

Planning Committee – Supplementary agenda no. 1

A meeting of the Planning Committee will be held on:

Date: 5 February 2020

Time: 6.30pm

Venue: Meeting Room 9 - Level 3, Gun Wharf, Dock Road, Chatham ME4 4TR

Items

- 7 Planning application - MC/19/1875 - Land North of Medway Road, Gillingham ME7 1NY (Pages 4 - 26)**

Gillingham North

Construction of a Foodstore (Use Class A1 - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works.

The following report replaces the version included in the main agenda published on 28 January 2020.

For further information please contact Ellen Wright, Democratic Services Officer on Telephone: 01634 332012 or Email: democratic.services@medway.gov.uk

Date: 31 January 2020



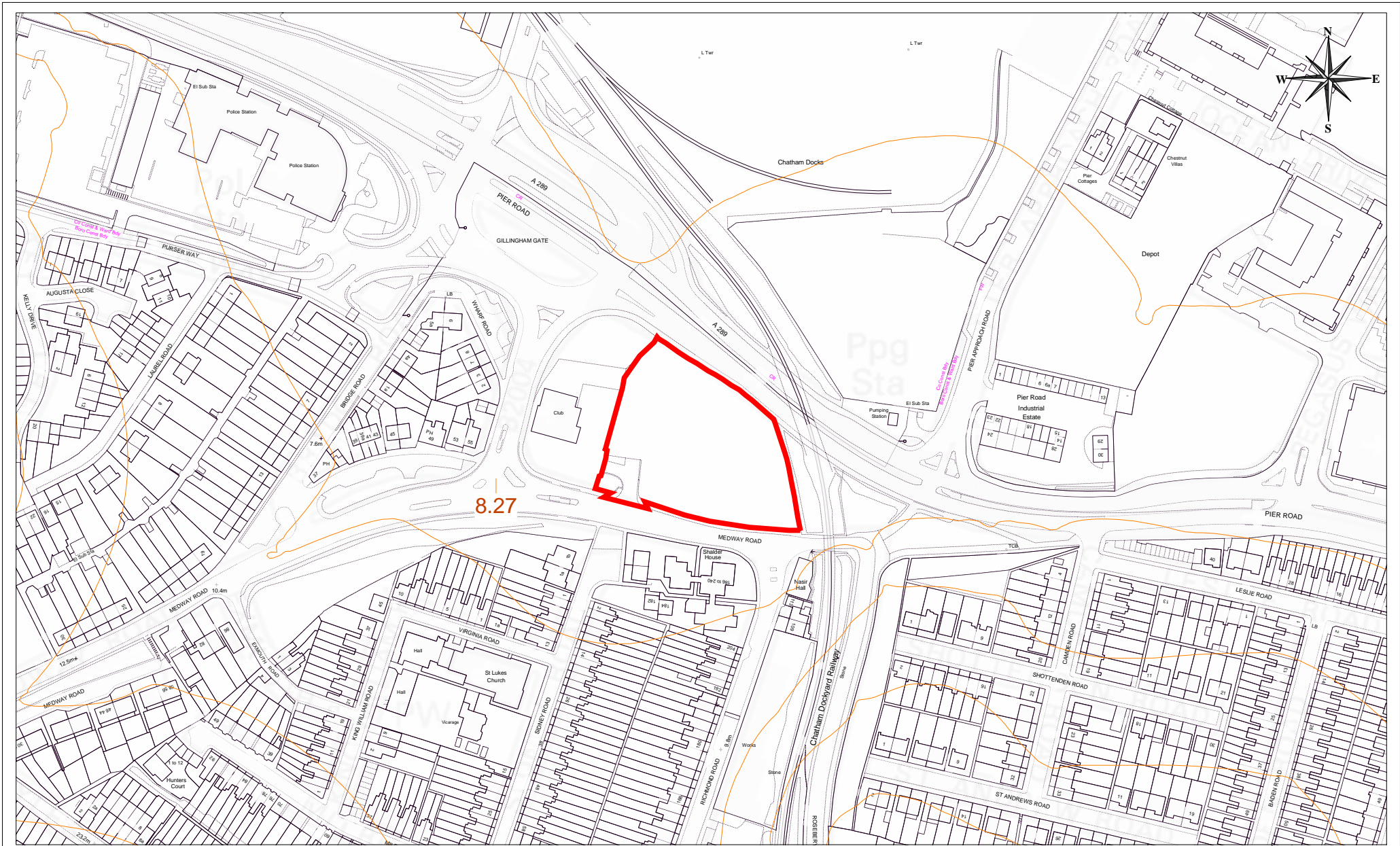
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MC/19/1875 - Land North of Medway Road, Gillingham, ME7 1NY



MC/19/1875

Date Received: 15 July 2019

Location: Land North Of Medway Road Gillingham Medway ME7 1NY

Proposal: Construction of a Food store (Use Class A1 - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works.

Applicant Lidl Great Britain Limited,
Mr Conor Lavery

Ward: Gillingham North Ward

Case Officer: Doug Coleman

Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 5 February 2020.

Recommendation - Approval with Conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers AD 110_REV F, AD 113_REV B and AD 114_REV F received 18 November 2019.

Reason: For the avoidance of doubt and in the interests of proper planning.
- 3 No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The Construction Environmental Management Plan shall include amongst other matters details of: hours of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis

cleaning facilities; dust control measures; pollution incident control and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan.

Reason: Required before commencement of development in order to minimise the impact of the construction period on the amenities of local residents with regard to BNE2 of the Local Plan.

4 No development shall take place until full details of the following highway improvements have been submitted to and approved in writing by the Local Planning Authority:

- Reinstatement of the existing footway at the north side of Medway Road all the way up to the west side of the bridge;
- Extension of double-yellow line parking restrictions on the south side of Medway Road to facilitate safer pedestrian movements,
- Introduction of a new pedestrian refuge with dropped kerbs and tactile paving approximately 30m east of the site access including a refuge island and tactile pavement at both sides of the road.
- New site access

The approved details shall thereafter be implemented in full prior to first occupation of the development.

Reason: Required before commencement of the development to ensure that the development does not prejudice conditions of amenity and highway safety in accordance with Policy T1 of the Medway Local Plan 2003.

5 No development shall take place until a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

Those details shall include:

- i. a timetable for its implementation.
- ii. Appropriate operational, maintenance and access requirements for each sustainable drainage component are adequately considered.
- iii. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

Reason: Required before commencement of the development to manage surface water during and post construction and for the lifetime of the development as outlined at Paragraph 165 of NPPF.

- 6 Prior to occupation (or within an agreed implementation schedule) a signed verification report carried out by a qualified drainage engineer (or equivalent) must be submitted to and approved by the Local Planning Authority to confirm that the agreed surface water system has been constructed as per the agreed scheme and plans. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

Reason: This condition is sought in accordance with paragraph 165 of the NPPF to ensure that suitable surface water drainage scheme is designed and fully implemented so as to not increase flood risk onsite or elsewhere.

- 7 No development above slab level shall take place until detailed drawings at scales of at 1:5, 1:10 and 1:20 showing details required of the ridge, eaves, verge, dormers, brick bonding and joint types, mortar colours, scheme colourways, entrance recess soffits, solar panels and brackets, balustrades, handrails, parapets & capping's, window and door cills - jambs - heads , ground connections, wall plane changes, junctions at material changes, visible flashings, roof vents, electricity cupboards, waste enclosures, boiler and other flume placements have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 8 No development above slab level shall take place until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 9 The boundary treatment shall be completed in accordance with the approved details (drawing number AD 114_REV F received 18 November 2019) prior to the first use of the development and shall thereafter be retained.

Reason: To ensure that the development does not prejudice conditions of visual amenity in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 10 The development herein approved shall not be occupied until the area shown on drawing number AD 110_REV F received 18 November 2019 as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking is likely to lead to hazardous on-street parking and in accordance with Policies T1 and T13 of the Medway Local Plan 2003.

- 11 The Travel Plan Ref: GA/18539/TP01B (dated June 2019) received 15 July 2019 shall be implemented prior to the occupation of the development and maintained for 5 years post completion of the development.

Reason: To ensure the sustainable transport objective related to the development of this site and to reduce potential impact on the surrounding area in accordance with Policy T14 of the Medway Local Plan 2003.

- 12 Prior to the installation of any external lighting on the site, details of such lighting shall be submitted to and approved in writing by the Local Planning Authority. Details shall include height, position, external appearance, any shielding, light intensity, colour, spillage (such as light contour or lux level plans showing the existing and proposed levels) and hours of use together with a report to demonstrate its effect on nearby residential properties and of how this effect has been minimised. Any external lighting shall be implemented in accordance with the approved details.

Reason: In order to limit the impact of the lighting on the nearby residents and with regard to Policies BNE1 of the Medway Local Plan 2003

- 13 The development herein approved shall not be occupied until details of the refuse storage arrangements, including provision for the storage of recyclable materials, shall be submitted to and approved in writing by the Local Planning Authority. the development shall be occupied until the approved refuse storage arrangements for that building are in place and all approved storage arrangements shall thereafter be retained.

Reason: In the interests of visual amenity and to ensure a satisfactory provision for refuse and recycling in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 14 If, during development, contamination not previously identified is found to be present at the site, no further development shall take place until a method statement has been submitted to and approved in writing by the Local Planning Authority. The Method Statement must detail how this unsuspected contamination shall be dealt with. The development shall thereafter be implemented in accordance with the approved Method Statement.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 15 The proposed curtain wall glazing shown on the approved plan (drawing number AD 113_REV B received 18 November 2019 to be clear glazed shall be retained as such and shall not be replaced by obscure glazing or panels or any other such device that would prevent or obscure views into the retail unit.

Reason: In the interest of visual amenity in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 16 No development above slab level shall take place above ground floor slab level until details of the provision of 4 electric vehicle charging points along with a parking management plan to increase the number of charging points required to 10 after three years have been submitted to and approved in writing by the Local Planning Authority. Details shall include the location, charging type (power output and charging speed), associated infrastructure and timetable for installation. The development shall be implemented in accordance with the approved details and shall thereafter be maintained.

Reason: In the interests of sustainability in accordance with paragraph 110E of National Planning Policy Framework 2019.

- 17 Notwithstanding the approved plans, no development above slab level shall take place until full details of both hard and soft landscape works, a timetable for implementation and a landscape management plan, shall be submitted to and approved in writing by the Local Planning Authority. The Landscape Management Plan shall include, management responsibilities and maintenance schedules for all landscape areas for a minimum period of five years; and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species. The development shall thereafter be implemented in accordance with the approved details.

Reason: To ensure a satisfactory external appearance and provision for landscaping in accordance with Policies BNE1 and BNE6 of the Medway Local Plan 2003.

- 18 No commercial goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart, within the application site outside the hours 07:00 to 23:00 Monday to Sunday.

These hours hereby permitted shall be discontinued 12 months after the building herein approved has been occupied and after this period no commercial goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart, within the application site outside the hours 07:00 to 19:00 Monday to Friday, 08:00 to 18:00 Saturday or at any time on Sunday or Bank Holidays.

Reason: To allow the Local Planning Authority an opportunity to assess the effect of the permitted development on the amenities of the surrounding area in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 19 The development herein approved shall not be occupied until details of the means to prevent unauthorised parking within the adjacent site to the east, The Walnut Tree Club, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved means have been installed and shall thereafter be retained.

Reason: To regulate and control unauthorised parking within the adjacent site at The Walnut Club, in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 20 No development above slab level shall take place until details of ecological enhancement measures have been submitted to and approved in writing by the Local Planning Authority. The approved shall be provided before the building is occupied and shall thereafter be maintained.

Reason: In the interests of ecology and in accordance with the provisions set out under Policies BNE37, BNE38 and BNE39 Medway Local Plan 2003.

- 21 No development above slab level shall take place until details of a close boarded fence to be erected around the external plant has been submitted to and approved in writing by the local planning authority. The close boarded fence shall have a minimum mass of 10kg/m². The fence shall be completed before the development is brought into use and shall thereafter be maintained in accordance with the approved details.

Reason: To protect nearby noise sensitive receptors from noise arising from the plant and in accordance with Policy BNE2 of the Local Plan.

- 22 No more than 20% of the net sales area of the unit herein approved shall be used for the sale of comparison goods and at no time shall more than 3,500 individual lines of goods be sold from the retail unit hereby permitted.

Reason: To safeguard the vitality and viability of existing retail centres and having regard to Policy R13 of the Medway Local Plan 2003 and Paragraph 90 of the National Planning Policy Framework 2019.

For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.

Proposal

This application seeks permission for a food store (Class A1) with a retail floor area of approx. 1,669 sq. m. measuring approx. 58m by approx. 24m, including ancillary servicing and storage areas. The proposed building would have a mono-pitched roof rising from approx. 5.9m at the north side (rear) of the building to approx. 7.5m towards the south (front) of the building. To the front of the building would be a single storey flat roof projection, approx. 4.5m in height, above the entrance into the store and trolley storage area.

The proposed building would be white rendered, with a grey plinth beneath. The entrance would be at the south-western corner, and would be glass. The glass would continue along most of the west elevation, with the remaining elevations being rendered. The scheme has been amended by the inclusion of illustrative display panels on the north and south elevations to add more interest to the building.

Both pedestrian and vehicular access would be achieved off Medway Road at the point where there is an existing access. This would be widened to a width of approx. 9m with footpaths on either side. 97 car parking spaces are shown including 6 disabled parking spaces and 8 parent and child spaces and 2 spaces provided with an electric charging station as shown on drawing number AD 110_REV F received 18 November 2019.

Relevant Planning History

- | | |
|------------|--|
| MC/07/2273 | Construction of car showroom with service workshop, car valeting facilities & mezzanine office over also car parking & vehicle display area.
Refused 7 March 2008 |
| MC/03/0233 | Construction of car showroom and work shop with associated wash down, car parking and vehicle display area (demolition of building)
Approved 19 March 2003 |

Representations

The application has been advertised on site and in the press as a major development and by individual neighbour notification to the owners and occupiers of neighbouring properties.

8 letters have been received, including **2 letters on behalf of ASDA** objecting for the following reasons:

- No need for more supermarkets in Medway.
- There are empty shops in High Street which should be used instead.
- Proposal would generate additional traffic.
- HGVs will have difficulty turning into site and would block traffic.
- If on street parking is removed to facilitate the development, this would impact on parking elsewhere.
- A safe pedestrian crossing.
- No details as to how the car park will be managed.
- Noise and disturbance to local residents from activity on site, particularly when deliveries are taking place and at night.
- Adverse impact on police station.
- The proposed store should be located in Chatham not Gillingham.

28 letters have been received making the following comments in support of the application.

- There is a need for Lidl in Medway.
- Proposal would positively contribute to regeneration of the locality.
- Proposal would create jobs.
- A new supermarket in this location will be popular with residents and students.
- 98 parking spaces should be sufficient for customers.
- Site would be accessible for local residents on foot
- Local people would not have to travel to other shopping centres.
- Proposal would increase consumer choice.
- The site is an eyesore and need development.
- Site is located on a bus route

2 letters have been received neither supporting nor objecting to the application but making the following comments

- Access to adjoining sports club must be retained.
- Development would be easily accessible by bicycle.
- The Transport Assessment does not take account of the speed of traffic using local roads.
- Insufficient traffic monitoring data.
- Traffic calming measures required.
- It's disappointing that the existing boundary fence is to remain.

KCC's Biodiversity Officer comments that sufficient ecological information has been provided but requests conditions relating to the control of Japanese Knotweed and ecological enhancements, and an informative regarding the protection of breeding birds.

A letter was received on behalf of **Tesco** raising the following concerns:

- Even though the development falls below the 2,500 sq. m. threshold for a retail impact assessment specified in Paragraph 89 of the NPPF, the Council has not had regard to the retail impact of the proposal having regard to Policy R13 of the Local Plan and Paragraph 90 of the NPPF.
- The Council has not had regard to comments in the recent draft Local Plan and the Gillingham Masterplan.
- The proposal would impact upon established retail facilities in Gillingham town centre.
- The applicant and the Council has failed to properly apply the sequential test.
- The sequential test has not considered Rochester or Strood and does not take into account preferable out of centre sites.
- The report fails to identify the net sales area or the breakdown between convenience or comparison goods.
- No conditions are recommended controlling the extent of floorspace or goods to be sold.

The applicant has submitted the following comments in response to the letter of representation by Tesco:

- In terms of retail impact Paragraph 89 is clear in that a retail impact assessment should only be required, in the absence of a locally set threshold, if the gross floorspace is over 2,500 sq. m. The proposed development is well below this threshold meaning an impact assessment is not required. The letter quotes Paragraph 90 saying that where an application is likely to have a significant adverse impact is should be refused. In setting the threshold at 2,500 sq. m. the Secretary of State does not believe that stores smaller than 2,500 sq. m. are likely to have a significant adverse impact. The applicant quotes a recent High Court judgement (Asda v Leeds City Council 20 December 2019) where an impact assessment had indicated a significant impact but the planning permission was granted permission. Asda challenged the decision and argued that NPPF paragraph 90 provides a presumption against granting permission, and essentially mandates refusal. The Court disagreed saying that the NPPF has to be read as a whole and that while the term 'presumption' is used in paragraphs 11-14 in relation to sustainable development, and a structure set out by which it is to be applied, the word is not used in paragraph 90, which contains no suggestion that a 'tilted balance' should be applied. There is no mandatory requirement for the application to be refused on impact grounds. The likelihood of a significant adverse impact on existing centres is a material consideration that should be weighed against the benefits of bringing a brownfield site back in to

economic use, improving choice and competition for local food shoppers and creating up to 40 new jobs for local people; the Secretary of State's guidance suggesting that developments of less than 2,500sq m gross are unlikely to result in significant impact; and the proposed development being 800sq m below the impact threshold.

- With regard to the sequential test, this was conducted on the basis of the development being a Limited Assortment Discount (LAD) foodstore to serve the local catchment of Gillingham/Chatham, which is consistent with the judgement in Aldergate Properties v Mansfield District Council (July 2016) that sequential assessments should relate to the broad type of development being proposed (in this case a deep discount foodstore) rather than the requirements of the individual retailer. A search was made for sites within or on the edge of existing centres, and additional information later provided in an addendum to address points raised by your policy team. No sites have been identified that are both suitable and available to accommodate the proposal. The comment that a wider catchment should be adopted pays no regard to the operational characteristics of LADs which serve as local neighbourhood stores for much smaller catchments than mainstream retailers.
- So far as the size and type of store is concerned, the proposal is for a LAD foodstore, with the format and layout obviously tailored to the applicant's specifications. The net sales space will be broken down into 80% convenience goods and 20% comparison, and the applicant has no objection to a condition restrict the store to that mix.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2019 and are considered to conform.

Planning Appraisal

Background

The application was the subject of a presentation to Members. The applicant also engaged in a public consultation exercise with local residents with flyers sent to local households and businesses

Principle

The site is within the urban area, but outside the core retail area and not within an area allocated for retail or any other use on the Proposals Map to the Medway Local Plan 2003.

Policy R13 of the Local Plan relates to retail development outside of the main retail centres and requires such proposals to apply a sequential approach, seeking to locate within core areas first, edge of centre and then adjacent to or within Local, Village and Neighbourhood Centres. Proposals outside of sequentially preferable locations would then be assessed having regard to the impact on vitality and viability of the existing centres, Local, Village or Neighbourhood centres; the choice of transport; and the overall impact on travel.

The sequential approach to the siting of town centre uses is also supported in the current NPPF at paragraph 86, given that at paragraph 85 of the NPPF it states that planning decisions should support the role that town centres play at the heart of local communities

However, paragraph 11 of the NPPF, sets out a presumption in favour of sustainable development and therefore, consideration has to be given to whether the proposal would constitute a sustainable form of development and whether any adverse impacts would significantly and demonstrably outweigh the benefits it would deliver.

The Sequential Test

A sequential assessment was included within the Planning and Retail Statement. This was carried out in accordance with the requirements of Paragraph 86 of the NPPF and the appropriate Planning Practice Guidance – Town Centres and Retail which states that *use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations.*

The sequential assessment submitted by the applicants looked at the following sites within the retail areas of Gillingham and Chatham:

- Former Budgens, Brittan Farm Mall, High Street, Gillingham
- Land off Jeffery Street, Gillingham
- Pentagon Shopping Centre, Chatham
- Land at Richard Street / Best Street, Chatham
- Trafalgar Centre, High Street, Chatham
- Land bound by High Street, Waterfront Way and Medway Street, Chatham
- Queen Street and Slicketts Hill Car Park, Chatham

Each of these sites were assessed in terms of their suitability, accessibility, availability and viability in accordance the aforementioned guidance. Looking at each of these sites in turn and summarising the assessment's conclusion on each site:

Former Budgens, Brittan Farm Mall, High Street, Gillingham. This site was neither suitable nor available, having regard to the fact that it has been vacant since 2016 and there has been a recent grant of planning permission (MC/19/0825) for a mixed Class B1/D1 scheme.

The applicant subsequently produced a Sequential Assessment Addendum, adding that work had now commenced on the development of this site and it is, therefore, not available. Furthermore, it is considered that the unit, in its current form is unfit for purpose and could not be used without comprehensive redevelopment.

Land off Jeffery Street, Gillingham. This site comprises an irregular area of land to rear of properties in High Street. It comprises several car parks and a former pub, the Dog and Bone, which has the benefit of planning permission for a retail development (MC/18/2448). As it is still partly in use and would require land assembly it is currently not available and due to its irregular shape not suitable.

Pentagon Shopping Centre, Chatham. The majority of the centre is occupied and vacant units within the centre would individually be too small and sufficient floorspace could only be achieved through the amalgamation of existing units. No plans have come forward for the expansion of the centre and it is currently neither suitable nor available.

Land at Richard Street/Best Street, Chatham. This site is allocated in the Local Plan for retail development (principally for comparison goods with ancillary Class A2 and A3 uses. There have been previous planning permissions for retail development but no schemes have come forward. The majority of the site is used as a car park, but there is also a car rental outlet and NHS facility. The site is in multiple ownership and unlikely to come forward within a reasonable time period and as such is not available.

Trafalgar Centre, High Street, Chatham. The Trafalgar Centre has been vacant since 2014 and with a floorspace of 1,920 sq. m. would be able to accommodate the foodstore. However, significant modification to the building would be required and the site would not be able to accommodate the parking and servicing arrangements necessary for the development and in this regard is not considered suitable.

Land bound by High Street, Waterfront Way and Medway Street, Chatham. This site is currently in use, occupied by Argos and its car park. It is allocated for retail in the Local Plan and identified as a potential development opportunity in the North Kent SHENA (2016) for 'other town centre' uses with residential on the upper floors. However, there are no proposals to bring this site forward and it is currently not available.

Queen Street and Slicketts Hill Car Park, Chatham. This site is outside the core retail area but is defined as an edge of centre site. Outline planning permission previously granted for mixed retail (Classes A1 and A2) and residential (MC/09/2926). Currently identified in the SLAA as suitable for residential only. Due to very steep gradient, not considered suitable for retail. Although not referred to in sequential assessment, this site would be separated from the core retail area by a major distributor route, which would make the site less accessible and attractive to shoppers in Chatham

Comments on matters of principle and sequential test.

The site is not within a core retail area, nor within any other area allocated for retail use and therefore the provisions of Policy R13 of the Local Plan and Paragraph 86 of the NPPF have been applied and a sequential assessment has been submitted as part of the application.

In assessing the sequential assessment, the applicant has considered each of the stated sites having regard to the characteristics of each site with one exception (former Budgens site). Whilst the conclusion of the assessment was accepted in that none of the stated sites would be suitable for the proposed development for the reasons given, further clarification was sought with regard to the former Budgens site. Further information was submitted in the form of an Addendum to the Sequential Assessment. This stated that although it was acknowledged the unit was empty, planning permission was granted for the site and is being implemented. In addition, it was stated that the unit would require comprehensive redevelopment to make the unit fit for purpose.

Following receipt of this further information and acknowledging that both the applicants and the Council have properly considered paragraph 87 of the NPPF, the conclusion of the Sequential Assessment and the Addendum to the Sequential Assessment are accepted and therefore there are no other suitable sites. Accordingly, no objection is raised to the principle of the proposed development in terms of the sequential test.

Retail Impact Assessment

In terms of the retail impact, Policy R13 of the Local Plan states that development will be assessed in accordance with the extent to which the proposal would undermine the strategy and objectives of the local plan to sustain and enhance the vitality and viability of existing centres; and whether the scale and type of retailing by itself, or cumulatively with other proposals, would have a detrimental impact on the vitality and viability of the Core Areas, Local Centres, Villages or Neighbourhood Centres. Paragraph 26 The NPPF (2012) introduced a default threshold of a 2,500 sq. m. for the requirement to submit a retail impact assessment where there is no locally set threshold. This has followed through in revisions to the NPPF and is now incorporated within Paragraph 89 of the current 2019 NPPF. Policy R13 does not specify a threshold for the submission of a retail impact assessment.

As part of the consideration of a planning application in 2017 for an extension to large supermarket in Gillingham (MC/16/3925), legal advice was sought from Counsel with regard to the need for an impact assessment. This proposed extension was for an additional 640 sq. m. which increased the floorspace of the supermarket from 8,470 sq. m. to 9,110 sq. m. As the proposed extension was to increase the area for clothing sales, there was concern with regard to the potential impact on nearby town centres.

Policy R13 of the Local Plan substantially predates the NPPF and in Counsel's view, is out of date. Policy R13 of the Local Plan has no stated floorspace threshold in relation

to the application of the impact test and does not justify the absence of any such threshold by reference to local circumstances, let alone one lower than 2,500 sq. m. set proportionately by reference to local circumstances. Policy R13 of the Local Plan also lacks the flexibility inherent in paragraph 87 of the NPPF in terms of demonstrating flexibility on such issues of format and scale. It was concluded that the weight afforded to Policy R13 of the Local Plan should be limited and that there was no policy requirement to insist on a retail impact assessment as such an assessment should only be required in relation to developments over 2,500 sq. m.

ASDA across the road is a much larger store and is performing relatively well relying on a wider catchment/wider draw. The proposed store is well below the size of ASDA and being a limited assortment discounter (LAD) is a different type of store to a standard convenience store like ASDA. The proposed store is defined as primarily a food store which is characterised by: a dominance of store private or 'exclusive' labels with few national brands; selling a limited range of products; ancillary non-food ranges promoted through 'weekly specials'. On the basis of the scale of the proposal and the type of offer, it is considered that there would not be an adverse impact.

With regard to Gillingham High Street, there is an ALDI store in an edge of centre location and is very accessible to visitors. Linked trips are likely to happen from visiting the ALDI and the High Street. The location of the proposed store could have an impact on these linked trips but the masterplan for Gillingham has established that many visits to the High Street are from residents living in close proximity who generally walk. The offer is very localised and therefore the proposed store on this site, further afield, would probably not deter the large proportion of residents from visiting the High Street or the ALDI in close proximity.

A condition is recommended and has been agreed with the applicant, restricting the goods on offer at the proposed store, thus ensuring that there would be a healthy choice on offer to customers whilst minimising any potential impact on the High Street which could occur should the comparison offer increase in proportion in the LIDL store.

Tesco have raised questions relating to the principle of the proposed development including retail impact, the sequential test and the type of goods sold. The Council's response is as follows: Paragraph 89 of the NPPF clearly states that the Local Planning Authority should require an impact assessment if the development is over proportionate, locally set threshold (if there is no locally set threshold, the default threshold is 2,500 sq. m.). These should include:

- a) *The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- b) *The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).*

- Paragraph 90 says that where an applicant fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the considerations in Paragraph 89, it should be refused.
- Having regard to paragraph 89 of the NPPF and in the absence of a locally set threshold, or any overriding material considerations, there is no requirement for a retail impact assessment. It is therefore considered that the application would be unlikely to have a significant impact in this regard, and there is no reason to suggest that the proposal would have an adverse impact, particularly having regard to the scale of the proposed development and the limited range of comparison goods sold.
- There is no published draft Local Plan at present. Although consultation has been carried out on the evidence in preparation for the publication of a Local Plan, there are no planning policy documents currently available to which any weight can be attached to these documents when making planning decisions. The Gillingham Town Centre Masterplan is a draft document to which limited weight can be attached. In the absence of an up to date policy document, the planning application has to be considered in the context of Paragraph 89 of the NPPF and a retail impact assessment is not considered necessary.
- Due to the nature and size of the development Rochester and Strood are not within the catchment area and there are similar stores nearer (e.g. Aldi, Horsted Retail Park) which would be likely to have greater impact.
- The Council considers that the applicant has adequately assessed each of the sites in the submitted sequential test in terms of their suitability, accessibility, availability and viability. The Council agrees with the conclusions of the sequential test in that none of the stated sites would meet the requirements of this development.
- In response to the comment regarding the breakdown between convenience and comparison goods, the Planning Statement says that Lidl is a discount food retailer with a limited range of grocery products and base their retail offer on selling those products at very competitive prices. The three major LADs in the UK are Aldi, Lidl and Netto. Each ... carries in the region of 1,000 to 1,400 product lines in stores ranging from 500 sq. m. to 1,400 sq. m. (stores of a similar size operated by a large grocery retailer generally carry about 5,000 products). The applicant has subsequently confirm this in response to the letter of representation and is agreeable to a condition in this regard.

Design, Scale and Visual Impact

Policies S4 and BNE1 of the Local Plan and paragraphs 124 and 127 of the NPPF supports high quality development with landscape mitigation where appropriate.

The character of the area is varied with predominantly residential development to the south and commercial development to the north. Immediately to the west of the site is the Walnut Tree Club, a part single/part two storey mid twentieth century building within a large car park, which is accessed via the application site. To the south is part two storey/part three storey building, Compass House used as student accommodation. To the east of Compass House, on the opposite side of Richmond Road, is a mosque.

Immediately to the east of the site, is an embankment to the former dockyard railway, whilst to the north, on the opposite side of Pier Road (A289) is a wooded area, beyond which is Asda petrol station and car park.

The application site has two frontages. The Medway Road frontage (south) is proposed as the more active frontage with the entrance facing this way. Although there is an adopted public footpath along this frontage, it has become overgrown and is currently not useable. Vehicular and pedestrian access to the site would be via Medway Road. The proposed building would be set back into the site beyond the carpark. It would be low rise and not unduly prominent when viewed from the Medway Road street scene.

The proposed building would be located closer to the Pier Road (north) frontage. The land level varies across the site rising to a maximum of approx. 1.5m above the highway of Pier Road at the eastern end, adjacent to the embankment. The Pier Road frontage is currently defined by a close-boarded fence at the western end of the frontage and by a rising retaining wall to the east with railings on top. This retaining wall is to be retained under the proposed development.

Due to the constraints of the site it is difficult to alter the layout. The existing access to the site is via Medway Road and will be retained. Vehicular access cannot be obtained via Pier Road due to the variation in levels and the fact that it would be unacceptable in highway terms. Although there is a pedestrian footpath along the Pier Road frontage, it is little used. The majority of people using the store, both by car and on foot, are likely to come from the south.

Careful consideration has been given to the Pier Road frontage, as it is onto a main distributor route. As originally proposed, the building would have presented a blank wall to the Pier Road frontage. Concerns in this regard were raised with the applicant and changes sought to address this and enhance the appearance of the development when view from Pier Road. It is recognised that there are going to be difficulties designing a building with active frontages that also responds to the requirements of the use where a significant amount of storage and shelving is required internally. Although the rear elevation (Pier Road frontage) does not have any windows, the scheme has been amended to include two large display panels measuring approx. 4.5m in height and approx. 5.5m in width to add interest to an otherwise blank elevation. In addition a secondary pedestrian access to Pier Road has been included which will bring an element of activity to the frontage. Finally, hedge planting is proposed along the Pier Road frontage to soften the impact of the building.

Whilst the principle of a hedge along this frontage has been agreed with the applicant careful consideration will have to be given to the choice of species, having regard to the width of the planting strip and that being on the north side of the building it is likely to be in shadow for a considerable part of the day and therefore unlikely to establish. A condition is therefore recommended requiring the submission and approval of a detailed landscaping scheme. This condition would apply to the whole site not just the Pier Road frontage.

A condition is also recommended requiring the submission of drawings showing building details at scales of 1:5, 1:10 and 1:20, materials, planting any lighting.

In summary, careful consideration has been given to the design of the proposal, particularly the north elevation, and it is considered that having regard to the nature of the site and its overall appearance, the amended scheme would be acceptable in and accord with Policy BNE1 of the Local Plan and Paragraphs 124 and 127 of the NPPF.

Amenity

Policy BNE2 of the Local Plan states that development should protect those amenities enjoyed by nearby properties with regard to but not limited to loss of sunlight, daylight, outlook and privacy; as well as disturbance caused by noise, light, activity levels and traffic generation.

The nearest residential property is the Kent Student Accommodation to the south, approx. 20m from the boundary of the site and approx. 60m from the proposed retail unit itself. In view of this distance, it is considered that there would be no detrimental impact on neighbouring residential amenities in terms of loss of daylight, sunlight, outlook or privacy. However, there is potential for there to be an impact of amenities in terms of noise, light, activity levels and traffic generation.

In terms of noise related to the operation of the development, the revised Noise Impact Assessment Ref: 7806/FD/JA/BL (dated 25 October 2019) received 18 November 2019 has accounted for noise from the plant and delivery operation and has made the recommendation that deliveries should be allowed from 07:00 – 23:00 seven days a week. Concerns have been raised that there may be an impact on neighbouring amenities in terms of noise from the deliveries. However it is considered that it would be acceptable to allow the proposed delivery times on a temporary basis, which would be conditioned to be reviewed after 12 month period following the development being brought into use to assess the impact of the proposal on neighbouring residential amenities. It should be noted that traffic generation has been considered in the highways section of this report.

There is the potential for plant machinery to cause noise and disturbance to nearby neighbouring residential amenities which have also been addressed in the Noise Impact Assessment Ref: 7806/FD/JA/BL (dated 25 October 2019). The applicants have recommended constructing a 2m close boarded fence around external plant, which is

considered acceptable in terms of minimising the impact of noise on neighbouring properties. This fence should have a minimum mass of 10kg/m² to be effective and would be included as a condition to any forthcoming planning permission. No objection is, therefore, raised in this regard under Policy BNE2 of the Local Plan and paragraph 127f of the NPPF.

In terms of external lighting, these details would be required to be submitted and approved in writing by the Council prior to any installation of external lights to limit the impact of the lighting on the nearby residents in accordance with Policy BNE5 of the Local Plan.

Additionally it is considered that a condition relating to a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the Local Planning Authority in order to minimise the impact of the construction period on the amenities of local residents with regard to Policy BNE2 of the Local Plan and paragraph 127f of the NPPF.

Highways

Site Access

Policy T1 of the Local Plan states that proposals should not significantly add to the risk of road traffic accidents; and Policy T2 of the Local Plan states that proposals which involve intensification in use of an existing access will only be permitted where it would not be detrimental to the safety of vehicle occupants, cyclists and pedestrians or can be improved to a standard acceptable to the Council as Highway Authority. Paragraph 108 of the NPPF states that applications for development should provide safe and suitable access to the site for all users.

The application proposes one point of vehicular access which would make use of the existing access onto Medway Road that currently serves The Walnut Tree Club. It is proposed that the existing access would be adjusted to meet current highways standards and a swept path analysis has been completed to demonstrate that, after the adjustments to the access, a delivery vehicle can safely enter and exit the site in a forward gear as illustrated on drawing number SCP/18539/003. This access would also serve as a pedestrian access and the submitted plan (drawing number AD 110_REV F) shows a pedestrian crossing at the entrance to the Walnut Tree Club with a footpath along the western boundary and a second pedestrian crossing from this footpath to the entrance of the retail unit to provide safe pedestrian routes onto and around the proposed development. Additionally the proposal would re-instate a previously existing footpath along Medway Road that is currently overgrown, along with a pedestrian crossing on Medway Road from the student accommodation to the reinstated footpath. (This would be secured by an agreement under Section 278 of the Highways Act). It is considered that these arrangements would provide a safe pedestrian access to the site along with an improvement to the existing vehicle access to the site to a standard which

would be acceptable to the Council and in accordance with Policy T2 of the Local Plan and paragraph 109 of the NPPF.

Traffic generation and impact

Policy T1 of the Local Plan states that proposals will be permitted where the highway network has adequate capacity to cater for the traffic which would be generated by the development and Policy BNE2 of the Local Plan states that development should protect those amenities enjoyed by nearby properties with regard to traffic generation. Paragraph 109 of the NPPF states that development should only be refused on highways grounds if there would be unacceptable impact on highways safety.

The proposed scheme could potentially generate approx. 168 vehicle trips per peak hour during the PM peak on a weekday and approx. 229 trips per peak hour during the PM peak during the weekend peak as outlined in the submitted Transport Assessment Ref. CG/18539/TA01A (dated June 2019). It is considered that some of these trips associated with the proposal would be diverted from existing retail provision within the local vicinity (primarily ASDA) or would be likely passing by from other trips such as work commutes and school runs and would therefore not represent an increase of traffic in the town centre road network. The Transport Assessment Ref. CG/18539/TA01A (dated June 2019) goes on to predict that 50% of the additional traffic would be linked/pass by trips to the store therefore the actual additional vehicle trips generated during the weekday peak could be estimated at approx. 84 and 114 at the weekend. Although the exact figure of diverted trade may vary slightly from these figures, because this traffic is already on the network, whether the final destination is LIDL or ASDA, it is not considered to detrimentally impact highway traffic generation

The applicants have undertaken capacity assessments at the site access and at the B2004 Medway Road/Wharf Road signal controlled junction, which is discussed in the Transport Assessment Ref. CG/18539/TA01A. The junction modelling demonstrates that the access would not create any significant delays or result in an impact that would be deemed severe. With regard to Medway Road/ Wharf Road junction, the assessment demonstrates that there is sufficient capacity with a maximum degree of saturation at 67.9%.

It is therefore considered that the highway network has adequate capacity to cater for the traffic which would be generated by the proposal and would not create any significant delays or result in an impact that would be deemed severe. Therefore no concerns would be raised with regard to Policy BNE2 or T1 of the Local Plan and Paragraph 109 of the NPPF.

Parking

Policy T13 states that proposal will be expected to make vehicle parking provisions in accordance with the Council's adopted standard and Paragraph 106 of the NPPF states

that maximum parking standards for non-residential development should only be set where there is a clear and compelling justification.

The site is proposed to have 97 spaces to serve the development which is slightly more than the number of spaces outlined in Medway's Parking Standards, however no objections would be raised in this regard. Of the proposed spaces, 6 disabled parking spaces are provided, 8 parent and child spaces are provided; and 2 spaces are provided with an electric charging station as set out on drawing number AD 110_REV F received 18 November 2019. However, 2 spaces with a single electric vehicle charging point is considered to be inadequate. A minimum of 4 parking spaces served by 2 charging points is recommended, with the situation reviewed after 3 years to assess whether the proportion of electric vehicles has changed. This can be addressed by an appropriately worded condition.

The applicant has provided a parking accumulation to demonstrate that the parking is sufficient to meet the average demand. A total of 10 cycle parking spaces are proposed, which accords with the Council's Parking Standards. A condition would be included on any planning permission to provide these spaces prior to the occupation of the unit in the interest of highways safety in accordance with Policies T1 and T13 of the Local Plan.

Accessibility by Sustainable Modes of Transport

Policy T14 of the Local Plan states that Travel Plans will be required for developments which require a transport assessment and Paragraph 102 of the NPPF states that development proposals should identify and pursue opportunities to promote walking, cycling and public transport use.

The area around the development site encourages walking and cycling, with the pedestrian and cycling provision. After discussions with the applicant, the proposal now includes further improvements (drawing number SCP/18539/003 received 24 September 2019) within the local vicinity which are:

- Reinstatement of the existing overgrown footway at the north side of Medway Road all the way up to the west side of the bridge;
- Extension of double-yellow line parking restrictions on the south side of Medway Road to facilitate safer vehicle and pedestrian movements, and;
- Introduction of a new pedestrian refuge with dropped kerbs and tactile paving approximately 30m east of the site access including a refuge island and tactile pavement at both sides of the road.

The improvements outlined above would be secured by a condition requiring an agreement under Section 278 of the Highways Act. They would be required to be implemented prior to the retail unit coming into use in the interest of highways and pedestrian safety and in accordance with Policies T1 and T3 of the Local Plan and paragraphs 102 and 109 of the NPPF.

There is a number of existing bus services that are within the local vicinity of the site providing services to lower Gillingham, Walderslade, Chatham and Hempstead. The nearest railway station is at Gillingham, which is within a 15 minute walk from the proposed site. The station is served by frequent trains to Rainham to the east and Chatham and Rochester to the west. The proposed development is well located such that for certain journeys undertaken by customers and staff could be undertaken by walking, cycling, bus or train thereby providing a viable alternative to the use of the private car. The submitted Travel Plan Ref: GA/18539/TP01B (dated June 2019) sets out proposed the sustainable travel measures to promote walking, cycling, car sharing and public transport use to its customers and staff members, which would be conditioned in any forthcoming planning permission.

It is considered that the proposal is acceptable with regard to highways safety, capacity and sustainability, in accordance with Policies BNE2, T1, T2, T3, T13 and T14 of the Local Plan and paragraphs 102, 106, 108, 109 of the NPPF.

Contamination

A Phase 1 Desk Study and Phase 2 Ground Investigation report have been submitted with the application. The reports are in line with current guidance and the findings that potential contaminants did not exceed the assessment criteria for the proposed end use are accepted. However, as made ground is present on the site from previous use and demolition, a watching brief condition is recommended to address any unexpected contamination. Subject to this condition, no objection is raised under Policy BNE23 of the Local Plan and Paragraph 178 of the NPPF.

Flood Risk and Surface Water

The Environment Agency's Flood Risk map shows that the site is within an area at low risk of surface water flooding meaning that the chance of flooding in any one year is between 0.1% (1 in 1000) and 1% (1 in 100). No objection is, therefore raised in this regard under Policy CF1 of the Local Plan and Paragraph 164 of the NPPF. A condition is recommended in respect of surface water drainage.

Local Finance Considerations

There are no local finance considerations raised by this application.

Conclusions and Reasons for Approval

Although the site is not within a core retail area or a local centre, the proposal falls below the 2,500 sq. m. threshold for carrying out a retail impact assessment, specified in Paragraph 89 of the NPPF and therefore such an assessment is clearly not required in this instance and cannot be requested. It is, therefore considered that the proposal would not adversely affect the vitality and viability of existing centres, particularly having

regard to the limited range of goods that would be displayed for sale in this instance. A condition is, therefore recommended to ensure that this is the case. It is considered that the sequential test has adequately looked at appropriate town centre and edge of centre sites and the proposal would comply with Paragraph 90 of the NPPF. No objection is, therefore, raised to the principle of the proposed development under Policy R13 of the Local Plan and Paragraphs 80, 85 and 86 of the NPPF.

Careful consideration has been given to the design and appearance of the proposed development and changes have been secured, and the scheme is considered to be acceptable. Subject to appropriate conditions, no objection is raised in terms of amenity, highways contamination and flood risk and the proposal would comply with Policies BNE1, BNE2, BNE23, T1, T2, T4, T13, T14 and CF1 of the Local Plan and Paragraphs 102, 106, 108, 109, 124, 127, 164 and 178 of the NPPF. The application is, therefore recommended for approval.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the number of representations received expressing a view contrary to officer's recommendation.

The application was due to be considered at the meeting of the Committee on 15 January 2020 but was deferred following the receipt of the letter from **Tesco** (summarised under representations raised) to enable the comments to be considered more fully.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>