

TABLED UPDATE FOR ITEM 2.4

18/502735/FULL - Land at Perry Court, Faversham

Further representations

Further representations have been made by consultants acting for Tesco and Morrisons. Both state that a further consultation period should be provided in order that they can consider the content of the WYG retail assessment (which was placed on the public file on 22nd May). If this is not provided, both state / imply that the decision could be challenged.

Officer comment – the WYG retail assessment has been carried out on behalf of the Council for this specific application, in order to provide expert retail advice. It is not part of the applicant's submission and as such is not subject to statutory consultation. It is effectively advice to the Council on a specific subject in the same way as received, for example, from KCC Highways and Transportation. The report states that it has had regard to a number of submissions and third party comments, including those made on behalf of Morrisons and Tesco. I do not consider that a further consultation period is necessary, or that this places the Council at risk of challenge.

Consultations

SBC Tree Officer – Advises that the landscaping scheme for the whole site is generally acceptable, subject to submission of a more detailed scheme at a later date (by condition). The widening of the landscaping is welcomed but additional tree planting should be secured within the planting strip in the foodstore car park

Updated plans

The applicant has provided an amended site plan which strengthens the extent of landscaping on the site frontage from an average of 5 metres depth to 7 metres depth. This provides the ability to secure a more comprehensive landscaping scheme (including the Avenue tree planting) on this boundary, and the tree officer finds this acceptable.

However the site plan also shows a wider central landscaped section within the car park and it is my view and that of the tree officer that further tree planting should be secured within this strip. This has been raised with the applicant and I will provide Members with an update at the meeting.

Public Art

The applicant has been in discussion with my officers to deliver public art to the site. The initial costs put forward by the applicant are for an installation costing up to £10,000. Draft images have been submitted to give the Council some indication of the size / type of installation that could be provided at this cost. However, Members

will note that the details would be agreed under condition (20) on Page 159 of the agenda.

Recommendation – that permission is granted subject to the agreement of the provision of appropriate tree planting within the retail car park, completion of a S106 Agreement (to secure the provision of the highway contributions as summarised at paragraphs 6.03 and 6.04 of the report) and conditions as set out in the report and as amended by the conditions below.

Planning Conditions (further to the wording on Pages 155 to 163 of the agenda)

The Council is now required to agree all pre-commencement conditions with an applicant before a decision is made. A set of draft conditions has been shared with the applicant, and some amendments to the following conditions are proposed as follows

2) The development shall be carried out in accordance with the following Approved Plans: 1416-PP Rev C, 1416-PCL Rev A, 1416-90 Rev E, 1416-300 Rev J, 1416-301 Rev K, 1416-350 Rev D, 1416-206 Rev C, 1416-205 Rev F, 1416-201 Rev D, 1416-200 Rev H, 1416-110 Rev HH, 1416-310.

Reason: To accord with the application, in the interests of proper planning

4) Prior to the installation of each element described below for the hotel the following building details (drawings to be at a suggested scale of 1:5, or as appropriate in order to show sufficient detail) shall be submitted to and approved in writing by the Local Planning Authority:

- Section drawings of window frames and glazing bars, to include depth of window reveal from the external face of the building.
- Manufacturer's colour brochure and specification details of the window product.
- Section drawings of the junction between the cladding materials, brickwork and facing materials on the elevations of the building.
- A section drawing of the wall capping detail
- Facing materials for the lift overrun and plant enclosure on the roof of the hotel building.
- Details of rainwater goods

The development shall be implemented in accordance with the approved details.

Reason: In the interests of visual amenity and design quality.

14) Prior to the occupation of each phase, details of electric changing facilities to be provided in that phase shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed prior to first public use of the buildings, and maintained thereafter.

Reason: In the interests of sustainable development.

15) No development in any phase shall be brought into use until the visibility splays for that phase as shown on the Site Access Visibility Splays Plan (drawing no: 17-0303/VS01 appended to the Transport Assessment) have been provided, and such splays shall thereafter be maintained with no obstructions over 0.9 metres above carriageway level within the splays.

Reason: In the interests of highway safety.

17) No development beyond the construction of foundations shall take place in any phase until full details of both hard and soft landscape works for that phase have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, measures to prevent vehicles from overhanging onto paths and landscaped areas within the car park, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

18) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of each phase of the development or in accordance with the programme agreed in writing with the Local Planning Authority

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

20) No development beyond the construction of foundations to the hotel shall take place until details of the design and siting of a public art installation have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be installed prior to first opening of the hotel, or within six months of approval by the Local Planning Authority, whichever is the sooner.

Reason: In the interests of the visual amenities of the area.

21) The open space for each phase, as identified on drawing 1416 OSA Rev A shall be provided and made available for public use prior to first occupation of that phase of the development, and maintained as such thereafter.

Reason: To ensure that the development contributes to wider space objectives as set out under Policy MU7 of the Local Plan.

Informatives

1. For the avoidance of doubt, the electricity substation can be constructed in accordance with the approved details and without a requirement to comply with the above pre-commencement conditions other than condition (40) (archaeology)
2. For the avoidance of doubt, works in connection with condition (40) (Archaeology) shall be permitted to take place without a requirement to comply with the above pre-commencement conditions.

JRW – 28/5/2019

Our Ref: 2995/MY/LT20190529

29th May 2019

Mr James Freeman
Head of Planning Services
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MRPP

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Dear Mr Freeman,

ALDI AT PERRY COURT, FAVERSHAM (18/502735/FUL)

We act on behalf of Tesco Stores Ltd, owners and operators of the town centre Tesco superstore at Crescent Road, Faversham (the former Fremlin's Brewery). Our client objected to the above application (letter of 15th May 2019), primarily relating to the absence of an impact assessment and the health of Faversham town centre generally.

Neither of my client's concerns have been abated by recent activity here. Tesco remains extremely concerned by the lack of an appropriate retail assessment (see below). But more pressing, is the perversity of taking the Perry Court application to Committee having only last Wednesday (22nd May) published the retail appraisal by WYG; the same day on which the related Committee report (recommending approval of the application) was also published; denying relevant interests the opportunity to be heard.

As you're aware, there are a number of important retail considerations here. First, the proposal engages policies specifically cast to protect town centres, in addition to a site allocation policy which requires a retail impact assessment. Second, is the advice of Carter Jonas, noting that the likely impact of Aldi on the town centre is a "...*cause for concern*". Third, there exist objections from two major national retailers, located in the town centre and evidently acting as its anchors. Fourth, the Borough Retail Study confirms there is some £15m of surplus convenience expenditure in Faversham; in other words, existing convenience floorspace is trading substantially below expected levels, meaning that Faversham is particularly vulnerable to change.

Officers have previously recorded that the proposed Aldi is not in accordance with the relevant site allocation policy (MU7), and is inconsistent with the underlying outline consent. Indeed, the supporting text to the policy states (our emphasis):

"The impact of locating main town centre uses, such as offices, leisure and retail development [at Perry Court] may require the submission of an impact assessment in accordance with Policy DM2, but it is the Council's view that larger scale retail and leisure development is unlikely to be acceptable due to adverse impacts on the town centre."

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We also note that the application has been referred to Committee by Cllr David Simmons on the basis that the "...retail store is much larger than was proposed under the outline permission and would have significantly more impact on local residents".

Bearing in mind the context for decision-making here, it is most odd that the Council would not first publish, and invite responses to, advice on which the recommendation is evidently founded. Indeed, it is essential that relevant interests, particularly those in the town centre (who are most likely to be impacted by the proposed development and whom government policy specifically seeks to protect), are given an appropriate opportunity to respond to material considerations and, where necessary, bring to the attention of officers and Members deficiencies within the advice on a recommendation is made.

Whilst it is not the objective of this letter to respond extensively to the WYG advice (that can only occur following a comprehensive appraisal), we note the following deficiencies within the advice presented to the Council:

1. No consideration of existing turnover relative to benchmark turnover; ie, at no point is the impact of Aldi considered in the context of the already poor trading performance of existing town centre stores, as identified in the Borough Retail Study and in Appendix 1 to Tesco's objection;
2. Forecast impact on Morrisons is noted by WYG but essentially discounted because of that store's edge-of-centre status, despite WYG acknowledging the importance of Morrison's, alongside Tesco, as an important anchor to the town centre;
3. Impact on Tesco (15% of Aldi's turnover) and Morrisons (10% of Aldi's turnover) is fundamentally underestimated; whereas trade drawn from the out-of-centre Sainsbury's is forecast to be nearly twice as much, despite being of comparable scale to Tesco and located twice the distance from it;
4. Impacts on the town centre Iceland, Coop and other town centre retailers are said to be largely imperceptible (just £200k per year), which appears highly improbable bearing in mind the scale of the proposed Aldi store; and
5. No consideration is given to the implication of the likely loss of linked trips arising from the reduction in trade at, primarily, Tesco and Morrisons, and the harmful effect of this on the town generally.

The primary concern arising is that, through a failure to re-open consultation in respect of new and important material considerations (and to take account of any representations which arise) officers are then closed to deficiencies within the technical advice on which their recommendation is built. Whether or not this alters their recommendation is moot. However, Members would then be exposed to making a decision based on potentially erroneous and untested advice, thus leaving the Council's decision very much exposed.


All this should be considered in the context of an underlying and highly material planning policy which specifically requires that "*proposals for main town centre uses will need to be the subject of an impact assessment.*" To date, no such assessment has been undertaken, and thus, fundamentally, no decision on this application should be taken until that matter is resolved.

In summary, one is grappling here with: (i) underlying policies which caution against retail development in this location; (ii) a policy specifically requiring detailed analysis but which is effectively ignored without appropriate justification; (iii) a Retail Study identifying substantial underperformance of existing town centre retail provision and no capacity for additional convenience retail floorspace; (iv) a respected consultancy (Carter Jonas) having unresolved concerns; (v) objections from major national retailers; (vi) an application specifically brought before Committee on the basis of concerns regarding retail impact; and (vii) the risk of flaws the advice on which the officer recommendation turns. In the context of matters (i) to (vii) above, it appears wholly irrational for a decision-making authority to proceed to determination without having first provided relevant interests with an opportunity to review the latest retail advice, and to take account of any relevant representations.

We respectfully request that application 18/502735/FUL be withdrawn from tomorrow's Planning Committee agenda and an appropriate consultation exercise undertaken so that town centre and other relevant interests may review and respond accordingly to the WYG advice before a decision is made.

To confirm, a copy of this letter has been transmitted to the Planning Committee Chair and the Council's Legal Services department.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Miles Young', written over a horizontal line.

Miles Young
Director

Cc: Louise Ford – Town Planning Manager, Tesco Stores Ltd

