

# REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE

## 16 February 2021

**REFERENCE:** HW/FUL/18/00553

**OFFICER:** Patricia Coyle

**APPLICANT:** The Crown Estate

**LOCATION:** Proposed 1A  
Queensgate Centre  
Edinburgh Way  
Harlow  
Essex  
CM20 2DA

**PROPOSAL:** Minor External Alterations to Elevations of Unit 1A to Accommodate a Food store (Class A1) and Reconfiguration of Car Parking.

### LOCATION PLAN



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## **Background**

This application was brought to the January meeting of the Development Management Committee when Members indicated that they were minded to approve the scheme. Prior to issuing the decision, Officers reviewed the application and noted that while a Site Notice was originally posted, there was a procedural oversight. The application review concluded that the proposal is a departure from the policies of the local plan. The decision cannot be issued until further advertising of the application has been undertaken and any comments received during the consultation period have been considered. The application has been re-advertised via a Site Notice at the application site and with a press notice placed in a local paper.

## **Reason brought to Committee**

The proposal is for a departure from the adopted Local Plan (HLDP, Dec 2020) and more than 2 objections have been received.

## **Application Site and Surroundings**

The application site comprises part of the former Toys “R” Us unit to the western end of the Queensgate Centre, comprising a retail park circa 1.5km from Harlow town centre. Other retailers and a number of leisure and restaurant uses are also located at the Queensgate Centre.

The site is accessed from Edinburgh Way at its roundabout junction with Howard Way. There is a further egress only towards the eastern end of the site again onto Edinburgh Way.

## **Details of the Proposal**

Minor External Alterations to Elevations of Unit 1A to Accommodate a Foodstore (Class A1) and Reconfiguration of Car Parking.

The proposal is for full planning permission for minor works and to extend the range of goods to allow the sale of food and drink from the premises to facilitate occupation by Lidl. The physical works proposed include the reconfiguration of the existing car park and minor alterations to the front, side and rear elevations.

Permission is required for food retail as there is a condition on the original approval restricting the types of goods which can be sold from the out-of-centre retail warehouse unit.

Currently the Unit 1 Queensway unit(s) within the Edinburgh Way Retail Park can only sell DIY goods, furniture, floor coverings, leisure and garden products, motor accessories, electrical goods and toys, bicycles, computers, baby/ancillary child-related products and other non-food bulky goods care items.

The external elevation changes would be to the front, side and rear of the building and would involve the glass canopy being extended over the entrance, alterations to entrance doors, removal of an internal door, new fire exit doors to the rear and side elevations, installation of a trolley bay and installation of bollards along the front elevation.

The car park reconfiguration would result in minor changes to the layout of the shared car park. These would comprise the reconfiguration of car parking to allow the provision of 12 disabled parking spaces, 15 parent and child spaces and 148 standard parking spaces

which would result in a loss of 7 car parking spaces in comparison to the existing situation (182 parking spaces to the front of Unit 1; 850 parking spaces to the Queensgate Retail area overall).

The proposal would benefit from the recent sub-division of the existing Unit 1 into three of which the proposed food supermarket (Unit 1A) would utilize the largest space of 1,952 sq.m by gross internal area with a net sales area of 1,100 sq.m. Unit 1C has been taken by Smyths Toy Superstores and Unit 1B, the smallest/narrowest, has yet to be occupied.

It is proposed that there would be 45 fte jobs.

A twin EV Charging Point unit, spanning 2 car parking spaces, was recently installed between Pizza Hut and EE and the new substation installed opposite Smyths Toys was specifically designed to allow for the installation of EV charging points over time should a requirement arise. The Crown Estate and Lidl have indicated that they are prepared to consider the introduction of 2 X EV Charging Points and to install the ducting for additional spaces to "future proof".

There would be two ducts connected to the telecoms network; one for copper and the other for fibre so that it is enabled for "high quality communications" infrastructure.

The applicant indicates in their Planning Statement that the proposal is to enable Lidl, a LAD (Limited Assortment Discount) type food and drink supermarket with WIGIG (when its gone its gone) comparison goods "middle aisle" to operate from their existing vacant unit in Edinburgh Way. The existing Lidl store at Staple Tye would remain.

The applicants have submitted a transport assessment, a draft travel plan, a statement of community involvement and a Planning and Retail Statement including both a Sequential Test Statement and a Retail Impact Assessment (Dec 2018, revised in November 2020) in support of their application. The applicants have put forward the argument that their proposal would neither result in any harm to the local highway/transport network nor result in any harm to the vitality and viability of Harlow Town Centre and, as there are no available units within the Town Centre or in edge of town centre locations, that the proposal meets the requirements of the Sequential Test.

## **RELEVANT PLANNING HISTORY**

Application Reference Number: HW/PL/08/00061

Proposal: Refurbishment of existing building including alterations of south and east elevations and reconfiguration of car park (Toys R Us)

Application Status: Granted

Date Application Received:

Date Application Decided: 1 April 2008

Application Reference Number: HW/PL/08/00218

Proposal: Replacement and enhancement of three existing signs and installation of 1 new fascia sign (Toys R Us)

Application Status: Consent given

Date Application Received:

Date Application Decided: 2 April 2008

Application Reference Number: HW/FUL/18/00097

Proposal: Alterations to External Appearance including new shopfront and entrance features to support sub-division

Application Status: Granted planning permission

Date Application Received: 5 March 2018

Date Application Decided: 16 May 2018

The sub-division of Unit 1 Queensgate into three units did not of itself require planning permission as it met the requirements of the condition attached to the original consent in that it did not involve the provision of undersized units.

Two applications were submitted for the whole of the warehouse unit - Unit 1 Queensgate - in October 2018 prior to the submission of the current application:

- HW/FUL/18/00097 (see above). This also included the change from one sign housing with upstands to the frontage to three with additional entry doors beneath all three.
- HW/FUL/18/00459 - Alterations to Servicing Arrangements for Unit 1C, including external alterations to the side elevation of the unit and minor physical works to the car park and site layout – this was granted planning permission on 6 December 2018. This also included the change from one sign housing with upstands to the frontage to three with additional entry doors beneath all three.

Also, during the course of consideration of this application a number of applications have been made which affect the area of the site within the red line for the current application as follows:

- Advertisement consent - HW/ADV/20/00149 – plans submitted with this application show Unit 1C as covering the eastern (nearly half –approximately 28m wide) side (front to rear) of the current application site. Signage for Smyths Toys superstores proposed to be located on the front elevation in the upstands and on the eastern elevation at high level was approved on 5 May 2020.
- Unit 2 Queensgate – (HW/FUL/20/00396) - Alterations, including minor extension to existing building, and re-introduction of drive through lane, alterations to car parking and continued use of property for Use Class A3 (food and drink) and Use Class A5 (takeaway) i.e., Restaurant and drive-through. The proposal mainly affects the access/parking arrangements by removing 6 existing parking spaces – Granted planning permission on 12 October 2020. The removal of 6 parking spaces would not specifically alter the number needed for the proposed food store in the shared car park.

## **CONSULTATIONS**

### **Highways Agency**

No response received.

### **Regeneration**

The potential for Lidl to become an occupier in the Queensgate Centre is one that we wish to encourage as it would provide additional employment for the town and help to replace at least some of the many retail jobs that have been lost as a result of the impact of the Covid-19 measures and the longer term trends in the town.

### **Neighbours and Additional Publicity**

Number of Letters Sent: 4

Total Number of Representations Received: 4

Date Site Notice Expired: 13 February 2019  
Date second Site Notice Expired: 10 February 2021  
Date Press Notice Expired: 10 February 2021

## **Summary of Representations Received**

One correspondence has been received from a member of the public neither objecting to nor supporting the application.

Three objections have been received from representatives of Tesco, Aldi and Asda. These have been added to on receipt of additional documentation and Council assessments. No letters of support have been received.

A member of the public has written neither objecting to nor supporting the application. Nonetheless they raise that a budget food store will help people in the locality but that traffic is appalling, dangerous at the roundabout. They suggest that drivers behave recklessly and that an additional vehicle access should be provided to Queensgate, in part so pedestrian traffic is safer. This is addressed in the Transport Assessment section of this report.

An objection has been received on behalf of Aldi stores concerned at the retail impact and cumulative impact of the proposed use combined with the permission granted for the "*Food Warehouse*" at Unit 5, The Oaks Retail Park, they consider that the Retail Impact Assessment report does not reflect the true picture and that the loss of their trade will be significantly greater than indicated, in part as their store is located only 1km from the application site and is at The Stow Neighbourhood Centre where it provides an "anchor store" within the centre. They consider that the recommendation is based on information that it not sufficiently robust such that the scheme should be refused on policy grounds in line with the NPPF. Also that the sequential test should not solely relate to the availability of Unit 24 (former BHS) in the town centre such that the sequential test has not been robustly met. This is addressed in the Sequential Test section of this report.

An objection has been received on behalf of Asda objecting to the proposal on the grounds that "LAD" discounters have changed over time and are more like a traditional supermarket such that the differentiation is now marginal and should be considered simply as a food supermarket rather than a special type, in particular as the unit could be occupied by any food retailer rather than just Lidl in future. As such, sensitivity tests should be undertaken using other retailers' densities or an average to give a clear indication of potential impact on protected retail in retail centres; given that the Council's Retail experts have raised a concern re sequential test, a further assessment is needed; the proposal would not be in accordance with Policy RTS19/PR10 relating to retail warehouse parks being restricted to bulky goods and the original restrictive condition should stand; an impact test should be tested and if the scheme fails, it should be refused. Asda are concerned that the proposal could have a significant impact on the Town Centre. This is addressed in the Vitality and Viability and Sequential Test sections of this report.

An objection has been received on behalf of Tesco store concerned that the Retail Impact and Cumulative impact tests have not been carried out correctly. Specifically, that there is a lack of a proper 'cumulative assessment' of impact to include the recent Food Warehouse opening. The applicants have listed Food Warehouse as an existing store making a claim against available expenditure but that is not how it should be done. Were a 'cumulative assessment' undertaken adopting the applicant's consultants 'simplistic approach' one gets a 10% impact on food and convenience retailing in the town centre. This is not a matter that the Council's Retail Impact Assessment Reviewer explored in their recent response. This is addressed in the Vitality and Viability sections of this report.

A further objection from a representative of Tesco was received as follows:

“On behalf of our client, Tesco Stores Limited, we have to make a further objection which arises from the content of the officer’s Report to Committee and its failure to have proper regard to the content of the Council’s expert advisor on retail impact matters.

Your advisor, LSH, explained in their advice dated 25<sup>th</sup> November 2020 that:

“... there is no threshold to what constitutes ‘significant adverse impact’, which will be influenced on how vulnerable a town centre will be to further trade diversion. Given Harlow Town Centre’s role as the principal shopping location for the District there is a greater onus to provide a robust health check assessment; particularly as the town centre will be subject to higher levels of trade diversion (ranging between 18% to 23%) than other assessed centres in the catchment”.

“We therefore conclude that the application fails the impact test on the basis that the applicant has failed to fully assess impact on investment in line with paragraph 89a of the NPPF or provide an up-to-date health check to inform impact on the vitality and viability of Harlow Town Centre in line with paragraph 89b of the NPPF. For the health check evidence in particular, this is required to interpret the economic impact of the proposal on the town centre’s turnover. Without further evidence to support their impact case we recommend that planning permission is refused”.

Whilst LSH mistakenly advised that the decision-taker could weigh that advice on ‘significant adverse impact’ against any wider benefits, the nature of the policy in the NPPF – which is now reflected in your adopted Local Plan – is that “Where an application... is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused”. Thus, it is not a question of applying a balance, or as the officer’s Report suggests that “The significance of any harm identified has to be considered in relation to any other material consideration” rather the policy expressly requires refusal. This is addressed in the Vitality and Viability section of this report.

Furthermore, the conclusion in the officer’s Report that your expert’s assessment that “the harm would be less than indicated in the (applicant’s) RIA, such that it may no longer be significant”, is wholly at odds with the actual findings set out in detail in LSH’s November advice and which nowhere suggests that impact on the town centre “would be relatively small”. This is assessed in the Vitality and Viability section of this report.

Following the second site notice/press notice the following representations were received:

No representations received at the time of drafting this report.

## **PLANNING POLICY**

SD1 (Presumption in Favour of Sustainable Development)

RS1 (Retail Hierarchy)

The Queensgate Retail Park is included at the bottom of the retail hierarchy but does not form a retail centre. The retail centres are: Harlow Town Centre, The Neighbourhood Centres and the Hatches. It is recognised that Retail Parks have a role by providing large retail warehouse units for bulky comparison goods.

RS2 (Future Retail Floorspace)

The policy identifies a need for 18,000 sq.m of comparison and upto 3,200 sq.m of convenience floorspace up to 2026 but also that the new villages of the Harlow and Gilston

Garden Town will need to have their own Neighbourhood Centres and Hatches to support their additional populations.

#### RS3 (Protecting and enhancing existing Retail Centres)

The policy indicates that the role and function of the district's Retail Parks as a provider of bulky retail goods will be protected.

#### PL1 – Design Principles for Development

#### PL3 – Sustainable Design, Construction and Energy Usage

#### PR5 (Sequential Test and Principles for Main Town Centre Uses)

This indicates that Main Town Centre Uses must be directed in the first instance to the Town Centre unless there are no suitable or available sites. Also that Neighbourhood Centres and then Hatches must be considered before any Main Town Centre Uses are directed to Retail Park locations. Main Town Centre Uses within Retail Parks will be supported where all the criteria are met: sequential approach is satisfied, an active frontage is achieved at ground floor level, the vitality and viability of the retail centre is preserved and enhanced and is well related to public transport or located appropriately for sustainable transport provision.

#### PR10 (Development in Retail Parks)

Development in Retail Parks must meet the following criteria:

- (a) the sequential approach is satisfied;
- (b) the development is in Use Class A1 [Shops within new Use Class E\*] and is for the sale of bulky goods, or provides leisure activities;
- (c) any sub-division does not result in any separate retail unit being less than 1,000sqm in size.

For sub-division, evidence must be provided to demonstrate that the existing unit has been actively marketed for Use Class A1 [Shops within new Use Class E\*], to the satisfaction of the Council, for at least 12 months.

\*Use Class E (1 September 2020) defines A1 shops as “shops, retail warehouses, post offices, ticket and travel agencies, sale of cold food for consumption off premises, hairdressers, funeral directors, hire shops, dry cleaners, internet cafes”. In the transitional period, planning Applications submitted before the change to Use Class E retain their “A1” category status and therefore benefit from related permitted changes of use under this use class until July 2021.

Use Class E also includes A1, A2, A3, B1, D1 and D2 and the sui generis “in a class on their own” uses – e.g. theatres, Large HMOs, hostels, petrol filling stations, shops selling and/or displaying motor vehicles, scrap yards, retail warehouse clubs, nightclubs, launderettes, taxi or vehicle hire businesses, amusement centres, casinos, funfairs, waste disposal installations, betting offices and pay day loan shops.

It is expected that before the 31 July 2021 the restrictive permitted development changes will either be confirmed to cease (allowing any change to any other use within Use Class E without planning permission or prior notification) or a new/revised General Permitted Development Order will be applied (setting out new permitted development/prior notification changes).

Shops (former A1) may otherwise fall within new Use Class F2 “Local Community Uses” if they are less than 280 sq.m, sell essential goods and are at least 1km from a similar shop. This would not apply for the application site.

IN1 - Development and Sustainable Modes of Travel

IN2 – Impact of Development on the Highways Network including Access and Servicing

IN3 – Parking Standards

## **PLANNING STANDARDS**

National Planning Policy Framework (NPPF) (2019) - sets out the Government's key economic, social and environmental objectives and the planning policies to deliver them. These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value. It seeks to free communities from unnecessarily prescriptive central government policies, empowering local councils to deliver innovative solutions that work for their local area.

### **Supplementary Planning Documents/Current Planning Guidance**

The Harlow Design Guide SPD (2011)

The Essex Parking Standards: Design and Good Practice (2009)

Planning Practice Guidance (PPG)

### **Background**

In relation to Harlow Town Centre, when the application was first received Unit 24 at the Harvey Centre was available and the proposal for convenience store sales failed the Sequential Test, failing to meet policy the requirements of policy RTCS1 of the Adopted Replacement Harlow Local Plan (July 2006) and the National Planning Policy Framework 2019.

The applicants requested the opportunity to respond to the Retail Expert's comments and submitted further information in March 2020 regarding the suitability of Unit 24 for Lidl's market model. The Council's retail expert reviewed the information submitted and again considered that Unit 24 was capable of being used by Lidl even though their standard store layout would need to be revised to suit the current layout of the BHS and car parking would not be directly adjacent to the store, that it was not unreasonable, in line with the NPPF, that the Lidl's configuration and market model be altered for existing units/car parking provision in Town Centre locations. The Sequential Test was considered to be failed again, contrary to Policy RTCS1 of the ADRHLP (2006).

Nonetheless during the first pandemic lockdown in Summer 2020, a new department store known as 15:17 signed a lease for the former BHS which was then taken off the market; while it has yet to open (due in part to the pandemic resulting in less confidence in the comparison goods retail market and the 2<sup>nd</sup> lockdown preventing non-convenience stores being open) it is considered that the Sequential Test (that there is no other location currently available) is now met. As such, the proposal was then considered to meet the then requirements of Policy RTCS1 of the ADHLP (2006) and the then emerging Policy PR5 of the HLDP (Dec. 2020)

In addition, in Autumn 2020, the Planning Inspector confirmed that the emerging Local Development Plan with its Policies relating to retail was acceptable and, as such the emerging Policies carry great weight. As a result, the trigger point for a Retail Impact Assessment was lowered from the NPPF trigger of 5,000 sq.m to 500 sq.m; the unit size for the proposed Lidl then triggered the need for both the originally submitted Sequential Test and also a Retail Impact Assessment.

The Harlow Local Development Plan (HLDP) was adopted in December 2020.

### **Summary of Main Issues**

The key issues for consideration in the determination of this application are: the principle of the development; whether the proposal represents sustainable development; the proposals compliance with the sequential approach; the impact on the vitality and viability of the town centre; and the proposed parking arrangement and resulting traffic impact.

### **Principle of Development**

The retail park is located in an out-of-town location and the application proposes retail development. A sequential assessment must therefore be undertaken, together with a retail impact assessment.

The unit is located within a designated retail warehouse park. HLDP policy PR10 specifically relates to development proposals on retail parks. This policy specifies that proposals for development must meet the following criteria: a) the sequential approach is satisfied; b) the development is in Use Class A1 and is for the sale of bulky goods, or provides leisure activities; c) any sub-division does not result in any separate retail unit being less than 1,000 sq.m in size. The proposed development would not conform to the requirements of part b) of policy PR10, but parts a) and c) would be met.

The proposal is considered to be in conflict with one of the requirements of policy PR10 (b), however, the NPPF states that town centre uses (of which food retail is one such use) are suitable within out-of-town locations, provided that there are no sequentially preferable sites for such development and the retail impact of the development is not harmful on higher order centres. The NPPF's position on town centre uses is an important material consideration which indicates that the development should not necessarily be rejected in principle.

Determining the sustainability of the proposal is an important material consideration (as set out at NPPF paragraph 11). There should be no presumption in favour of the development if it is found to be unsustainable; concerns regarding a proposal may therefore assume more weight in the overall balance in such circumstances.

### **Sustainability of Development**

NPPF paragraph 8 sets out that there are 3 different elements to sustainable development: economic, social and environmental. Given the retail nature of the proposal, the economic element is likely to be most relevant; however it is important that all 3 elements are considered.

The applicant has submitted a Planning and Retail Statement (dated December 2019) in support of the scheme. The applicant states that the Lidl brand is defined as a Limited Assortment Discount (LAD) selling a limited range of discounted convenience and comparison goods. They generally occupy stores of between 1,500m<sup>2</sup> and 2,500m<sup>2</sup> gross offering a range of essential products with roughly 20% ancillary comparison goods, which change each week on a "when its gone, its gone" basis.

The proposal to bring back an existing retail warehouse into use would provide both goods for purchase and jobs for local people. There is a clear economic advantage of providing both. In terms of social sustainability, the scheme would provide jobs which would be mainly for local people which would be a social benefit. The applicants indicate that Lidl has its own programme to support staff to gain promotion through internal training. It is considered that

this seeks to support the aims of policy PR4 (Improving Job Access and Training) which seeks to ensure development provides support through of the employment of local people.

The proposed development would result in linked trips with other out-of-town retailers within the Queensgate Centre, to the economic benefit of the existing retailers and the proposed use rather than benefits to the town centre or the wider public. Given that the site is located 1.5km from the town centre and has restricted public transport connections (particularly in comparison with the town centre), the potential for linked trips with the town centre from the proposed Lidl is considered to be negligible. Consumer choice would be limited to offers within the Queensgate Centre; the consumer would otherwise have to travel to alternate destinations, at the expense of the environment, in order to benefit from additional choices. As for the previous use as a Toy retailer, the development would be heavily reliant on car travel. While new forms of vehicle are replacing petrol/diesel forms, increasing convenience shopping in a retail park would increase environmental concerns such as pollution, use of natural resources and personal carbon use.

Social – The NPPF indicates that the social objective relates to providing support for strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being.

The creation of jobs in the existing vacant unit will have a social impact with wages going mainly to people living locally which would help to support a healthy community.

Environmental – The NPPF's environmental objective looks to protecting and enhancing our natural, built and historic environment; including making effective use of land, improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

The proposal would result in the re-use of a vacant, existing building on brownfield land which would mean that no new land would be taken for the development such that there would be no pressure on green belt or green wedges (and fingers) or other protected land within the District. Including electric vehicle charging points would also work towards improving the environment.

The proposal would meet the economic part of the sustainable development equation. It is of concern that the social and environmental parts would be less clearly met, however, the details of the scheme need to be assessed before a final conclusion can be drawn.

### **The Sequential Approach**

Policy PR5's criteria are as follows:

- (a) the sequential approach is satisfied;
- (b) an active frontage is achieved at the ground floor;
- (c) the vitality and viability of the retail centre is preserved and enhanced to provide facilities and services for local residents; and
- (d) it is well related to public transport facilities, or is located where appropriate provision for sustainable transport can be provided.

The applicant has undertaken a sequential test within its submitted Planning and Retail Statement. This sets out the business model requirements. Lidl has a model based on keeping operating costs to a minimum in order to sell goods at a lower price. The statement states at paragraph 6.26 that *"all stores must provide the necessary floorspace to accommodate the standard minimum product range (approximately 2,000 lines) along with*

*adjacent surface level car parking and servicing facilities. As the proposed operator is a national multiple, consistency in terms of products and services is essential and parking is required given the stores provide more than a “top-up” offer for most customers”.*

Further at paragraph 6.27 it states *“dedicated surface level car parking is required to ensure the majority of customers can undertake their food shopping trips by private modes of transport. Many customers undertake bulk weekly or bi-monthly food shopping and purchase perishable goods.*

*Therefore customers expect stores to benefit from easily accessible, dedicated surface level car parking to allow an easy transfer of shopping from the store to vehicle. Without dedicated car parking, the overall viability of the Lidl would be affected”.*

In their sequential site search, the applicants considered sites in Harlow Town Centre, The Stow Neighbourhood Centre and the Old Harlow Neighbourhood Centre. They conclude largely that most available units are of insufficient size to accommodate the development. In the case of the (then) vacant BHS store the applicants state that *“the unit comprises a total of 3,160 sq.m of floorspace configured over two levels. This size of unit is significantly larger than what is required by Lidl, therefore it is not suitable. However we note from marketing particulars that the unit may have the ability to be reconfigured to provide four smaller units”.*

Further at paragraph 6.35 it is stated that *“notwithstanding, Unit 24 does not have any direct and level customer parking, which is essential for Lidl’s business model. The unit is located approximately 150m away from the nearest car park. This is not suitable for customers with shopping trolleys or a number of shopping bags, given that the store is often used by customers undertaking both a ‘top-up’ and ‘main’ food shop. As set out above, car parking is an essential requirement for Lidl, an operator within the ‘LAD’ market, as well as all other mid-large foodstores”.*

This statement is however at odds with the fact that a number of Lidl’s stores do not have surface level parking and operate from town centre locations such as Kentish Town, Edmonton Green, the Stratford Centre and Aldershot. The requirement for the store to be served by adjacent surface level car parking and to have direct access by car should not be considered 'fundamental'. It is clear that Lidl stores trade in different locations across the UK, including town centres, many of which have no direct access to dedicated surface level car parking. To dismiss other sequentially preferable sites, on the basis of a lack of dedicated car parking is highly inflexible, and entirely contrary to the main thrust of the sequential approach in support of sustainable development and the town centres first policy approach; no matter what the operator's business model may be at any point in time.

The applicant provided a further document which detailed more reasons why the BHS was unsuitable, nonetheless the Council’s retail advisor again confirmed that that the applicants were not being sufficiently flexible in terms of the former BHS unit (24 Harvey Centre) and that this did not meet the sequential test.

The Council has been advised that 24 Harvey Centre has recently been the subject of a new lease to a new department store operator known as “15:17”. According to their website, the store was expected to open in December 2020 and an application for store signage was submitted in late December 2020. If the former BHS is occupied by 15:17, as appears so, this would mean that the former BHS unit would not be available and that there would be no sequentially preferable site either within the Town Centre or in an edge of centre location.

The applicant’s revised documentation indicates that there is no preferentially sequentially suitable site in Harlow Town Centre and, as such, that Lidl should be allowed at 1A Queensgate. The Council’s independent Retail Assessor agreed that with the removal of the

BHS unit that it was no longer available and that there was no sequentially preferable site in the town centre such that the proposal for a food retail use would not result in harm to the town centre's retail offer.

It is considered that the Sequential Test (that there is no other location currently available) is met. As such, the proposal meets the requirements of Policy PR5 a) and point a) of Policy PR10 of the HLDP (Dec. 2020).

### **Impact on the Vitality and Viability of the Town Centre**

When assessing applications for retail and leisure development outside town centres, 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 2,500m<sup>2</sup> of gross floorspace). The proposed foodstore at the application site measures 1,951m<sup>2</sup> (GIA) and 1,100m<sup>2</sup> (net sales area) and therefore based on the newly adopted policies (and the threshold at 500 sq.m), a retail impact assessment is required.

In line with the new policy in the Local Development Plan (December 2020), the applicants were requested to submit a Retail Impact Assessment as the trigger point is met by the proposed development.

The applicants originally submitted a light assessment to support the 2018 application. The submitted assessment states that the majority of Lidl's turnover (52%) will be diverted from stores in out of centre locations. It is anticipated that the highest level of trade diversion will be from the Aldi on First Avenue (19%) and Tesco on East Road (18%), due to the close proximity and the strong market shares that these stores have within the area in which the application site is situated. These stores (particularly Aldi) share a similar target market to Lidl.

The Council requested consultants to undertake a review of the retail impact assessment of the proposed change of use of Unit 5, The Oaks Retail Park to a Food Warehouse approved under reference HW/REMPVAR/18/00480. The study confirms that both stores (Aldi/Tesco East Rd) are 'overtrading' and therefore should be resilient to this impact through trade diversion.

The assessment submitted with this application sets out that an estimated 25% (£1.59m) of Lidl's turnover will be diverted from Harlow Town Centre, resulting in an impact of 3.2% on convenience goods sales. The majority of turnover is expected to be diverted from Asda (15%) given its similar customer profile and proximity to the site and 8% of the proposed turnover will be taken from Tesco Metro.

Anticipated impacts of the convenience goods sales of neighbourhood centres are 1.3% on Church Langley, 2.7% on Staple Tye and 2.0% on Old Harlow. This low level of impact is clearly not significant and will not give rise to any concerns on the future vitality and viability of these centres.

There would be some trade diversion from the Aldi store which is located adjacent to The Stow Neighbourhood. However, the recently adopted HLDP (Dec 2020) does not include the Aldi store within the neighbourhood centre, albeit that it lies adjacent to it, it is itself an out of centre development. The proposal would result in trade diversion from this store which would result in harm to existing stores based on retail impact.

The Retail Impact Assessment (as updated by the applicants in November 2020) was considered by the Council's independent retail assessor and was considered to result in

some trade diversion from both the Town Centre and other centres including Church Langley.

A further written submission from the Council's retail assessor indicates that considering the grocery market was performing strongly in the coronavirus pandemic the proposal is unlikely to lead to a significant adverse impact by the scheme's design year (2023) when it could be expected that there will be some recovery in town centres following the end of the current Covid-19 pandemic. Neither Tesco nor Aldi have provided evidence that their stores would close as a result of the proposal. Asda did not originally make an objection so the retail expert assumed at that time that they were not concerned by trade diversion from their store. It is acknowledged that impact on the Harlow Town Centre's overall retail turnover is low based on both the applicant's and the retail expert's scenario testing. While retail impact is not just confined to impact on retail turnover as there will also be some loss of trade from linked trips between Harlow's foodstores and other businesses which is difficult to quantify. However, given the level of trade diversion that is assumed (and tested upwards by the retail expert - LSH), it is unlikely to result in a significant adverse impact on the overall vitality and viability of Harlow Town Centre.

On the basis of the Council's retail expert's comments, Officers consider that there is unlikely to be a significant adverse impact on the overall vitality and viability of Harlow Town Centre.

There is some harm to retail vitality of the neighbourhood centres, in particular the closest which is The Stow. However, Aldi are located outside the neighbourhood centre and is therefore also an out of centre retail store. While some trade diversion would occur and there is likely to be some loss of trade from linked trips between Aldi and the defined Neighbourhood Centre the food store does not itself fall within the retail hierarchy.

National Planning Guidance under the title "Determining a planning application" states "*the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise*" (s70(2) TCPA 1990 and s38(6) Planning and Compulsory Purchase Act 2004), and that the NPPF itself is "*a material consideration which must be taken into account*". The guidance concludes that "*If decision takers choose not to follow the NPPF, where it is a material consideration, clear and convincing reasons for doing so are needed.*"

The NPPF states at paragraphs 11 and 12 that there is a presumption in favour of sustainable development.

Policy PR5 and PR10 of the Harlow LDP accord with the NPPF in relation to retail policy. It is nonetheless wholly within the Council's remit to consider whether if in policy terms a scheme might otherwise be considered for refusal has any material circumstances which indicate otherwise.

In reviewing the updated Retail Impact Assessment and Sequential Test, the Retail Advisor has stated that the proposal meets the sequential test (that there is no sequentially preferable site in Harlow Town Centre or in an edge of centre location) but is concerned that the Retail Impact Assessment is partly-based on data which, in retail terms, is somewhat out-of-date. As such the Retail Review indicates that the scheme may result in harm to the vitality and viability of the Town Centre, or on other centres within the Retail Hierarchy. The Assessor has written subsequently to confirm that in her opinion any harm is likely to be less than indicated in the RIA as the base information submitted was somewhat out of date and that the situation would therefore be less onerous than as indicated in the RIA. There is sufficient information provided by the applicant to identify that in actual terms there would be trade diversion, however this would not result in significant harm to the vitality and viability of the Town Centre. The Retail Expert has indicated that the Neighbourhood centres identified

in the RIA - The Stow and Old Harlow Neighbourhood Centres - would experience some loss of trade to the new Lidl, however it is not considered that this would be so significant that this would result in closure of stores. There was no specific conclusion in relation to other retail centres within the retail hierarchy in part as they are further away and their market share is relatively limited.

In relation to consideration of material considerations, while it is recognised that in policy terms the proposal could result in some harm to trade within Harlow Town Centre which would suggest that the scheme might be refused, planning policy is only one part of the requirement when determining applications.

The applicants indicate that there are a number of benefits of the scheme including that an existing vacant unit on a brown-field site would be brought back into a viable use, that there would be employment for 45 people (expected to be mainly locals) and that the employer looks to promote from within such that there is a career-progression among staff.

HDC Regeneration Team offer their support for the scheme on the grounds that [a Lidl] would provide additional employment for the town and help to replace at least some of the many retail jobs that have been lost as a result of the impact of the Covid-19 measures and the longer term trends in the town.

Given the benefits of the scheme, it is considered that these material circumstances are sufficient to outweigh any harm to retail vitality/viability which may occur to the existing defined retail hierarchy due to a change from shop use for bulky, comparison goods sales to majority convenience (food) sales, such that the proposal is recommended for approval.

## **Visual Impact**

The physical works are all minor in scale and will not give rise to any detrimental impacts of any interested acknowledged importance. The external works are similar to those that have been previously granted permission under reference HW/FUL/18/00087 and would be required to meet the operational requirements of Lidl. There are no objections to the external alterations which are compliant with Policy PL1.

## **Parking and Highways Issues**

A Transport Assessment (TA) which assesses the likely impacts of the proposed development on the surrounding transport infrastructure has been submitted with this application. It states that during the Saturday peak period, it is estimated that an additional 25 vehicles will enter the Queensgate Centre whilst an additional 43 will depart, the equivalent of one vehicle every 1 – 2 minutes each-way. It is anticipated that there would be a demand for an additional 46 spaces during the PM Peak and Saturday afternoon peak hours, with a lesser demand at other times which would not affect the availability of car parking. The car park will continue to operate within capacity under normal trading conditions.

The foodstore would be likely to receive an average 3-4 deliveries per day which would not affect the capacity of the local highway network, with deliveries taking place via the existing service yard to the north of the new unit.

The TA concludes that the proposed development is acceptable in highways terms, with no 'severe' impacts on the local highway network.

The proposal is not for a change of Use Class and the traffic associated with the proposal is not indicated to result in any overflow of the existing shared parking area. Officers therefore consider that the provision of additional vehicle exits onto Edinburgh Way or traffic lights not directly associated with this development would be unduly onerous in relation to a single unit within the Queensgate retail park.

The development is considered to accord with policies T3 and T9 of the Adopted Replacement Harlow Local Plan (July 2006).

### **Sustainable transport and 21<sup>st</sup> Century Ready**

The proposed provision of electric vehicle charging points is welcomed in line with Policy IN1 of HLDP (Dec 2020). A condition is proposed as Condition 4 to require the implementation and retention of EV Charging points.

In relation to Policy IN4, while this proposal is not for a change of use but a relaxation in a previous restriction of the A1 Use, the scale of the building involved is major and it is welcomed that consideration has been given to the retro-fitting of enabling infrastructure in relation to broadband coverage of the District.

## **CONCLUSIONS**

The application is for minor works and also for convenience sales (food and drink) contrary to the existing restrictive condition (attached to permission HW/92/00107) which prevents the use of the unit other than for bulky goods/toys.

It is considered that the Sequential Test (that there is no other location currently available) is met. As such, the proposal meets the requirements of Policy RP5 (a) and point a) of Policy PR10 of the HLP (Dec. 2020).

The Retail Impact Assessment (RIA), as updated in November 2020 was assessed by the Council's independent Retail Expert to result in some trade diversion. However, the background data was considered not fully up-to-date and that the actual harm would be less than indicated in the RIA, such that it is unlikely to be significant in relation to the town centre although significant harm has not been precluded as arising in respect of Neighbourhood or other Centres.

It is considered that on the basis of the information submitted there may be some harm to vitality and viability of the existing retail hierarchy.

The figures submitted in the Retail Impact Assessment are, by retail market standards, somewhat out of date and the situation would be less harmful than indicated in the Retail Impact Assessment.

The trade diversion figures relate to 2023 in barely 2 years' time and, it is also expected that there will be a significant increase in catchment area population within the plan period in the Harlow and Gilston Garden Town (particularly to the north of the District) such that existing food stores are all likely to benefit.

As such, in the event that some harm would be caused to the existing retail centres, consideration has to be given to whether there are any material circumstances which could be considered in favour of the proposal.

In this case, material considerations include that the warehouse store was already in A1 shop use at the time of submission of the application and therefore no change of use is proposed. The change from comparison to convenience food sales requires planning permission due to a restrictive condition attached to the permission for the store to only allow the selling of toys (Toys-R-Us) in addition to the original bulk goods list required under the original approval.

The proposal would result in bringing a currently vacant shop unit back into viable use and 45 f.t.e jobs would be available to local people.

It is considered that there would be a limited loss of trade which would be diverted away from other existing retail centres, including Harlow Town Centre, Staple Tye and Church Langley. However, the scheme would provide significant benefits in particular at a time when store-based retail job losses have been increasing and have been exacerbated during the Covid-19 world pandemic. Given that it is proposed to enable food sales, this would also provide a relatively stable source of income for local residents.

As such, it is considered that the proposal's merits would be material considerations which outweigh the harm to existing centres and that the proposal should be granted planning permission.

## **RECOMMENDATION**

That Committee resolve to **APPROVE** subject to the following conditions:

- 1 The external facing materials (including for windows and doors) to be used in the construction of the development hereby permitted shall be those materials specified on the application form submitted in relation to the development hereby permitted, unless alternative materials are proposed. Where alternative materials are to be used, no development shall commence before details of those alternative external facing (including windows and doors) and roofing materials to be used in the development have been submitted to and approved in writing by the Local Planning Authority. Where materials other than those materials specified on the application form are agreed in writing by the Local Planning Authority, the materials agreed shall be those used in the development hereby permitted.  
**REASON: In the interest of visual amenity and to accord with Policy PL1 of the Harlow Local Development Plan (December 2020)**
- 2 Notwithstanding the Town and Country Planning (Use Classes) Order (Amendment) 2020, the use shall only be as a food supermarket within Use Class A1 and for no other use within Use Class A1 without a further planning permission being granted.  
**Reason: To retain control over development within the Queensgate retail warehouse park, in line with Policy RS3 of the Harlow Local Development Plan (December 2020)**
- 3 The proposal shall be implemented in accordance with the details contained in the submitted draft Travel Plan, unless otherwise agreed in writing  
**Reason: To promote alternative ways to travel in line with Policy IN1 of the Harlow Local Development Plan (December 2020)**
- 4 Prior to first occupation by the foodstore hereby approved, details for electrical vehicle charging points shall be provided; once approved in writing by the Local Planning Authority the charging points shall be implemented in accordance with the approved details and retained prior to customer use of the store.

**Reason: To promote greener alternative travel in line with Policy IN1 of the Harlow Local Development Plan (December 2020)**

- 5 The A1 unit shall not be sub-divided unless each unit formed would be a minimum of 1,000 sq.m.

**Reason: To retain the scale of development unit appropriate in an out of centre retail park in accordance with Policies RS3 and PR10 of the Harlow Local Development Plan (December 2020)**

- 6 The development hereby permitted shall be carried out in accordance with the approved plans as shown listed in the table below.

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

<b>Plan Reference</b>	<b>Version No.</b>	<b>Plan Type</b>	<b>Date Received</b>
1340-U1A-LP01	--	Location Plan	19.12.2018
1340-U1A-P01	--	Existing Floor Plans	19.12.2018
1340-U1A-P02	--	Proposed Ground Floor Plan	19.12.2018
1340-U1A-P05	--	Existing Elevations	19.12.2018
1340-U1A-P06	--	Proposed Elevations	19.12.2018

#### **INFORMATIVE CLAUSES**

1. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address these concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.