

## COMMITTEE REPORT

**Date:** 12 January 2023      **Ward:** Huntington/New Earswick

**Team:** East Area      **Parish:** Huntington Parish Council

**Reference:** 22/01135/FULM  
**Application at:** T.K.Maxx Unit 2 Monks Cross Drive Huntington York  
**For:** Erection of food store following part demolition of existing unit together with drive-thru restaurant both with associated access, parking and landscaping  
**By:** Lidl Great Britain Ltd  
**Application Type:** Major Full Application  
**Target Date:** 15 December 2022  
**Recommendation:** Approve

### 1.0 PROPOSAL

1.1 This application relates to the erection of a food store and drive thru restaurant following the part demolition of the existing TK Maxx store at Monks Cross. The site comprises the former TK Maxx with associated car parking and landscaping and measures 1.26 hectares. The store ceased trading in March 2020 and has since relocated to a new site.

1.2 The existing retail unit, sited in the south-western part of the site, would be reconfigured to create a 2169sqm (GIA) Lidl food store comprising of 1,456sqm sales area with the remaining floorspace occupied by warehouse and back of house areas. The proposed drive-thru unit would occupy the north-western corner of the site and would be surrounded by a drive-through circular vehicle loop. Vehicular access would be provided from both the existing priority-controlled T-junction with Monks Cross Drive at the north-eastern part of the site and via the Jockey Lane roundabout with the store reached through the existing Sainsbury's car park. Car parking would separate the two units and would comprise a total of 131 car spaces and 20no.cycle parking spaces.

1.3 The new store would reflect Lidl's latest design concept with grey cladding and white render to the walls and columns with glazing for the store frontage. The landscaped strip running alongside Monks Cross Drive would be retained and new trees would be planted within the car park.

1.4 The site is located with the Monks Cross retail development, approximately 3.7 km north of the city centre. The site is bounded by the Sainsbury's food store to the south, Monks Cross Drive to the east, Anytime Gym and office development to the north and the Portakabin site to the west. The site is within Flood Zone 1 and therefore is at low risk from river flooding.

## **RELEVANT PLANNING HISTORY**

1.5 Permission was granted for the development of 3no. non-food retail stores in 1995 (3/66/650AP/OA) subject to conditions requiring that no retail unit shall be less than 10,000 sq. ft and units greater than 15,000 sq. ft net sales area shall not be used for the retailing of any of the following goods except where ancillary to the main range of goods sold;

- a) men's, women's and children's clothing and footwear
- b) fashion accessories
- c) watches and jewellery
- d) music and video recordings and video or CD-rom games
- e) cameras (including camcorders) and other photographic equipment
- f) domestic tv, video and hi-fi equipment
- g) toys

1.6 In December 2018, a Certificate of Lawfulness application was submitted by TK Maxx for that element of the building occupied by it (units 1 and 2) on the basis that it had been operating outside the restrictions imposed by condition 3 of the original planning permission (3/66/650AP/OA) for more than 10 years. The Certificate was granted thereby removing the restriction on the unit in view of its size being more than 1,393 sqm. As such, there is no restrictions on the types of goods to be sold from units 1 and 2 (18/02442/CLU).

## **2.0 POLICY CONTEXT**

### **2.1 Key Sections of the NPPF**

Section 2 – Achieving Sustainable Development  
Section 7 – Ensuring the Vitality of Town Centres

### **2.2 Huntington Neighbourhood Plan 2017 - 2032/33**

H10 Vangarde / Monks Cross Shopping Park  
H4 Design Principles  
H17 Biodiversity  
H18 Flooding and Water Management  
H21 Walking and Cycling

## 2.3 Key relevant policies of the 2018 Publication Draft Local Plan (DLP 2018)

R1 - Retail Hierarchy and Sequential Approach

R4 - Out of centre retailing

D1 – Placemaking

D2 – Landscape and Setting

GI4 – Trees and Hedgerows

ENV4 – Flood Risk

ENV5 – Sustainable Drainage

T1 – Sustainable Access

CC1 - Renewable and Low Carbon Energy Generation and Storage

CC2 - Sustainable Design and Construction of New Development

## 2.4 Draft Development Control Local Plan 2005

GP1 – Design

GP4a - Sustainability

GP9 – Landscaping

GP15a Development and Flood Risk

T4 Cycle parking standards

T5 Traffic and pedestrian safety

## 3.0 CONSULTATIONS

### INTERNAL

#### HIGHWAY NETWORK MANAGEMENT

3.1 The proposed site has access to a third-party private car park that is outside of the developer's redline boundary. This might require monitoring in the future as the developer is and will be unable to impose any parking measures to the said car park.

3.2 Awaiting amendments in relation to improved cycle parking near the store and tactile crossing. The lateral spacing should be increased to 1000mm (min.) to enable cycles to be parked either side of the stands and the stand will have to be moved closer to the shop. The developer needs to clearly indicate that there are ten car parking bays – including two disabled, dedicated to the drive-thru. Hardstand material also needs to be conditioned.

#### DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT (ECOLOGY)

3.3 No objections, subject to conditions relating to the following matters:

- Biodiversity Net Gain (BNG) - Although it is encouraging to see that a positive net gain can be achieved post construction, the soft landscaping can be further enhanced through the addition of native planting. The applicant should also consider the addition of bat and bird boxes, and features such as hedgehog access point into the landscape design.
- Great crested newts (GCN) - With the aim of safeguarding the local population of GCN, a Reasonable Avoidance Measures method statement for GCN should be submitted via condition. Also recommended that newts and other amphibians are safeguarded post construction, through sensitive drainage design.
- Lighting Plan - With the aim of maintaining and improving foraging and commuting habitats for bats, a sensitive lighting scheme should be submitted prior to any new lighting being installed on site.
- Nesting birds – As the site provides suitable habitat for nesting birds, precautionary methods will be required during all required vegetation clearance works.
- Hedgehogs Informative - To ensure hedgehogs can make use of the soft landscaping within the development the applicant is advised to consider using permeable fencing or leaving occasional gaps suitable to allow passage of hedgehogs. Any potential hibernation sites including log piles should be removed outside the hibernation period to avoid killing or injuring hedgehog.

## DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT (LANDSCAPE)

### Comments to Revised Scheme

3.4 The proposed site layout and landscape proposals have been positively revised, so I am able to support the proposed development provided a few minor additions to the landscape proposals are implemented as follows (these revisions could be secured by the recommended landscaping condition).

3.5 The proposed landscape scheme is credited with the inclusion of trees within the proposed car park. The choice of species is fine, however given the space within which they stand, there is an opportunity to use broad-spreading deciduous trees to provide maximum shade and rain capture in the summer months. New trees should also be added to the frontage with Monks Cross Drive to supplement the existing trees and provide more robust tree cover in the longer term.

3.6 The applicant needs to clarify that there will be no new kerb runs any closer to trees T3 to T15 as any additional excavation closer to the trees is very likely to cause damage to roots.

3.7 An arboricultural method statement should be provided under a pre-commencement condition to secure protection of the existing boundary trees which could otherwise be at risk. Details of tree pits should also be provided as a pre-

commencement condition since it is related to excavations and hard works infrastructure across the site.

## DESIGN, CONSERVATION AND SUSTAINABLE DEVELOPMENT (ARCHAEOLOGY)

3.8 I do not wish to comment or impose any archaeological conditions on this scheme.

## PUBLIC PROTECTION

3.9 No objections raised but recommend conditions requiring details of (i) submission of a Construction Environmental Management Plan (CEMP), (ii) details of extraction and (iii) contaminated land details. A condition restricting the hours of demolition / construction is also recommended.

## FLOOD RISK AND DRAINAGE

3.10 Subject to agreement by Yorkshire Water, we are satisfied with the revised Drainage Strategy showing foul water discharge to the public foul sewer network via the existing point of connection, and surface water connection to the public surface water sewer via existing point of connection. A 30% betterment (i.e., 28 litres per second) of the existing discharge rate is proposed, based on the capacity of the outlet pipe at full bore (which is 40 litres per second).

## FORWARD PLANNING

3.11 Forward Planning recommended an appraisal of the submitted Sequential and Retail Impact Assessment (prepared by DPP Planning) by a specialist retail consultant.

3.12 This recommendation was followed. The advice provided by the retail consultant (Lambert Smith Hampton) is summarised within paragraphs 4.9 to 4.13.

## EXTERNAL

### YORKSHIRE WATER

3.13 If permission is granted, recommend the following conditions in order to protect the local aquatic environment and Yorkshire Water infrastructure; (i) separate systems of drainage for foul and surface water, (ii) surface water run-off to pass through oil interceptor, (iii) no construction works in the relevant area of the site to commence until measures to protect public water supply infrastructure have been agreed and, (iv) no piped discharge of surface water.

3.14 In relation to wastewater, the submitted Drainage Strategy is generally acceptable, and the matter can be dealt with via condition.

#### FOSS INTERNAL DRAINAGE BOARD

3.15 The surface water discharge rate of 28 litres per second is agreed. The Board notes that a Hydrobrake is proposed. Provided this flow control device restricts the discharge rate to 28 litres per second and the applicant has a maintenance schedule in place, the Board has no objections to this proposal. A Cellular Storage Tank is also proposed which appears to accommodate a 1:100 storm event (plus 30% for climate change). Provided the LLFA as the “approving authority” are satisfied with the proposal as a long-term sustainable solution, the Board has no objection.

3.16 It is proposed to connect into the existing foul system. Assuming this connects into the nearby mains foul sewer and that Yorkshire Water is satisfied that the asset has the capacity to accommodate the flow, the Board has no objections. Condition recommended that the drainage works be in accordance with the submitted documents.

#### HUNTINGTON PARISH COUNCIL

3.17 No objections.

### **4.0 REPRESENTATIONS**

#### THIRD PARTY REPRESENTATIONS

4.1 Three no. letters received in support for the application.

4.2 A representation received from the store manager of Sainsbury’s objecting to the application for the following reasons;

- (i) The lack of a need for a further foodstore at Monks Cross given that the area is already well served by existing stores;
- (ii) Failure to satisfy the sequential and impact tests given that the applicant has not assessed all available and suitable sites for the proposed drive thru, or assessed the impact of the drive thru on nearby centres;
- (iii) Inadequacy of the sequential test undertaken for the Lidl store as they have not sufficiently demonstrated that there are no alternative sequentially preferable sites; and
- (iv) Landscape impact with the proposal involving the loss of several trees, in particular along Monks Cross Drive with a limited amount of replacement trees proposed.

4.3 A comment to the Sainsbury's objection received from a logistics company stating that they are neutral in the case of the Monks Cross location but raise caution to the suggestion that Lidl consider the vacant Coppergate premises. This would be unsuitable for a supermarket due to congestion issues.

4.4 Another representation has been received which raises the following objections;

- this application contradicts the requirements of the CYC Draft Climate Change Strategy to combat / slow down the effects of climate change particularly heat and flooding.
- dispute the comment that an additional supermarket will enhance consumer choice.
- dispute statement that proposed stores will create many jobs. Nearby store has reduced its hours as they cannot recruit colleagues.
- construction jobs will be short lived. Would like evidence that such roles are filled by local people who are given training and that it will boost the local economy. Jobs will mostly be unskilled and low paid. Site will be expensive to get to for people on low wages.
- there is no detail about the amount of cycle parking and the drive-thru.
- the existing off-road cycle network needs to be extended to the site and signage on the access points/at the cycle parking is required. Needs to include parking for all designs of cycles (those for disabled people and for families who use cargo cycles).
- the route passing the site needs to be upgraded to be a continuation of the segregated cycle-ped path that currently stops at the toucan to Monks Cross retail park; this is necessary to enable e-cargo cycles.
- It is not acceptable that cyclists are required to use the two car entry points.
- there needs to be sufficient racks for current need and spare capacity for future requirements.
- there needs to be secure, covered, lit cycle parking for staff long term provision not shared with customers. It needs to be close to the entrance to the shop/cafe and near the trolley bays and on flat ground.
- there is a problem with the proposed site layout – no route provided for people to cycle, walk between the retail outlet and the drive-thru

## **5.0 APPRAISAL**

### **5.1 Key Issues**

- Sequential Test and Retail impact
- Highway considerations
- Scale and Design
- Landscaping
- Biodiversity
- Amenity
- Sustainable Design and Construction
- Flood Risk and Drainage

## **POLICY CONTEXT**

5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determinations be made in accordance with the development plan unless material considerations indicate otherwise. An adopted Neighbourhood Plan forms part of the statutory Development Plan for the City of York

### **Huntington Neighbourhood Plan**

5.3 The Huntington Neighbourhood Plan (HNP) was adopted in 2021. Full weight can be given to the policies contained within the HNP which is the development plan for this application.

### **National Planning Policy Framework (2021)**

5.4 Central Government guidance is contained in the National Planning Policy Framework (NPPF). It is a material consideration in the determination of this application. Paragraph 81 states that significant weight should be placed on the need to support economic growth and productivity.

### **Publication Draft Local Plan (DLP 2018)**

5.5 The Publication Draft City of York Local Plan 2018 was submitted for examination on 25 May 2018. Phase 1 of the hearings into the examination of the Local Plan took place in December 2019. Phase 2 of the hearings concluded in May 2022. Phase 3 of the hearings took place in July 2022 and Phase 4 took place in September 2022. In accordance with paragraph 48 of the NPPF its policies can be afforded weight according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
- The degree of consistency of the relevant policies in the emerging plan to the policies in the previous NPPF published in March 2012.

### **2005 Draft Development Control Local Plan**

5.6 The Development Control Local Plan (DCLP) was approved for development management purposes in April 2005. Whilst the DCLP does not form part of the statutory development plan, its policies are considered to be capable of being material considerations in the determination of planning applications where policies



relevant to the application are consistent with those in the NPPF albeit with very limited weight.

## SEQUENTIAL TEST AND RETAIL IMPACT

5.7 The principle of maintaining retail uses at the Monk's Cross shopping park is supported by the adopted Huntington Neighbourhood Plan (HNP). Notwithstanding this, in accordance with National and draft local plan policy, the proposed development, due to its out of centre location, must demonstrate compliance with the sequential approach and show that the proposal will not have a significant adverse impact on any defined centre.

5.8 The proposed development comprises a unit with a gross floorspace of 2,169sqm and net sales area of 1,456 sqm together with a drive thru unit. A Sequential and Retail Impact Assessment has been undertaken by DPP Planning (dated May 2022) with the area of search being York City Centre and Haxby District Centre. As required by paragraph 88 of the NPPF, applicants and local planning authorities should demonstrate flexibility on issues such as format and scale when applying the sequential approach.

5.9 The identified out of centre sites are not considered to be sequentially preferable given the Neighbourhood Plan's support for retail uses at Monks Cross and the relative locations of the sites. Sites at Castle Gateway, York Central and Haxby District Centre have been considered but no sites have been identified which are suitable, viable and available. As such the sequential test has been passed and it is accepted that there are no sequentially preferable development sites within or on the edge of York City Centre at the present time.

5.10 It is noted that the retail consultant commissioned by the Council, Lambert Smith Hampton (LSH) has identified a failure of the applicant to satisfy the sequential and impact tests in relation to the drive-thru, however their own assessment concludes that there are no more central sites available to accommodate both elements of the proposed development. LSH also conclude that the drive-thru would not be expected to draw substantial amounts of trade from existing centres, given the existing food and beverage offer at Monks Cross.

5.11 Policy R1 of the 2018 Draft Local Plan sets a Retail Impact Assessment threshold of 1,500sqm (gross). The proposed development comprises retail space that amounts to a gross floorspace of 2,169sqm and net sales area of 1,456 sqm together with a drive thru unit. It is important to note however that the proposed development involves the reconfiguration of the existing TK Maxx store, which further to the granting of a Certificate of Lawfulness in 2018, had no restrictions on the types of goods to be sold. The TK Maxx store had a gross floorspace of 2,694sqm.

5.12 Despite this proposal representing a reconfiguration of the existing store, a full Retail Impact Assessment by DPP Planning accompanied the planning application. LSH expresses major concerns over the trade draw and impact forecasts prepared by DPP and does not consider that they can be relied upon by the Council. However, their own assessment of likely trade draw, informed by the accompanying household survey, confirms that any impacts on in centre foodstores will be extremely limited.

5.13 In response to an objection raised by the manager of Sainsbury's, LSH make the point that the *need* for a new store is no longer a retail planning policy test in England. However, even if it were, LSH do not consider that the development of an additional supermarket in the area will impact on the existing retailers in the smaller centres nearby. These shops are already trading alongside Sainsbury's, M&S, Asda, Aldi, and Tesco and it is not considered that the introduction of Lidl would alter trade patterns in the smaller centres to a significant extent.

5.14 On the basis of the above considerations, Officers conclude that the proposal will not have a significant adverse impact either in terms of its effect on the vitality and viability of the defined centres or on investment in them. It is also considered that the proposal is in accordance with the Huntingdon Neighbourhood Plan Policy H10, which seeks to retain retail uses at Monks Cross. There are therefore no retail or town centre policy reasons why the current application should not be approved.

## HIGHWAY CONSIDERATIONS

5.15 Neighbourhood plan policy H21 Walking and Cycling states that as appropriate to their scale and location development proposals should be designed to provide safe and convenient connections to the network of footpaths and cycleways in the immediate locality. As appropriate to their scale and location development proposals may be required to contribute to improvements to the network of footpaths and cycleways outside the development site and in the immediate locality.

5.16 Paragraph 110 of the NPPF states in assessing development proposals it should be ensured that:

- appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- safe and suitable access to the site can be achieved for all users;
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

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

5.18 Paragraph 112 states that proposals should give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use.

### Impact on the network

5.19 The Transport Assessment accompanying the application concludes that the development is expected to generate some 260 vehicle trips during the weekday evening period and 421 vehicle trips during the Saturday midday peak period. These vehicle trips are not all new to the network and will be linked with other retail uses in the wider Monks Cross area or will be passing by the site as part of another journey. Assessments have been undertaken of the operation of the priority-controlled T-junction with Monks Cross Drive and the Jockey Lane roundabout which reveal that the junctions will continue to operate satisfactorily even following the addition of the development related trips with no discounting for transferred, linked or pass by trips.

### Access

5.20 Vehicle access to the site would be provided from the existing priority-controlled T-junction with Monks Cross Drive at the north-eastern part of the site and via the Jockey Lane roundabout with the store reached through the existing Sainsbury's car park (this is the same way as access to the TK Maxx store was reached). Pedestrian access to the site would be provided via a footway adjacent to the vehicular access with Monks Cross Drive and via the existing footpath link approximately 55 metres to the south of the vehicular site access. An internal footpath with crossing points and tactile paving will be provided within the car park for those walking between the proposed foodstore and Monks Cross Drive.

### Car Parking

5.21 In terms of car parking provision, the original scheme proposed a total of 176 spaces however in response to Officer requests to reinstate the landscape strip alongside Monks Cross Drive and to provide trees within the car park itself, the number of spaces has been reduced to 131 (including 8no. parent and child and 6no.disabled). This number is still significantly above the Council's maximum parking standards for retail units but is reflective of the amount of car parking already available at the site. The revised plans indicate that 10no. car parking bays (including 2no.disabled) will be dedicated to the drive thru unit. 2no. electric vehicle spaces are detailed and 20% of the standard spaces will be provided with appropriate infrastructure to allow conversion to EV spaces in the future.

## Promotion of sustainable travel

5.22 The plans detail cycle parking for 20 bikes (5no. Sheffield stands adjacent to the drive thru and 5no. Sheffield stands related to the foodstore). It is considered that these spaces could be improved in terms of their location and spacing with there being scope also to include provision for non-standard bikes. Amended details relating to the cycle provision and for improvements to the tactile pedestrian crossing will be secured via condition and an update will be provided at Committee.

5.23 The application is accompanied by a Travel Plan which has been prepared predominantly for staff at the store but also aimed at customers where applicable.

5.24 In terms of servicing, articulated HGVs will be used to provide deliveries and will use the servicing bay on the western side of the proposed store. Vehicle swept path analysis has been undertaken to demonstrate that the proposed site access arrangement and internal arrangement can safely accommodate the required vehicle movements.

## DESIGN AND CHARACTER

5.25 NPPF policy on developing previously developed land allows for an approach which either maintains an area's prevailing character and setting, or of promoting regeneration and change. It places importance on securing well-designed, attractive, and healthy places (paragraph 122). Huntington Neighbourhood Plan policy H4 – Design Principles, states that development proposals should respect the character of their local environment having regard to scale, density, massing, height, landscape, layout materials and access, as appropriate to their nature and location.

5.26 The proposed development would use the existing TK Maxx store which will be part demolished and extended on the western elevation to form a single unit. The new store, with a similar height to the existing store, would reflect Lidl's latest design concept with grey cladding and white render to the walls and columns with glazing for the store frontage. The proposed drive thru unit would also comprise a mix of metal cladding, render and glazing. The scale and design of the proposed store and drive-thru are considered appropriate to its context and is therefore compliant with local and national planning policy.

## LANDSCAPING

5.27 The perimeter landscape along Monks Cross Drive is considered to be a critical element of the setting for the Monks Cross Retail Park and it is noted that with the redevelopment of plots, there has been an incremental loss of both quantity and quality of landscape infrastructure. In particular, the depth of planting along Monks Cross Drive has been reduced to a critical minimum and similarly, trees have been lost within the body of the car park.

5.28 The original submission, whilst proposing new planting along the southern boundary of the site, involved a reduction in the depth of planting alongside Monks Cross Drive and the loss of existing trees. The scheme failed to mitigate the loss of vegetation and the capacity for replacement planting alongside Monks Cross Drive and detailed a lack of tree planting within the car park. This was considered detrimental to the street scene, public amenity, and setting of the development.

5.29 Revised plans have been submitted which address these issues largely to the satisfaction of the Council's Landscape Architect. Existing trees along Monks Cross Drive are to be retained and the scheme details the inclusion of trees within the car park. In response to a request for new trees to be added to the frontage with Monks Cross Drive to supplement the existing trees, (which are struggling in the poor growing conditions) and provide more robust tree cover in the longer term, the applicant has agreed to provide 2no. trees. These can be secured via a landscaping scheme condition which will also seek to secure some broad-spreading deciduous trees in the car park to provide maximum shade and rain capture in the summer months. Conditions requiring an arboricultural method statement and tree pit details are also recommended.

## BIODIVERSITY

5.30 The NPPF states decisions should contribute to and enhance the natural and local environment by minimising the impacts on and providing net gains for biodiversity. Huntington Neighbourhood Plan policy H17 – Biodiversity, states that in order to protect and where possible, provide net gains in biodiversity, development proposals should, as appropriate to their scale nature and location – maintain and where possible enhance landscape features; and where practicable incorporate into new developments features that would lead to net gains in biodiversity.

5.31 An ecological impact assessment accompanied the application. In order to meet the requirements of the Neighbourhood Plan and the NPPF, conditions are recommended relating to (i) amphibians and drainage, (ii) measures to further enhance Biological Net Gain (BNG) through the addition of native planting and the addition of bat and bird boxes and features such as hedgehog access point into the landscape design, (iii) a Reasonable Avoidance Measures method statement for Great Crested Newts, (iv) a lighting plan and (v) precautionary methods required during all required vegetation clearance works to protect nesting birds.

## AMENITY

5.32 The proposed erection of a food store and drive thru restaurant following the part demolition of the existing store does not raise any amenity issues. The site is surrounded by commercial uses and noise from the site itself would not have a

material impact on residential uses outside of the retail park, the nearest of which are approximately 800 metres away.

## SUSTAINABLE DESIGN AND CONSTRUCTION

5.33 The applicants have provided an Energy Usage and Sustainability Statement that acknowledges local requirements and confirms these can be achieved. It notes that the technologies listed below would be suitable for the site -

- Use of air-sourced heat pumps
- Heat recovery ventilation
- Building Energy Management System
- Enhanced Fabric Efficiencies and Thermal Mass

5.34 Paragraph 158 of the NPPF states that the planning system should support the transition to a low carbon future and, among other things, support renewable and low carbon energy. Policy CC1 'Renewable and Low Carbon Energy Generation and Storage' of the 2018 Publication Draft Local Plan requires that all new buildings must achieve a reasonable reduction in carbon emissions of at least 28% unless it can be demonstrated that this is not viable. The revised Building Regulations that came into force in June 2022 (with a transition period) exceed Policy CC1 requirements for reduction in carbon emissions. As such the proposed building would be considered under the more stringent 2022 Building regulations as such it is not considered necessary to condition the 28% reduction in carbon emissions.

5.35 Policy CC2 'Sustainable Design and Construction of New Development' states that developments which demonstrate high standards of sustainable design and construction will be encouraged. Development proposals will be required to demonstrate energy and carbon dioxide savings in accordance with the energy hierarchy and water efficiency. The policy requires that all new non-residential buildings with a total internal floor area of 1000m<sup>2</sup> or greater should achieve BREEAM 'Excellent' (or equivalent).

5.36 The applicant has confirmed that as this is a part-refurbishment of the existing store, BREEAM Excellent cannot be met with the aim instead for the development to achieve BREEAM 'Very Good'. Given that very limited weight can be afforded to both Policies CC1 and CC2 because of the proposed modifications to the Local Plan, it is not considered that the application could be refused on the basis that the scheme does not meet BREEAM "Excellent". A condition seeking a rating of 'Very Good' could be applied.

## FLOOD RISK AND DRAINAGE

5.37 The site is outside of Flood Zones 2 and 3. The development is therefore appropriate in terms of flood risk and NPPF paragraph 159 which seeks to direct development away from areas at the highest risk (of flooding).

5.38 The NPPF in paragraph 167 establishes that when determining any planning applications, flood risk elsewhere should not be increased and sustainable drainage systems be incorporated, unless there is clear evidence that this would be inappropriate. Neighbourhood Plan Policy H18 – Flooding and Water Management states that development should not increase the risk of flooding and/or exacerbate existing drainage problems. The draft local plan approach following the NPPF, in policy ENV5, is that existing surface water rates are evidenced and reduced by 30%. It also applies the sustainable drainage hierarchy.

5.39 Following the sustainable drainage hierarchy, the Drainage Strategy shows foul water discharge to the public foul sewer network and surface water connection to the public surface water sewer. A 30% betterment (i.e., 28 litres per second) of the existing discharge rate is proposed. A condition requiring the submission of the details of the proposed means of foul and surface water drainage to ensure compliance with HNP policy H18 and draft local plan policy ENV5 is recommended.

## **6.0 CONCLUSION**

6.1 The proposal involves the reconfiguration of an existing retail building. A sequential test has been undertaken and a retail impact assessment provided to indicate that there are no sequentially preferable sites and that the impact on the vitality and viability of the city centre will be acceptable.

6.2 The retail use is compatible with neighbouring uses and the building will have a neutral impact on the existing vacant site. Highway impacts have been assessed and a revised scheme submitted which retains the existing trees along Monks Cross Drive and details new trees within the car park. Amended details in relation to the cycle parking provision are awaited with an update to be provided at Committee.

6.3 Technical matters can be addressed to achieve policy compliance through conditions in respect of sustainable design and construction, biodiversity, drainage, the highway network and ground conditions and pollution. Subject to the proposed conditions, it is considered that the proposal will comply with the Huntington Neighbourhood Plan, the NPPF, and the Publication Draft Local Plan (DLP 2018) and accordingly it is recommended that the application be approved.

## **7.0 RECOMMENDATION: Approve**

1      TIME2      Development start within three years

2 The development hereby permitted shall be carried out in accordance with the following plans and documents:-

2504 P411 (Location Plan)  
2504 P401 Rev U (Proposed Site Plan) \*\*\*\*\*  
2504 P101 Rev A (Proposed Floor Plan)  
2504 P102 Rev A (Proposed Floor Plan Areas)  
2504 P202 Rev A (Proposed Elevations Front / Back)  
2504 F203 Rev A (Proposed Elevations Side)  
2504 P110 Rev B (Drive Through Proposed Floor Plan)  
2504 P204 Rev C (Drive Through Proposed Elevations)  
S19147-1F 01 (First Floor Plan)  
S19147-GF (Ground Floor Plan)  
Drainage Strategy - 21650 - DR-C-0100 - Revision P3 (Topping Engineers)  
Framework Travel Plan (May 2022) prepared by Bryan G Hall

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority.

3 All demolition and construction works and ancillary operations, including deliveries to and dispatch from the site shall be confined to the following hours:

Monday to Friday      0800 to 1800 hours  
Saturday                0900 to 1300 hours  
Not at all on Sundays and Bank Holidays

Reason: To protect the amenity of the locality

4 There shall be adequate facilities for the treatment and extraction of cooking odours. Details of the extraction plant or machinery and any filtration system required shall be submitted to the local planning authority for written approval prior to installation. Once approved it shall be installed and fully operational before the proposed use first opens and shall be appropriately maintained and serviced thereafter in accordance with manufacturer guidelines.

Note: It is recommended that the applicant refers to the updated Guidance produced by EMAQ in September 2018 titled "Control of Odour and Noise from Commercial Kitchen Exhaust Systems (September 2018)" for further advice on how to comply with this condition. The applicant shall provide information on the location and level of the proposed extraction discharge, the proximity of receptors, size of kitchen or number of covers, and the types of food proposed. A risk assessment in accordance with APPENDIX 3 of the EMAQ guidance shall then be undertaken to determine the level of odour control required. Details should then be provided on the location and size/capacity of any proposed methods of odour control, such as filters, electrostatic precipitation, carbon filters, ultraviolet light/ozone treatment, or odour neutraliser,



and include details on the predicted air flow rates in m<sup>3</sup>/s throughout the extraction system.

Reason: To protect the amenity of nearby properties and the environmental qualities of the area.

5 Prior to development, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be approved in writing by the Local Planning Authority prior to development. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination (including ground gases where appropriate);
- (ii) an assessment of the potential risks to:
  - o human health,
  - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - o adjoining land,
  - o groundwaters and surface waters,
  - o ecological systems,
  - o archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

6 Prior to development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried

out safely without unacceptable risks to workers, neighbours and other offsite receptors.

7 Prior to first occupation or use, the approved remediation scheme must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems.

8 In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be submitted to and approved in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

9 Any drainage structures such as gully pots and kerbing associated with the development shall be constructed to be 'amphibian-friendly'. Details shall be submitted to and approved in writing by the local planning authority prior to their construction. The construction works shall be carried out in accordance with the approved details.

Reason: In order to comply with legislation relating to European protected species and with Paragraph 175 of the National Planning Policy Framework.

10 The development shall not be occupied until a biodiversity enhancement plan/drawing for the site has been submitted to and approved in writing by the local planning authority and has been implemented in accordance with the approved details.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 174 d) of the NPPF (2021) to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including establishing coherent ecological networks that are more resilient to current and future pressures.

11 Prior to the commencement of development, including any site clearance works, a Reasonable Avoidance Measures method statement for Great Crested Newts (GCN) shall be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved details. The method statement shall include the following;

- o Description of development proposal and works.
- o Legal status of GCN.
- o Risk assessment to consider site description, proposed working areas, potential impacts of works and an assessment of potential impacts upon GCN.
- o Methods of working, to include appointment of Ecological Clerk of Works, toolbox talk, timing and extent of works, prevailing weather conditions, site supervision, methods of working (hand searching, destructive searching vegetation removal etc) and what action to be taken in the event that GCN were to be encountered on site.

Reason: The site is located close to a known Great crested newt mitigation area and the method statement is required to reduce the potential impacts upon a protected species arising from the construction of the development. Great crested newts and their habitat are protected by the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended).

12 Prior to the installation of any new external lighting, a 'lighting design plan' shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved lighting design plan. The lighting design plan shall:

- o Demonstrate that required external lighting has been selected in-line with current guidance - Bat Conservation Trust (2018) Bats and artificial lighting in the UK.

<https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229&focal=none>

- o Demonstrate how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications), clearly demonstrated where light spill will occur.

Reason: To protect the habitats European Protected Species where there might be changes on site in accordance with Section 15 of the National Planning Policy Framework.

13 No vegetation removal shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the works and written confirmation from the ecologist has been submitted to the local planning authority

that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to the local planning authority.

Reason: To ensure that nesting birds are protected from harm during construction. All British birds, their nests and eggs (with certain limited exceptions) are protected by Section 1 of the Wildlife and Countryside Act 1981, as amended.

Informative: The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Suitable habitat is likely to contain nesting birds between 1st March and 31st August inclusive. As such habitat is present on the application site and is to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is certain that nesting birds are not present.

15 The development shall be carried out in accordance with the details shown on the submitted Drainage Strategy - 21650 - DR-C-0100 - Revision P3 - dated 28th July 2022, unless otherwise approved in writing by the Local Planning Authority.

The site shall be developed with separate systems of drainage for foul and surface water on and off site.

Reason: In the interest of satisfactory and sustainable drainage

16 Surface water run-off from hardstanding and car parking areas of more must pass through an oil, petrol and grit interceptor/separator of a design that has been submitted to and approved in writing by the Local Planning Authority, prior to any discharge to an existing or prospectively adoptable sewer.

Reason: To prevent pollution of the aquatic environment and protect the public sewer network

17 No construction works in the relevant area (s) of the site shall commence until measures to protect the public water supply infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The construction works shall be carried out in accordance with the approved details. The details shall include but not be exclusive to the means of ensuring that access to the pipe for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times. If the required stand -off or protection measures are to be achieved via diversion or closure of the water main, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been

agreed with the relevant statutory undertaker and that, prior to construction in the affected area, the approved works have been undertaken.

Reason: In the interest of public health and maintaining the public water supply

18 No site clearance, preparatory work or development involving excavations shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 (tree protection plan) and chapter 6 (arboricultural method statement) of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The document shall also include construction details and methodology, where a change in surface material and/or boundary treatments is proposed within the root protection area of existing trees. Thereafter the scheme for the protection of the retained trees shall be carried out in accordance with its terms as approved. A copy of the document will be available for reference and inspection on site at all times.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

Reason: To ensure every effort and reasonable duty of care is exercised during the development process in the interests of protecting the existing trees shown to be retained that are considered to make a significant contribution to the amenity and setting of the development.

19 Within three months of commencement of development, a detailed landscape scheme shall be submitted to the Local Planning Authority for approval in writing. This scheme shall include the species, stock size, density (spacing), and position of trees, shrubs and other plants. All tree planting details shall include: means of support, and irrigation; maintenance regime and responsibilities; soil volumes and structural soil cell systems, where applicable, and the corresponding detail of surface treatment. The applicant shall maintain a suitably robust written record and photographic evidence that trees have been installed in strict compliance with the approved details.

The approved scheme shall be implemented within a period of six months from the practical completion of the development. Any trees or plants which during the lifetime of development, die, are removed or become seriously damaged or diseased in the opinion of the local planning authority, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority agrees alternatives in writing. This also applies to any existing trees that are shown to be retained within the approved landscape scheme.

Reason: So that the Local Planning Authority may be satisfied with the variety,

suitability and disposition of trees and other landscape details across the site, since the landscape scheme is integral to the setting and amenity of the development and the immediate area. The trees are a critical element of the approved landscape scheme which is integral to the amenity and setting of the development. Suitable detailing and maintenance will encourage the trees to establish and thrive.

20 Prior to the development coming into use, all areas used by vehicles shall be surfaced, sealed and positively drained within the site, in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the egress of water and loose material onto the public highway.

21 Notwithstanding the submitted details and prior to the construction of the development commencing, details of the cycle parking areas, including means of enclosure, shall be submitted to and approved in writing by the Local Planning Authority. The building shall not be occupied until the cycle parking areas and means of enclosure have been provided within the site in accordance with such approved details, and these areas shall not be used for any purpose other than the parking of cycles.

Reason: To promote use of cycles thereby reducing congestion on the adjacent roads and in the interests of the amenity of neighbours.

22 Prior to the commencement of the use hereby approved, provision shall be made within the site for accommodation of delivery/service vehicles in accordance with details which shall have been previously submitted to and approved in writing by the Local Planning Authority. Thereafter all such areas shall be retained free of all obstructions and used solely for the intended purpose.

Reason: To ensure that delivery/service vehicles can be accommodated within the site and to maintain the free and safe passage of highway users.

23 No work shall be carried out on site for the development hereby approved until a method of works statement identifying the programming and management of site clearance/preparatory and construction works to address safety concerns on the public highway, has been submitted to and approved in writing by the Local Planning Authority. All works shall be carried out in accordance with the approved method of works statement. The method of works statement shall include at least the following information;

- (i) Contractor parking management
- (ii) The routing for construction traffic to be promoted
- (iii) A scheme for signing the promoted construction traffic routing
- (iv) A dilapidation survey

- (v) Measures to prevent the egress of mud and other detritus onto the adjacent public highway
- (vi) Details of where materials will be stored within the site
- (vii) Details of the organisation in control of the development and the individual responsible for the works
- (viii) The plant and equipment required
- (ix) The handling and storage of materials and pollution prevention procedures; and
- (x) The method for safeguarding highway structures.

Reason: To ensure that the development can be carried out in a manner that will not be to the detriment of amenity of local residents, free flow of traffic or safety of highway users.

24 The construction of the development shall not commence until details of the internal pedestrian crossing layouts have been submitted to and approved in writing by the Local Planning Authority. This must include tactile paving at every pedestrian crossing within the development. The internal pedestrian crossing layouts shall be provided in accordance with the approved details prior to the use commencing and shall be retained as such thereafter.

Reason: In the interests of road safety.

25 A strategy for the provision of Electric Vehicle charging facilities on the site shall be approved in writing by the local planning authority prior to the commencement of the construction of the development. Active Electric Vehicle charge point provision shall meet minimum requirements as set out in the City of York Council Low Emission Planning Guidance. The strategy shall include details of numbers, locations and full specifications for the charge points alongside details of the management and servicing arrangements for a period of 10 years. The strategy shall be implemented as approved.

Reason: To ensure provision of Electric Vehicle charging facilities in line with National Planning Policy Framework (NPPF) and CYC's Low Emission Strategy / Low Emission Planning Guidance

#### INFORMATIVE

- o A minimum of 5% of the total parking provision on a site should include active EV charge points. Developments should additionally satisfy the minimum requirements as set out in Approved Document S: Infrastructure for the charging of electric vehicles (2021) in terms of both active EV charge points and passive provision / cable routes.
- o Charging points should be located in a prominent position on the site and should be for the exclusive use of zero emission vehicles. Parking bay marking and signage should reflect this.
- o All electrical circuits/installations shall comply with the electrical requirements

in force at the time of installation.

o The EV charging strategy should provide confirmation that the charge point(s) will be serviced and maintained in line with the manufacturer's recommendations for a minimum period of 10 years. It should also address what would happen in the event of a fault with the charge point and explain how this will be reported and rectified. The plan should also confirm what will happen in the event that a non-EV parks in an EV-only parking space and how this will be managed.

26 Prior to the development coming into use 2.0 x 2.0m sight lines, free of all obstructions which exceed the height of the adjacent footway by more than 0.6m, shall be provided both sides of the junction of any access with the footway, and shall thereafter be so retained and maintained.

Reason: In the interests of pedestrian safety.

28 The development hereby approved shall be constructed to a BREEAM standard of 'Very Good'. A formal Post Construction assessment by a licensed BREEAM assessor shall be carried out and a copy of the certificate shall be submitted to the Local Planning Authority within 12 months of first use of the building (unless otherwise agreed).

Reason: In the interests of achieving a sustainable development in accordance with the requirements of the NPPF

## **8.0 INFORMATIVES: Notes to Applicant**

### **1. STATEMENT OF THE COUNCIL'S POSITIVE AND PROACTIVE APPROACH**

In considering the application, the Local Planning Authority has implemented the requirements set out within the National Planning Policy Framework (paragraph 38) in seeking solutions to problems identified during the processing of the application. The Local Planning Authority took the following steps in order to achieve a positive outcome:

- revisions to details of design, e.g. with reference to landscaping and cycle parking
- the use of conditions

2. You are advised that prior to starting on site consent will be required from the Highway Authority for the works being proposed, under the Highways Act 1980 (unless alternatively specified under the legislation or Regulations listed below). For further information please contact the officer named:

Works in the highway - Section 171 - Vehicle Crossing - Section 184 - (01904)  
551550 - streetworks@york.gov.uk



Planting in the highway (Section 142)

Temporary highway closure (Road Traffic Regulation Act 1984, Section 14) -  
highway.regulation@york.gov.uk

Footpath/bridleway diversion (Town and Country Planning Act 1990, Section 257)

3. You are advised that this proposal effect Statutory Undertakers' equipment. You must contact all the utilities to ascertain the location of the equipment and any requirements they might have prior to works commencing.

4. The applicant is advised that the Yorkshire Waters prior consent is required as well as planning permission to make a connection of foul and surface water to the public sewer network.

5. As this application relates to a business that will sell or supply food and/or drink (including alcohol), the proprietor of the business should contact by email at public.protection@york.gov.uk or by telephone on 01904 551525 at their earliest opportunity to discuss registering the business as a food premises (a legal requirement) and to obtain advice on food hygiene & standards, health & safety, odour extraction etc."

6. Hedgehogs: To ensure hedgehogs can make use of the soft landscaping within the proposed development, the applicant is advised to consider using permeable fencing or leaving occasional gaps suitable to allow passage of hedgehogs. Any potential hibernation sites including log piles should be removed outside the hibernation period (which is between November and March inclusive) to avoid killing or injuring hedgehog.

Hedgehogs are of priority conservation concern and are a Species of Principal Importance under section 41 of the NERC Act (2006). An important factor in their recent population decline is that fencing, and walls are becoming more secure, reducing their movements and the amount of land available to them. Small gaps of approximately 13x13cm can be left at the base of fencing to allow hedgehogs to pass through. Habitat enhancement for hedgehogs can easily be incorporated into developments, for example through provision of purpose-built hedgehog shelters or log piles.

<https://www.britishhedgehogs.org.uk/wp-content/uploads/2019/05/developers-1.pdf>

**Contact details:**

**Case Officer:** Rachel Tyas

**Tel No:** 01904 551610