

MC/20/1431

Date Received: 18 June 2020
Location: Land North of Medway Road Gillingham
Medway ME7 1NY
Proposal: Construction of a Food store (Use Class E(a) - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works.
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 13 October 2021.

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:

Received 7 May 2020 (in relation to discharge of conditions application MC/20/1054):

LD(14)-CS-01 REV 02 - GA Sections
LD(14)-CS-02 REV 01 - Section Details Sheet 1 - Sandwich Panel
LD(14)-CS-04 REV 01 - Section Details Sheet 1 (Interface Plan Details)
LD(14)-CS-05 REV 01 - Details Sheet 2 (Interface Plan/Section Details)
LD(14)-CS-06 REV 01 - Details Sheet 3 (Typical Sandwich Panel/Portions Details)
LD(14)-CS-07 REV 01 - Approved Construction Options
LD(14)-CS-11 REV 01 - Cladding Details - Option 2
LD(14)-DD-01 REV 02 - Door Schedule
LD(14)-FF-03 REV 01 - Concrete Lidl Arrangement
LD(14)-GF-06 REV 02 - Wall Finish Plan
LD(14)-GF-09 REV 02 - Finishes Plan
LD(14)-RP 01 REV 01 - GA Roof Plan
LD(14)-SG-01 REV 01 - Curtain Wall
PC-03 REV 01 - Isometric View of Precast And Glulam Structure
CG-11 REV 02 - Wall Types Plan - Ground Floor Plan
CG-12 REV 02 - Wall Types Plan - First Floor Plan

ST-410 REV 02 - Details of Steel Door Surroundings
ST-415 REV 02 - GA & Details of Canopy Roof
ST-430 REV 02 - Isometric View 01

Received 18 June 2020

AD 110_REV G - Proposed Site Layout
AD 111_REV B - Proposed Floor Plans
AD 113_REV B - Proposed Elevations
AD 114_REV H - Proposed Site Layout Boundary Treatments

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 The construction works shall be carried out at all times in accordance with the Construction Environmental Management Plan (CEMP) Report Number Gil/CEMP/01 (dated 9 April 2020) received 8 June 2020.

Reason: In order to minimise the impact of the construction period on the amenities of local residents with regard to BNE2 of the Medway Local Plan 2003.

- 4 The use of the development hereby permitted shall not commence until the highway improvements shown on drawing number SCP/18539/003 Rev B have been completed in full.

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety in accordance with Policies T1 and T3 of the Medway Local Plan 2003.

- 5 No development shall take place until a scheme based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

The scheme shall include (where applicable):

- i. Details of the design of the scheme (in conjunction with the landscaping plan where applicable).
- ii. A timetable for its implementation (including phased implementation).
- iii. Operational maintenance and management plan including access requirements for each sustainable drainage component.
- iv. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

The development shall be undertaken in accordance with the agreed scheme.

Reason: Required prior to development to manage surface water during and post construction and for the lifetime of the development as outlined at paragraph 168 of National Planning Policy Framework 2021.

No development shall take place until a scheme based on sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority.

The scheme shall include (where applicable):

- i. Details of the design of the scheme (in conjunction with the landscaping plan where applicable).
- ii. A timetable for its implementation (including phased implementation).
- iii. Operational maintenance and management plan including access requirements for each sustainable drainage component.
- iv. Proposed arrangements for future adoption by any public body, statutory undertaker or management company.

The development shall be undertaken in accordance with the agreed scheme.

Reason: Required prior to development to manage surface water during and post construction and for the lifetime of the development as outlined at paragraphs 167 and 169 of National Planning Policy Framework 2021 and Policy CF13 of the Medway Local Plan 2003.

- 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 paragraphs 167 and 169 of the National Planning Policy Framework 2021 to ensure that suitable surface water drainage scheme is designed and fully implemented so as to not increase flood risk onsite or elsewhere and Policy CF13 of the Medway Local Plan 2003.

- 7 No development shall take place until details of a Construction Surface Water Management Plan (CSWMP) detailing how surface water and storm water will be managed on the site during construction (including demolition and site clearance operations) is submitted to and agreed in writing by the local planning authority in consultation with the LLFA. The CSWMP shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction.

The approved CSWMP and shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include:

- i. Temporary drainage systems.
- ii. Measures for managing pollution / water quality and protecting controlled waters and watercourses.

iii. Measures for managing any on or offsite flood risk associated with

The development shall be undertaken in accordance with the approved details.

Reason: Required prior to development to manage surface water during and post construction and for the lifetime of the development as outlined at Paragraphs 167 and 169 of National Planning Policy Framework 2021 and Policy CF13 of the Medway Local Plan 2003.

- 8 All materials used externally shall match those set out in drawing numbers LD(14)-DD-01 REV 02 and LD(14)-SG-01 REV 01 received 7 May 2020 in relation to discharge of conditions application MC/20/1054; and 18002 - External Building Finishes Schedule - Lidl, Gillingham, SAS SF52 Curtain Wall Systems brochure, DorSuite Secure Suite Specification Guide received 29 May 2020 and LD(14)-CS-11 Rev 01 received 30 June 2020 in relation to discharge of conditions application MC/20/1219.

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 H received 18 June 2020) 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 G received 18 June 2020 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: JRB/18539/TP01C (dated June 2020) received 18 June 2020 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 June 2020 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 112(e) of National Planning Policy Framework 2021.

- 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 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 Public 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 The close boarded acoustic fence shall be erected around the external plant with a minimum mass of 10kg/m² in accordance with Reflective Sound Screens BS EN 1793-2: 1998 by Hales Sawmills Ltd; and the Fence Location Plan received 7 May 2020. 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 Medway Local Plan 2003.

- 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 92 of the National Planning Policy Framework 2021.

- 23 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.

- 24 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.

- 25 No development shall take place above slab level until an Air Quality Emissions Mitigation Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall be prepared in accordance with the Medway Air Quality Planning Guidance and shall specify the measures that will be implemented as part of the development to mitigate the air quality impacts identified in the Air Quality Assessment Ref: AQ_assessment/2019/Lidl_MedwayRd (dated 4 June 2020). The total monetary value of the mitigation to be provided shall be demonstrated to be equivalent to, or greater than, the total damage cost values calculated as part

of the approved Air Quality Assessment. The development shall be implemented, and thereafter maintained, entirely in accordance with the measures set out in the approved Mitigation Statement.

Reason: Required prior to commencement of development to ensure the adequate protection of health and amenity of the surrounding area in accordance with Policy BNE24 of the Medway Local Plan 2003.

- 26 The proposed E(a) Use (Retail) hereby permitted shall remain in that use and no other Class E uses within Schedule 2, Part A, Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) shall be carried out unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of neighbouring and occupier amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 27 The building shall not be occupied until details of secure cycle parking provision for a minimum of 10 bicycles have been submitted to and approved in writing by the Local Planning Authority. The cycle parking shall be implemented in accordance with the approved details before the building is occupied and shall thereafter be retained.

Reason: To ensure the provision and permanent retention of bicycle spaces in accordance with Policy T4 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 E(a) – Retail) 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 side (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 would include 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. 96 car parking spaces are shown including 6 disabled parking spaces and 8 parent and child spaces and 4 spaces provided with an electric charging station as shown on drawing number AD 110_REV G received 18 June 2020.

Planning History

There have been a number of planning permissions granted in relation to this scheme but those have been successfully challenged by judicial review by a third-party objector (Asda Stores Limited) on various grounds, as set out below. Furthermore, there is a judicial review in relation to the most recent grant of permission (MC/20/3077), this permission has since been quashed by consent order, signed and dated 10 September 2021.

Given the fact that they have been quashed those previous grants of permission do not constitute material considerations. However, for the sake of completeness a summary of the reasons they have been quashed is set out below.

- | | |
|------------|--|
| MC/20/3077 | Construction of a Food store (Use Class E(a) - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works. Approved with Conditions on 5 February 2021. On 16 August 2021, the Council agreed with the Claimant a consent order quashing this decision on the grounds in summary that the Council had failed to correct apply the sequential approach set out in paragraph 158 of the NPPF (i.e., the 2019 version). This consent order has now been approved by the Court and was signed and dated 10 September 2021. |
| MC/20/1431 | Construction of a Food store (Use Class A1 - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works. Approved with Conditions on 7 October 2020 but subsequently quashed by consent order on 25 January 2021 on the grounds in summary that the officer report had referred to irrelevant policies and failed to reach any conclusions as to compliance with the relevant flood risk policies of the NPPF (2019) and the Local Plan |
| MC/19/1875 | Construction of a Food store (Use Class A1 - Retail) together with associated car and cycle parking, servicing, landscaping, and associated works. Approved with Conditions 3 April 2020 but decision subsequently quashed by consent order dated 27 July 2020, on the grounds that changes made to the scheme of delegation and constitution were unlawful. This application was subsequent granted subject to conditions on 17 September 2020. It was subsequently quashed by consent order on 25 January 2021 on the same grounds as MC/20/1431. |

MC/07/2273	Construction of car showroom with service workshop, car valeting facilities & mezzanine office over also car parking & vehicle display area. Decision: Refused Decided: 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) Decision: Approved Decided: 19 March 2003

Representations

Given the previous applications it was considered relevant to reconsider consultation responses for all three planning applications for this scheme, as these are material planning considerations.

Consultation Responses to application MC/19/1875

With reference to the previous application MC/19/1875, 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 90 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 (now paragraph 91) 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 have 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 (now paragraph 90) 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 (now paragraph 91) saying that where an application is likely to have a significant adverse impact it 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. *Asda* challenged the decision and argued that NPPF Paragraph 90 (now paragraph 91) 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 (now paragraph 91), 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) food store 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 food store) 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/20/3077

With reference to application MC/20/3077, the application had been advertised on site and in the press and by individual neighbour notification letters 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.

1 letter received objecting for the following reasons:

- Highways impact on residents' access to local roads

8 letters were received making the following comments in support of the application:

- A new supermarket in this location will be popular with residents and students.
- Highly desirable improvement
- Bring land back into use
- Not an overdevelopment of site
- Need for increased retail
- Benefit to other local businesses
- Employment opportunities
- Within walking distance
- EV Charging points
- Good existing access
- Served by bus route

1 letter was received neither supporting nor objecting to the application but making the following comments:

- the DfT's cycle design vehicle has a width of 1.2m the proposed access is too narrow. It should be an absolute minimum of 1.5m.

- Additional letter has been received from the applicant. A copy of the letter is appended.

Consultation Responses to the current application MC/20/1431

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

Natural England has 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 was 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 into 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.

Following the quashing of the MC/20/1431 planning permission on 21 January 2021, the application is subsequently live again. A revised Flood Risk Assessment and Drainage Strategy Doc Ref: CW/190320/FRA/RevD (dated April 2021) was submitted on 20 April 2020 and a 21-day consultation was issued.

3 letters of support have been received outlining the following:

- The community has grown
- Limited food stores
- No flood risks
- Allow choice

Southern Water raise no objection to the proposed foul drainage. Guidance on surface water retaining or conveying features and public sewers, oil/petrol spillages and oil trap gullies or petrol/oil interceptors, and groundwater/ land drainage and public sewers has been provided. Their records indicate that a decommissioned surface water sewer is crossing the development site. If found during construction works, this apparatus will have to be relocated/removed under Section 185 of the Water Industry Act.

SGN provided plans and guidance on works near gas mains and Safe digging practices.

UK Power Network has provided records which show the electrical lines and/or electrical plant and a fact sheet which contains important information regarding the use of their plans and working around their equipment.

ESP Utilities Group Limited has provided guidance on gas pipes, locating gas pipes, safe working practices, works near gas mains and Safe digging practices, and has outlined when ESP Utilities Group must be consulted.

Natural England raise no objection, the proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

Shoosmiths have written on behalf of **Asda** on 21 July 2021 in response to the application appearing on the agenda for the 21 July 2021 Planning Committee. (For information purposes, the application was deferred from the 21 July 2021 agenda at officer's request due to a printing error omitting a section of the report and in light of the release of the NPPF 2021). In summary, the letter makes comments in relation to procedure:

- i. we have referred the matter to the SoS for a screening opinion particularly in light of changes to the NPPF and the issues that have come to light in respect to flood risk;
- ii. the lead flood risk authority have not been consulted in light of changes to the NPPF;

iii. we have not been notified of this application and only learnt of it after hours yesterday evening, during which time access on the Council's website has not been working (indeed we have found that when the Council's agenda is accessed online only access to the committee report's front page has been feasible for certain periods).

The letter raised the following observations with regard to the Committee report published at the time:

- i. the consideration of the sequential test has relied on sites that are not properly detailed to allow our client the opportunity to comment upon this;
- ii. the impact test has not been applied for reasons that are unclear and are not consistent with the NPPF, which does not preclude the application of the impact test;
- iii. the report relies on an appendix to the applicant's flood risk assessment which is not accessible or available to our client; and
- iv. the report has discounted sites on the basis that they are in 'flood zones 2/3' albeit some of these sites remain unidentified, making it impossible for our client to review this and make representations on this.

The Planning Appraisal section below sets out the Council's response to issues raised in letters of representation.

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 2021 (the NPPF) and are considered to conform.

The National Planning Policy Guidance (NPPG) has not been revised in full to refer to the NPPF 2021. Therefore, where the NPPG has been directly quoted in this report the references to the NPPF may relate to the NPPF 2019.

Planning Appraisal

Background

As set out above, this application (MC/20/1431) and 2 other applications (MC/19/1875 and MC/20/3077) for a LAD food store at this application site have previously been granted planning permission but have been the subject of various legal challenges.

This application is being reconsidered following the quashing of the original grant of permission on 25 January 2021. The reasons for the quashing of that original grant of permission are set out above but in summary the legal errors in the advice given to members related to the incorrect reference to policies and a failure to reach any conclusions as to whether the flood risk policies of the NPPF and Local Plan were complied with. Those errors have been corrected in the analysis below.

The analysis below also corrects further legal errors that the Council now accepts were contained in the advice given to members when a concurrent application for a similar scheme was considered by members of the Committee on 5 February 2021. The legal error in summary was a failure to correctly apply the sequential approach set out in the (then) paragraph 158 of the NPPF on flood risk. The Council accepts that it should have advised members on whether there were other alternative sites for the same type of development which was the subject of the application at a lesser risk of surface water flooding.

On 28 June 2021 the High Court granted permission for the claim filed by the claimant (Asda Stores Limited for the claim to proceed) on the basis that the errors identified by the claimant were arguable. The Council reviewed its position in light of that judgment and decided to no longer defend that decision.

The High Court has now granted the consent order, signed and dated 10 September 2021. The advice given to members in this report is on the basis that the Council accepts that the previous decision of the Committee on 5 February 2021 was unlawful due to the errors above in relation to the officer's report.

Since this scheme was last considered by members on 5 February 2021, it should also be noted that a new version of the NPPF has been issued by the Government (on 20 July 2021). In particular, this clarifies certain issues in relation to the interpretation of the previous NPPF policies on flood risk, and in particular the circumstances in which the sequential test should be applied. The Lead Local Flood Authority (LLFA) has been re-consulted in light of the new NPPF being published. This current report addresses those new NPPF policies on flood risk and takes into account the new advice from the LLFA.

To address the issues raised regarding flood risk raised during the above legal proceedings the applicants submitted a revised Flood Risk Assessment and Drainage Strategy Doc Ref: CW/190320/FRA/RevD (dated April 2021) for consideration. Although this pre-dates the new NPPF, the information contained in it has been assessed against the requirements of the new NPPF.

This application (MC/20/1431) has been screened under the Environmental Impact Assessment Regulations and a formal screening opinion issued by the Secretary of State on 16 August 2021 following the release of the new NPPF and assessing flood risk, confirms the proposed development does not require an environmental impact assessment as set in his previous Direction dated 5 October 2020.

The proposed development does not fall within Schedule 1 and falls below the thresholds and criteria in Schedule 2: 10(b) urban development projects of the 2017 EIA Regulations. The size and nature of the development, together with the location of the site and its limited ecological value, means the development is not expected to result in an adverse impact on the environment, either alone or cumulatively with other development.

Following the approval of application MC/19/1875 the applicants submitted several discharge of conditions applications (MC/20/0990, MC/20/1054, MC/20/1219 and MC/20/1055) pursuant to conditions 3, 7, 8, and 21 respectively as set out on decision

notice MC/19/1875 (dated 3 April 2020) prior to planning permission MC/19/1875 being subsequently quashed by consent order dated 27 July 2020. These approved details related to a CEMP, details of the building, noise, and materials.

During the consideration of this application (MC/20/1431) it was agreed with the applicants that the approved documents of the previously discharged conditions as outlined above would be added to the application MC/20/1431 and considered. Therefore, the documents were added to this application on 21 July 2020, a formal consultation was carried out and these documents are being treated as part of application MC/20/1431.

It should be noted that the received dates for each of these documents shown on the Council's online planning file for MC/20/1431 do not represent when they were transferred across to the application but are when they were originally received as part of the earlier application to discharge conditions. These documents were however part of the formal consultation of application MC/20/1431.

Principle of a Retail Unit at the Application Site

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. Policy R13 of the Local Plan states that retail development outside the main retail centres will only be permitted when it is demonstrated that sites suitable for the proposed retail development are not available in accordance with the following sequence:

- (i) within the Core Areas of Chatham, Strood, Gillingham and Rainham; then
- (ii) on the edge (i.e. within 200-300 metres) of the core Areas of Chatham, Strood, Gillingham and Rainham; then
- (iii) within or adjacent to one of the Local Centres, Village and Neighbourhood Centres as listed in policy R10.

Development will be assessed in accordance with the following criteria:

- (iv) 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
- (v) 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; and
- (vi) whether the location enables access by a choice of transport, including public transport.

(vii) the overall impact on travel, the likely changes in travel patterns and reduction in the reliance on the car.

The sequential approach to the siting of town centre uses is also supported in the current NPPF at paragraphs 87 and 88.

Paragraph 87 states that:

“Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.”

Paragraph 88 states that:

“When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.”

Paragraph 86 of the NPPF also states that *“Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation”*.

Paragraph 011 of the NPPG (Reference ID: 2b-011-20190722) states how the sequential test should be used in decision-making. It goes on to provide a checklist that sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test. Lastly, paragraph 011 of the NPPG (Reference ID: 2b-011-20190722) states *“In line with paragraph 86 of the National Planning Policy Framework, only if suitable sites in town centre or edge of centre locations are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be taken into account.”*

The Sequential Test

A Sequential Test was included within the Planning and Retail Statement. This was carried out in accordance with the requirements of paragraphs 87 and 88 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, the catchment area of which the LPA agree with:

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. The site had been vacant since 2016 and the unit, in its current form is unfit for purpose and could not be used without comprehensive redevelopment. In considering 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 food stores 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 as further food store provision in the Gillingham area. However, since the SHENA the former Budgens site has not come forward for retail development but for other development. There has been a recent grant of planning permission (MC/19/0825) for a mixed Class B1/D1 scheme. The applicant has also added that work had now commenced on the development of this site, and it is, therefore, not available.

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 food store. 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 Slickets Hill Car Park, Chatham.

This approx. 0.71-hectare site is located to the northeast of Chatham town centre (outside the core retail area) and is bound by The Brook, Queen Street, Slickets 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. However, 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 previous 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 residential apartments and a planning application has been submitted under reference MC/20/2782 for 179 apartments in 4 blocks. This planning application was reported to Planning Committee on 31 March 2021 where there was a resolution to grant planning permission subject to the completion of a s106 Agreement and the assessment of a Highway Safety Audit (with any concerns resulting in the application being reported back to Planning Committee).

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

Conclusions on matters of principle and sequential test.

The application is not located within a core retail area, nor within any other area allocated for retail use. The Sequential Test included within the Planning and Retail Statement has been considered having regard to the provisions of (i) – (iii) of Policy R13 of the Local Plan, and paragraphs 81, 86 - 88 of the NPPF as well as the QC advice submitted by the applicant in support of the application.

It is considered that the identified sites within the retail areas of Gillingham and Chatham have been appropriately assessed and 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.

The Need for a Retail Impact Assessment

Paragraph 90 of the NPPF states that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:

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

Paragraph 015 of the NPPG (Reference ID: 2b-015-20190722) also provides guidance on when the impact test should be used. It states that the impact test only applies to proposals exceeding 2,500 square metres gross of floorspace unless a different locally appropriate threshold is set by the local planning authority. In setting a locally appropriate threshold it will be important to consider the:

- scale of proposals relative to town centres
- the existing viability and vitality of town centres
- cumulative effects of recent developments
- whether local town centres are vulnerable
- likely effects of development on any town centre strategy
- impact on any other planned investment

As a guiding principle, impact should be assessed on a like-for-like basis in respect of that particular sector (e.g., it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities. Conditions may be attached to appropriately control the impact of a particular use.

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- the policy status of the investment (i.e., whether it is outlined in the Development Plan)
- the progress made towards securing the investment (for example if contracts are established)

the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence

In setting the default threshold at 2,500sq m gross in paragraph 90 of the NPPF and paragraph 015 of the NPPG (Reference ID: 2b-015-20190722), it suggests that it is considered that retail units smaller than 2,500sqm 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.

The current Local Plan does not state a threshold and given that the Local Plan was adopted in 2003 consideration must be given as to the weight that should be afforded to its retail policies, in particular Policy R13 of the Local Plan. Paragraph 219 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 the 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).”

As outlined above, the Local Plan does not provide a locally set floorspace threshold which would require the need for a formal Retail Impact Assessment. Therefore, default threshold is 2,500m² of gross floorspace and in these circumstances the submission of Retail Impact Assessment is not a requirement. Additionally, paragraph 91 of the NPPF states 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 90, it should be refused. It does not say in the absence of an impact assessment the application should be refused.

In these circumstances, although Policy R13 of the Local Plan was adopted in 2003, it is not considered wholly out of date. This Policy does not state that a formal Retail Impact Assessment should be submitted, however it does outline that development will be assessed in accordance with specific criteria, which is considered to broadly conform with paragraph 90 of the NPPF and paragraph 015 of the NPPG (Reference ID: 2b-015-20190722). Therefore, due weight should be given to Policy R13 of the Local Plan in assessing retail impact.

Assessment of Retail Impact of the Proposal

The following is the assessment against the criteria of Policy R13 of the Local Plan.

(iv) 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;

The Gillingham Town Centre Masterplan (GTCM) has 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 food store within the town centre.

(v) 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;

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 were Aldi, Lidl and Netto each of which carries in the region of 1,000 to 1,800 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) – Netto have now ceased trading in the UK and sold their portfolio of stores to Asda. The applicant has subsequently confirmed this in response to the letter of representation and is agreeable to a condition restricting the store to a maximum of 3,500 product lines, to allow some flexibility for future growth. 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 E and Sui Generis (Formally Classes A2, A3, A4 and A5) there would be very limited impact on town centre.

There are no other forthcoming proposals or extant permissions, which, cumulatively, with the scale and type of retailing of this development, would have a detrimental impact on the vitality and viability of the Core Areas, Local Centres, Villages or Neighbourhood 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 E(a) retail unit (formally Class A1)), compared to the much wider range of goods available in Gillingham Town centre, it is considered the impact would be limited and not adverse.

(vi) whether the location enables access by a choice of transport, including public transport.

The area around the development site encourages the use of public transport, walking and cycling, with nearby bus stops, Gillingham Train Station, pedestrian and cycling provision. The proposal includes onsite cycle storage and further improvements (drawing number SCP/18539/003 Rev B received 29 July 2020) within the local vicinity which are:

1. Reinstatement of the existing overgrown footway at the north side of Medway Road all the way up to the west side of the bridge.
2. Extension of double-yellow line parking restrictions on the south side of Medway Road to facilitate safer vehicle and pedestrian movements, and;
3. 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.

(vii) the overall impact on travel, the likely changes in travel patterns and reduction in the reliance on the car.

It is considered that some trips associated with the proposal 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.

In summary, having assessed proposal against all criteria of Policy R13 of the Local Plan it is concluded that the proposal supports the strategy and objectives of the local plan to sustain and enhance the vitality and viability the existing centres of Chatham and Gillingham; the scale and type of retailing by itself, or cumulatively with other proposals, would not have a detrimental impact on the vitality and viability of the Core Areas, Local Centres, Villages or Neighbourhood Centres; the location enables access by a choice of transport, including public transport and would result in a positive impact on travel patterns. Therefore, the proposal complies with Policy R13 of the Local Plan and the relevant parts of the NPPF and NPPG in respect of assessment of retail impact.

Design, Scale and Visual Impact

Policies S4 and BNE1 of the Local Plan and paragraphs 126 and 130 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 under MC/19/1875, 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 was amended under MC/19/1875 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, these amendments have been reflected in the current application MC/20/1431. 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.

The proposal is supported by plans showing building details at varying scales, along with details of the proposed materials which would be conditioned as part of any forthcoming planning permission.

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 126 and 130 of the NPPF.

Amenity

Policy BNE2 of the Local Plan states that development should protect those amenities enjoyed by nearby properties and future occupants 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 the previous application (MC/19/1875) concerns were raised by Members regarding the proposed delivery hours being excessive. A noise impact assessment Ref: 7806/FD/JA/BL (dated 5 June 2020) received 18 June 2020 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 5 June 2020). The applicants have proposed 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 130f 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, the proposal is supported by a Construction Environmental Management Plan (CEMP) Report No Gil/CEMP/01 (dated 9 April 2020), which is considered acceptable in terms of minimising the impact of the construction period on the amenities of residents with regard to BNE2 of the Local Plan and paragraph 130f of the NPPF. Any forthcoming planning permission would therefore include a condition that the construction works shall be carried out at all times in accordance with the CEMP.

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 110 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/18539/002 Rev C within the Transport Assessment Doc Ref: CG/18539/TA01B (dated June 2020). This access would also serve as a pedestrian access and the submitted plan (drawing number AD 110_REV G) 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 Policies T1 and T2 of the Local Plan and paragraph 110 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 104(a) of the NPPF states that:

‘Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:

- a) the potential impacts of development on transport networks can be addressed

Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be unacceptable impact on highways safety, or the residual cumulative impacts on the road network would be severe.

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 Doc Ref: CG/18539/TA01B (dated June 2020). 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 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 the previous application (MC/19/1875) highways concerns were raised by Members relating to this proposed 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-today 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, the proposal is considered to comply with Policy BNE2 and T1 of the Local Plan and paragraphs 104(a) and 111 of the NPPF.

Parking

Policy T13 of the Local Plan states that proposal will be expected to make vehicle parking provisions in accordance with the Council's adopted standard and paragraphs 104(b) and 104(c) of the NPPF state:

- Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:
- b) opportunities from existing or proposed transport infrastructure, and

changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
c) opportunities to promote walking, cycling and public transport use are identified and pursued

Paragraph 112(e) of the NPPF states that:

Within this context, applications for development should:

e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

Paragraph 108 of the NPPF relates to a clear and compelling justification in setting maximum parking standards for residential and non-residential development.

The site is proposed to have 96 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 4 spaces are provided with an electric charging station as set out on drawing number AD 110_REV G received 18 June 2020. 4 spaces with a 2 electric vehicle charging points are considered appropriate at this stage, however it is recommended that this situation be reviewed after 3 years to assess whether the demand for electric vehicle charging points has increased. This can be addressed by an appropriately worded condition, in any forthcoming planning permission.

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.

Conditions would be included on any planning permission to provide these parking spaces, electric vehicle charging points and cycle parking facilities prior to the occupation of the unit in the interest of highways safety and to make provision for alternative modes of transport in the form of cycling in accordance with Policies T1, T4 and T13 of the Local Plan and paragraphs 104(b), 104(c), 108 and 112(e) of the NPPF.

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 104(c) of the NPPF goes on to say that development proposals should identify and pursue opportunities to promote walking and public transport use. Paragraph 113 of the NPPF states:

All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

A Travel Plan Ref: JRB/18539/TP01C (dated June 2020) received 18 June 2020 has been submitted.

The area around the development site encourages walking and cycling, with the pedestrian and cycling provision. The proposal also includes further improvements (drawing number SCP/18539/003 Rev A received 28 July 2020) 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 required by a condition 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 104(c) and 113 of the NPPF.

There are 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: JRB/18539/TP01C (dated June 2020) received 18 June 2020 sets out proposed 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.

Conclusion to Highways Section

It is considered that the proposal is acceptable with regard to highways safety, capacity, parking and sustainability, in accordance with Policies BNE2, T1, T2, T3, T13 and T14 of the Local Plan and paragraphs 104(a)-(c), 108, 110, 111, 112(e) and 113 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 183 of the NPPF.

Air Quality

Paragraph 186 of the NPPF outlines that planning decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan. Policy BNE24 of the Local Plan outlines when an application requires an assessment of the likely impact of emissions and goes on to outline that development will not be permitted when it is considered that unacceptable effects will be imposed on the health, amenity, or natural environment of the surrounding area, taking into account the cumulative effects of other proposed or existing sources of air pollution in the vicinity.

The application is supported by an Air Quality Assessment Ref: AQ_assessment/2019/Lidl_MedwayRd (dated 4 June 2020). It is considered that the air quality impacts have been appropriately assessed and that the impacts of the proposed development should be insignificant, particularly in the context of nearby sensitive receptors (including within The Pier Road AQMA).

The provision of EV charging points would be conditioned to be phased, with 2 EV charging points to serve four vehicles and the infrastructure in place to increase this number at a later date. The submission of a parking management plan and the increase the number of charging points to 10 after 3 years will be conditioned.

Lastly, the air quality damage costs calculated in the Quality Assessment Ref: AQ_assessment/2019/Lidl_MedwayRd (dated 4 June 2020) must be used as the basis for drawing up an air quality mitigation scheme that offsets the additional emissions generated by development related road transport emissions. This mitigation scheme must be drawn up in accordance with the Medway Air Quality Planning Guidance, which would be conditioned in any forthcoming planning.

Subject to the above conditions relating to EV vehicle charging points, parking management plan and air quality emissions mitigation statement, the proposal is in accordance with Policy BNE24 of the Local Plan and paragraph 186 of the NPPF.

Flood Risk and Surface Water

Policy CF13 of the Local Plan outlines development will not be permitted within a tidal flood area in particular circumstances. Specifically, Policy CF13 of the Local Plan states:

Development will not be permitted within a tidal flood risk area if:

- (i) it harms the integrity of the flood defences; or
- (ii) it fails to provide for a means of escape for people in the event of a flood; or
- (iii) it introduces residential living and sleeping accommodation below the estimated flood level; or
- (iv) it introduces mobile homes or caravans; or
- (v) it introduces new holiday accommodation between October and May.

The NPPF's section on planning and flood risk at paragraphs 159 – 169 are also relevant. Set out below are the most relevant parts of that section for ease of reference.

Paragraph 159 states that:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”

Paragraphs 160, in summary, refers to what strategic policies should address. Paragraph 161 states that “All plans should apply a sequential, risk-based approach to the location of development – taking into account all sources of flood risk and the current and future impacts of climate change – so as to avoid, where possible, flood risk to people and property. They should do this, and manage any residual risk, by:

a) applying the sequential test and then, if necessary, the exception test as set out below;

b) safeguarding land from development that is required, or likely to be required, for current or future flood management;

c) using opportunities provided by new development and improvements in green and other infrastructure to reduce the causes and impacts of flooding, (making as much use as possible of natural flood management techniques as part of an integrated approach to flood risk management); and

d) where climate change is expected to increase flood risk so that some existing development may not be sustainable in the long-term, seeking opportunities to relocate development, including housing, to more sustainable locations.

Paragraphs 162 – 164 of the NPPF state:

“162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.

164. The application of the exception test should be informed by a strategic or sites specific flood risk assessment, depending on whether it is being applied during plan

production or at the application stage. To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 165 of the NPPF states that:

“Both elements of the exception test should be satisfied for development to be allocated or permitted.”

Analysis

The LLFA has been consulted on this proposal following the changes to the latest changes to the NPPF on 20 July 2021. The revised FRA was uploaded on the Council’s website on 20 April 2021 and the public was consulted on 23 April 2021. It should be noted that in accordance with EA guidance there is no requirement to consult the Environment Agency in relation to this proposal, as this is not an area of critical drainage problems, and the site is not within 20m of a main river on the EA Flood Map

The LLFA has commented as follows in terms of flood risk (the relevant section of the response is set out in full as flood risk has proved a contentious issue in light of the litigation referred to above):

The site is situated predominantly in Flood Zone 1 in accordance with the most up to date Environment Agency mapping. Flood Zones relate to the risk of tidal and fluvial flooding; Flood Zone 1 represents very low risk where the risk of flooding in any one year less than 1%. There is a small area along the northern boundary, which is at low risk, where the risk of flooding in any one year is between 0.1% and 1%.

EA mapping also indicates that the site is at high risk of surface water flooding with estimated depths under a high-risk scenario of less than <300mm, and some localised areas of 300-900mm depths under a medium risk scenario. The low-risk scenario indicates greater depths, but there is more uncertainty associated with the low order event, and therefore the medium risk event should be appraised for design purposes. There are known surface water flooding issues adjacent to the site along Pier Road, but this does not impact the site itself which is situated at a higher level.

The applicant presents a site-specific Sequential Test at Appendix L in accordance with para 33 of NPPG, in absence of the Local Authority having a flood risk Sequential Test as part of the existing Local Plan.

The exercise culminated in 13 sites. Of those 13 sites, 3 sites (site A Machine Shop 08 on Dock Head Road, site B former Gas Holder site on Pier Road and site C Gads Hill Industrial Estate, Owens Way), were discarded due to higher risks of flooding and

considered 'sequentially inferior' to the application site in flood risk terms. The LLFA agrees with this assessment.

The LLFA have reviewed the proposals in the context of paragraph 167 of National Planning Policy Framework, and have no objection to this approach on the basis that it has been demonstrated that the identified risks can be suitably mitigated and that the site will be designed to be safe;

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient; and d) any residual risk can be safely managed.*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be managed;*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

An appropriate surface water system has been designed which considers the surface water risks. Microdrainage outputs within Appendix I indicate surcharging under a 2-year event. It is understood that the proposed surface water attenuation features will not be adopted by any public body, however, where the connecting pipework is, attention is drawn to the surcharging under the 2-year model outputs which will not be appropriate under the latest Sewers for Adoption guidance. The remaining proposals are acceptable in principle, and as long as the design does not change, negates the need for a pre commencement condition.

Residual risk has been considered via a sequential risk-based approach to the design of the development.

Environment Agency mapping indicates that access and egress route would not be impacted by surface water flooding as these flows are directed to other areas within the site.

Officers has taken into account the comments of the LLFA in respect of the assessment of flood risk set out below, both of this site and others considered by the applicant when applying the sequential test referred to in the NPPF.

The Sequential Test

The LLFA has noted that the area is at high risk of surface water flooding.

It should be noted that the NPPF now states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding "from any source". It remains the case that the basis of applying the sequential test is the Strategic Flood Risk Assessment (para 162 of the NPPF). It also states (at para.163) that if it is not

possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. Previously it only referred to “zones”, but that has now been replaced with “areas” in paragraph 163 of the NPPF. The NPPF (at para. 161) refers to plans applying a sequential, risk-based approach to the location of development taking into account “all sources of flood risk”.

The changes to the NPPF clarify that the sequential test should be applied in relation to all sources of flooding including surface water flooding. The LLFA therefore is no longer advising that a sequential test is not applicable to this scheme.

The NPPG on flood risk at paragraph 033 (Reference ID: 7-033-20140306) also states that *“For individual planning applications where there has been no sequential testing of the allocations in the development plan, or where the use of the site being proposed is not in accordance with the development plan, the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed.”*. In this case there has been no such sequential testing, so this particular aspect of the guidance applies here when considering the area of search.

Officers had previously advised that the sequential test was not relevant to sites at risk of other sources of flooding other than coastal and river flooding, but that the “sequential approach” should be applied. Officers had taken the view (which the Council now accepts was wrong) that the sequential approach did not necessarily require consideration of alternative sites with a lower risk of surface water flooding that could accommodate the proposal.

Officers have now considered the new NPPF, and now consider that the sequential test as set out in the NPPF should be applied to this scheme. Therefore, it is necessary for members to consider whether there are any reasonably available sites at lower risk of any form of flooding including surface water flooding.

The Applicant has submitted a report to support the application of a sequential test involving consideration of other reasonably available sites at lower risk of any form of flooding including surface water flooding within the Flood Risk Assessment and Drainage Strategy (FRA) (dated April 2021) under appendix L. At that time, it presented this on the basis that there was a live judicial review challenge which had not been determined, and that the simulated flood sequential test was being presented on without a prejudice basis to the applicant’s position in that litigation. However, that basis has clearly been overtaken by events, in particular the publication of the new NPPF.

Officers have considered the FRA in detail and, notwithstanding that it pre-dates the new NPPF, consider that its conclusions and findings remain valid when applying the sequential test required by the NPPF.

The FRA has identified a catchment area that the proposed store is intended to serve in undertaking a search for alternative sites. This catchment has been defined by the applicants as both a desk-top exercise and an on the ground survey of the catchment area which is considered representative for a LAD store of circa 1,068sq m net sales

having regard to: i) the fact that such stores serve a neighbourhood shopping function with a tight catchment that usually does not extend beyond 5 minutes drivetime; and ii) the proposed store at Medway Road is intended to serve the Gillingham North area.

It is considered that this identification of the search area by the Applicant is reasonable.

Within the identified catchment area, the sequential search initially identified 28 separate sites. However, 15 sites were assessed and discounted at an early stage as not being reasonably available or unsuitable to accommodate the proposed store (on the basis that they were too small to accommodate the proposed store and/or they are still in active use with no indication of being marketed for disposal):

- The Range, Dock Outlet Centre, Dock Head Road.
- Pier 5 The Quays, Dock Head Road.
- Ship & Trades Public House and adjoining Co-op store, Maritime Way.
- Quayside House (offices), Maritime Way.
- OSB House (offices), Maritime Way.
- Former Colonial House site, Quayside, Wheelwrights Way.
- Land at Chatham Waters, Southside Road/Gillingham Gate Road/East End Road.
- Mast & Rigging Public House, Gillingham Gate Road.
- Asda, Pier Approach Road.
- Premier Inn, Pier Road.
- Unite Students (student accommodation), Pier Road/Pegasus Way.
- Trust Ford Car Dealership, Pier Road.
- Gillingham Marina Chandlery, Pier Road.
- The Strand Leisure Centre/Lido, Strand Approach Road.
- Shell PFS, Dock Road.

There have been no comments or objections received through the formal consultation process criticising the approach taken by the applicant in its latest FRA when assessing these sites.

Officers have reviewed those sites in detail and consider that the approach taken by the applicant in relation to the discounting of these 15 sites was, for the most part, appropriate and in accordance with the pragmatic approach endorsed in Paragraph 033 (Reference ID: 7-033-20140306) of the NPPG, which states that:

“When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken.”

However, it should be noted that in respect of the Gillingham Marina Chandlery, it does appear from officer’s review of those sites that this site is in fact available and may well be suitable for the development proposed here. However, it is in Flood Zone 3 and so is not sequentially preferable to the application site.

The 13 remaining potential sites were initially identified as part of an initial sift, of which 3 (Machine Shop 08 on Dock Head Road, the Gads Hill Industrial Estate on Owens Way and the former Gas Holder site on Pier Road) were discounted as being at a

higher risk of flooding than the application site at Medway Road as they are located in Flood Zone 2 and 3.

The LLFA as set out above agrees with this particular assessment.

The FRA then examined the 10 remaining sites in more detail, in terms of their reasonable availability to accommodate the proposed discount food store. The Applicant considers that in accordance with the pragmatic approach set out in the NPPG at paragraph 033 (Reference ID: 7-033-20140306), reasonably available would mean that any site would need to be able to accommodate the store and car park; in a location that is viable in retail terms (which normally means having a main road frontage), with satisfactory access for customers and delivery vehicles and one which is acceptable in terms of development plan policy.

It is considered that this approach to assessing reasonable availability of other sites was reasonable and accords with the NPPG.

The FRA concluded that none of those sites initially identified were reasonably available to accommodate the proposed Lidl development. The Council agrees with that conclusion.

Conclusions on matters of the Sequential Test

The LLFA in summary agrees with the assessment under appendix L of the FRA (dated April 2021) with respect to the identification by the applicant of sites in a sequentially preferable location in terms of flood risk.

Officers have looked in detail at the analysis of the sites considered by the applicant that are in an area of lower flood risk (including surface water flood risk) and agree with the conclusions of the applicant's FRA that none of these are considered to be reasonably available or suitable for this type of development. It is noted that those sites have been discounted for various reasons including that they are not Policy compliant with the Local Plan in terms of land allocation, they are too small to accommodate the proposal, they are currently in use with no indications of becoming available in the future.

Officers have reviewed the applicants' considerations of those sites, in particular having regard to Policy CF13 of the Medway Local Plan 2003 and Proposals Maps, and it is considered that the identified sites within the catchment area have been appropriately assessed and it is concluded that there is no alternative and available site within Gillingham North catchment that would be suitable for the development proposed.

Exception Test

The exception test is set out in paragraphs 159, 163, 164 and 165 of the NPPF. The NPPF states at paragraph 163 that:

"If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may

have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3

The Exception Test, as set out in the NPPG, is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

Annex 3 lists the flood risk vulnerability classifications for different development typologies which is similar to the existing Table 2 within [NPPG: Flood and Coastal Change](#). Reviewing Annex 3, it is noted that the proposed development falls within the Less Vulnerable classification. However, Annex 3 does not provide express guidance on when to apply the Exception Test in areas of risk of surface water flooding.

The NPPG at paragraph 035 (Reference ID: 7-035-20140306) addresses when the exception test should be applied to planning applications. It states as follows:

“See general guidance on the Exception Test. The Exception Test should only be applied as set out in Table 3 following application of the Sequential Test. An applicant will need to show that both elements of the Test, as set out in paragraph 159 of the Framework, can be satisfied.” It also states that the exception test should only be applied as set out at Table 3 (at paragraph 2).

Table 3 in the NPPG sets out “flood risk vulnerability and flood zone compatibility” and indicates when development in those zones is appropriate or should not be permitted. It should be noted that Table 3 of the NPPG does not explicitly deal with areas at risk of surface water flooding. However, the notes to Table 3 states that it does not “reflect the need to avoid flood risk from sources other than rivers and the sea”.

Therefore, in the absence of any further detail as to the circumstances in which the exception test should be applied to developments at risk of surface water flooding, it is a matter of judgement whether or not an exception test is required in cases where there is (as here) a high surface water flooding. In doing so it is necessary to have regard to the potential vulnerability of the site and the development proposed. It is therefore necessary to have regard to the level of risk of flooding at this particular site, and to have regard to the vulnerability of this particular development.

Table 2 of the PPG set out the flood risk vulnerability classification for development: In this case as a “building for shops” the proposed development is classified as “Less Vulnerable”.

Whilst it is not directly applicable to surface water flooding, it is nonetheless relevant to note that in Table 3 of the NPPG development with a flood risk vulnerability classification of Less Vulnerable is appropriate in all flood zones other than 3b and does not require an exception test for less vulnerable development in these zones. That means that even in an area of a high degree of probability of river or coastal flooding (i.e land that has a 1 in 100 or greater annual probability of river flooding; or land having a 1 in 200 or greater annual probability of sea flooding), less vulnerable

development is still considered in the NPPG to be appropriate (the only zone where it is not appropriate is Zone 3(b) (functional floodplain)).

It is acknowledged here that there is a high risk of surface water flooding here. However, having regard to the vulnerability of the site, and in line with the approach taken in the PPG and in Annex 3 to river and coastal flooding, on balance it is not considered necessary in this instance for an exception test to be carried out.

Site specific flood risk assessment

Paragraph 167 of the NPPF states:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment⁵⁵. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location.*
- b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment.*
- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate.*
- d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”*

Footnote 55 states:

“A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.”

The applicant has submitted a site-specific Flood Risk Assessment and Drainage Strategy (SCP, Ref: CW/190320/FRA/RevD, dated April 2021), as required in accordance with paragraph 167 of the NPPF. This had regard to the Council's Strategic Flood Risk Assessment 2006, Strategic Flood Risk Assessment Addendum 2011 and draft Strategic Flood Risk Assessment 2020).

The proposals and that assessment have been reviewed by officers in the context of paragraph 167 of the NPPF and the submitted Flood Risk and Drainage Strategy taking into account what the LLFA has stated in its consultation response.

The LLFA has concluded that the proposed development satisfies each element of paragraph 167. The LLFA concludes that it has been demonstrated that the identified risks can be suitably mitigated and that the site will be designed to be safe.

Taking account of the LLFA comments, the Council considers that subject to conditions in respect of surface water drainage, the proposal is considered to be in accordance with Policy CF13 of the Local Plan and paragraph 167 of the NPPF.

Conclusions and Reasons for Approval

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

The application is not located within a core retail area, nor within any other area allocated for retail use. The Sequential Test included within the Planning and Retail Statement has been considered having regard to the provisions of (i) – (iii) of Policy R13 of the Local Plan, and Paragraphs 81 and 87 of the NPPF as well as the QC advice submitted by the applicant in support of the application.

It is considered that the identified sites within the retail areas of Gillingham and Chatham have been appropriately assessed and 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.

With regard to the provisions of Policy R13 (iv) – (vii) of the Local Plan, although it is concluded there is no requirement to submit a retail impact assessment, the Council have given the impact on existing due consideration and conclude that given the size and type of the proposal, it would not undermine vitality and viability of existing centres, Local Centres, Villages or Neighbourhood Centres; additionally, the location enables access by a range of transport, including public transport; and some trips would be likely passing by from other trips.

In considering the sequential assessment and the impact to town centre vitality and viability, the proposal is in accordance with the criteria of Policy R13 of the Local Plan as well as paragraphs 90 and 91 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 acceptable. Furthermore, detailed assessment of flood risk and drainage as well as the impact on amenity, highways, contamination and air quality and the proposal is considered to comply with Policies BNE1, BNE2, BNE23, BNE24, T1, T2, T4, T13, T14 and CF13 of the Local Plan and paragraphs 104(a), (b) and (c), 108, 110, 111, 112(e), 113 126, 130, 161, 167, 183 and 186 of the NPPF. The application complies with the development plan as a whole and there are no material considerations of sufficient weight which indicate that permissions should not be granted. The scheme therefore is recommended for approval.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the previous applications being considered by Planning Committee.

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/>