

MC/19/1875

Date Received: 15 July 2019

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

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

Applicant Agent 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 16th September 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 The use of the development hereby permitted shall not commence until the highway improvements shown on drawing no: SCP/18539/003 have been completed in full.

Reason: 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 shall take place until details of flood resilience and resistance measures specific to the building construction and site layout have been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

Reason: To ensure that the development is appropriately flood resilient and resistant for its users for the developments lifetime in accordance with Paragraph 001 of National Planning Policy Guidance (NPPG): Flood and Coastal Change.

- 8 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.

- 9 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.

- 10 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.

- 11 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.

- 12 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.

- 13 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

- 14 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.

- 15 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.

- 16 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.

- 17 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.

- 18 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.

- 19 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 21:00 Monday to Saturday and 08:00 to 18:00 on Sunday and Public Holidays.

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.

- 20 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.

- 21 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.

- 22 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 pass 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.

- 23 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.

- 24 The use of the development hereby permitted shall not commence until the details of a mechanism for off-site planting have been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a contribution towards off site planting and a timescale for the carrying out and maintenance of the planting.

Reason: In the interests of visual amenity and in accordance with Policies BNE1 and BNE6 of the Medway Local Plan 2003.

- 25 The use of the development hereby permitted shall not commence until a Service Delivery Plan has been submitted to and approved in writing by the Local Planning Authority. The Service Delivery Plan shall include details of the number, frequency and times of deliveries and collections from the premises and the noise impact. The use shall operate in accordance with the approved Service Delivery Plan.

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety in accordance with Policies BNE2 and T1 of the Medway Local Plan 2003.

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) to 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.

This application was previously determined to grant planning permission, however following determination the decision was legally challenged. As a result of that legal challenge, the planning permission granted under this reference (MC/19/1875) has now been quashed by a consent order agreed by all parties and dated 27 July 2020. This application is therefore now live and presented to Planning Committee for determination.

Relevant Planning History

MC/20/1431	Construction of a Foodstore (Use Class A1 - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works. Resolution to Grant 19 August 2020 subject to screening opinion from Secretary of State to determine if an EIA is required.
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 workshop with associated wash down, car parking and vehicle display area (demolition of building) Approved 19 March 2003

Representations

Given the timeframe between this application and application MC/20/1431, it was considered relevant to include the consultation responses for both applications.

Initial Consultation Responses to MC/19/1875

With reference to this application, the application was advertised on site and in the press as a major development and by individual neighbour notification to the owners and occupiers of neighbouring properties.

7 letters were 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.
- Question viability of the proposal.
- The proposed store should be located in Chatham not Gillingham.

28 letters were 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.
- There is a need for Lidl store in Medway.
- Proposal would increase consumer choice.
- The site is an eyesore and need development.
- Site is located on a bus route.

2 letters were 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.

A letter was received from **Gillingham Town Centre Forum** making the following comments:

- Express disappointment that the development is to be located away from the town centre and would have preferred this to be located at the Britton Farm Mall site.
- However, they accept that a different development is now taking place at that site and it is not available.
- Scheme has benefit of regenerating area and would draw people to Gillingham.
- Consideration should be given to encouraging feeder trade to the High Street so that High Street benefits from the store. Every opportunity should incentivise visitors to High Street – car park incentives, shuttle services (resurrecting old tram route), cycling and pedestrian provision.

KCC's Biodiversity Officer commented 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.
- Tesco say that if these matters are not addressed the probity of any decision must be called into question.

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

- Tesco has 6 months to comment on the application but waited until the day before the Committee. This is an unacceptable tactic.
- 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.
 - Tesco's letter does not raise any material issues that you have not already satisfactorily addressed the report and all relevant material considerations have been assessed.

Consultation Responses to Application MC/20/1431

With reference to application MC/20/1431, the application had been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties.

Natural England had no comments to make.

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

A letter has been received **on behalf of ASDA** objecting for the following reasons:

- Asda have not received a response to matters raised in the second legal challenge by Asda, namely Ground 3 - Unlawful application of the sequential test and / or failure to provide reasons; and, Ground 4 - Unlawful approach to Policy R13 of the Development Plan.
- The updated Planning & Retail Statement still fails to assess the cumulative impacts of the proposed development.
- Asda should be able to see how matters raised in the second legal challenge have been considered in the determination of the duplicate application.
- Asda should also be afforded the opportunity to follow proceedings and address the Planning Committee directly.
- The site should not be classified as Flood Zone 1 or an area with low flood risk. The duplication application must be refused owing to flood risk and the lack of a sequential test and consideration of the exception test.

The applicant had submitted the following comments in response to the letter of representation **on behalf of ASDA:**

- The retail impact and sequential test issues have previously been responded to, including in the Planning & Retail Statement submitted with the MC/20/1431 application.
- The flood risk statement submitted with MC/19/1875 was not challenged or queried.
- The imprecise nature of the Environment Agency's map means that it cannot be interpreted down to the level of individual pixels and it cannot have been their intention to suggest that the Zone 2 designation extends in to the application site, as the section of Pier Road that is within Flood Zone 2 is 1.5-2m below the level of the site.
- The potential for any surface water on the road to spill over on to the application site is close to zero – Pier Road would have to be flooded to a depth of 2m before the application site would be at any risk.
- Advice has been sought from Queens Counsel (QC) who has confirmed that the impact and sequential tests have been satisfactorily addressed and that the objections raised by Asda have no planning merit. This QC written opinion has been formally submitted to officers in support of the application.

Prior to MC/20/1431 being presented to Planning Committee, **the applicant** submitted a summary of a public consultation that was carried out under this planning application (MC/19/1875). At that time, 3502 responses in support of the application were received and as planning application MC/20/1431 is a duplicate of MC/19/1875, the applicant submitted these responses in support of the MC/20/1431 application. **The applicant** also sent a letter to the Members of the Planning Committee outlining that the MC/20/1431 application is a duplicate of planning application MC/19/1875 along with the responses in support received via the public consultation carried out by the applicant under MC/19/1875 as mentioned above; and a summary highlighting the benefits of the proposal.

Twenty-four letters of support were received in relation to the MC/20/1431 application. The following comments were made in support of the application:

- Improve local economy
- Good use of land
- Good for local community
- Proposal would create jobs
- A new supermarket in this location will be popular with residents and students.
- Site would be accessible for people with limited travel ability
- Local people would not have to travel, reducing traffic
- There is a need for Lidl store in Medway
- Proposal would increase consumer choice and competition
- The site is an eyesore and needs development

One letter of objection received from a resident outlining the following concerns:

- Increase highways movements
- Pollution caused by traffic

One further letter of objection had been received on **behalf of Asda** stating that a request has been made to the Secretary of State on 18 August 2020 for a screening direction, and citing case *R.(on the application of Roskilly) v Cornwall Council [2015] EWHC 3711 (Admin)*. Asda state they are of the opinion that should the Council determine the application prior to the Secretary of State decision, the decision would be unlawful.

Screening Opinion

The application has been screened for EIA development. The proposed development does not fall within Schedule 1 development as described in Schedule 1 of the EIA Regulations 2017. In considering Schedule 2, 10(b) (Urban Development Projects), the development does not meet the thresholds set out in column 2 (i), (ii) or (iii) for an Environmental Impact Assessment. In these circumstances the development would need to include more than 1 hectare of urban development which is not dwellinghouse development. The site area for this development is 0.58ha, which does not meet this requirement.

The size and nature of the proposal for a standalone retail unit and the location of the application site in the urban area, which is not ecologically rich or sensitive, nor is it abundant in natural resources and located a significant distance from environmentally or historically sensitive sites, is unlikely to result in an adverse impact on the environment either on its own or in combination with other development in terms of the use of natural resources, production of waste, pollution and nuisances and risk to human health. The proposal is not considered to present a significant risk with regard to major accidents and/or disasters.

In consideration of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, Medway Council does not consider that the development proposed requires an Environmental Impact Assessment.

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 generally considered to conform. Where the Council considers there to be a non-conformity, this will be addressed in the relevant section of the appraisal.

Planning Appraisal

Background

This application (MC/19/1875), for a LAD foodstore at this application site was granted planning permission on 3 April 2020. However, following a challenge by judicial review, the parties involved in that challenge agreed a consent order that the planning permission be quashed on a very narrow and technical ground relating to the process of determination during the COVID pandemic. The consent order was finalised and sealed by the Court on 27 July 2020 which means the decision to grant planning permission for MC/19/1875 is now quashed and the application submitted under MC/19/1875 is now a live application again.

Given the uncertainty regarding timescales for the court decision with regard to the consent order for MC/19/1875, the applicant chose to submit a duplicate application (MC/20/1431). This application was referred for Committee determination on 19 August 2020. On 18 August 2020, prior to the Planning Committee meeting, a request was made to the Secretary of State to determine if an EIA is required. The Planning Committee made a resolution to grant subject to a screening opinion from the Secretary of State stating that the development is not EIA development. Any other decision from the Secretary of State will result in the MC/20/1431 application being referred back to Planning Committee for a decision at the appropriate time.

By way of engagement, this application (MC/19/1875) was the subject of a presentation to Members. The applicant also engaged in a public consultation exercise with residents with flyers sent to local households and businesses prior to the previous decision and the subsequent quashing.

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 as 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. Paragraph 89 of the NPPF only requires an assessment of impact where the proposed development is over 2,500sq m gross floorspace, or where there is a lower threshold included in the development plan, which is not the case with the Local Plan. There is therefore a degree of inconsistency between Policy R13 of the Local Plan and paragraph 89 of the NPPF in respect of the need for an impact assessment. Given the NPPF post-dates the Local Plan by 16 years officers believe that greater weight should be accorded to the NPPF on this matter. This is consistent with the stance adopted in considering application MC/20/1431 and the QC's written opinion submitted by the applicant.

The Sequential Test

A Sequential Test 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 test 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 approx. 0.71 hectare site is located to the north east of Chatham town centre (outside the core retail area) and is bound by The Brook, Queen Street, Slicketts Hill and Cross Street. The site is defined as an edge of centre site but is separated from the core retail area by a major distributor route.

Outline planning permission was granted for a mixed retail (Classes A1 and A2) and residential scheme on 21 April 2010 (reference MC/09/2626). The outline scheme proposed 1,350 sq. m. retail floorspace, with a further 2,080 sq. m. of flexible floorspace plus 118 residential units.

In terms of the retail floorspace previously permitted, although only in outline, the Planning Statement submitted in support of the planning application identified that this would comprise a larger anchor unit (1,350 square metres) together with 2,025 square metres of flexible retail space. There was no end user identified.

The site has been cleared but since permission was granted in 2010 no reserved matters application has been submitted. The outline permission has now expired and in this regard a retail unit on this site is not available.

Whilst the quantum retail floorspace previously permitted could accommodate the broad level of floorspace proposed for Medway Road, the nature and constraints associated with delivering retail and commercial floorspace in this location means that this site would not be suitable for the application proposal. The land, due to its topography and difficulty in providing service and delivery arrangements from the Brook would have a potential adverse impact on highway safety and free flow of traffic and as such the site would not be suitable for the nature of the proposal and the prospective tenant.

Furthermore, the limited site area means that any parking that could be provided would be very limited. The permitted scheme (MC/09/2626) included only 10 spaces to serve the retail units. Such parking provision would be insufficient to meet the requirements of a Limited Assortment Discount (LAD) food retailer.

Since the consideration and determination of the outline planning application MC/09/2626, the site has been assessed as part of the Local Plan process. It is currently identified in the SLAA as suitable for residential only. In addition, the Chatham Town Centre Masterplan 2019 (CTCM) has been developed in support of the Local Plan, having now been published and forming part of the evidence base. The CTCM updates the Council's position in terms of uses from the Chatham Centre and Waterfront Development Brief 2008 and identifies this site and other sites along this side of The Brook, as being suitable for housing. There is no reference to retail for the site in this document. It is therefore unlikely that any proposals for retail development (either in isolation or part of a mixed use scheme) coming forward at this site will be supported by the Council.

Furthermore, the Council as landowner have entered into a joint venture agreement with a developer to redevelop the land for 229 residential apartments in 4 blocks for which a planning application has been submitted under reference MC/20/0222. This planning application is currently under consideration and awaiting determination.

Accordingly, it is considered that this site is neither suitable nor available to accommodate a LAD foodstore.

Conclusions on matters of principle and sequential test.

Whilst the site is not within a core retail area, nor within any other area allocated for retail use, having regard to the provisions of Policy R13 of the Local Plan, and Paragraphs 80 and 86 of the NPPF, as well as the QC advice submitted by the applicant, it is concluded that there is no suitable site within core retail areas of Gillingham or Chatham that would be suitable for the development proposed, and accordingly no objection is raised to the principle of the proposed development.

Retail Impact

In terms of the retail impact, proposal falls below the 2,500 sq. m. threshold for a retail impact assessment, specified in Paragraph 89 of the NPPF.

However, **Tesco** have raised questions relating to the proposed development in relation to matters of principle including retail impact, the sequential test and the type of goods sold. The following comments are made in response:

- Paragraph 89 of the NPPF clearly states that the Local Planning Authority should require an impact assessment if the development is over a locally set threshold (if there is no locally set threshold, the default threshold is 2,500 sq. m.). Where an impact assessment is required, it should include and assessment of:
 - a) *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
 - b) *The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).*
- The current Local Plan does not state a threshold and given that the Local Plan was adopted in 2003. Paragraph 213 of the NPPF states:
 - “However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).”
- Given the inconsistency of the Policy R13 of the Local Plan with paragraph 89 of the NPPF (noted earlier in this report), the NPPF is considered more up-to-date and the 2,500sq. m. threshold should apply. The proposal falls below this threshold in terms of floorspace.
- Paragraph 90 says that where an application 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. It does not say in the absence of an impact assessment the application should be refused.

- In setting the default threshold at 2,500sq m gross in the preceding paragraph 89 of the NPPF, suggests that it is considered that retail units smaller than 2,500sq m are unlikely to have a significant adverse impact. If this were not the intention, it would seem pointless to have set a scale of development that should not require an impact assessment.
- However, the absence of need to submit an impact assessment does not prevent consideration of the impact of the proposal upon existing centres. There is no published draft Local Plan at present. Although consultation has been carried out in preparation for the publication of a Local Plan, limited weight can be attached to these documents when making planning decisions. However, it is important to consider some of the documents/assessment which form the evidence base to the new Local Plan. The North Kent SHENA prepared in 2016 provides recommendations for all retail centres in Medway. In section 10.42 of Volume 1 – Main Report, it states the above average performance of existing foodstores within the Gillingham area and advises of the need for a foodstore-led development at the former Budgens site in the High Street as well further foodstore provision in the Gillingham area. Since the SHENA the former Budgens site has not come forward for retail development but for other development and is not considered a suitable option for the reasons set out in the Sequential Assessment section above.
- The Gillingham Town Centre Masterplan (GTCM) has also been produced which identifies significant potential for development in the town centres. Following consultation, the document was approved by Cabinet on 17 December 2019 to be published as an evidence base document for the preparation of the new Local Plan. The document also recognises the former Budgens store offers opportunity for change but also states the challenge for retail development given the site is distant to the core retail area at the eastern end of the High Street. Whilst the recommendation of the GTCM is to condense the A1 retail offer into a smaller defined primary shopping area, the document acknowledges the difficulties with land assembly and therefore does not specifically promote within the recommendations, a larger foodstore within the town centre.
- Having regard to the scale of the proposed development and the limited range of goods sold (which is proposed to be conditioned and therefore not an unrestricted Class A1 retail unit), compared to the much wider range of goods available in Gillingham Town centre, it is considered the impact would be limited and not adverse. The impact also has to be considered against the benefit of bringing forward the development of a previously developed site that has been left for many years to deteriorate resulting in negative visual impact on the locality which in turns harms the amenity and well being of surrounding residents.

- 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.
- Each of the sites in the sequential test were assessed carefully in terms of their suitability, accessibility, availability and viability and it was concluded that none of them 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 confirmed this in response to the letter of representation and is agreeable to a condition in this regard. It is considered due to the limited range of goods that would be on offer (grocery products only), compared to the much wider range of goods available in Gillingham Town centre, convenience goods, comparison goods and a range of services falling within use Classes A2, A3, A4 and A5, there would be very limited impact on town centre.

On 12 April 2017, planning permission was granted for a single storey extension to Tesco at Courtney Road, Gillingham (MC/16/3925). That application proposed an extension of 640 sq. m. increasing the floorspace from 8,470 sq. m. to 9,110 sq. m. In the supporting documentation, it was stated by the applicant that as the floorspace was less than the 2,500 sq. m. specified in Paragraph 26 of the NPPF (2012), which was in force at the time, no retail impact assessment was required. This was accepted by the Council and no retail impact assessment was carried out in respect of that development.

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 viewed 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 of planting and any lighting.

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 considering this application concerns were raised by Members regarding the proposed delivery hours being excessive. A noise impact assessment Ref: 7806/FD/JA/BL (dated 25 October 2019) received 18 November 2019 has been undertaken which demonstrates that deliveries restricted to 0700-2300 hours would be acceptable, with the internal noise within the nearest noise sensitive properties expected to be 4dB lower than the British Standard guidelines. Conditions are proposed to restrict hours to 0700-2100 Monday to Saturday and 0800-1800 on Sunday and Public Holidays. It is also proposed that these hours be conditioned for a temporary 12-month period to assess whether there is any disturbance to adjoining residents. A condition is also recommended for a Service Delivery Management Plan to be submitted to manage delivery operations. 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 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%.

In considering this application (MC/19/1875) highways concerns were raised by Members relating to this proposal being the only Lidl in Medway, therefore cars would be travelling from all over Medway, in addition to this the store would be adjacent to a complex road junction and queues will worsen when the store opens, increase in existing excessive speeds on B2004; lastly the loss of on-street parking in Medway Road could lead to hazardous on-street parking on narrow neighbouring roads. A Transport Assessment has been undertaken which demonstrates that on the extreme assumption that 70% of Lidl's agreed trip generation (170 two-way) in the PM peak hour will be new to the network and that over 80% of that traffic will be drawn from Pier Road, traffic flows will only increase by 2.2% across the whole intersection, significantly less than 10% (the typical day-to-day fluctuation in traffic flow. On the two A289 approach arms, the impact is less than 1.5%. With regard to concerns of excessive speeds, a speed survey confirmed that the 85%ile speed was 24mph. Visibility out of the site access towards Medway Road is in excess of 2.4m by 43m which is the standard required for a 30mph road. There is no evidence of excessive speed on the approach to the access and therefore no risk to highway safety as a result of the proposals. A drawing has been submitted showing the swept path of an HGV turning right out of the site and lining up at the stop line clear of eastbound traffic. The space between the site access and the stop line is sufficient for 4 cars to queue. Regarding the loss of parking, it has been confirmed that this area of parking is not essential to the network and that such vehicles can easily be accommodated in Rosebery Road.

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). An objection was submitted to the Council on behalf of Asda outlining under MC/20/1431 that Asda are of the view that the site should not be classified as Flood Zone 1 or an area with low flood risk and therefore the application should be refused due to flood risk. Given the timeframe between this

application and application MC/20/1431, it was considered relevant to include the objection for the current application.

The proposal is supported by Flood Risk Statement and Drainage Strategy Doc Ref: TW/190320/FRA (dated July 2019). No concerns have been raised by the Council regarding the classification of the site as Flood Zone 1. It is clear from Environment Agency's Flood Risk map that there is an area of flood zone 2 on A289 Pier Road to the north of the proposed Site. However, it should be noted that this area of Pier Road is approx. 1.5-2.m lower than the application site. Whilst there is a very small element of Flood Zone 2 overlapping the site boundary it is not considered applicable to the application site, given the pixelated quality of the data on the flood zone map and the increase in land-levels from Pier Road to the site. No objection is therefore raised by the Council in this regard under Policy CF1 of the Local Plan and Paragraph 164 of the NPPF. Conditions have recommended in respect of surface water drainage and flood resistance and resilience measures.

In considering this application (MC/19/1875) concerns were raised by Members regarding an increase surface water run-off onto A289. Conditions have been recommended which require the submission of details relating to surface water drainage and flood resistance and resilience measures.

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 contrary to the officers recommendation for approval with conditions

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 on Medway Council's website.