

Committee Update – HW/REMVAR/18/00480 – 5 The Oaks Retail Park

Additional correspondence has been received as follows:

Objection on behalf of Aldi, received 23rd May

We write on behalf of our client ALDI Stores (ALDI) in objection to two planning applications currently under consideration by Harlow Council which individually and combined would result in significant adverse impacts on a nearby ALDI store which functions as part of The Stow Neighbourhood Centre.

Both applications seek the relaxation of current trading restrictions which currently prevent the sale of food and drink from the retail units in question. Both units are near to one another and located in established out of centre retail locations where the Council have historically sought to resist the introduction of food sales on the grounds of impact on the established local network of neighbourhood centres. Indeed, the Council resisted similar proposals for relaxation of restrictions in favour of food sales in the form of an M&S Foodhall at the Queensgate Centre in 2014 and more recently in the former Office Outlet unit at the St James Centre in December 2018. The Council refused both applications on impact and sequential grounds.

We have thoroughly reviewed the retail assessments submitted in support of both applications and observed that neither have appropriately assessed the impact of their respective proposals on the nearest existing main food shopping destination, the ALDI at First Avenue, located within 1km, and which functions as the main food anchor for The Stow Neighbourhood Centre, a policy protected shopping centre. Both assessments inexplicably disregard the impact on ALDI in its capacity as anchor store to The Stow, and therefore its continued vitality and viability.

In the case of the Queensgate Centre application, a relaxation is sought to allow Lidl to occupy the former Toys R Us unit. Whilst the applicant's assessment acknowledges the principle of 'like-affects-like', it grossly underestimates the impact that a Lidl store would have on the established ALDI and The Stow just a short distance away.

This is also the case with the application at The Oaks Retail Park which was submitted in late 2018 with no named occupier. The assessment submitted with this application took a very generic approach suggesting the store would draw most of its trade from larger established stores in Harlow, i.e. Tesco and Sainsburys, again underestimating the likely impact on the nearby ALDI and The Stow. We subsequently understand it has been acknowledged that the occupier would be Iceland Food Warehouse who are also a direct competitor of ALDI's. Through their neglect to realistically assess the impact on ALDI and The Stow, the retail impact assessments submitted in support of both applications are clearly flawed, and do not allow for a full understanding of potential retail impacts. This is notwithstanding the cumulative impact that both proposals would be expected to have should they both be approved.

When combined, i.e. 1,951 sqm (Lidl – total GIA) and 1,049 sqm + (Iceland – just the ground floor GIA), the proposed convenience floorspace of both applications would comfortably exceed the 2,500 sqm NPPF threshold for when detailed retail impact assessments are required. The Council would be in their rights to require an impact assessment for the applications individually, but given combined these exceed the 2,500sqm threshold, the Council should request a cumulative retail impact assessment to be submitted. Without such an assessment, the Council are not in a position to understand the full impacts of either

proposals. As we consider both proposals have the potential to significantly impact on ALDI and The Stow, we would reserve the right to comment further on any further justification submitted by the applicants.

Should a more appropriate assessment not be submitted by the applicants, we would expect the Council to take a consistent approach considering previous applications in the area and refuse both applications on impact grounds.

Please keep us updated with the progress of these applications.

Objection on behalf of Aldi, received 4th June

We write on behalf of our client ALDI Stores (ALDI) in respect of the above planning application which is due to be heard at the Development Management Committee this Wednesday 5th June. On 23rd May 2019 we submitted a combined objection to this application which seeks the relaxation of a goods restriction in favour of Iceland and a similar application across the road at the Queensgate Centre which Lidl are hoping to benefit from (HW/FUL/18/00553) and which is also being considered by officers at present. We understand this combined objection is to be included in a written addendum to the committee report for this week's meeting.

ALDI's concern is that individually and, certainly combined, these applications would have a significant adverse impact on their nearby store on First Avenue which functions as the anchor store for The Stow Neighbourhood Centre. In the absence of a cumulative impact assessment, the Council should not be determining either application until their combined impact has been appropriately assessed.

Both applications seek the relaxation of trading restrictions which currently prevent the sale of food and drink from the retail units in question. Both units are near to one another and located in established out of centre retail locations where the Council have historically sought to resist the introduction of food sales on the grounds of impact on the established local network of neighbourhood centres. Indeed, the Council resisted similar proposals for relaxation of restrictions in favour of food sales in the form of an M&S Foodhall at the Queensgate Centre in 2014 and more recently in the former Office Outlet unit at the St James Centre in December 2018. The Council refused both applications on impact and sequential grounds.

Both the current applications have neglected to realistically assess the impact they would have on the ALDI which is located less than 1km to the south and undoubtedly the store and its position as anchor store to The Stow, which would experience the greatest levels of impact. The submitted retail impact assessment is thus fundamentally flawed. This position is further undermined in the absence of a cumulative retail impact assessment that considers the levels of estimated impact were both schemes to come forward.

In our previous objection we urged the council to seek a cumulative retail impact assessment so the combined impact of these two proposals can be appropriately assessed. Such an assessment is entirely justified, as combined, the proposals would comfortably exceed the 2,500 sqm impact threshold in paragraph 89 of the NPPF. Without such an assessment, the council cannot make an informed judgement on either application.

We are surprised that our objection has not been reported to committee.

In the case of the application in favour of Iceland going to committee this week, we would also raise the difficulties for third parties to hear of the proposals. Whilst the application was

submitted in December last year, it was submitted as a S.73 variation with no named retail occupier mentioned. We have subsequently reviewed the report and observed that officers refer to 'independent retail advice' obtained in respect of the areas of retail impact and sequential. We raised with officers that this key piece of advice received in January and which influenced their recommendation had not been made public, which has in turn prevented interested third parties the opportunity to refer to within their representations. This deficiency has since been rectified and this key piece of advice is online, along with a detailed response from the applicant's advisors from February, however this has been far too late to allow detailed review in advance of committee.

Should the council determine this application under these circumstances without having made this key advice public for a reasonable period this is a clear area for third party challenge. Considering the points raised above, we would respectfully request the council to either:

- Deferring determination of both planning applications until a cumulative retail impact assessment has been submitted. We would expect the council to seek further independent advice on this detailed study, whilst also allowing an appropriate period of consultation for third parties to make representations. Following this process, we would expect the council to determine both applications at the same committee, allowing members to fully appreciate the impact combined retail impact implications.
- Deferring determination of the Iceland application (HW/REMVAR/18/00480) until the Council have carried out an appropriate form of reconsultation in respect of the independent retail advice they have received, and the applicant's response. This will allow third parties a more reasonable opportunity to comment on the key advice officers have based their recommendation on.

We trust that the Council will consider the content of this letter prior to determination of this planning application.

Objection from Lidl, received 4th June

We note that application HW/REMVAR/19/00480, to widen the range of goods that can be sold from Unit 5, Oaks Retail Park is to be determined at the Development Management Committee this Wednesday 5th June. The application seeks planning permission to permit the sale of food and drink. The prospective tenant is Food Warehouse. The planning application is recommended for approval subject to conditions.

We request that determination of the application is deferred to allow the Local Planning Authority to have full regard to our directly comparable application on the site opposite, Queensgate Centre (HW/FUL/18/00553). We respectfully suggest that to determine planning application HW/REMVAR/19/00480 in isolation of the application falls short of a full and proper assessment of all the relevant material considerations and could result in a decision which is neither transparent nor robust.

You will be aware that we have a live application with you to enable us to occupy part of the vacant former Toys R Us, at the Queensgate Centre (Ref: HW/FUL/18/00553). We made the application with The Crown Estate, the landlords, following a pre-application process including a public exhibition on 9 November 2018. The application has been with the Local Planning Authority since 18 December 2018.

In line with application HW/REMVAR/19/00480, our application proposes the sale of food and drink and relates to Lidl's the specific requirements for an additional store to serve Harlow. We have proposed a tailored condition, which reflects our specific operational

requirements and aligns with the evidence submitted with the application. We have reviewed all opportunities within the defined centres of Harlow and unfortunately none of them meet our business model requirements (such as a surface level car park immediately adjacent to the site and provision of a dedicated servicing area).

The key matters and issues raised for both applications are identical (i.e. the sequential test, retail impact, highways etc). In both cases, it is accepted by Officers that the proposals will not give rise to retail impact or highways issues. With regards the sequential test, both applications have submitted additional justification which demonstrate that there are no sequentially preferable units within Harlow, including the former BHS in the Harvey Centre. We note from the Officer's Report to Committee that it is accepted that the application for Food Warehouse satisfies the sequential test and that specifically the former BHS is not "suitable". We have yet to have a formal response from Officers to the final submission made in relation to our application, but the only logical conclusion must be the same-i.e. that the former BHS is not suitable and therefore not sequentially preferable.

We note that Aldi has recently objected to both applications by way of a single letter. To the best of our knowledge, this objection has not been addressed. Furthermore, we would suggest that the fact a single objection was made in relation to both applications reinforces the relationship between the two.

In summary, it is our opinion that the Food Warehouse and Lidl applications give rise to identical matters and on this basis, the Planning Committee should be determining the applications together, once all the information is available. A deferral of application HW/REMVAR/19/00480 is reinforced by the fact that there are still matters to address. We strongly request that application HW/REMVAR/19/00480 is deferred until a future Planning Committee, so that it can be determined at the same time as our proposal (HW/FUL/18/00553).

We look forward to receiving confirmation that the determination of application HW/REM VAR/19/00480 has been deferred from 5 June Planning Committee.