

**FLINTSHIRE COUNTY COUNCIL**

**REPORT TO:** **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

**DATE:** **20<sup>TH</sup> JANUARY 2016**

**REPORT BY:** **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

**SUBJECT:** **ERECTION OF A FOODSTORE, ASSOCIATED CAR PARKING, ACCESS, SERVICING AND LANDSCAPING (PARTLY RETROSPECTIVELY) AT BROUGHTON SHOPPING PARK, BROUGHTON**

**APPLICATION NUMBER:** **054589**

**APPLICANT:** **ALDI STORES LTD**

**SITE:** **BROUGHTON SHOPPING PARK, BROUGHTON**

**APPLICATION VALID DATE:** **12.11.15**

**LOCAL MEMBERS:** **COUNCILLOR W MULLIN**

**TOWN/COMMUNITY COUNCIL:** **BROUGHTON**

**REASON FOR COMMITTEE:** **LOCAL MEMBER REQUEST TO CONSIDER THE CHANGES FROM THE ORIGINAL CONSENT AND CONDITIONS**

**SITE VISIT:** **YES**

**1.00 SUMMARY**

- 1.01 This is a retrospective planning application for the erection of a 1,843m<sup>2</sup> foodstore with a net sales area of 1,254m<sup>2</sup> with 132 car parking spaces, access, servicing and landscaping.
- 1.02 It is considered that the proposed landscaping and boundary treatment in the amended scheme does provides adequate screening between the store and the existing residential properties along Simonstone Road and Chester Road. It is considered that a

condition to control the maintenance and management is required to ensure that the landscaping does not become overbearing and it retains its function. The proposed opening hours and delivery times are acceptable. The issues of public art and affordable housing can be dealt with by commuted sums through a S106 agreement.

## **2.00 RECOMMENDATION: TO GRANT PLANNING PERMISSION, SUBJECT TO THE FOLLOWING:-**

- 2.01 That conditional planning permission be granted subject to the applicant entering into a Section 106 Obligation/Unilateral Undertaking to provide the following;-
- Payment in the sum of £210,000 towards the provision of, or to facilitate access to, affordable housing in the community
  - Payment in the sum of £15,000 towards a community art project or projects for the public realm

### Conditions

1. Time commencement
2. Plans
3. Landscape maintenance and management programme
4. Landscape implementation
5. Opening hours - Monday to Saturdays 0800 – 22.00, Sundays a six hour period between 10.00 and 18.00.
6. Delivery hours – Monday to Saturdays from 06.00 – 23.00 including bank holidays and Sundays 07.00 – 23.00 hours
7. Retention of 2.5m high fence around condenser unit for lifetime of operation of store and the incorporation of a 10dB (A) inline silencer in the extraction system

If the Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as outlined above) is not completed within three months of the date of the Committee resolution, the Head of Planning be given delegated authority to REFUSE the application.

## **3.00 CONSULTATIONS**

### 3.01 Local Member Councillor W Mullin

Requests Committee determination to consider the changes from the original consent and conditions. Requests a Committee Site visit for a better understanding of the store and also the landscaping issues.

### Broughton Community Council

Objects on the grounds of;

- The landscaping is insufficient to provide proper screening of the store from the properties adjacent to the site
- The bund has been reduced in depth and many trees removed

- The proposed landscaping scheme does not remedy this situation
- The conifers planted should extend along the rear of the store and more deciduous trees should be planted adjacent to the residential properties
- The acoustic fencing should be increased in height by a metre and extended to screen the vents in the rear of the buildings
- The fencing should be extended for security reasons
- While the Council does not object to the removal of the affordable houses it asks that the 'compensatory finance' is ring-fenced for the benefit of the residents of Broughton and Bretton

Highways Development Control Manager

No objection. As the store is completed in accordance with the previously submitted details there are no conditions required.

Public Protection Manager

No objections subject to the retention of 2.5m high fence around condenser unit and the incorporation of a 10dB (A) inline silencer in the extraction system.

Welsh Water/Dwr Cymru

No objections subject to a condition requiring a grease trap.

Natural Resources Wales

No objections but comments on;

Flood Risk

The site lies partially within Zone A and partially within Zone C1 as defined in TAN 15 Development & Flood Risk (2004) and shown on Welsh Government's Development Advice Map (DAM). The submitted Flood Consequences Assessment (FCA) correctly identifies that the site lies outside Natural Resources Wales' present-day modelled tidal and fluvial flood outlines, and that the area to the north of the site is included in Flood Zone 2 and hence DAM Zone C because it was affected by fluvial flooding from Broughton Brook in 1964.

The FCA states that there will be no new building developments within the area affected in 1964, which will be part of the proposed car parking area. While the FCA does not comment specifically on the expected flood levels on site during the 0.5% AEP plus climate change event, paragraphs 7.1 and 7.2 indicate that site levels are no lower than 7.9mAOD which is higher than the expected tidal Dee defended in-channel level, with uncertainty and with 75 years' climate change in 2090, of 7.21mAOD. The development would therefore comply with A1.14 of TAN 15, and we have no objection to the proposals.

The FCA comments on all four criteria in A1.15 of TAN 15. Again, the FCA does not comment specifically on the expected tidal flood levels on the site during the 0.1% AEP plus 75 years' climate change event, but site levels would appear to be higher than the modelled tidal Dee defended in-channel level for this event (7.23mAOD). Given that the development is outside the modelled 0.1% AEP fluvial flood outline, and towards the edge of the recorded fluvial flood outline, we would accept the assessment in paragraph 7.8 that flood depths and velocities are likely to be low.

We note that for a previous application on this site (your Authority reference 052369), the consultant Peter Mason Associates obtained confirmation from DCWW that the culverted watercourse beneath the site is not a public sewer. Therefore, given that the FCA states that infiltration is not feasible, surface water runoff from the site may be discharged to the culvert.

#### Airbus

No aerodrome safeguarding objection.

### **4.00 PUBLICITY**

#### 4.01 Press Notice, Site Notice and Neighbour Notification

The application was advertised as a departure from the development plan.

3 letters of objection on the grounds of;

- The scheme no longer includes housing and the commuted sums are not equivalent to the costs of building the houses
- Impacts on residential amenity from the store due to the removal of the previous existing landscape bund and high level planting
- The revised plans have not accounted for the impact on neighbouring properties
- Store is closer to the boundary by 0.67 metres
- The landscaping bund and vegetation was removed without planning permission
- No significant visual barrier between the store and the existing houses
- Aldi have altered the landscaping to suit their own purposes
- The rear of the store, vents and lights and the 'plant' are all clearly visible to the immediate residents
- Residents were assured that the bund would be retained in full and enhanced this is not the case
- Acoustic provisions are inadequate
- Residents request additional fencing along the boundary
- There is no security gate to the side of the store and this is a

security issue. The public can access the walkway around the building. The installed security gates are too low.

- Request two 25ft high deciduous trees are planted in place of the ones removed
- Continue the line of evergreen trees across the whole of the bund to provide a visual screen
- Replace the render with brickwork so it would blend better with the surroundings
- The plant should be repositioned to the other end of the store where it will not impact on residents
- Use of rear garden is compromised by noise from trolleys and cycle racks and this area should be enclosed
- Opening hours should be restricted to 9am to 8pm and deliveries from 8am to 9pm.

1 letter of support

Comments from the Community Safety Officer that the development should look to achieve the 'Secured by Design Accreditation for commercial developments'.

## **5.00 SITE HISTORY**

5.01 052369 - Full planning application for a foodstore (Use Class A1) and 5 three bedroom affordable houses (Use Class C3) with associated car parking, access, servicing and landscaping. Approved 19.03.15.

Application site

048764 Construction of a 1473sqm supermarket and 464.5sqm non-food retail unit. Refused. 20.02.12

046818 Erection of a 1347 m2 supermarket and a 467.2 m2 non-food retail unit (Gross internal area) together with car parking and associated works. Withdrawn 17.12.09

046564 Outline - erection of a budget hotel of up to 70 rooms and a separate restaurant/public house together with car parking, landscaping and other associated works. Withdrawn 11.01.10

Adjacent site

049488 Outline - Erection of up to 24no. dwellings together with means of access from shopping park link road and removal of part of existing earth bund and change of use of land to domestic gardens. Approved 13.05.13

## **6.00 PLANNING POLICIES**

- 6.01 Flintshire Unitary Development Plan  
STR1 - New Development  
STR4 – Housing  
STR5 – Shopping Centres and Commercial Development  
STR10 - Resources  
GEN1 - General Requirements for Development  
GEN2 - Development Inside Settlement Boundaries  
D1 - Design Quality, Location and Layout  
D2 - Design  
D3 – Landscaping  
D6 – Public Art  
WB1 - Species Protection  
AC13 - Access and Traffic Impact  
AC18 - Parking Provision and New Development  
S6 – Large Shopping Development  
HSG1 – New Housing Development Proposals  
HSG8 – Density of Development  
HSG10 – Affordable Housing within Settlement Boundaries  
SR5 – Outdoor Playing Space and New Residential Development  
EWP3 – Renewable energy in New Development  
EWP14 – Derelict and Contaminated Lane  
EWP17 – Flood Risk  
Supplementary Planning Guidance Note 25: Development Brief for Housing at the Compound Site, West of Broughton Retail Park.  
Planning Policy Wales Edition 7 (July 2014)  
Technical Advice Note 1: Joint Housing Land Availability Studies  
Technical Advice Note 4: Retailing and Town Centres  
Technical Advice Note 11: Noise  
Technical Advice Note 12: Design  
Technical Advice Note 15: Development and Flood Risk

The application is in accordance with the above policies.

## **7.00 PLANNING APPRAISAL**

### 7.01 Introduction

This is a retrospective planning application for the erection of a 1,843m<sup>2</sup> foodstore with a net sales area of 1,254m<sup>2</sup> with 132 car parking spaces, access, servicing and landscaping.

### 7.02 Planning history

Planning permission was granted for application (052369) “Full planning application for a foodstore (Use Class A1) and 5 three bedroom affordable houses (Use Class C3) with associated car parking, access, servicing and landscaping.” in March 2015 following a resolution by Planning and Development Control Committee. This

was contrary to officer recommendation as the site is a housing allocation with the Flintshire Unitary Development plan.

7.03 During the implementation of this permission it became apparent that there were some issues with the location of the store and its siting in relation to the surrounding residential properties and the extent of the works that therefore needed to be undertaken to the existing landscaping bund and vegetation.

7.04 Following discussion with Aldi and its agents this application has been submitted in order to regularise the development on site and to reflect some proposed changes to the scheme. This includes the removal of the housing element of the scheme and therefore an extension of the car parking and landscaping, along with some minor changes to the store building and the erection of a substation in the car park.

7.05 Site Description

The site is located within the settlement boundary of Broughton to the east of the settlement. To the west of the site is existing residential development and to the east is Broughton Retail Park which is outside the defined settlement boundary. The site is bounded by the Broughton shopping park link road to the east and to part of the northern boundary is Chester Road and further residential development. The Airbus factory is located to the north east of the site. The current application relates to the northern part of the site.

7.06 The site was known as the 'compound site' as it was formally used as the construction compound for the retail park in the 1990's. The southern part of the site has outline planning permission 049488 for 24 houses approved on 13.05.13. A reserved matters application has recently been submitted for 24 dwellings on this part of the site and is currently under consideration. (054728)

7.07 The foodstore which is the subject of this application has now been completed and is operational in accordance with the submitted details and opening/delivery hours.

7.08 Proposed development

This current application therefore regularises the works carried out on site which are not in accordance with the previously approved scheme (052369).

7.09 The application was submitted with a suite of documents to satisfy the previous requirements of planning conditions imposed. These include;

- Planning Statement including retail assessment by JLL
- Plans and ownership Certificate
- Design and Access Statement

- Transport Assessment
- Noise Assessment
- Flood Consequences Assessment
- Statement of Community Involvement
- Construction Traffic Management Plan
- Lighting /CCTV details
- Drainage details
- Bird nesting check details

7.10 The current application proposes a S106 agreement to provide a commuted sum in lieu of the previously proposed 5 affordable dwellings. The area previously shown to be housing is proposed to be additional car parking spaces (132) for the foodstore and landscaping.

7.11 It is also now proposed to provide a unilateral undertaking with a commuted sum of £15,000 towards public art in the community in lieu of providing public art within the site (as previously secured by condition).

7.12 There are also some minor physical changes to the foodstore building namely; the alignment of the loading bay. It is also proposed to extend the opening hours and delivery hours from those approved to those which were previously requested as part of 052369.

7.13 The main issues to consider are;

- whether the proposed landscaping and boundary treatment in the amended scheme provides adequate screening between the store and the existing residential properties along Simonstone Road and Chester Road
- the suitability of the proposed opening hours and delivery times
- the acceptability of a commuted sum in lieu of the 5 affordable houses

7.14 Principle of development  
The principle of the retail use of the site has already been established by planning permission 052369 for “Full planning application for a foodstore (Use Class A1) and 5 three bedroom affordable houses (Use Class C3) with associated car parking, access, servicing and landscaping.” This application therefore is to regularise the differences between what was approved and what is as built on the ground.

7.15 Landscaping  
The previous application 052369 stated that the existing landscaping bund which was on site as part of its former use as the compound for the construction of the retail park would remain. The bund was covered in unmanaged vegetation and it was proposed that the

mature trees would remain with some removal of low level vegetation as required. However following the marking out of the store on site and the commencement of the construction process it became evident that the works required to the bund were more substantial than initially envisaged. The stores location was plotted using GPS with the retail park spine road as the starting point. The site boundaries with Simonstone Road and Chester Road has not been surveyed on site due to the vegetation that was on the bund. The submitted plans had therefore relied upon Ordnance survey data which in this instance was inaccurate with what was actually built on the ground.

- 7.16 The main discrepancies related to the position of the boundaries and siting of 24 and 26 Simonstone Road. These properties were in fact closer to the site boundary than indicated on the Ordnance Survey plan. The adjacent properties on Simonstone Road to the west of the foodstore and on Chester Road to the east were in fact located approximately 0.7-1 metre closer to the foodstore than shown on the plans. Furthermore, one of the neighbouring properties (26 Simonstone Road) is also closer to the boundary than shown on the plans.
- 7.17 It was necessary to remove part of the existing bund during the construction process along the western and northern boundaries and then reinstate it and support it with stone filled gabion baskets and a 1.2 metre high fence. This led to the removal of the trees and vegetation which were established on the bund. This is proposed to be and has been replanted with a comprehensive landscaping scheme. This is being implemented on site. The proposed scheme is a mixture of deciduous and evergreen trees, hedge and shrub planting. An adjacent resident on Simonstone Road has questioned the nature of the planting and fencing proposed and has requested an alternative mix of planting and additional fencing.
- 7.18 It is considered that the landscaping shown on the latest drawing provides a mixture of evergreen and deciduous vegetation at varying heights which together with the bund and fencing provide a reasonable screen for the store from the adjacent properties. The concern is that the level of planting proposed may become overbearing on the adjacent properties in the medium term and proactive management is therefore required. It is therefore recommended that a condition is imposed to secure the long term management and maintenance of the landscaping.
- 7.19 In terms of the impact on the site on residential amenity whilst it is acknowledged that the rear of the store building is visible from Simonstone Road and the rear gardens of properties on Simonstone Road it has to be considered what is the impact that this causes and what is the planning harm. This is an urban area with residential

properties adjacent to a food store. Landscaping mitigation has been proposed and partially implemented to mitigate any potential impacts. The rear of the store is not a public area and there is no staff access. The only access to this area is for maintenance to the plant equipment. The doors on this elevation are fire doors for emergency access only.

7.20 The side of the store is partially visible from properties on Chester Road. Along this corridor there is activity associated with the trolley bays and cycle stands which are under a canopy. The active frontage of the store is set back underneath the canopy. There is the landscaping bund with gabion baskets and planting between the canopy and the rear gardens of the dwellings on Chester Road. It is therefore considered that any impact on amenity is adequately mitigated.

7.21 An adjacent resident of 26 Simonstone Road has also raised concerns about concerns over security to the property due to the location and height of the rear security gate and public access around the trolley bay and cycle stands down the side of the store. Prior to the development of the site as a retail unit, the land was open with no security fencing at all. The site now has an active use and there is an appropriate security gate each side of the store to prevent public access to the rear. It is not considered from a planning point of view that any additional gate or fencing is required.

7.22 Noise

A Noise report by Spectrum Acoustics was submitted with the planning application. This sets out the sources of noise from the development and assesses them against current background levels. This concludes that subject to the retention of 2.5m high fence around the plant condenser unit and the incorporation of a 10dB (A) inline silencer in the extraction system the mechanical plant would meet noise limit objectives and would have a low noise impact. Public Protection have no objection with the submitted noise assessment subject to the mitigation measures being implemented.

7.23 The adjacent resident has raised the issue of trolley noise and requested a fence to act as an acoustic barrier and screen the air conditioning vents on the rear of the building. There are no planning grounds to request this.

7.24 Delivery times and opening hours

It is proposed that deliveries take place Monday to Saturdays from 06.00 – 23.00 including bank holidays and Sundays 07.00 – 23.00 hours. All deliveries take place within the enclosed bay so the only potential noise associated with deliveries is the arrival of the vehicle and the manoeuvring associated with reversing into the bay. Once in

the bay deliveries are made into a hatch direct from the lorry into the store. The hours imposed on 052369 were Monday to Saturday 0700 - 2100 hours with no deliveries on Sundays or Bank Holidays.

- 7.25 A noise report has been submitted with the planning application which was undertaken with Spectrum Acoustics which considers that deliveries could be undertaken within the proposed hours without any impact on residential amenity. Public Protection raise no objection to the delivery hours proposed.
- 7.26 The proposed store operating hours are Monday to Saturdays 0800 – 22.00 and on Sundays a six hour period between 10.00 and 18.00. These hours are those which were previously requested by Aldi as part of 052369, however earlier closing times were previously imposed due to the objections from neighbouring properties. The opening hours imposed on 052369 are Mondays to Saturdays 0800 - 2000 hours and Sundays 1000 - 1800 hours.
- 7.27 A noise report has been submitted with the planning application which was undertaken by Spectrum Acoustics. Public Protection have no objections to the proposed opening hours on amenity grounds therefore it is not considered that shorter hours could reasonably be imposed.
- 7.28 Differences with the previous permission  
There is a small difference in the total floor area of the foodstore as the alignment of the delivery bay has been amended slightly from 1805m<sup>2</sup> to 1,843m<sup>2</sup>. This does not have any other implications.
- 7.29 There are other minor amendments namely the erection of a substation in the car park and a bin store.
- 7.30 Access and parking  
The vehicular access to the site is in the south east corner and the previous access to the site has been closed off and the footway reinstated. There are also 3 pedestrian access routes into the store grounds, one off Chester Road and two off the spine road form the retail park.
- 7.31 The previous application 053269 proposed 101 parking spaces, however the removal of the houses from the scheme provides more external space for parking and landscaping. There are now 132 spaces including 9 parent with child and 6 disabled bays.
- 7.32 Highways have no objections to this proposal as the highways requirements have already been met so no conditions are required.

- 7.33 Affordable Housing  
The application site is a housing allocation and the previous permission showed the provision of five affordable houses. It is now proposed to provide a commuted sum of £210,000 to the council by way of S106 agreement in lieu of this on-site provision.
- 7.34 The location of the houses within a retail environmental access via the car park and fronting a busy road did not make an attractive residential environment. The commuted sum is based on if the 5 dwellings were to be sold at 70% of their market value, the residual 30% difference between the market value and the discounted price. Valuations have been undertaken by Aldi and verified by the Council. The proposed figure of £210,000 is therefore deemed to be acceptable
- 7.35 Public Art  
It was previously proposed to provide a scheme of public art on site to comply with Policy D6 of the UDP. However instead of providing a piece of art on site, it was felt it would be of more public benefit for a commuted sum of £15,000 to be provided to the community to be spent on community art projects for public realm. This will be secured through a S106 agreement. The same approach also been taken at the Buckley store.
- 7.36 S106 contributions and CIL compliance  
The application requires commuted sums for off-site public art and affordable housing provision. The infrastructure and monetary contributions that can be required from the Proposals have to be assessed under the Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and Welsh Office Circular 13/97 'Planning Obligations'.
- 7.37 It is unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation does not meet all of the following Regulation 122 tests:  
  1. be necessary to make the development acceptable in planning terms;
  2. be directly related to the development; and
  3. be fairly and reasonably related in scale and kind to the development.
- 7.38 Policy D6 of the Flintshire Unitary Development Plan requires the incorporation of public art in all major, publicly accessible developments. It is considered in this instance that there would be more public benefit from a commuted sum to be spent by the Community Council on public art projects within the locality than a piece of art within the car park which would have limited benefits. In other schemes in the County £15,000 has been the sum which has

been spent on such on site projects. It is therefore considered a reasonable amount to require. The same approach has also been taken on the Aldi store in Buckley, with the same amount requested. However no other monies for public art in Broughton have been required within the relevant CIL period.

7.39 The site is a housing allocation under Policy HSG1 (19) of the Flintshire Unitary Development Plan. The previous permission showed the provision of 5 dwellings which were proposed to be affordable. Members granted approval for the foodstore and a retail use on the site on that basis. It is now considered that the siting of the houses within the car park of and accessed through a supermarket car park and adjacent to a busy road junction is not a desirable location for affordable housing providers. It is therefore proposed to provide a commuted sum to the amount of £210,000. The commuted sum is based on if the 5 dwellings were to be sold at 70% of their market value, the residual 30% difference between the market value and the discounted price. No other commuted sums have been required in the community within the relevant CIL period.

7.40 It is considered that both of these contributions meet the Regulation 122 tests.

## **8.00 CONCLUSION**

8.01 It is considered that the proposed landscaping and boundary treatment in the amended scheme does provides adequate screening between the store and the existing residential properties along Simonstone Road and Chester Road. It is considered that a condition to control the maintenance and management is required to ensure that the landscaping does not become overbearing and it retains its function. The proposed opening hours and delivery times are acceptable. The issues of public art and affordable housing can be dealt with by commuted sums through a S106 agreement.

8.02 In considering this planning application the Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention, and has had due regard to its public sector equality duty under the Equality Act 2010.

**LIST OF BACKGROUND DOCUMENTS**

Planning Application & Supporting Documents

National & Local Planning Policy

Responses to Consultation

Responses to Publicity

**Contact Officer:** Emma Hancock  
**Telephone:** (01352) 703254  
**Email:** [emma.hancock@flintshire.gov.uk](mailto:emma.hancock@flintshire.gov.uk)