

# PLANNING COMMITTEE

16<sup>th</sup> February 2022

## Late information

<b>AGENDA PAGES</b>	<b>DETAILS</b>
Pages 5 -36	<p data-bbox="491 524 906 555"><b>AGENDA ITEM NUMBER: 6</b></p> <p data-bbox="491 595 740 627"><b>SITE ADDRESS:</b></p> <p data-bbox="491 667 1388 734">Land at Broadway Green Business Park, Foxdenton Lane, Chadderton</p> <p data-bbox="491 775 815 806"><b>Additional Information:</b></p> <p data-bbox="491 846 1388 967">Two additional representation have been received from both Lidl Great Britain Ltd and Tesco Stores Ltd. Rapleys on behalf of Lidl raise the following points (in summary) The full representations are on the website for review:</p> <ol data-bbox="539 1008 1388 1845" style="list-style-type: none"><li data-bbox="539 1008 1388 1106">1. It has not been fully demonstrated that the proposal passes the sequential test as set out within Paragraph 87 and 88 of the National Planning Policy Framework (NPPF).</li><li data-bbox="539 1146 1388 1267">2. Given the two separate components which make up the application, it is necessary to give consideration to whether it is appropriate to disaggregate these elements for the purposes of undertaking the sequential test.</li><li data-bbox="539 1308 1388 1541">3. The outline element of the application is quite clearly flexible and open ended, in that there is no design for this part of the site and indeed, no end user or end use identified. As such, the two separate components of the scheme must be disaggregated for the purposes of the sequential test. At present, there is no assessment undertaken by the applicant which seeks to disaggregates the two uses.</li><li data-bbox="539 1581 1388 1845">4. Lidl do not agree that the outline element of the scheme will simply serve day to day sustenance needs. Whilst the Planning and Retail Statement submitted with the application states that the use will likely be a sandwich shop, bakery, drive-thru coffee shop or restaurant type facility, the actual end use remains open ended. Indeed, the applicants are seeking flexibility to allow the unit to trade within Use Classes E(a) Shop or E(b) Café / Restaurant.</li></ol>

Martin Robeson Planning Practice (“MRRP”) on behalf of Tesco Stores Ltd raise the following objections (in summary):

1. Misapplication of the sequential test in respect of the commercial unit. Tesco do not agree with the sequential assessment of the commercial unit and conclude that alternative sites should be explored. They do not agree that the commercial unit should not been considered further in retail terms because it is considered that the facility will serve day to day needs.
2. Inappropriate judgements on retail impacts through references to retail ‘need’. The NPPF no longer requires an assessment of retail ‘need’ when bringing applications forward for proposals outside of town centres. Impact on “consumer choice” in the town centre (a consideration in paragraph 90 b of the NPPF) does not import the concept of need.
3. Uncertain Highways Impacts The proposed ‘flexible use’ unit could operate within any use under E(a) or E(b) (or in a combination of these uses should it be subdivided).
4. MRRP raise concerns about the existence of a fall-back position. MRRP conclude that the 2013 outline planning permission does not represent a “fall-back” use. The judgment of Lockhart Montgomery in R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd. [1998] sets out a three-component fallback test: "First whether there is a fallback use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is “yes” a comparison must be made between the proposed development and the fallback use". The extant permission for B-class uses does not permit retail development and thus does not create a lawful ability for the proposed use. The Officer’s Report applies the third stage of the Ahern test (comparing the impacts of the proposed development against the extant permission) in explaining “the proposal would have a lesser impact on nearby residents when compared with a B2 and/or B8 industrial type”. However, as the extant permission does not create a lawful ability to undertake the proposed retail use it is not a fall-back position and thus such a comparison is not relevant to make.
5. Clarity is required as to whether the proposed development is a departure from the Development Plan as a whole.

It should be noted that since both representations have been received Nexus Planning (“Nexus”) have responded directly on the application of the sequential test for the commercial unit, which can be reviewed on the website. This is summarised below.

*Consultations and Response to additional representations:*

*Number of objections*

At the time of writing the report, 55no objections had been received. Following, the additional representation, this takes the total to 57 representations.

*Response to objection from Rapleys on behalf of Lidl*

Nexus confirm in their response dated 14<sup>th</sup> February 2022 that their initial response (in August 2021) notes that part of the proposal relates to a 'flexible-use commercial unit', which is submitted in outline. Nexus's response in August 2021 also concludes that the sequential test should be applied with regard to whether there are available and suitable sites that could separately accommodate the larger foodstore unit and the smaller commercial unit, i.e., whether the two units could be disaggregated in practice.

In this regard, the Council proposes to condition the grant of any planning permission such that the second unit would be limited to occupation by '**a café, sandwich shop or bakers**' only.

Paragraph 5.11 of Nexus's response (August 2021) confirmed the view that such a use would meet day-to-day sustenance needs. In Nexus's experience, this type of operator would meet a localised need, and sites within or in proximity to Chadderton district centre would not serve the same catchment in practice.

Furthermore, Nexus is unaware of any sites within or well-connected to The Downs and Grimshaw Lane local centres that could meet the same day-to-day sustenance needs. The need to consider the realistic catchment area of a proposal is fundamental in applying the sequential test and forming a view on the suitability of alternative sites. In this regard, Nexus recognise that paragraph 012 of the Town Centre and Retail Planning Practice Guidance 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.*'

Nexus conclude that consideration of the smaller commercial unit has been clearly justified with reference to the local circumstances and is wholly consistent with the above guidance.

*Response to objection from MRRP on behalf of Tesco*

Point 1 and the issue of applying the sequential test to the commercial unit has been discussed above when addressing the Lidl objection, please refer to this.

On point 2 Nexus conclude that they have assessed the application based on its compliance with the sequential and impact tests, and clearly finds that it accords with relevant retail and town centre planning policy on this basis. The references to retail 'need' in the

officer report are qualified with reference to future population growth in the area and the substantial level of overtrading that is apparent at the existing Asda store at Chadderton. These matters are of relevance in respect of improved consumer choice, which is of materiality to the determination of the application in accordance with paragraph 90 of the NPPF.

Considering point 3 and highway impacts, the use of the commercial unit is conditioned to be a café, sandwich shop or bakers, and will not be able to operate in any use within Use Class E(a) or (b). The Highways impacts have been assessed and subject to a contribution of £12,800 towards highway improvements, no objections have been raised from the Highways Engineer or Transport for Greater Manchester. The layout for the commercial unit will be considered at reserved matters stage, and the Highways Engineer will be involved to ensure highway and pedestrian safety is maintained.

On point 4 and MRRP's assertions that the 2013 outline planning permission does not represent a fall-back position at the site because it does not permit retail development, and thus does not permit a lawful ability for the proposed use, MRRP statement in this regard is correct.

The fallback position is discussed in the Committee Report in the context of setting out what could potentially be delivered on the site via the outline planning permission, such as the scale of development and types of uses. In this context, it provides an effective opportunity to look at what can already be delivered at the site and what is proposed and look at the impacts of both in terms of the scale of development and impacts to residential amenity, which the Committee Report considers. The fallback position in the Committee Report should not be interpreted as the site having extant permission for a retail use, as it does not.

MRRP in point 5 seeks clarity on whether the application is a departure from the Development Plan as whole. The Committee Report, under the 'Loss of Employment Land' section, acknowledges that the application is a clear departure from Policy 14 and a planning balance assessment has been undertaken as a result.

## **Amendment to RECOMMENDATION**

### *Amendment to Conditions*

**Part A Condition 4 currently states** - *The flexible use commercial unit hereby permitted shall have a maximum Gross Net Sales Area of 240sq.m. The sales area shall be used primarily for the sale of convenience goods. REASON: To reflect the basis on which the application has been assessed and to protect the vitality and viability of nearby town centres, having regard to policy 16 of the Local Plan*

**Part A Condition 4 proposed rewording** - *The flexible use commercial unit hereby permitted shall have a maximum Gross Floor Area of 300 sq. m and a maximum Net Sales Area of 240sq.m. The*

	<p><i>sales area shall be used primarily for the sale of food and drinks. REASON: To reflect the basis on which the application has been assessed and to protect the vitality and viability of nearby town centres, having regard to policy 16 of the Local Plan</i></p> <p><b>Part B Condition 1 currently states</b> - <i>Application for approval of the reserved matters of 1) Access 2) Appearance 3) Landscape 4) Layout and 5) Scale shall be made to the Local Planning Authority before the expiration of six years from the date of this permission. The development hereby permitted shall be begun either before the expiration of six years from the date of this permission or two years from the date of approval of the last of the reserved matters whichever is the later. REASON - To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.</i></p> <p><b>Part B Condition 1 proposed rewording</b> - <i>Application for approval of the reserved matters of 1) Access 2) Appearance 3) Landscape 4) Layout and 5) Scale shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or two years from the date of approval of the last of the reserved matters. REASON - To comply with Section 51 of the Planning and Compulsory Purchase Act 2004</i></p>
<p>Pages 37 – 48</p>	<p><b>AGENDA ITEM NUMBER: 7</b></p> <p><b>SITE ADDRESS:</b></p> <p>Plot 3000, Lydia Becker Way, Foxdenton, Oldham</p> <p><b>Amendment to RECOMMENDATION</b></p> <p><u><i>Amendment to Conditions</i></u></p> <p><b><u>Condition 3</u></b></p> <p><b>Condition 3 currently states:</b> <i>No development shall commence unless and until a remediation strategy has been carried out and the consultant's report and recommendations have been submitted to and approved in writing by the Local Planning Authority. Written approval from the Local Planning Authority will be required for any necessary programmed remedial measures and, on receipt of a satisfactory completion report, to discharge the condition. REASON - In order to protect public safety and the environment in accordance with Local Plan Policy 9.</i></p> <p><b>Condition 3 proposed rewording:</b> <i>The development shall only be carried out in full accordance with the approved remediation proposals outlined in the remediation strategy submitted by TRC dated 2<sup>nd</sup> February 2022. Should, during the course of the</i></p>

development, any contaminated material other than that referred to in the investigation and risk assessment report and identified for treatment in the remediation proposals be discovered, then the development should cease until such time as further remediation proposals have been submitted to and approved in writing by the Local Planning Authority, and the approved measures shall be implemented in full. REASON - To protect the environment and prevent harm to human health having regard to Policy 9 of the Oldham Local Plan.

**Condition 8 currently states:** *The use of the buildings hereby approved shall not commence until a scheme for the provision of secure cycle parking has been implemented in accordance with details which shall have previously been submitted to and approved in writing by the local planning authority. The approved facility shall remain available for users of the development thereafter. REASON – In order to promote sustainable means of travel having regard to Policies 5 and 9 of the Oldham Local Plan.*

**Condition 8 proposed rewording:** *The development hereby approved shall be carried out in accordance with plan references BSSGA-1521-1-dated 03/04/2017, BSSGA-1521- dated 03/04/2017, BSSGA-1521-9 – dated 03/04/2017 and 21095 P0003 Rev E relating to secure cycle parking. REASON – In order to promote sustainable means of travel having regard to Policies 5 and 9 of the Oldham Local Plan.*

**Condition 10 currently states:** *The development hereby approved shall be carried out in accordance with the following drainage details:*

- *Proposed Drainage Plan’, reference 21-023-CHA D01 P1, Dated 03.01.22; and*
- *‘Culvert Diversion Overview’ reference FDH-BWB-HDG-05-DR-D-0525 S4 Rev B1.*

*REASON - To ensure that a satisfactory system of drainage is installed having regard to Policies 9 and 19 of the Oldham Local Plan.*

**Condition 10 proposed rewording:** *The development hereby approved shall be carried out in accordance with the following drainage details:*

- *Proposed Drainage Plan’, reference 21-023-CHA D01 P2; and*
- *‘Culvert Diversion Overview’ reference FDH-BWB-HDG-05-DR-D-0525 S4 Rev B1.*

*REASON - To ensure that a satisfactory system of drainage is installed having regard to Policies 9 and 19 of the Oldham Local Plan.*

#### **Additional Condition**

**Condition 14 -** *Prior to any part of the development hereby approved being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy submitted by TRC*

	<p><i>dated 2<sup>nd</sup> February 2022 and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. REASON - To ensure that the site does not pose any further risk to human health or the water environment having regard to Policy 9 of the Oldham Local Plan.</i></p>
<p>Pages 49 - 68</p>	<p><b>AGENDA ITEM NUMBER: 8</b></p> <p><b>SITE ADDRESS:</b></p> <p>Land to the south of Denbigh Drive, Shaw, Oldham</p> <p><b>Additional representations received:</b></p> <p>Following the publication of the Committee Agenda and the meeting notification letters/emails being issued, four further representations have been received raising objections to the application.</p> <p>The additional concerns raised are summarised below:</p> <ul style="list-style-type: none"> <li>• Concerns that the scheme has been reduced in number and a public consultation has not been undertaken by the Council; and</li> <li>• The proposal is contrary to the principles of Places for Everyone, as it contravenes the cycling/walking friendly section and the main policy statement of Grow up, Get On and Grow Old in a Beautiful Place given the majority of the residents affected will be by the development.</li> </ul> <p>Moreover, two representations have been received from local Councillors, and these are outlined below:</p> <p>Cllr Williamson contacted the case officer to raise concerns over the proposed number of units being reduced to 42 units and the neighbours not being formally notified. However, given this amendment represents a reduction in development undertaken to address concerns raised and not an increase in development, the Local Planning Authority are not required to undertake a full re-consultation.</p> <p>Cllr Murphy requested that the case officer includes site photographs in the Planning Committee PowerPoint presentation. Since it is common practice for the case officer to include site images and proposed plans within presentation it has been agreed that these photographs will be included.</p>

**Amendment to PLANNING CONSIDERATIONS section of report:**

**Principle of development:**

Other Protected Open Land (OPOL)

Following publication of the originally report, it has come to the attention of officers that this section of the report includes a drafting error, as it incorrectly notes 44 units rather than 42 units which is the number being considered.

**Developer Contributions:**

Financial viability

The report originally requires a Section 106 agreement for the contribution of £100,000 towards the enhancement of existing Open Space provision within the locality. However, given the Section 106 would be just requiring a payment to be made, it has been agreed with the applicant that a Unilateral Undertaking would be an appropriate method to secure this.

**Amendment to RECOMMENDATION section of report:**

Given the above alteration to the Developer Contribution section of the report, the recommendation section has been updated as follows:

It is recommended that the Planning Committee resolves to grant permission, subject to the inclusion of the conditions listed below, and a Unilateral Undertaking securing the provision of the following:

- A financial contribution of £100,000.00 towards the enhancement of existing Open Space provision within the locality.

In addition, following further discussions with the applicant the below amended conditions are recommended:

Condition No.3, proposed amended wording:

*No dwelling shall be occupied until the access to the site and car parking space for that dwelling has been provided in accordance with the approved plan Ref DOSL 01 Rev M and with the details of construction, levels and drainage, which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the access and parking spaces. Thereafter the parking spaces and turning area shall not be used for any purpose other than the parking and manoeuvring of vehicles. Reason - To ensure adequate off-street parking facilities are provided and remain available for the development so that parking does not take place on the highway to the detriment of highway safety having regard to Policies 5 and 9 of the Oldham Local Plan.*

The amendment of this condition relates to an update of the revision number of the plan from Rev L to Rev M.



Condition No. 5, proposed amended wording:

*No dwelling shall be occupied unless and until a scheme has been submitted to and approved in writing by the local Planning Authority showing details of the proposed Public Right of Way to the south of the site and the connectivity with the overall development, and all works that form part of the approved scheme are complete. Reason – To ensure that the site can be accessed safely in accordance with Policies 5 and 9 of the Oldham Local Plan*

Further to discussions with the applicant it has been agreed that this condition is not required to be pre-commencement, as such the amended wording related to the condition being triggered preoccupation.

Condition No. 11, proposed amended wording:

*The drainage for the development hereby approved, shall be carried out in accordance with principles set out in the submitted Preliminary Adoptable roads and Drainage Layout, ref: 6484-01-02 Revision K, dated 18/01/2022 produced by Lees Roxburgh Limited and Flood Risk Assessment (FRA) (Ref: 6484/R1 Rev D, dated January 2022). No surface water will be permitted to drain directly or indirectly into the public sewer. Any variation to the discharge of foul shall be agreed in writing by the Local Planning Authority prior to the commencement of the development. The development shall be completed in accordance with the approved details. REASON - To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding.*

The applicant has raised that the originally condition did not reference the Flood Risk Assessment, as such this has been added to the list of details within the updated condition.

Condition No. 11, proposed amended wording:

*Prior to the commencement of the development hereby approved, a scheme of design for security measures that takes into account the recommendations within the associated Crime Impact Statement, and approved in writing by, the Local Planning Authority. The development shall be completed in accordance with the agreed details. REASON - To ensure a safe form of development in accordance with Policy 9 of the Oldham Local Plan.*

It was raised by the applicant that to comply with all of section 4 of the Crime Impact Statement would result in changes to the approved plans and elevations and the boundary plans which have already been agreed with highways and GMEU. Therefore, it is considered appropriate to amend this condition to reflect the submission of a design for security measures prior to commencement.

Condition No. 15, proposed amended wording:

*No development shall take place until an Environmental Construction Method Statement (ECMS) setting out details of measures to protect the nature conservation interest of the SBI during construction has been submitted to and approved in writing by the Local Planning Authority. The ECMS shall include details of the following:*

- *the siting, height and design of any protective barrier to be erected between the site and the SBI proposed 10m buffer zone;*
- *any reasonable avoidance measures to limit the potential for harm to habitats and species associated with the SBI;*
- *details to protect the badger sett with planting (as noted on landscape plan Drwg. 101 Rev. E), to be planted in the first planting season following a material start on site;*
- *measures to prevent local ground and surface water pollution; and,*
- *A timetable for implementation*

*Development shall thereafter be carried out in strict accordance with the details and timetable contained within the duly approved ECMS.*

*Reason: In order to ensure that appropriate mitigation measures are put in place to safeguard the nature conservation interest of the adjacent habitat during the construction period before any development takes place in accordance with the requirements of policies 6 and 21 of the Local Plan, and the National Planning Policy Framework.*

This condition has been amended to reflect the requirement to protect the badger sett on site prior to commencement on site, as advised by GMEU.

Condition No. 16, proposed amended wording:

*No dwelling shall be occupied until a landscape and ecological management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), shall be submitted to, and approved in writing by, the local planning authority. The landscape and ecological management plan shall be carried out as approved and any subsequent variations shall be agreed in writing by the local planning authority.*

*The scheme shall include the following elements:*

- *details of maintenance regimes of retained, protected and new semi-natural habitats as indicated on landscape plan Drwg. 101 Rev. E;*
- *details of management responsibilities;*
- *details of monitoring to check efficacy of maintenance and management prescriptions;*
- *details of monthly litter/waste removal from the SBI; and,*

- *details of quarterly review during the landscape establishment period of any antisocial activities/boundary effectiveness that may be damaging the SBI so that remediation can be considered during that first 5 years of landscape establishment and occupation of the homes.*

*REASON - To ensure the protection of wildlife and supporting habitat. Also, to secure opportunities for enhancing the site's nature conservation value in line with national planning policy and adopted policy 19 & 21 of the Oldham Development Plan.*

It is noted that the landscape plan (Drwg. 101 Rev. E) has been accepted by GMEU during the consideration of the scheme. As its design reflects both the recommendations of ERAP assessments and GMEU's recommendations by including native mix, wildflower and protective planting near badger setts, this condition has been re-worded.