

Our Ref: 2995/MR/LT20240926

26 September 2024

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Via Email: 

Dear Alex,

ERECTION OF RETAIL FOODSTORE (LIDL) WITH ASSOCIATED CAR PARKING, ACCESS, LANDSCAPING AND ENGINEERING WORKS. LAND TO THE WEST OF B&Q, PURBROOK WAY, HAVANT. PLANNING REFERENCE: APP/24/00330

We act on behalf of Tesco Stores Limited in respect of the above application. Our client trades from an Extra Store on Solent Road. That store was the subject of considerable investment when it opened in 2009 and Tesco continues to invest in the Havant area today.

We make initial representations on the following:

- Failure of the retail sequential test arising from the suitability and availability of the former Wilko store in the Meridian Shopping Centre;
- The appropriateness for an effective retail impact assessment; and
- Substantial ecological harm arising from the significant loss of trees

Failure of the retail sequential test arising from the suitability and availability of the former Wilko store

The sequential test is set out in Policy CS4 of the Havant Borough Core Strategy (2011) and Policy AL3 of the Havant Borough Local Plan (Allocations) (2014). This follows the approach in the National Planning Policy Framework (NPPF) confirming that the first preference for the location of proposals such as the application scheme as a 'main town centre use' is within town centres, followed by edge-of-centre locations, and only if no other suitable sites are available should out-of-centre sites then be considered. The sequential test has, because of the recent availability of an additional suitable and available site, not been carried out effectively.

We are aware that the former Wilko Store in the Meridian Shopping Centre is available. Indeed, it is being actively marketed. It provides a suitable, sequentially preferable, opportunity. It has not been considered by the applicant in the sequential assessment submitted on their behalf. Whilst the assessment of sequential test opportunities considered then available opportunities within the Meridian Shopping Centre earlier this year, the specific former Wilko store opportunity is not addressed as part of the narrative relating to Site 15 (Document 4 to the Planning and Retail Statement April 2024 (PRS)). The opportunity is within Havant town centre and is thus within an established retail location. It largely comprises ground floor premises with some first floor storage accommodation. The unit has a ground floor area of around 1,400 m² with 600 m² on its first floor. According to the agent's particulars (Flude Commercial) the unit benefits from direct access to the loading bay, with a goods lift to the first floor. It also provides connections for shoppers to the Meridian Centre's multi-storey car park.

The use of the former Wilko store by the applicant would present only a minor reduction in of only a little over 10% in the gross floorspace sought by Lidl for their proposed store of 2,275m². Thus, the applicant's approach fails to recognise the significance of the inherent requirement for "*flexibility*" in the operation of the sequential approach. It seeks to rely upon, at best, secondary operational requirements in the application of the sequential test.

"*Flexibility*" is not just a consideration to be applied generally. It needs to be subject to specific locational variations (whether as a site size parameter or otherwise). Thus, it needs to consider what achievable beneficial outcomes there might be for a town centre in accommodating new development in more flexible ways as part of the consideration of how that then secures the optimisation of the centre's health and viability. It cannot be reliant on retailers or developers applying a 'one size fits all' test.

Town centre opportunities are inevitably more constrained by neighbouring development and infrastructure such that the scale of opportunities will often be more modest than in out-of-town locations. It is therefore inappropriate to apply size or scale thresholds without there being broader scrutiny of the ease by which real risks might arise for the long-term health and prosperity of the town centre. The sequential test is not a test to judge a proposition today or in the short term, rather it must operate to ensure the resilience of the town centre, not just through a typical plan period, but for future generations. This specific opportunity, being located within a highly accessible town centre, will encourage and generate linked shopping trips across a wide range of existing facilities. The centre is accessible by bus and car and benefits from extensive public car parks.

Thus, the current availability of the vacant Wilko store and its suitability in the context of the requirement to apply flexibility to help facilitate town centre opportunities, is failed. There is a breach of development plan policies CS4 and AL3 as supported by the NPPF and proper interpretation of leading case law such as in *Aldersgate*. Refusal of planning permission is therefore justified.

The appropriateness for an effective retail impact assessment

The applicant's agent submits that because the proposal is for a store that is below the 2,500 m² gross threshold set out in the NPPF (paragraph 94) there is no requirement for a retail impact assessment and nothing has been produced. Notwithstanding this, it has become common practice for discount store operator's applications to be accompanied by at least a proportionate assessment of retail impact.

Furthermore, the applicant seeks to erroneously rely on qualitative and quantitative need assumptions stating that “...*whilst a demonstration of the need for a proposal is no longer required in the NPPF, it is still the case that qualitative need remains a material consideration*” (paragraph 4.68 of the PRS). Qualitative and quantitative needs can be a material consideration when there is evidence to back up such claims. The applicant asserts that “...*the proposal would, therefore, provide both quantitative and qualitative improvements in shopping provision, addressing a locationally specific need, whilst at the same time reducing the need to travel*” (paragraph 4.70 of the PRS). In the absence of any ‘capacity assessment’, there is no evidence of this. Indeed, the Core Strategy Policy CS4 (Town, District and Local Centres) advises that 13,000 sqm of comparison goods floorspace was sought in town and district centres up to 2016. The Town Centre Study (July 2020) advises this was exceeded by 14,034 in 2016. There is no stated requirement for additional convenience goods floorspace. Indeed, with an Aldi, Iceland, Tesco and M&S located within the Town Centre, together with an Iceland and Lidl to the North and an Asda to the West, the area is both *quantitatively and qualitatively* well served.

In all these circumstances, the absence of the retail impact assessment is a significant omission from the application material. Without an impact assessment, the Council is unable to conclude whether there would be a significant adverse impact on the town centre. In that regard, the continued vacancy of units such as the former Wilko premises adds to that risk. The application, as it stands, is therefore deficient in not providing appropriate and relevant information. Without it, refusal would be justified pursuant to Policies CS4 and AL3 and paragraph 95 of the NPPF.

Substantial ecological harm arising from the significant loss of trees

It is evident that in the granting of the extant permission, the Officer undertook a careful balancing exercise when considering the identified impact as a result of tree loss, and this was said to be specifically outweighed by the benefits (including provision of economic development).

The Officer's Report ahead of the Planning Committee on 30th June 2022, stated that:

“There is a clear need here to weigh up the harmful loss of trees across the site, against the benefits the scheme would bring in terms of the provision of economic development, including additional employment opportunities. On balance, whilst it is very regrettable that the proposal would require tree loss, as set out above the scheme would meet many

requirements as set in the local plan, and the economic and social dimensions of the NPPF, by providing economic and employment opportunities.” (page 34)

Of importance is the Arboriculture Manager's response dated 22 January 2021 which stated:

“[The loss of trees] is excessive and will impact on the area in terms of sustainable tree canopy cover, although there is a proposal to plant a number of trees in mitigation for the proposed losses these would take time to establish and fill a void left by the tree to be removed. Based on the identified tree loss I would not be able to support this application in arboricultural terms, hence it would then be your decision to decide if the overall benefit of the site development outweighs this tree loss and not in conflict with Policy DM8.”

The total number of trees proposed to be removed as a result of the 2021 scheme was 9 (T1-T5, T7, T8, T9, T10.) and 3 groups of trees/scrub (G1, G5 and G6) as set out in paragraph 5.10 of the Updated Tree Survey and Arboricultural Impact Assessment dated 1 April 2021. The above referenced report indicates that 29 trees will be planted as replacement planting however, the 2022 Officer's report cites the number as 37.

The proposed extended store seeks the removal of 30 trees (5.13 of the Tree Survey and Arboricultural Impact Assessment dated July 2024). This is in addition to T1, T2, T4, T6, and T7 (numbered as per the Tree Removal and Protection Plan dated June 2020) which no longer feature on the Tree Removal Plan and have presumably already been removed. According to the applicant's agent's PRS, only 27 new trees will be planted (paragraph 5.43).

The loss of trees in the previous application was considered by the Planning Officer to be “*very regrettable*” and led to a finely balanced decision. The current application proposes the loss of significantly more trees, in addition to those now already removed. And notably there appears to be no net increase in new tree planting compared to the previous scheme.

It is therefore not unsurprising that the Council's Tree Officer advises that “*the removal of multiple trees must be mitigated more fully than is suggested with the replanting proposals as they currently stand*” (4th September 2024). Tree loss has been a key consideration for development on this site. As such it should not be addressed by a condition. Rather it should be a substantive matter that is addressed as part of any decision as to whether to grant permission or to refuse.

Summary

The applicant's sequential assessment of alternative sites has failed to consider the available former Wilko Store with the Meridian Shopping Centre. This was not available at the time of the earlier application nor when the applicant's Planning and Retail Statement was written. The premises, as a centrally located town centre opportunity, appear to have

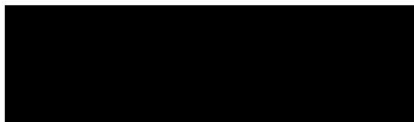
considerable merit in terms of meeting the purpose of sequential testing that relates to ensuring continuing town centre health and vitality. Without appropriate assessment the sequential test can be regarded as failed and planning permission should be refused.

The application does not provide a retail impact assessment. Whilst there might be no formal requirement, it has become common practice for discounter operators to willingly provide such an assessment. Indeed, there would seem to be justification for such an assessment bearing in mind the level of vacancies within Havant and other town centres. In addition, there is no evidence of any quantitative or qualitative need for further floorspace of the scale proposed.

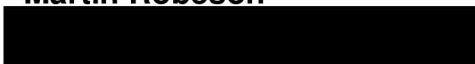
The proposal will result in a substantial loss of mature trees. This issue was seen as leading to a finely balanced issue on the previous decision and the circumstances now, with further losses having taken place and proposed, would appear to make this consideration more critical and potentially tilt the balance against the grant of planning permission.

For all the above reasons permission should be refused.

Yours sincerely,

A black rectangular box redacting the signature of Martin Robeson.

Martin Robeson

A black rectangular box redacting the contact information of Martin Robeson.

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