and trip generation rates. Whilst National Highways did express some underlying concerns, they have considered the scheme and decided to raise no objections on the basis of the evidence available. National Highways therefore concluded as per below:-

- *The A249/A2500 junctions are close to **but not quite yet** at a state of capacity where we could confidently recommend a refusal;*
- *The likely trip generation/distribution from the proposed Lidl is unlikely to tip the junction into definite overcapacity.*
- *These proposals of themselves do not warrant the need for a specific form of mitigation, subject to the successful implementation of a Travel Plan covering staff, visitors/customers and deliveries.*
- *Given the site's location adjacent to the SRN various other conditions are required to avoid the risk of unacceptable impacts on the safety, reliability and/or operational efficiency of the SRN [referenced below]"*

6.60 NH also reviewed the Travel Plan and acknowledged the target of a 10% modal shift from single occupancy private cars. The Travel Plan includes monitoring to be undertaken annually, together with setting targets and potential incentives, such as:-

- Welcome and information pack to staff,
- Provision of employment perks, such as access to promotional schemes allowing the purchase on tax-free bikes;
- Potential option to facilitate car-share scheme if targets set out in the Travel Plan are not met; identifying the needs for additional measures to be considered.
- Inclusion of commitment and confirmation to provide financial means to fund the implementation of the Travel Plan.

6.61 NH have also added an advisory note to the Council that all other applicants in the area that this is likely to be the last set of proposals capable of being accommodated ahead of improvements to the A249/A2500 junction(s) to be promoted via applications and/or the emerging Local Plan. NH confirm that they are "*content to recommend no objection subject to the imposition of the conditions on any consent granted.*" The suggested conditions would require the applicant to provide details of a scheme to safeguard and maintain the geotechnical stability of A249 during construction, construction management traffic plan, details of lighting and drainage details, and submission of an updated Travel Plan that includes monitoring, review and effective enforcement measures.

- 6.62 Turning to the parking provision within the site, the parking court is situated within the eastern part of the site. The total parking provision amounts to 119 spaces, including 8 dedicated parent and child spaces, with 6 DDA compliant spaces, 7 motorcycle spaces and 12 bike stands. Parking to be located along landscaped edge is notionally smaller, however given the low landscaping planted in this location, this arrangement has been accepted by KCC Highways. The total provision of parking spaces complies with parking standards in Swale for mixed convenience(food)/comparison (non-food) stores based on the proposed floor space split of 80%/20% of the internal sales area. 11 EV charging points are included, as requested by KCC Highways and SBC Climate Change Officer.
- 6.63 In view of the above, subject to conditions requiring access to be provided, retention of parking, manoeuvring space, travel plan implementation, highways improvements and construction management plan, the proposal is considered acceptable in terms of local and national highway network impacts to accord with Chapter 9 of the NPPF and Local Plan Policies CP2, DM6, DM7 and DM14.

Impact on Heritage Assets

- 6.64 Following a challenge, the Council agreed to quash the previous grant of planning permission on the basis that the former Officer Report did not include sufficiently clear advice and a complete reference to the requirements to discharge the statutory duty contained in S. 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Consequently, the application is back to the LPA for re-determination. As advised above, this report, including that part of the report which assesses impact on heritage assets, comprises a comprehensive reassessment of the proposals and is independent of the assessments in previous reports, which led to the decisions which have been quashed.

Policy background

- 6.65 Any planning application for development which affects a listed building must be assessed in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Section 66(1) states the following:-

“In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority . . . shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

6.66 The effect of this statutory duty is that great weight and importance should be attached to any harm to a listed building or its setting when considering an application for planning permission and carrying out any planning balance as part of that consideration.

6.67 Policy CP8 of the Swale Local Plan 2017 deals with conserving and enhancing the historic environment and states:

'To support the Borough's heritage assets, the Council will prepare a Heritage Strategy. The development will sustain and enhance the significance of designated and non-designated heritage assets to sustain the historic environment whilst creating for all areas a sense of place and special identity. Development proposals will, as appropriate:

1. Accord with national planning policy in respect of heritage matters, together with any heritage strategy adopted by the Council;
2. Sustain and enhance the significance of Swale's designated and non-designated heritage assets and their settings in a manner appropriate to their significance and, where appropriate, in accordance with Policies DM32-DM36;
3. Respond to the integrity, form and character of settlements and historic landscapes.

6.68 Policy DM32 of the Local Plan states that development proposals, including any change of use, affecting a listed building, and/or its setting, will be permitted provided that:

1. The building's special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved, paying special attention to the
 - a. design, including scale, materials, situation and detailing.
 - b. appropriateness of the proposed use of the building; and
 - c. desirability of removing unsightly or negative features or restoring or reinstating historic features.

6.69 The NPPF provides guidance on identifying impacts upon heritage assets and weighing them against public benefit. National policy on conserving and enhancing the historic environment is contained in chapter 16 of the NPPF and is to be interpreted and applied consistently with the statutory duties under the

Planning (Listed Building and Conservation Areas) Act 1990.

6.70 The most relevant paragraphs of the NPPF in relation to heritage assets are set out as follows;

212. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

213. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:-

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*

214. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: a) the nature of the heritage asset prevents all reasonable uses of the site; and b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and d) the harm or loss is outweighed by the benefit of bringing the site back into use.

215. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

216. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

6.71 The Planning Practice Guidance (“PPG”) provides further guidance on the degree of harm.

Assessment

6.72 The application site is situated approximately 500m from the Grade II Listed Neats Court Farmhouse (also known as Neat Court Manor), which 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 grade II listed farmhouse fronts Queenborough Road. The significance of the listed building is derived from its architectural and historic interest as an eighteenth-century farmhouse. The building has architectural interest in the classical composition of its façade, and in the features to its principal façade. The listed building also has historic interest in the age of its built fabric and its role as the centrepiece and focal point of a historic farm.

6.73 Within direct proximity and to the east of the listed building, there are other outbuildings, which were part of the farmstead complex. These create a series of courtyards. These buildings appear to be vacant today and no longer in agricultural use. The farm buildings are a mixture of single and two-storey structures constructed of yellow and buff-brown bricks, with occasional areas of waney edge timber cladding. The roofs of the buildings are a mixture of slate and corrugated steel. Windows no longer contain glass but are timber framed. Given their age and relationship to the listed building, the outbuildings within the Neats Court are considered to be curtilage-listed. The Heritage Statement provided in support of the application treats the farm buildings as being curtilage-listed, and this view is endorsed in the most recent set of comments from the Council’s independent Heritage Advisers. Officers concur with the view that outbuildings are curtilage listed, on the basis of the historic map records and all other available information. The farm buildings are redundant and in poor condition, and it is understood that the farmhouse no longer has an active functional link with the adjacent agricultural land. Areas surrounding Neats Court Farm, which forms part of its setting comprise the following:-

- Curtilage-listed buildings to the east with some irregular, small-scale residential development beyond;
- Fields to the north, north-west and north-east;
- An approved Aldi application to the south-west (400m from the heritage asset in question, which is closer than the distance from this application site

to the listed building);

- Employment development site (and battery storage units) to the south (between Queenborough Road and A249), providing large-scale employment units, together with the land subject to this application;
- Substantial in size Regional Distribution Building (Aldi) beyond A249;

6.74 As to the setting of the listed building and heritage assets, the farmstead is, to a degree, enclosed to the south by vegetation and fencing. While once in the past, it was surrounded entirely by farmland, this setting has been eroded and divided heavily in the 20th/21st-century due to the construction of highway infrastructure, including roundabouts, residential development and most recently, the substantial building of the Aldi Distribution Centre and employment development between Queensborough Road and A249. Notwithstanding, given the historical connection, the application site forms part of the setting of the listed building and associated curtilage buildings and so has the potential to impact upon the setting of listed building. This is because the historical map records available suggest that the site was once in the same ownership as the listed building and had a functional relation with Neats Court Farm. Therefore, it is important to assess the contribution of this application site to the setting and thereby to the significance of the heritage assets in question.

6.75 The application site is a piece of undeveloped land sandwiched between the existing road infrastructure (roundabout and A2500), battery storage unit and a considerable piece of land currently under construction for employment uses. The separation distance between the site and heritage assets is approximately 400 metres to outbuildings and 500m to farmhouse.

6.76 A detailed Heritage Statement has been submitted in support of the application, which concludes that *“due to the eroded contribution of the site to the significance of Neats Court, the much-altered setting of the listed buildings, and the scale and form of the proposals, the proposed development would have no impact on the significance of Grade II listed Neats Court. The proposals would, therefore, preserve the special architectural and historic interest of the listed and curtilage listed buildings.”*

6.77 It is considered by officers that the land to the south of the listed building, including the application site boundaries, has been altered in character following twentieth and twenty-first century development. While patches of green farmland remain, these sit between the busy routes of Queenborough Road and beyond the extensive road network of the A249. These green areas are also understood in the context of the twenty-first century development

beyond, including the Neats Court Retail Park and the large Aldi Warehouse. The open agricultural fields to the north of the listed building form part of the setting and contribution to its significance, since the historic and functional relationship between former farm and outbuildings and surrounding farm land can still generally be appreciated. The position of the application site is very different. Intervening development and land uses are such that it is considered that although the application site forms part of the setting of the listed asset, it makes no positive contribution to that setting or to the significance of the listed farmhouse and curtilage listed outbuildings. In addition, there is no intervisibility between the site and the listed building. Although the public footpath to the north of Queensborough Road offers some views of Neats Farmstead, including the site, the undeveloped nature of the site does not provide any meaningful legibility of the historic agrarian setting of the listed building, given the erosion that took place by existing development. Against that background, the scheme has been reviewed by the independent Heritage Advisors appointed by the Council to provide a thorough assessment of impacts. The Council's Heritage Advisers have agreed with the above conclusion from the Applicant's Heritage Statement and are of a view that the proposal would not result in any harm to the setting or thereby to the significance of listed building and its curtilage listed outbuildings. Officers agree with the Council's Heritage Advisers' conclusion as to absence of impact.

- 6.78 It is noted that public consultation responses were submitted to dispute the level of impact and form the view that the proposal would lead to harm to the setting of listed buildings and there was a level of confusion in previous reports. Officers thoroughly considered that submission and are satisfied that the proposed development would have no harmful impact on the setting or significance of the heritage assets in question, for the reasons set out above.
- 6.79 In considering the impact of the proposal, Officers have also necessarily paid regard to the statutory duty imposed by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as referred to above. In this regard, as it has been established that the proposal would not harm the heritage assets, their setting or significance. The *South Lakeland District Council v Secretary of State for the Environment* case and the *Barnwell Manor* case (*East Northamptonshire DC v SSCLG*) establish that "preserving" in s.66 means "doing no harm". It is therefore concluded that the proposed development would preserve the setting of listed buildings and curtilage listed buildings.
- 6.80 In view of the above, the proposal is considered to comply with the requirements set out in policies CP7 and DM32 of the Local Plan and the NPPF.

Archaeology

- 6.81 The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 6.82 Policy DM34 of the Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ; however, where this is not justified, suitable mitigation must be achieved. Archaeological work is also required through policy A4 of the Local Plan 2017.
- 6.83 The site is located within an area of archaeological potential, as designated on the Proposals Map of Swale Local Plan 2017 and KCC Archaeology were consulted as part of the application process. KCC Archaeology have considered the proposal and commented as follows: -
- The application has not included a supporting assessment of the archaeological potential, but we have provided advice on adjacent sites for the development related to the Neats Court distribution centre, the Aldi development, and adjacent employment sites.
 - 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. The present site is close to the focus of the clusters of Iron Age and Roman cremations at Cowstead Corner.
 - A staged archaeological investigation programme is an appropriate mitigation that can be secured through an appropriately-worded condition. The archaeological programme should commence with a stage of trial trenching, which would inform subsequent stages of the mitigation programme.
- 6.84 KCC Archaeology recommend a similar condition to that on the approved Aldi development nearby for intrusive field investigation and evaluation. In view of the above assessments, Officers are satisfied that safeguarding conditions are necessary and will ensure that any impact is appropriately and timely mitigated. With safeguarding conditions, the scheme is considered acceptable in terms of archaeological impacts and is in accordance with policies CP8 and DM34 of

the Local Plan and Chapter 16 of the NPPF.

Biodiversity

- 6.85 Policies CP7 and DM28 of the Swale Local Plan 2017 relate to the protection of sites of international conservation importance, including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites. Policy DM28 requires developments to be accompanied by appropriate surveys and preserve, restore and re-create ecological habitats, landscaping features and aged/veteran trees and irreplaceable habitats.
- 6.86 The application site comprises undeveloped rough grassland, with ditches passing around the site outside the site perimeter boundary. The applicant's Preliminary Ecological Appraisal (PEA) demonstrates that there is some but limited protected species interest, as the site has some suitable habitat to support foraging/commuting bats, reptiles and breeding birds. Due to the small areas of habitat to be impacted, KCC Ecology and Natural England raised no objections and concurs with the findings of ecological appraisals, which recommend precautionary mitigation measures, including:-
- Removal of vegetation outside bird breeding season and if not possible, vegetation should be checked for the presence of nesting birds by an experienced ecologist,
 - Covering of excavations, foundations and service connections overnight to prevent small mammals from becoming trapped or using ramps to allow small mammals to escape;
- 6.87 Turning to the potential impacts upon reptiles, the site comprises a suitable habitat for reptiles, however given that it is surrounded by busy roads on three sides, the presence of reptiles is highly unlikely. The PEA recommend nonetheless implementation of sensitive habitat clearance to ensure no reptiles are harmed. KCC Ecology advice is that in advance of the precautionary mitigation being implemented suitable habitat to support and retain the reptile population, if found, must be established within the site (landscaped areas). This can be reasonably secured via safeguarding conditions requiring detailed ecological mitigation strategy to be submitted for approval.
- 6.88 A BNG assessment and accompanying metric have also been submitted to demonstrate an overall net gain of 10.93%, largely achieved through the scrub and wildflower grassland creation. Initially, KCC Ecology raised some questions over the above values; however, upon further clarification (and receipt of base condition assessments), KCC Ecology is satisfied that this is achievable, but further enhancements to the BNG score can be achieved by

replacing amenity grassland with neutral grassland within the site. This can be reasonably secured via condition. Whilst it is noted that the application is not subject to a national or local requirement to deliver minimum of 10% BNG, the submitted information demonstrates sufficiently that there would be no loss of biodiversity on-site and enhanced biodiversity will be provided as supported in policy DM28 of the Local Plan 2017. The PEA also recommends a Landscape and Ecological Management Plan to cover 25-30 years, as well as a recommended external low lighting to mitigate the impact on foraging bats. Both measures can reasonably be secured via conditions.

- 6.89 It is also noted that due to the age of the Preliminary Ecological Report, a Walkover Survey (by RPS) has been carried out in 2024, which confirmed that the conclusions of PEA continue to be valid and robust, and this has been accepted upon by KCC Ecology.
- 6.90 KCC also requested a sensitive lighting design and, importantly, ensure that the development is not illuminated throughout the entire night. Lighting details will be secured by condition as above.
- 6.91 Subject to the safeguarding conditions above and the requirement of implementation of ecological enhancement features, the proposed development is considered to have an acceptable impact on ecology and would not result in any adverse loss of biodiversity or harm to protected species.
- 6.92 It is also noted that the Arboricultural Survey established that the site has a single group of Elder and Elm in the site's north-western corner. This group lacks any arboreal value and was largely declining in health terms. For arboricultural reasons, the group provides no long-term value and was recommended for removal and new planting. Consequently, it is concluded that the proposed scheme has no unacceptable arboricultural impacts and that the development and its proposed landscape scheme offer an opportunity to enhance the tree and woody shrub cover experienced locally.

Appropriate Assessment

- 6.93 The application site is located within the 6km buffer of the Swale Special Protection Area, which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) and Wetland of International Importance under the Ramsar Convention. In considering the European site interest and likely potential significant effect, the Council has had regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment (HRA).

- 6.94 SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, as far as these would be significant having regard to the objectives of this Article.
- 6.95 Residential development within 6km of any access point to the SPAs has the potential to negatively impact that protected area by virtue of increased public access and degradation of special features therein from recreational use. The proposal is for a retail store and would not generate new recreational pressure within the Designations, and it does not have the potential to affect SPA and Ramsar's features of interest. Natural England, in its response of 3rd July 2023, confirmed that it considers that the proposed development will not have significant any likely significant effect on any European or other statutorily protected nature conservation sites or landscapes. NE recommends the decision to rule out likely significant effects be recorded in the decision taken on the application.
- 6.96 Given the nature of the proposed development for a retail store, which is absent of recreational pressures, and absent any other identified basis for impact, Officers are satisfied that likely significant effects on European sites can be ruled out. The site is not functionally linked habitat and this has not be of a concern to NE or KCC Ecology. As such, no Appropriate Assessment is required. Furthermore, NE have confirmed that the proposed development will not likely have significant effects on other statutorily protected sites and has no objection to it.
- 6.97 In view of the above, the proposed development would have an acceptable impact on biodiversity, ecology, and protected species and would not result in any potentially significant effects upon protected designations, and so it accords with policies CP7 and DM28, DM29, chapter 15 of NPPF and Habitats Regulations (as amended).

Drainage and Flood Risk

- 6.98 Local Plan as Policy DM21 sets out a raft of criteria aimed at preventing or reducing flood risk. The revised NPPF at Chapter 14 sets out government views on how the planning system should consider the risks caused by flooding. The planning practice guidance under the chapter titled 'flood risk and climate change' gives detailed advice on how planning can take account of the risks

associated with flooding in the application process.

- 6.99 At paragraph 173, NPPF sets out a sequential risk-based approach to individual applications in areas known to be at risk now or in future from any form of flooding, by aiming to steer development to areas with the lowest risk of flooding from any source (paragraph 174). Paragraph 175 of the NPPF clarifies that the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a sitespecific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land rising or other potentially vulnerable elements, would be located on an area covered by that risk of flooding from any source. The NPPG further clarifies that Sequential Test should not be applied in areas at low risk of flooding from any source.
- 6.100 Local Plan Policy CP7 requires new development to be supported by the timely delivery of green infrastructure, including SuDS.
- 6.101 The site is located in a low-risk Flood Zone 1. The EA Flood Maps indicate the presence of a low risk of flooding from surface water to the south-east and north/northeast of the site. A Flood Risk Assessment and Drainage Strategy supports the application. The Environment Agency confirmed they have no comments to make on the proposal.
- 6.102 First, the risk of surface water flooding is low, as demonstrated in FRA, EA maps and Swale Planning Map. The area within the application site boundaries that is at low risk of surface water flooding is isolated and situated near the site boundaries. There is a low risk of surface water flooding within the northwest part of the site, where it would minimally encroach onto the substation/fence and hardstanding area. Given the risk of flooding is low, in line with the guidance contained in NPPG, Officers are satisfied that the Sequential Test is not required.
- 6.103 The proposal is to dispose of the surface water through attenuation and to a ditch at a slowed rate of discharge at 2.5l/s. The outfall pipe is proposed to run continuously in the A249 highway verge (HE/National Highways) and discharge directly into the LMIDB ditch. In terms of the proposed discharge of foul water, the proposal is to manage it through an on-site treatment plant located to the southwest of the site. The treated, cleaned foul effluent will be joined to the surface water run-off and become a combined sewer. It is noted that the construction of drainage infrastructure running along a public highway would be managed through a process separate from planning (Section 50 Licence). However, National Highways was consulted and raised no objection to this aspect of the scheme, subject to safeguarding conditions. KCC SuDs accepted the proposed drainage strategy as suitable, drawing the Applicant's

attention to the need for consent from the Lower Medway Internal Drainage Board. LMIDB has agreed in principle to the discharge of both surface water and treated foul water into the LMIDB drainage district and to consent to these discharges, subject to further details secured via safeguarding conditions. The consent process for LMIDB is a separate from planning process. Southern Water have also not raised an objection to the proposed drainage strategy on this site.

6.104 Subject to safeguarding conditions requiring a detailed design of the drainage scheme, the proposal will ensure that the scheme meets the requirements of Policies DM21 and CP7 of the Local Plan and would not result in off site or on-site risk of flooding. On this basis, drainage is considered to be satisfactorily addressed

Sustainable design and construction

6.105 Policy DM19 of the Swale Local Plan 2017, requires development proposals to include measures to address climate change, and it 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”*. Additionally, in 2020 the Council adopted a Climate and Ecological Emergency Action Plan, which encourages development to reduce carbon emissions by 50% compared to the Building Regulations Part L1 2013.

6.106 The application is accompanied by BREEAM Pre-Assessment Report and Energy Strategy that demonstrates that energy efficiency and reduction in CO₂ over Building Regulations will be achieved, resulting in a minimum total savings of 133%. This will be achieved through the following measures:-

- Building fabric performance (passive design), it's air permeability, ventilation, heating,
- Use of energy-efficient lighting,
- Use of re-usable energy and efficient refrigeration,
- Installation of solar panels on the roof, consisting of 303 panels,
- Installation of heat pumps for both heating and cooling

6.107 The above sustainability measures are projected to provide 177% on-site renewable energy and 133% CO₂ emissions reduction. The Council's Climate Change Officer supports the sustainability/renewable energy strategy, subject to a condition on BREEAM 'very good' rating compliance.

6.108 Policy DM21 requires developments to reduce water usage. The target for housing developments is a maximum of 110 l/per person daily. Officers note that this target does not apply to commercial development. Nonetheless, the proposed development aims at reducing water consumption by a minimum of 12.5%, an improvement over the baseline water consumption, which is sufficient to meet 'very good' BREAAAM Standards. Consequently, this element of the proposal is considered to comply with local plan policies.

6.109 In view of the above, subject to safeguarding conditions requiring implementation of the above, the application is compliant with policies DM19 and DM21 of the Swale Local Plan 2017 and the NPPF.

Air Quality

6.110 The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.

6.111 The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.

6.112 The Air Quality and Planning Technical Guidance states that "whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation.....". The Guidance goes on to require Emission Mitigation Assessment (damage cost calculation) from all major developments and Air Quality Assessment for proposals generating more than (as applicable to proposals):-

- Generates more than 500 Light Duty Vehicles AADT elsewhere than adjacent to an AQMA,
- Generates more than 100 Heavy Duty Vehicles AADT elsewhere than adjacent to an AQMA,

6.113 The Local Plan at Policy DM6 sets out that development proposals will integrate air quality management and environmental quality into the location, design, and access to development and demonstrate that proposals do not worsen air quality to an unacceptable degree.

6.114 The proposed development is a major development located outside of any AQMA. Notwithstanding, given the updated guidance and the volume of daily traffic, the Air Quality Assessment has been submitted in support of the proposal. Initially, the submitted assessment relied upon the rural location of the site to calculate the damage costs, to which Air Quality Officer recommended that given the scale and location of the development, central damage cost should be applied. Upon receipt of additional information, it was demonstrated that even with applying the worst-case scenario (central damage cost) and excluding air quality measures required by other policies, the proposed mitigation that is embedded within the scheme would exceed the low and central damage costs. For these reasons, the proposed development is considered to sufficiently mitigate its pressure on air quality and the implementation of the mitigation measures referred to in an Air Quality Assessment will be secured via safeguarding conditions. SBC Environmental Health Team concurs with this conclusion and raises no further objections to the proposed development.

6.115 It is noted that the SBC Environmental Health Team initially recommended a safeguarding condition requiring details of measures for offsetting damage cost for an amount no less than £35,721,83. The updated Emission Mitigation Statement demonstrates the details of the measures proposed and demonstrates that the central damage cost would be spent in full. Consequently, only implementation condition is considered necessary, and the EH Team raised no objection to this approach.

6.116 Subject to safeguarding conditions, the proposed development is considered acceptable and would not worsen the air quality, which is in line with requirements of policy DM6 of the Swale Local Plan 2017 and NPPF.

Contamination

6.117 The NPPF states (at paragraph 196) that local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.

6.118 The application has been submitted with a Land Contamination Assessment. This has made recommendations for further investigation, including soil, groundwater samples and ground gas monitoring. The Environmental Team at

SBC recommended that a contamination condition be imposed in any consent to ensure that further investigations are completed and any contamination encountered adequately addressed to prevent impact on the health or safety of visitors and employees. Subject to safeguarding conditions, the matter of contamination is considered to be adequately addressed.

7. PLANNING BALANCE AND CONCLUSION

- 7.1 In conclusion, the above assessment demonstrates that the proposed development would comply with many policies contained in majority of the Swale Local Plan 2017. The setting of Neats Court Grade II Listed Building and associated curtilage listed outbuildings would be preserved and its significance as a heritage asset will not be harmed. The impact of the proposal on heritage assets, including archaeological impact, and visual and landscape impacts, are considered acceptable, subject to the imposition of conditions, where necessary. There is no unacceptable harm to highway safety or highway operations or to the living conditions of nearby residents. The proposal satisfactorily addresses drainage, energy, and ecological interests and impacts. Consequently, the proposed development would comply with local and national planning policies with respect to these matters.
- 7.2 However, the proposed development would result in a conflict with Local Plan policy allocation A4, in that it proposes a retail unit within the land that has been identified in the site specific policy for a hotel use. However, it is not considered likely that hotel development as sought by policy A4 is likely to come forward on the site and, as such, that conflict is not one to which substantial weight is attached. The proposals will also give rise to a partial conflict with policy DM2(4) in that the site and the proposals will not be easily accessible by public transport; the remaining parts of DM2(4), including the sequential and impact tests, are met. In view of there being a conflict with the Local Plan's specific policy for the site and partial conflict with policy DM2(4), the proposed development is considered to conflict with the Swale Local Plan 2017, taken as a whole. As such, since a conflict with the development plan as a whole is considered to arise, in the application of the relevant statutory test, planning permission should be refused unless material considerations indicate otherwise.
- 7.3 In terms of material considerations, and as a result of the conflict with Local Plan site allocation policy A4, a consequential conflict with NPPF para.127(b) arises. Although the proposal does pursue, indeed enhance, opportunities to promote walking and cycling, the proposed development will not be easily accessible by public transport and, as such, some conflict will arise will NPPF

para.109(d) and the general objective in national policy to promote and encourage public transport usage. However, given that the site is outside Sheerness at the outer edge of the built-up area, opportunities for public transport use can be expected to be relatively limited and the conflict with para.109(d) is considered in that context. These conflicts with the NPPF are taken into account as weighing against the proposals as part of the planning balance.

- 7.4 As against that, no unacceptable harm in respect of the impact of the development on the vitality and viability of Sheerness Town Centre or other local centres or locations is identified and the sequential test is passed (albeit, as recognised above, one element of the local plan retail policy DM2(4), concerning accessibility by public transport, is not met). The proposed development would result in planning benefits arising importantly from economic activities and job creation as well as through ecological enhancements. The proposals would provide increased retail choice for consumers. The proposed development will deliver a development of high-quality design that reduces its carbon footprint. Additionally, there would also be off-site improvements for active travel with a footway/cycleway extension along the north side of Queenborough Road to Neats Court, thus improving sustainable movement generally within the locality. These benefits, as a whole, are afforded substantial weight.
- 7.5 In terms of the overall planning balance, the proposed development will generate substantial benefits which, as material considerations, are such as to outweigh the conflict with site-specific policy A4 and the partial conflict with policy DM4(2) of the Swale Local Plan 2017 and the resultant conflict with the development plan as a whole, as well as with the conflict with NPPF, as set out above. The presumption against the grant of planning permission is rebutted. In consequence, the Officer's recommendation is to grant planning permission, subject to safeguarding conditions set out below.

8 RECOMMENDATION

- 8.1 Delegate to the Head of Planning to **grant planning permission** subject to the conditions set out below, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be necessary and appropriate.

DRAFT CONDITIONS

Compliance condition

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings:
 - AD100,
 - AD110 rev G,
 - AD111 rev B,
 - AD112 rev A,
 - AD113 rev H,
 - AD114 rev H,
 - AD115 rev E,
 - AD118 rev G,
 - AD119 rev A,
 - 600 rev C,
 - 601 rev C,
 - 9003-P06 and 9004-P06.

Reason: For clarity and in the interests of proper planning.

Design detail

- (3) Prior to the commencement of above ground-levels work within the development hereby approved, the following stated junction details between the key architectural elements of the building shall first have been submitted to and approved in writing by the Local Planning Authority:
 - (i) 1:5 vertical section showing the roof/wall junction detailing;
 - (ii) 1:5 vertical section showing cladding/brickwork junction detailing;
and
 - (iii) 1:5 vertical section showing external reveals to glazed areas and the associated glazing and brickwork or cladding junction detailing

The approved details shall be implemented in strict accordance with the details approved in relation to this planning condition, and thereafter and maintained as such in perpetuity.

Reason: In the interest of visual amenity.

Sustainability

- (4) The building hereby approved shall be constructed to achieve a minimum of BREEAM 'Very Good' rating. Within 6 months of the store first opening to the public, written documentary evidence proving that the development has achieved a minimum 'Very Good' rating against the BREEAM Standard in the form of a post-construction assessment and certificate as issued by a legitimate BREEAM certification body, shall be submitted to and approved in writing by the Local Planning Authority. The measures implemented shall be maintained and retained thereafter.

Reason: In the interest of promoting energy efficiency and sustainable development.

Transport

- (5) No works shall commence on the site hereby permitted (including site clearance or preparation) until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period for the development hereby approved and shall include:
- (a) Routing of construction and delivery vehicles to / from site
 - (b) Parking and turning areas for construction and delivery vehicles and site personnel
 - (c) Timing of deliveries
 - (d) Measures to prevent the transfer of mud onto the public highway including the provision of wheel washing facilities
 - (e) Temporary traffic management / signage

Thereafter the construction of the development shall proceed in strict accordance with the approved Construction Traffic Management Plan unless otherwise agreed in writing by the local planning authority.

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021).

- (6) No works shall commence on the site hereby permitted (including site clearance or preparation) until the details of a scheme to safeguard and maintain the geotechnical stability of, and safety of the travelling public on, the A249 during construction, occupation and maintenance of the site have been submitted to and approved in writing by the Local Planning Authority.

Thereafter the construction, occupation and maintenance of the development shall be in strict accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the A249 continue to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021).

- (7) No occupation of the site hereby permitted shall occur until the details of the scheme of external lighting (covering all land and works capable of being seen from the A249) have been submitted to and approved in writing by the Local Planning Authority.

The lighting scheme shall be designed to follow best practice guidance within Bat Conservation Trust/Institute of Lighting Professionals 'Guidance Note 08/23 Bats and Artificial Lighting at Night'. The lighting scheme details shall comprise:

- Lighting spill plan and details of where lighting is located,
- Details of how the lighting spill can be reasonably minimised,
- Operational hours of the proposed lighting.

Thereafter the construction, occupation and maintenance of the development shall be in strict accordance with the approved scheme unless otherwise agreed in writing by the local planning authority (who shall consult National Highways).

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021) and in the interest of ecology.

- (8) The site preparation, construction, use and/or maintenance of the development hereby permitted shall be managed in order to ensure that no surface water runs off on to the highway or into any drainage system connected to the Strategic Road Network. No drainage connections from

the development hereby permitted shall be made to any Strategic Road Network drainage systems.

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980, to satisfy the reasonable requirements of road safety and to prevent environmental damage and paragraph 111 of the National Planning Policy Framework (2021)

- (9) No part of the development hereby permitted shall be occupied until a detailed Travel Plan, has been submitted to and approved in writing by the Local Planning Authority and implemented.

The Travel Plan shall include such details as required by DfT Circular 01/2022, particularly paragraph 44. The Travel Plan shall also include details regarding responsibilities and arrangements for long-term monitoring, review, amendment and effective enforcement in perpetuity.

Reason: To minimise traffic generated by the development and to ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980.

- (10) Prior to the first occupation of the retail unit hereby approved, the delivery vehicle loading, unloading, and turning facilities within the site shall be provided in full as shown on drawing SCP/210746/ATR04_1 Rev A and ATR04_2 rev A . Once provided, they shall be maintained as such in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety and residential amenity.

- (11) Prior to the first use of the site commencing, the vehicle parking spaces, as shown on the submitted plans (18048 AD_11- F), shall be fully installed and implemented and retained thereafter.

Reason: In the interests of highway safety.

- (12) Prior to the first use of the site commencing, the cycle parking facilities shown on the submitted plans (23007_ AD_110 REV G) shall be provided and shall be permanently maintained as such thereafter.

Reason: In the interests of promoting active sustainable travel and highway safety.

- (13) Prior to the first use of the site commencing, details of electric vehicle charging points, to serve 11 car parking spaces, to include the provision of at least 5no. ultra-rapid charging points with 150-350 kw chargers, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed prior to first public use of the building and maintained thereafter.

Reason: In the interests of sustainable development.

- (14) Prior to development above slab level, the detailed and technical design for the footway/cycleway improvement works along Queenborough Road (as shown on drawing SCP/210746/D05) shall be submitted to and approved by the Local Planning Authority in writing. Subsequently, the off-site highway improvements, comprising the construction of a footway/cycleway along Queenborough Road, shall be completed in accordance with the approved details prior to the first use of the retail unit hereby approved.

Reason: In the interests of sustainable travel and highway safety.

- (15) Prior to the first use of the retail unit commencing, details of the lighting to serve the on-site pedestrian and cycle routes shall be submitted to and approved in writing by the Local Planning Authority. The on-site pedestrian and cycle routes, together with associated lighting hereby approved, shall be implemented in full prior to the first use of the retail unit hereby approved.

Reason: To encourage sustainable movement.

Construction Work

- (16) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (17) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday, or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

Ecology

- (18) Prior to the first occupation of the building, a site-wide management and monitoring plan must be submitted to the Local Planning Authority for written approval.

The plan shall include the following:

- a) Description and evaluation of features to be managed;
- b) Habitat Plan;
- c) Constraints on site that might influence management;
- d) Aims and objectives of management;
- e) Appropriate management prescriptions for achieving aims and objectives;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g) Details of the body or organisation responsible for implementation of the plan, and;
- h) Ongoing monitoring and remedial measures.

The LEMP will include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan shall be implemented in accordance with the approved details.

Reason: In the interests of ecology.

- (19) Within 3 months of works commencing, details of how the site will be enhanced to benefit biodiversity, shall be submitted to the LPA for written approval, including details of integrated enhancement features within the buildings and enhancement features within the site boundary of the site boundaries. The plan must be implemented as approved prior to the first use of the retail unit hereby approved.

Reason: In the interests of ecology and to ensure no net loss of biodiversity.

- (20) The landscaping scheme and planting specification shown on drawing nos. JSL4227-RPS-XX-EX-DR-L-9003_P06 and JSL4227-RPS-XX-EX-DR-L-9004_P06 shall be carried out within 12 months of the completion

of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

Public Art Feature

- (21) Prior to the above-ground works within the development hereby approved commencing, details of the design, materials and scale of the public art feature shown in drawing no. 230613_23007_AD 110 rev G, including CGIs from long-distance views, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme and public art shall be installed prior to the first opening of the retail unit approved and thereafter maintained.

Reason: To ensure the design of the approved development befits the gateway location in the interest of the visual amenities of the area.

Noise management

- (22) No building works shall commence until the details of mechanical ventilation system that will be installed, including details of the predicted acoustic performance, shall be submitted for approval in writing by the Local Planning Authority.

The system shall be installed, maintained, and operated in accordance with the details approved and thereby retained, to prevent the emission of odours, fumes, noise and vibration to neighbouring properties.

Reason: In the interest of residential amenities.

- (23) The proposed mitigation measures detailed in the Noise Impact Assessment 9314/RD revision 6 including the acoustic fencing opposite Cowstead Cottages shown on drawing no, 230613_23007_AD 114 Rev H shall be implemented fully prior to the first use of the development hereby approved.

The mitigation measures shall be maintained thereafter.

Reason: In the interest of residential amenity.

- (24) No deliveries shall take place outside the hours of 0600 - 2300 hours Monday to Saturday, and 07:00 - 23:00 hours on a Sunday, Bank or Public holiday.

Reason: In the interests of residential amenities.

- (25) Prior to the first use of the site hereby approved commencing, a Delivery Management Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. The DMP shall detail all recommended noise mitigation measures to be undertaken during deliveries, as contained in the Noise Impact Assessment submitted with this application, and shall include but not limited to, a limit of one delivery at a time and no audible reversing alarms.

Reason: In the interest of residential amenities.

Drainage

- (26) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based upon Flood Risk Assessment and Drainage Strategy dated September 2022 prepared by Mayer Brown Ltd. The submission shall also demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory

arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

- (27) The development hereby permitted shall not be occupied until a Verification Report, pertaining to the surface water drainage system, and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets, and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property, and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

Contamination

- (28) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved, in writing, by the local planning authority:

- 1) A site investigation, based on the Phase 1 site investigation and preliminary risk assessment 892.01.03 to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 2) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a

verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

- 3) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in (3). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Reason: In the interest of public health.

Archaeology

(29) Prior to any development works, the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the local planning authority.

- 1) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.
- 2) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.
- 3) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include

- a) a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
 - b) an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
 - c) a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.
- 4) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: To ensure that features of archaeological interest are properly examined and recorded in accordance with the Swale Borough Local Plan and the National Planning Policy Framework.

Air Quality

- (30) Prior to the commencement of the development hereby approved, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority.

The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'.

The construction of the development shall then be carried out in accordance with the approved methodology.

Reason: In the interest of air quality.

- (31) Prior to the commencement of the development hereby approved, a Dust Monitoring Schedule for dust monitoring to be undertaken at nearby sensitive receptor sites during the construction of the development shall be submitted to and approved in writing by the

Local Planning Authority.

The dust monitoring shall be undertaken for at least three months prior to site activity to ascertain background levels. The Dust Monitoring Schedule shall include monitoring measures throughout the construction or demolition phases of the work to determine impacts.

Reason: In the interests of air quality.

- (32) The Air Quality Mitigation measures, as set out in the Air Quality Assessment, shall be implemented in full, prior to the first operation of the retail shop hereby approved and thereafter retained.

Reason: In the interest of air quality.

Restriction on use

- (33) The food store hereby approved shall only be used as a Class E(a) retail food store only and shall be restricted to 'limited product line deep discount retailing' and shall be used for no other purpose falling within Class E of the Town and County Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting or amending that Order with or without modification).

'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 3,500 individual product lines.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (34) The total Class E(a) (retail) floorspace hereby permitted shall not exceed 1,906 sqm gross internal area. The net sales area (defined as all internal areas to which customers have access, including checkouts and lobbies) shall not exceed 1,266 sqm without the consent of the Local Planning Authority.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (35) The Class E(a) (retail) floorspace hereby permitted shall be used primarily for the sale of convenience goods with a maximum of 253 sqm of the net sales area devoted to comparison goods. Floorspace for the sale of

convenience goods shall at no time exceed 1013 sqm of the net sales area.

Reason: To control the extent of comparison goods retailing, to prevent unacceptable impacts upon the vitality and viability of Sheerness Town Centre.

- (36) The Class E(a) (retail) unit hereby permitted shall be used as a single unit and shall not be sub-divided into two or more units, and no concessions shall be permitted within the unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (37) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting or amending that Order with or without modification), no mezzanine floor or other form of internal floor to create additional floorspace other than that hereby permitted shall be constructed in the hereby permitted Class E(a) (retail) unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (38) The class E(a) retail use hereby permitted shall not be open to customers or any other persons not employed within the business operating from the site outside the following times 0800 - 2200 on Monday-Friday, Saturdays and Bank and Public Holidays and any 6 hours between 1000 - 1800 on Sundays.

Reason: In the interests of residential amenity.

