

COMMITTEE REPORT

Date: 26 September 2024 **Ward:** Huntington/New Earswick

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

Reference: 23/02200/FULM

Application at: T.K.Maxx Unit 2 Monks Cross Drive Huntington York

For: Erection of food store and drive-thru restaurant with associated access, parking and landscaping following demolition of existing retail building

By: Lidl Great Britain Limited

Application Type: Major Full Application

Target Date: 30 September 2024

Recommendation: Approve

1.0 PROPOSAL

1.1 This application relates to the erection of a food store and drive through restaurant following the part demolition of the former TK Maxx store at Monks Cross Drive. 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. This is a new and revised planning application following the grant of permission for a food store and restaurant in 2023 (see 1.8 below).

1.2 The existing retail unit, would be demolished to create a 2172sqm (Gross Internal Area) food store comprising of 1,512sqm sales area with the remaining floorspace occupied by warehouse and back of house areas. The proposed drive-through unit would occupy the north-western corner of the site and would be surrounded by a drive-through circular vehicle loop. Vehicle access would be provided from both the existing T-junction with Monks Cross Drive at the north-eastern corner of the site and via the Jockey Lane roundabout with the store reached through the existing Sainsbury's car park access road. Pedestrian access is provided via footways alongside the vehicle accesses detailed above with pedestrian routes marked out in the car park. An existing access provides an additional pedestrian access from Monks Cross Drive in close proximity to a bus stop.

1.3 The store will be occupied by Lidl and will employ 40 full and part-time staff. There is no operator identified for the drive-through unit.

1.4 The site is located within Monks Cross. The site is bounded by the Sainsbury's food store to the south, Monks Cross Drive to the east with the Monks Cross Shopping Park beyond, office/commercial 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 including condition 3 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 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 in excess of 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).

1.7 Planning permission was granted for the erection of food store following part demolition of existing unit together with drive-through restaurant both with associated access, parking and landscaping at the 12 January 2023 of Planning Committee B meeting. The permitted food store had a gross internal floorspace of 2169sqm and a 1456sqm sales area. The drive-through restaurant would have a floorspace of 168sqm.

Environmental Impact Assessment Regulations – Screening Requirement

1.8 The site is in an urban area and is not within a designated 'sensitive area' as specified in the Regulations. Taking into account the characteristics of the proposed development, the location of the development and the characteristics of any potential impacts, there would be no significant environmental effects and an Environmental Impact Assessment is not required.

2.0 POLICY CONTEXT

2.1 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.

Huntington Neighbourhood Plan 2017 - 2032/33

2.2 The Huntington Neighbourhood Plan (HNP) was adopted in 2021 and forms the statutory development plan for the application site. The relevant policies of the Plan are:

H4 – Design Principles

H12 - Other Shops (which supports retail development within the Vangarde/Monks Cross Shopping Park and the two defined Neighbourhood parades)

H13 - Hot Food Takeaways

H17 - Biodiversity

H18 - Flooding and Water Management

H20 - Car Parking

H21 - Walking and Cycling

National Planning Policy Framework

2.3 The planning policies of the National Planning Policy Framework December 2023 (NPPF) are a material consideration in the determination of planning applications. The presumption in favour of sustainable development is set out at paragraph 11 of the NPPF. Paragraph 85 states that significant weight should be placed on the need to support economic growth and productivity.

Section 2 – Achieving Sustainable Development

Section 7 – Ensuring the Vitality of Town Centres

Draft Local Plan (DLP 2018) as modified

2.4 The Draft Local Plan was submitted for examination on 25 May 2018, the plan has been subject to examination. Proposed modifications regarding policy H5 Gypsies and Travellers have recently been subject to consultation. The Draft Plan policies can be afforded weight in accordance with paragraph 48 of the NPPF. Relevant policies are:

R1 Retail Hierarchy and Sequential Approach

R4 Out of centre retailing

D1 Placemaking

D2 Landscape and Setting

GI4 Trees and Hedgerows

ENV1 Air Quality

ENV4 Flood Risk

ENV5 Sustainable Drainage

T1 Sustainable Access

CC2 Sustainable Design and Construction of New Development

3.0 CONSULTATIONS

INTERNAL

Highway Network Management

3.1 Cycle parking (for both uses) should be located near the store entrance, be covered and secure, and accommodate adapted bikes. Clear and safe routes should be provided to all designated cycle parking areas. Should be in accordance with LTN1/20.

3.2 The travel plan focuses exclusively on promoting sustainable travel to staff. The travel plan needs to provide details about how sustainable travel will be promoted to customers and visitors to the site, not just to staff. (Officer Note – a revised Travel Plan was submitted following the Highway Officer comments)

Design and Conservation (Senior Ecology Officer)

3.3 No objections, subject to conditions relating to Biodiversity Net Gain (BNG) - Great crested newts (GCN), lighting plan, nesting birds, and ecological enhancements for breeding birds and hedgehogs.

Design and Conservation (City Archaeologist)

3.4 No comment, it is not anticipated that any significant archaeological resource will be impacted by this scheme.

Public Protection

3.5 The scope of the Air Quality Assessment (ASA) previously agreed with Public Protection. In terms of the operation of the food store and restaurant the ASA is considered to be robust and represents a worst-case scenario of all the associated trips being 'new trips'. Air quality effects are not considered to be significant. Request conditions securing EV charging, vehicle idling management and a Construction Environment Management Plan (CEMP).

Sought conditions regarding noise impacts, land contamination and lighting intensity.

Flood Risk And Drainage

3.6 The original drainage design considered and approved under the approved 22/01135/FULM application has been revised to the revised site layout. 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 with a 30% betterment of the existing discharge rate (i.e. 28 litres per second) is proposed, based on the capacity of the outlet pipe at full bore (which is 40 litres per second) is generally acceptable in principle but if planning permission is to be granted conditions and an informative should be attached in order to protect the local aquatic environment and public sewer network.

Carbon Reduction Team

3.7 Recommend conditions regarding compliance with Draft Local Plan Policy CC2 including BREEAM requirements

EXTERNAL

Yorkshire Water

3.8 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) restricted discharge rate to surface water sewer, (iii) no piped discharge of surface water prior to the completion of the approved works.

Foss Internal Drainage Board

3.9 The Board has assets in the wider area in the form of Pigeon Cote Dyke. This watercourse is known to be subject to high flows during storm events.

3.10 The Board notes that this is a new application but is similar to that approved under 22/01135/FULM. Within that application, the applicant provided a CCTV Survey to show that the existing site is ultimately discharging into the mains surface water sewer further south of Monks Cross Drive. This then discharges into the lagoons, and they in turn ultimately discharge into the Board maintained watercourse known as Pigeon Cote Dyke. The survey suggests pretty much the whole site drains into the system.

3.11 Recommend that any approval granted should be subject to a condition requiring construction of the drainage works in accordance with the Drainage Strategy – 21650-DR-C-0100 – Revision P5 – by Topping Engineers - dated 08.03.2024.

Huntington Parish Council

3.12 Object. Whilst we do not wish to see this site remain empty and would support any redevelopment of the existing site, City of York Council have acknowledged a climate emergency, should applications be granted on brownfield sites where perfectly feasible buildings exist that allow for the removal of all the existing buildings (and all the negative environmental impact that removal has) to then rebuild covering the same footprint? An annual audit of England's heritage suggests that buildings should instead be upgraded and reused to save energy. It claims that by "thoughtfully adapting" an old building in the right way, CO2 emissions could be reduced by more than 60 per cent.

4.0 REPRESENTATIONS

Neighbour Notification and Publicity

4.1 A representation received from the store manager of Sainsbury's objecting to the application for the following reasons:

Sainsbury's are concerned that Lidl have submitted an application for a larger store, larger drive-thru facility (which is an unsustainable form of development) with a larger associated car park without undertaking sufficient and up-to-date sequential and retail impact assessment. Insufficient evidence has been submitted to demonstrate that the proposal will not have a significantly adverse impact on nearby sites, and that there are no suitable and available sequentially preferable site which could accommodate the proposals. Indeed, there is simply no need for another foodstore in York, and the impact from the drive-thru is unknown given that the tenant has not been disclosed.

Sainsbury's are also concerned that the proposals will have an adverse highways and drainage impact, whilst the development will reduce landscaping, remove trees and reduce biodiversity.

The application, therefore, conflicts with both national and local planning policy, and should be refused.

4.2 Two further representations have been received, one in support of providing additional choice for shoppers, and one stating that the scheme appears acceptable in principle but raising comments regarding noise and safety from loading procedures.

5.0 APPRAISAL

Key Issues

- Sequential Test and Retail impact

- Highway considerations
- Design and Landscaping
- Biodiversity
- Amenity
- Sustainable Design and Construction
- Flood Risk and Drainage

SEQUENTIAL TEST AND RETAIL IMPACT

5.1 The principle of maintaining retail uses at Monk's Cross is supported by the adopted Huntington Neighbourhood Plan (HNP). HNP policy H10 resists the loss of retail units which would detract from the viability of Monks Cross Shopping Park. H13 states that hot food takeaways should be located within the Monks Cross Shopping Park, with special regard made to the number of existing take away establishments in the immediate area and their proximity to each other, in order to avoid clusters (normally two or more) of takeaway uses.

5.2 Paragraph 91 of the NPPF states that the LPA should apply a sequential test to main town centre uses (incl. retail and drive through restaurants) which are neither in an existing centre nor in accordance with an up to date plan. Out of centre sites should only be considered if suitable town centre or edge of centre sites are not available.

5.3 Policy R1 of the DLP seeks to maintain and enhance the vitality and viability of the city centre, district and local centres and neighbourhood parades. Main town centre uses will be directed to the city, district and local centres. Proposals outside an identified centre should undertake a sequential test to identify why the proposal cannot be accommodated in a sequentially preferable location. The policy sets a Retail Impact Assessment threshold of 1,500sqm (gross) outside of the city centre. DLP policy R1 is subject to some objections of limited significance and is considered generally consistent with the NPPF it has moderate weight in the decision-making process. DLP policy R4 states that proposals for out of centre retailing will only be permitted where it cannot be accommodated in a sequentially preferable location; will not have an adverse impact on investment in the city centre or other defined centres; and will not result in a significantly adverse impact on the vitality and viability of any defined centre. R4 has some objections of limited significance, is consistent with the NPPF and has moderate weight.

5.4 The proposed development is for a food store of 2,172sqm gross internal floorspace and a drive through restaurant of 242sqm gross internal floorspace. The development requires the demolition of the existing 3,733sqm retail stores. This includes the former TK Maxx store (units 1 and 2 - gross floorspace of 2,694sqm) which further to the granting of a Certificate of Lawfulness in 2018, has no restrictions on the types of goods to be sold. Furthermore, the extant planning permission for the part redevelopment of the existing stores grants permission for a

retail food store with a gross floorspace of 2,169sqm together with a drive through unit of 168sqm. This is a material consideration of significant weight.

5.5 As part of the previous planning application a Sequential and Retail Impact Assessment was undertaken with the area of search being York City Centre and Haxby District Centre. No sites were identified which were considered to be suitable, viable and available. Identified out of centre sites were 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. It was accepted by an LPA commissioned review of the applicant's assessment that there were no sequentially preferable development sites within or on the edge of York City Centre.

5.6 The review identified that the applicant had not satisfied the sequential and impact tests in relation to the drive-through. However it was concluded that there were no more central sites available to accommodate both elements of the proposed development and that the drive-through would not be expected to draw substantial amounts of trade from existing centres, given the existing food and beverage offer at Monks Cross.

5.7 The LPA's commissioned assessment of likely trade draw confirmed that any impacts on in-centre food stores would be extremely limited and did not consider that the development of an additional supermarket in the area would 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.

5.8 The applicant has undertaken an additional sequential assessment to account for any changes in the property market since the previous assessment was undertaken. Whilst a number of additional sites have been identified as available, they were not considered suitable for a discount food store development due to either the size of the site; lack of a prominent frontage; car parking provision; inappropriate configuration or an inappropriate location for a new build store. As such the proposed food store is considered to be acceptable from a sequential perspective.

5.9 An updated Retail Impact Assessment states that there will be a marginal increase in trade draw and impact between the approved development and the proposed development and it is considered that the proposed food store will not have a significant adverse impact on the vitality or viability of any existing centre. The impact of the larger drive through is not considered to have a significant impact over and above that identified in above.

5.10 Considering the existing planning position set out in 5.4 above, and a proposed condition relating to the sale of goods appropriate to the out of centre location, 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 any planned investment. The proposal is in general accordance with the Huntington Neighbourhood Plan, and the retail policies of the Draft Local Plan and the NPPF.

DESIGN AND LANDSCAPING

5.11 HNP 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. HNP policy H17 Biodiversity states that development proposals should, as appropriate to their scale, nature and location maintain and where practicable enhance existing ecological corridors and landscape features. Landscape schemes should use traditionally and locally appropriate species to support and enhance biodiversity.

5.12 Paragraph 135 of the NPPF states that planning decisions should ensure that developments will function well and add to the overall quality of the area, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. Development that is not well designed should be refused.

5.13 DLP policy D1 Placemaking states that development proposals will be supported where they improve poor existing urban and natural environments. Development proposals that fail to take account of York's special qualities; and/or fail to make a positive design contribution to the city, and/or cause damage to the character and quality of an area will be refused. D2 states that proposals will be supported where they retain features such as mature trees and hedges, and include high quality landscape details and planting proposals. Policy GI4 Trees and Hedgerows states that development will be permitted where it retains existing trees and hedgerows that make a positive contribution to the setting of proposed development. These policies have moderate weight given the limited nature of unresolved objection.

5.14 The proposal would demolish the existing TK Maxx store and construct a contemporary single storey building with a slightly sloping roof appropriate in scale and massing to the surrounding development. The building would feature single height glazed curtain walling in grey and insulated metal cladding panels in white. The base of the wall cladding will have a render strip in grey and the doors will be powder coated steel in grey. The building will have metal composite insulated roof panels with steel coping flashing along the perimeter in grey to match the cladding, and aluminium gutters and rainwater pipes. The proposed drive-through restaurant is also a single-storey building, incorporating a contemporary design with a varied building height. Both buildings are considered to be appropriate to their context and broadly in accordance with local and national policy.

5.15 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.

5.16 The previous planning permission provided for additional landscaping and retained existing trees along Monks Cross Drive and included new trees within the car park and 2no. additional trees along the Monks Cross Drive frontage.

5.17 The current scheme (as amended) similarly provides for additional landscaping along the Monks Cross Drive frontage (albeit reconfigured from that previously approved) and 4no. additional trees and a retained hedgerow. New trees will be provided within the car park, to the side of the drive through restaurant and along the rear boundary of the site. A new native hedgerow will be planted along the southern boundary.

5.18 The landscaping scheme can be secured via a landscaping scheme condition which secure 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. The landscaping scheme should provide for an appropriate setting for the building and is considered to be an improvement to the existing situation. It is considered that the development will comply with HNP policies H4 and H17 and DLP policies D1 and GI4 in respect of design and landscaping.

HIGHWAY CONSIDERATIONS

5.19 HNP policy H20 Car Parking states that development proposals should incorporate sufficient, safe and convenient car parking provision in accordance with the most up to date City of York Council standards. H21 Walking and Cycling requires 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.

5.20 Paragraph 114 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.

5.21 Paragraph 115 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”.

5.22 DLP Policy T1 Sustainable Access states that development will be permitted where it minimises the need to travel and provides safe, suitable and attractive access for all transport users including those with impaired mobility such that it maximises the use of more sustainable modes of transport. Development proposals should demonstrate safe access to the adopted highway for all users; priority to pedestrians and cyclists, and sufficient secure and convenient covered cycle storage.

Promotion of sustainable travel

5.23 The site is well located to encourage journeys by sustainable modes of travel and linked trips with the adjacent shopping park. Pedestrian access is provided via footways alongside the vehicle accesses through the adjacent Sainsbury site and from Monks Cross Drive with pedestrian routes marked out in the car park. A modified access will provide an additional pedestrian route from Monks Cross Drive in close proximity to a bus stop (services 9, 12 and 20). There are no defined cycle routes within the car park although vehicle speeds should be low. Off-road cycle routes from the south through the Vangarde site and from Jockey Lane terminate about 100m south of the pedestrian access, however a route appears to be currently available through the Sainsbury car park.

5.24 The site plan details cycle parking for 12 cycles at the food store (6no. Sheffield stands including one with additional space provided between stands for non-standard bikes). The stands are located under the canopy and reasonably close to the entrance in a location which appears to be overlooked from inside the store. It is considered that these spaces should be amended by condition in terms of their location and spacing from the wall of the store to meet LTN 1/20 guidelines, this will restrict the width of the walkway along the store frontage especially if larger cargo or adapted bikes are parked.

5.25 Eight no. cycle parking places are provided for the drive through restaurant (4 no. Sheffield stands) adjacent to the entrance. It is considered that these spaces should be amended by condition to comply with LTN1/20 guidelines to make them useable and secure.

5.26 No staff cycle parking for either building is shown on the drawings, the agent stating that secure provision will be within the warehouse area. Suitable staff cycle parking for each use can secured be planning condition.

5.27 The application is accompanied by a Travel Plan prepared predominantly for staff at the store but also aimed at customers where applicable which has been revised following comments of the Highway Officer. The Travel Plan seeks to deliver modal shift towards sustainable modes of transport and reduce the impact of the site on local congestion and localised parking issues (should they arise); reduce the environmental impact of site-related travel, and promote the company's commitment to environmental values; reduce the need for unnecessary car travel through the promotion of suitable and reliable alternatives to the private car; and raise awareness amongst staff and customers of the detrimental impacts of car use in order to encourage the use of alternatives.

5.28 In the context of an out-of-town location it is considered that the proposals comply with HNP policy H21 "Walking and Cycling," NPPF paragraph 116, which 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" and also with DLP T1

Impact on the network

5.29 The Transport Assessment accompanying the application concludes that the development is expected to generate some 295 vehicle trips during the weekday evening period and 468 vehicle trips during the Saturday midday peak period. This is not a significant change from the predicted trips for the 2023 planning permission. 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 following the addition of the development related trips.

Car Parking

5.30 The scheme proposes 137 car parking spaces. The food store will have 124 spaces including 6 accessible spaces and 9 parent and child spaces. The restaurant has 13 spaces including 3 accessible spaces. The parking provided is reflective of the amount of car parking already available at the site.

BIODIVERSITY

5.31 HNP 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 enhance landscape features for biodiversity and where practicable incorporate into new developments features that

would lead to net gains in biodiversity including pollinators, bats, birds and mammals. 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.

5.32 The applicant's Ecological Impact Assessment identified: no bat roosts and negligible potential to support bats in the existing building; minor loss of suitable habitat for birds; hedgehogs are unlikely to be present on site but sensitive working practices and hedgehog highways are required to maintain habitat links.

5.33 The Council's Ecologist raises no objections to the development. It is known that significant populations of Great Crested Newts are present in the area. Although there is a limited amount of suitable habitat for GCN within the application site, the potential for GCN to pass through the site should not be discounted and newts and other amphibians should be protected through sensitive drainage design and reasonable avoidance measures during demolition and construction. The site offers some potential for nesting birds and as such precautionary methods will need to be undertaken to ensure active nests are not destroyed during any required site clearance works. The development is considered suitable for ecological enhancements 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.

5.34 Subject to the imposition of conditions it is considered that the application will comply with the requirements of the adopted Neighbourhood Plan, the NPPF and the Draft Local Plan in respect of biodiversity.

5.35 Having considered the nature, scale, timing, duration and location of the proposed development, it is concluded that the proposed development would not have any conceivable effect on the Strensall Common Special Area of Conservation.

IMPACT ON AMENITY

5.36 The site is surrounded by commercial uses. Noise from the site would not have a significant impact on residential uses outside of the retail park, the nearest of which are approximately 300 metres away.

5.37 ENV1 Air Quality states that development will only be permitted if the impact on air quality is acceptable, including the provision of mechanisms which appropriately mitigate adverse impacts and further exposure to poor air quality. Objections to this policy are partially resolved, but the policy is subject to significant modification (post 2021 consultation) and can be afforded limited weight. The scope of the Air Quality Assessment (ASA) was agreed with Public Protection. In terms of the operation of the food store and restaurant the ASA is considered to be robust and represents a worst-case scenario of all the associated vehicle trips being 'new trips'. Air quality

effects are not considered to be significant. There will be 7 electric vehicle charging spaces, 5% of total provision, which is in accordance with CYC Low Emission Planning Guidance for “active” provision and NPPF paragraph 116. The request for a vehicle idling management strategy and a CEMP is not considered necessary or reasonable in this location in this context and in terms of idling vehicles is considered to be difficult to enforce under the Planning Act. Neither condition would meet the tests set out in paragraph 56 of the NPPF.

5.38 In terms of the lighting design, the scheme would be compliant with the guidance for an E3 Environmental zone and shows that the upward light ratio of the proposed scheme is likely to be zero. Subject to conditions (which will also need to consider biodiversity impacts) this is acceptable and in compliance with DLP policy ENV2 which seeks to mitigate the increase in artificial light and glare.

5.39 Planning conditions can appropriately deal with impacts of noise and odour from the food store and restaurant operation under DLP policy ENV2.

SUSTAINABLE DESIGN AND CONSTRUCTION

5.40 Paragraph 157 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. DLP Policy CC2 ‘Sustainable Design and Construction’ requires that developments achieve high standards of sustainable design and construction. All new non-residential development with a total internal floor area of 100m² or greater should achieve:

- i. a 28% reduction in carbon emissions over and above the requirements of Building Regulations (2013) unless it is demonstrated that such reductions would not be feasible or viable; and,
- ii. BREEAM ‘Excellent’ (or equivalent), where feasible and viable and where development proposals are for 1,000m² or more.

CC2 is subject of significant modifications with only partially resolved objections, therefore very limited weight can be given to this policy.

5.41 The applicants have provided a Sustainability Statement that detailing consideration of the energy hierarchy and the emissions of each unit. The applicant has considered the following technologies:

- Use of air-source heat pumps
- Photovoltaic panels (PV)
- Solar shading
- Low energy fans
- Low energy lighting and controls

The proposed development will achieve a 164% reduction in carbon emissions compared to the target rate.

5.42 The use of heat pumps and solar PV as low carbon technology is encouraged by DLP policy CC2 and is policy compliant. There are no climate change or carbon reduction policies in the Neighbourhood Plan, the NPPF or the Draft Local Plan which could be used to require the conversion of the existing building.

FLOOD RISK AND DRAINAGE

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

5.44 Paragraph 165 of the NPPF 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. The local 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.

5.45 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 Policy ENV5, is recommended.

6.0 CONCLUSION

6.1 The proposal involves the redevelopment of an existing retail building. Significant weight is given to the extant planning permission for the reconfiguration of the existing unit into a new food store with separate drive-through restaurant. 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 site. Highway impact and sustainable access has been assessed and is acceptable, providing reasonable access by non-car modes. The scheme retains the existing trees along Monks Cross Drive and provides an improved landscaped margin. New trees are provided within the car park improving the landscaped setting.

6.3 Impacts regarding sustainable design and construction, biodiversity, drainage, environmental matters can be addressed to achieve policy compliance through conditions. Subject to the proposed conditions, it is considered that the proposal will

comply with the adopted Huntington Neighbourhood Plan, the NPPF, and the Publication Draft Local Plan.

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:-

P432 revision I dated 11/09/2024

P230 dated August 2023

P231 revision A dated 27/09/2023

R2576 R2C revision C dated February 2024

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

3 With the aim of safeguarding the local population of Great crested newts (GCN), prior to the commencement of development, including any site clearance works, a Reasonable Avoidance Measures method statement for GCN should be submitted to and agreed by the Local Planning Authority. The method statement shall include, but not be limited to 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).
- o Actions to be taken if GCN are encountered on site.

Reason: The site is located in close proximity to a known Great crested newt mitigation area, avoidance measures are required to reduce the potential impacts upon a protected species arising from construction works. 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).

4 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.

5 Prior to works starting on site a dilapidation survey of the highways adjoining the site shall be jointly undertaken with the Council and the results of which shall be agreed in writing with the Local Planning Authority.

Reason: In the interests of the safety and good management of the public highway the details of which must be recorded prior to the access to the site by any construction vehicle.

6 Prior to the development commencing details of the measures to be employed to prevent the egress of mud, water and other detritus onto the public highway, and details of the measures to be employed to remove any such substance from the public highway shall be submitted to and approved in writing by the Local Planning Authority. Such measures as shall have been approved shall be employed and adhered to at all times during construction works.

Reason: To prevent the egress of water and loose material creating a hazard on the public highway.

7 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

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 No site clearance works shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful and detailed check of suitable habitats for active nests immediately before the works commence. Written confirmation should be submitted to the local planning authority, detailing where works within suitable habitats have been undertaken within the nesting bird period, the outcome of checking surveys, and identify requirements for protection measures.

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.

10 A biodiversity enhancement plan/drawing for the application site shall be submitted to, and be approved in writing by, the local planning authority prior to the commencement of the construction of the approved development. Thereafter the development shall proceed in accordance with the approved plan/drawing.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 (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 by establishing coherent ecological networks that are more resilient to current and future pressures.

11 As detailed on the Revised Landscape Details plan (R-2576-2C, April 2024) prior to the first occupation of any building on the site at least three Schwegler 1B bird nest boxes shall be erected on the western boundary of the application site. In addition, hedgehog access holes (measuring at least 130mm x 13mm) shall be installed in the boundary fence line where indicated on the Revised Landscape Details plan (R-2576-2C, April 2024). These details shall be retained for the lifetime of the development.

Reason: To take account of and enhance the biodiversity and wildlife interest of the area, and to be in accordance with Paragraph 180 (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 by establishing coherent ecological networks that are more resilient to current and future pressures.

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.

The plan shall:

- o Specify lighting in-line with current guidance - Bat Conservation Trust (2023) Bats and Artificial Lighting at Night: <https://theilp.org.uk/publication/guidance-note-8-bats-and-artificial-lighting/>
- o Demonstrate how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications), clearly demonstrating where light spill will occur, both within and outside the site boundary.

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 Notwithstanding any proposed materials specified on the approved drawings or in the application form submitted with the application, samples of the external materials to be used shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the construction of the development. The development shall be carried out using the approved materials.

Note: Because of limited storage space at our offices sample materials should be made available for inspection at the site. Please make it clear in your approval of details application when the materials will be available for inspection and where they are located.

Reason: So as to achieve a visually cohesive appearance.

14 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, including any existing trees that are shown to be retained within the approved landscape scheme, 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.

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.

15 The development shall be carried out in accordance with the details shown on the submitted Drainage Strategy - 21650 - DR-C-0100 - Revision P5 - dated 8th March 2024, unless otherwise approved in writing by the Local Planning Authority.

Reason: In the interest of satisfactory and sustainable drainage.

16 Surface water run-off from hardstanding and/or car parking areas shall pass through an oil, petrol and grit interceptor/separator to a design that has been submitted to and approved 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 by the Local Planning Authority.

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 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 (b) of the National Planning Policy Framework.

19 Prior to the first occupation of the retail foodstore, details of the cycle parking area for the staff, 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 staff cycle parking area and any 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.

20 Prior to the first occupation of the drive through restaurant, details of staff cycle parking, 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 staff cycle parking area and any 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.

21 A travel plan, developed and implemented in accordance with National Planning Policy Guidance, shall be submitted to and approved in writing by the Local Planning Authority prior to first use of the development hereby approved. The plan shall be updated annually thereafter. The development shall operate in accordance with the aims, measures and outcomes of the approved Travel Plan. The travel plan shall identify specific required outcomes, targets and measures for promoting sustainable modes of travel, and shall set out clear future monitoring and proportionate management arrangements. It shall also consider what additional measures may be required to offset unacceptable impacts if the targets are not met. Specifically the plan shall include a target that no more than 60% of staff travel to work by car alone and shall be precise in identifying staff responsible for implementation of the travel plan the associated budget.

Reason: To reduce private car travel and promote sustainable travel in accordance with section 9 of the National Planning Policy Framework and policy T7: Minimising and Accommodating Generated Trips of the Draft Local Plan.

22 Details of all machinery, plant and equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to the

local planning authority for approval. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational before each of the approved uses first opens and shall be appropriately maintained thereafter.

Note: The combined rating level of any building service noise associated with plant or equipment at the site should not exceed the representative LA90 1 hour during the hours of 07:00 to 23:00 or representative LA90 15 minutes during the hours of 23:00 to 07:00 at 1 metre from the nearest noise sensitive facades when assessed in accordance with BS4142: 2014+ A1 2019, associated inclusive of any acoustic feature corrections with tonal, impulsive, distinctive or intermittent characteristics.

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

23 The development hereby approved shall be constructed to a BREEAM standard of 'Excellent' or equivalent.

A formal Post Construction assessment 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 in writing with the local planning authority.

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

24 Customer cycle parking comprising Sheffield stands shall be constructed for each approved building in accordance with drawing number P432 rev. I dated 11.09.2024 prior to the occupation of each approved building.

The cycle stands shall be retained as approved for the lifetime of the development.

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

25 The buildings shall not be occupied until the areas shown on the approved plans for delivery and service vehicles, and the parking and manoeuvring of vehicles and cycles if shown have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.

Reason: In the interests of highway safety.

26 The internal pedestrian crossing layouts, including tactile paving at every pedestrian crossing within the development, shall be constructed in accordance with drawing P432 rev. I dated 11/09/2024 prior to the first occupation of the approved development.

Reason: In the interests of road safety.

27 Seven no. car parking spaces and associated infrastructure for the charging of electric vehicles shall be provided in accordance with approved drawing number P432 rev. I dated 11/09/2024 prior to the first use of the development and thereafter retained.

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

28 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 as amended or any order amending, revoking or re-enacting that Order, or the description of development associated with this permission, no more than 300 square metres net floorspace of the retail development hereby authorised shall be used for the display and sale of comparison goods.

Comparison goods are defined as follows:-

- i) Clothing, footwear and fashion accessories(including jewellery and watches);
- ii) Music, Video/DVD recordings and computer games;
- iii) Cameras(including camcorders) and other photographic equipment;
- iv) Electronic Goods(incl TVs, Video, DVD, PC's and hi-fi equipment;
- v) Toys;
- vi) Books, and stationery;
- vii) Household Textiles;
- viii) Sports Goods;
- ix) Gardening Equipment and Furniture;
- x) Camping Equipment and tents;
- xi) Luggage;
- xii) Mobile phones and communication equipment.

Reason:- To safeguard the vitality and viability of the City Centre in accordance with policy R4 of the draft Local Plan.

8.0 INFORMATIVES:

Notes to Applicant

1. Informative - Great crested newts:

Application Reference Number: 23/02200/FULM

Item No: 4f

Great crested newts are afforded protection under the Wildlife & Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2010 (as amended), under which it is an offence to:

Capture, kill, disturb or injure Great crested newts deliberately.

- o Damage or destroy a breeding or resting place.
- o Obstruct access to their resting or sheltering places (deliberately or by not taking enough care).
- o Possess, sell, control or transport live or dead newts, or parts of them.
- o Take great crested newt eggs.

2. Informative - nesting birds:

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. Buildings, trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. Suitable 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 nesting bird activity.

3. Informative: Drainage

The applicant should be 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.

4. Foss (2008) Internal Drainage Board

Under the Land Drainage Act 1991 and the Boards' byelaws, the Board's prior written consent (outside of the planning process) is needed for:-

- a. any connection into a Board maintained watercourse, or any ordinary watercourse in the Board's district.
- b. any discharge, or change in the rate of discharge, into a Board maintained watercourse, or any ordinary watercourse in the Board's district. This applies whether the discharge enters the watercourse either directly or indirectly (i.e. via a third party asset such as a mains sewer).
- c. works within or over a Board maintained watercourse, or any ordinary watercourse in the Board's district - for example, land drainage, an outfall structure, bridges, culverting etc.

Please note that the Board does not, generally, own any watercourses and the requirement for you to obtain the Board's consent is in addition to you obtaining consent from any land owner or other authority to carry out the relevant works.

Full details of the Consent process can be found on the Board's website:-

<http://www.yorkconsort.gov.uk>

5. INFORMATIVE:

The developer's attention is drawn to the various requirements for the control of noise on construction sites laid down in the Control of Pollution Act 1974. In order to ensure that residents are not adversely affected by air pollution and noise, the following guidance should be adhered to, failure to do so could result in formal action being taken under the Control of Pollution Act 1974:

(a) All demolition and construction works and ancillary operations, including deliveries to and despatch from the site shall be confined to the following hours:

Monday to Friday 08.00 to 18.00

Saturday 09.00 to 13.00

Not at all on Sundays and Bank Holidays.

(b) The work shall be carried out in such a manner so as to comply with the general recommendations of British Standards BS 5228: Part 1: 1997, a code of practice for "Noise and Vibration Control on Construction and Open Sites" and in particular Section 10 of Part 1 of the code entitled "Control of noise and vibration".

(c) All plant and machinery to be operated, sited and maintained in order to minimise disturbance. All items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well-maintained mufflers in accordance with manufacturers instructions.

(d) The best practicable means, as defined by Section 72 of the Control of Pollution Act 1974, shall be employed at all times, in order to minimise noise emissions.

(e) All reasonable measures shall be employed in order to control and minimise dust emissions, including sheeting of vehicles and use of water for dust suppression.

(f) There shall be no bonfires on the site

6. Food Informative

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..

7. 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 planning conditions

Contact details:

Case Officer: Development Management Team

Tel No: 01904 551553