

ATISN 19180 ITEM 002

Iles, Nicholas (CCRA - Planning)

From: [REDACTED]
Sent: 13 June 2019 12:44
To: Correspondence mail - JJ
Cc: [REDACTED]
Subject: Request for 'Call In' of Application by Welsh Ministers (Section 77 Town & Country Planning Act 1990)
Attachments: Committee Report.pdf; 190329 NRW Objection.pdf; 190610 Aldi Aberystwyth objection letter FINAL.pdf; 190613 Welsh Ministers Aldi Aberystwyth.pdf

Sent on Behalf of Mr [REDACTED]

Dear Minister,

Please find attached a copy of a letter (with enclosures) requesting that a planning application before Ceredigion County Council (ref: A181062, Aldi, Park Avenue, Aberystwyth) is 'called in' for determination by the Welsh Ministers under Section 77 of the Town and Country Planning Act 1990.

Yours faithfully

[REDACTED]
Director

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Rhif y Cais / Application Reference	A181062
Derbyniwyd / Received	02-11-2018
Y Bwriad / Proposal	The erection of a Class A1 foodstore with associated access, car parking and landscaping.
Lleoliad Safle / Site Location	Former Kwik Save, Park Avenue, Aberystwyth
Math o Gais / Application Type	Full Planning
Ymgaisydd / Applicant	(Aldi Stores Ltd),
Asiant / Agent	[REDACTED]

THE SITE AND RELEVANT PLANNING HISTORY

The 0.48ha application site is located on the southern end of Park Avenue, Aberystwyth just outside of the Town Centre Boundary. The site is currently brownfield and previously occupied by a vehicle repair garage, car showroom and a foodstore. All buildings on the site have now been demolished. Surrounding uses include the Rheidol Retail Park opposite to the east, the Aberystwyth Dyfed Powys Police building to the south and the Aberystwyth Town FC football ground to the west.

The application site has been designated in the Local Development Plan Settlement Strategy as a Mixed Use Allocation (M0303 Park Avenue, Aberystwyth) for the comprehensive redevelopment of the site for retail, office and community purposes.

Applications to develop this site date back to the 1970's with the most recent being the consent in 2011 to demolish the vacant foodstore building, car showroom and garage and erection of Aldi foodstore, hotel and associated car parking. A further application to vary conditions on approval A090312 to enable submission of information to be submitted following demolition was approved in 2016.

DETAILS OF DEVELOPMENT

The application is submitted in full and seeks planning permission for the erection of a Class A1 retail foodstore with associated access, 85 car parking spaces, two motorcycle spaces, cycle and trolley bays and landscaping.

The building is proposed to be two storeys with the net sales area of 1,254m² being on the ground floor with the first floor catering for warehouse storage, welfare and other ancillary spaces.

The store is located on the southern half of the site with the main shopfront facing Park Avenue. The shop entrance is to be positioned on the prominent corner facing the car park and the site entrance. The sole vehicular access is proposed from the east directly off Park Avenue.

The store's loading bay is situated away to the rear of the building on the southern side facing the police station. Delivery vehicles will be kept completely separate from the rest of the site and will service the store via the access road off Park Avenue between the site and the police station.

The building plant will be located at roof level behind a raised parapet.

In order to respond to flood risk requirements the proposed finished floor level is higher than existing which will mean it will be slightly raised above Park Avenue. A ramped and stepped access to the building will be provided.

In terms of design it is intended to make use of extensive glazing. Amended plans have been received which demonstrate additional fenestration to provide more of an attractive retail frontage. A cantilevered canopy is proposed which will continue on the two sides of the main frontages. The main materials are contemporary metal cladding panels, facing brickwork and render.

In terms of employment, the store intends to provide 40 jobs. Opening hours will be 08.00 – 22.00 Monday to Saturday and 10.00 to 16.00 on Sundays.

A Pre-Application Consultation exercise was undertaken prior to the submission of the application in view of the designation of the development being categorised as a 'major' development.

RELEVANT PLANNING POLICIES AND GUIDANCE

Planning Policy Wales (Version 10)

Technical Advice Note 4: Retail and Commercial Development (November 2016)

Technical Advice Note 12: Design (March 2016)

Technical Advice Note 15: Development and Flood Risk (July 2004)

Ceredigion Local Development Plan

S01 Sustainable Growth

S02 Development in Urban Service Centres (USCs)

LU18 Retail Proposals Countywide

LU19 Retail Proposals in Urban Services Centres

LU32 Development and the Waste Hierarchy

DM03 Sustainable Travel

DM05 Sustainable Travel and Planning Gain

DM06 High Quality Design and Placemaking

DM08 Bilingual Signs and Place Names

DM09 Design and Movement

DM10 Design and Landscaping

DM11 Designing for Climate Change

DM12 Utility Infrastructure

DM13 Sustainable Drainage Systems

DM14 Nature Conservation and Ecological Connectivity

DM15 Local Biodiversity Conservation

DM17 General Landscape

DM22 General Environmental Protection and Enhancement

LDP Settlement Strategy – Aberystwyth

M0303 Park Avenue, Aberystwyth. Mixed Use Allocation for redevelopment for retail, office and community purposes.

Supplementary Planning Guidance

Parking Standards

Built Environment and Design

Aberystwyth Shopfront & Commercial Façade Design Guide

Transport Assessment

Community and the Welsh Language

OTHER MATERIAL POLICY CONSIDERATIONS

A Masterplan for Aberystwyth

'A Masterplan for Aberystwyth', November 2007, prepared by LDA Design in conjunction with the Welsh Assembly Government and Ceredigion County Council states that Park Avenue South should be seen as part of the main urban core

of Aberystwyth. Land uses should create strong streets and spaces. The redevelopment of the area should provide particularly strong frontages. The Masterplan states that Aberystwyth has a large and diverse range of independent retailers operating alongside national multiples to create a vital and viable town centre. However, the masterplan notes that the performance of the town centre could be improved significantly by the introduction of a new "anchor tenant-led scheme in the centre or on the edge of the town centre."

OTHER MATERIAL CONSIDERATIONS

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

Equality Act 2010

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. Having due regard to advancing equality involves:

- removing or minimising disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups where these differ from the need of other people; and
- encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The above duty has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

CONSULTATION RESPONSES

Statutory Consultees:-

Ceredigion Highways – No objection STC

Ceredigion Ecology – No objection STC

NRW – Advised that an amended flood consequence assessment was required to demonstrate that the risks and consequences of flooding could be managed to an acceptable level. Following assessment of an updated FCA, NRW have indicated that the proposal still does not comply with the requirements of TAN15 in that whilst being a less vulnerable development it is unlikely to be possible to make the proposal for development on the site and surroundings compliant with Tables A1.14 and A1.5 of TAN 15. Within the technical note, it is admitted that there could be increased flooding elsewhere, with increase in depths up to 280mm. This has not been assessed via hydraulic modelling, but this value does not comply with A1.12 of TAN 15. As such NRW recommends refusal of the application.

Aberystwyth TC – Support / Comments.

Flooding / Drainage - Comments

Non-statutory consultees:-

31 letters were received from third parties supporting the application on grounds that there was a need for the store; that it will provide employment; that it will provide a variation in choice; company supports the Welsh language; that the site is convenient and will assist in developing a rundown site.

3 letters of objection received from third parties on grounds of insufficient tree and shrub planting; non-compliance with suds recommendation; the need for bat and bird boxes; that the use of a warehouse at first floor blatantly seeks to overcome the requirement for massing on site; the loss of hotel accommodation and that the scheme does not meet aspirations of the Local Plan.

CONCLUSION

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that: "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise".

It is noted that planning permission is extant for the retail development of this site, albeit the original scheme approved in 2011 also permitted hotel accommodation (C1) at the upper floors. In addition it could be contended that that permission has been implemented through the demolition of the buildings on the site.

The applicants, however have not been able to bring forward development in the form originally approved, mainly as they have been unable to provide a developer to implement the hotel accommodation. As such the applicants have submitted a fresh application which focuses on the retail development only.

The material planning considerations relating to this application therefore are as follows:-

The Principle of Development

Given that there is an extant permission in place for a retail store at this site then it is considered that the principle for the development of a supermarket is acceptable and carries significant weight. Nevertheless, the original application determined by Committee in 2011 considered the retail need and impact test, together with the sequential approach as recommended in TAN 4. The assessments at that time concluded that sufficient quantitative need existed in Aberystwyth to ensure that the Aldi store would not prevent a larger foodstore operator from operating in the town. Since then, consent has been granted to both Tesco and Marks & Spencer on the former Mill Street car park site. Reports also concluded that the proposed location was considered acceptable due to the lack of suitable alternative sites within the town centre and since the granting of permission back in 2011 no alternative sites have become available.

Furthermore, the allocation of the site in the Aberystwyth Settlement Statement as defined in the LDP indicates support for the redevelopment of the site (together with additional land) as mixed use retail, office and community facility which would further strengthen the need for such use in the area.

Consideration must be given however to the perceived loss of the hotel element from this scheme especially in view of reports in the press of the interest of a well-known budget hotel business in developing in Aberystwyth. The applicant's agent states that discussions with the interested party confirmed their aspirations in the area however they note that the scheme would not be suitable for their needs.

The agent also approached an independent hotel developer who works with the main hotel chains who indicated that in a location such as Park Avenue, a hotel operator would be targeting a minimum parking ratio of 85% (i.e. 85 spaces per 100 rooms), but ideally a 100% ratio would be achieved plus operational spaces. This would not be possible at the proposed development.

Reference was also made to a similar arrangement which has hotel accommodation above the store but for various reasons has posed difficult operational problems for the retail provider.

In view of the above information received from the agents it is the opinion that the loss of hotel provision from the scheme is justified and therefore the LPA is prepared to support the principle of the provision of a retail store only on this particular site.

As such, it is considered that the principle of development is acceptable and is compliant with policies LU18 and LU19 of the LDP together with TAN 4.

The Design of the Proposal

The Masterplan for Aberystwyth confirms the need for the creation of strong streets and spaces and that Park Avenue itself should provide particularly strong frontages. This is more so considering that the eastern approach along the Rheidol Valley is seen as one of the main gateways into the town centre.

Significant negotiations have been undertaken between the LPA and the developers with the view of ensuring that any development at this location meet the design aspirations.

Amended plans have been received which show a building with greater fenestration on the northwest and south east facing elevation which present more of an active frontage. The articulation and massing of the building provides interest and variation and complies with the need to provide additional height at this juncture. Additional fenestration, albeit the use of both obscure and clear glazing, have also been included on the rear elevation facing the football ground in order to achieve a more vibrant frontage rather than blank walls given that this area would also be in the public domain once the football ground flats are occupied.

As such it is considered that the proposal is compliant with policy DM06 and meets the aspirations of the Masterplan.

Matters relating to Flooding and Drainage

The site is within Zone C1 of the Development Advice Map as contained in TAN15 Development and Flood Risk. In accordance with guidance a Flood Consequence Assessment was submitted with the application which sought to

demonstrate that the potential consequences of flooding could be managed to an acceptable level.

Natural Resources Wales indicated that the FCA failed to demonstrate that the risks and consequences of flooding could be managed as the report was undertaken in 2013/14 and was not suitable for use in the current application. Additionally, the FCA did conclude that there was potential for the increase in flooding elsewhere thus being in conflict with TAN15.

An updated FCA which sought to address the above issues was submitted to the NRW, however the information provided failed to overcome the concerns of NRW. The Agency indicated that the proposal still does not comply with the requirements of TAN15 in that whilst being a less vulnerable development it is unlikely to be possible to make the proposal for development on the site and surroundings compliant with TAN 15 more so given that there could be increased flooding elsewhere, with increase in depths up to 280mm.

Any new development on flood plain will generally result in additional risks. It is for the Local Planning Authority to arrive at a judgement on the acceptability of the flooding consequences. Notwithstanding the content of the response, the LPA maintains that, given that the proposed scheme is considered as being a less vulnerable development (a hotel is considered as being highly vulnerable development) and the strategic importance of the site, justifies the development coming forward despite the flood risk.

Matters regarding the disposal of surface water must be catered for via a sustainable drainage system and it is recommended that details of the arrangements be submitted to and approved by the Local Planning Authority prior to approval should the application be approved.

Matters relating to Highways

The scheme shows the creation of a new vehicular access to the proposed store's car park directly off the main road (Park Avenue), whilst delivery lorries will access the building via the side road which provides access to the police station and beyond.

The Authority's Highways Section have concluded that the scheme is acceptable subject to conditions including the requirement to provide a suitable Construction Traffic Management Plan and the implementation of the recommendations of the Travel Plan submitted in support of the application.

Ecology

An ecological appraisal of the site was undertaken which identified the presence of no protected habitats. The site consists of bare earth, hardstanding, and scattered scrub, all of which are of negligible ecological value.

The PEA identified some features that may be suitable for use by bats and although the development will increase lighting in the surrounding area, the area is already well illuminated at night by the football ground and street lighting. Bats may commute over the site but are unlikely to forage as no suitable habitat is present. The lighting should not increase illumination of the river or river corridor.

The application includes references to landscaping, though not to the species to be planted. Landscaping should be comprised of primarily native species in order to benefit local wildlife, and planting should be completed within 12 months of completion of the development. The development should include at least two bat boxes and two bird boxes, preferably installed on the southern elevation, in order to enhance the site for wildlife, as has been done on the Tesco and M&S building.

RECOMMENDATION

Given the strategic importance of the site to Aberystwyth, the fact that there already is an extant permission for the provision of a retail store already on the site the balance of advantage rests with the application. It is recommended that the application be approved, subject to conditions.

POWER OF DELEGATION:

The application is reported to the Development Control Committee for its consideration as [REDACTED]
[REDACTED] has declared his interest in the application.



**Cyfoeth
Naturiol
Cymru
Natural
Resources
Wales**

Ein cyf/Our ref: SN58/GB/CAS-81079-Q6R8
Eich cyf/Your ref: A181062

Swyddfa Llywodraeth Cymru/Welsh
Government Building,
Rhodfa Padarn,
Llanbadarn Fawr,
Aberystwyth
SY23 3UR

[REDACTED]

29/03/2019

Er sylw / For the attention of: [REDACTED]

Annwyl / Dear [REDACTED]

BWRIAD / PROPOSAL: THE ERECTION OF A CLASS A1 FOODSTORE WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING

LLEOLIAD / LOCATION: FORMER KWIK SAVE SITE, ABERYSTWYTH SY23 1PG (SN586812)

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which was received on 04/03/2019.

Further to our previous letter referenced SN58/GB/CAS-71524-G7Q4 dated 07/12/2019, we have the following advice to provide.

NRW objects to the proposal and recommends refusal. The FCA submitted with the proposal shows it does not comply with the requirements of TAN15, and in accordance with this guidance, this application must be refused as detailed below.

Requirement 2 of our previous letter has not been addressed, which is:

Requirement 2 – Pollution Prevention Plan

Flood Risk

The application is for a proposed new Aldi food store in Aberystwyth, which is classed as low vulnerable development by TAN15. As part of the application, a Flood Consequences Assessment (FCA) has been produced by Craddy Pitchers Ltd namely, 'Flood Consequence Assessment for Aldi Store, Park Avenue, Aberystwyth ref: 7517w0032' dated September 2018.

Since the submission of the original FCA noted above, an additional technical note has been provided, titled "NRW Response to proposed ALDI Store, Aberystwyth A181062 Ref: 7517w0035". This latest letter should be read in conjunction with the previous FCA received.

[REDACTED]

NRW have reviewed the technical note supplied by [REDACTED] and wish to highlight the following points referring to specific points within the technical note:

Section 2: Flood Levels and TAN15 A1.14 Threshold Criteria.

- Section 2.1 states that it is considered that the most up to date NRW flood model provides a conservative assessment. This has not been confirmed by any additional updated hydraulic modelling and therefore this statement cannot be verified.
- Section 2.2 states that there is a flood risk to the site. This may be as much as 840mm in the 1% Annual Probability of Flooding (APF) undefended scenario. No mention of TAN 15 compliance has been provided in this statement.
- Section 2.3 states that significant offsite works to make the site compliant with Table A1.15 of TAN 15 is required. This has been assumed but has not been assessed by updated hydraulic modelling by the consultant.
- Section 2.4 and 2.5 state that, there may not be suitable proposals to make this site compliant with Table A1.14 or A1.15 of TAN 15.

Section 3: Displaced flood storage.

- Section 3.3 of the technical note includes mathematical calculations to look at volume displacement. This level of displacement is based on volume only and does not include an assessment of the mechanism of flooding. The calculations have not been undertaken by updated hydraulic modelling.
- Section 3.4 highlights that there could be up to 280mm of additional flood depth to third parties. This has not been assessed by updated hydraulic modelling.
- Section 3.5 indicates that there could be increased flood risk to multiple properties with flood depths of 10mm. We would note that this has not been assessed by updated hydraulic modelling and does not meet the requirements of TAN 15 within NRW's hydraulic modelling tolerances guidance. This assessment does not look at the mechanism of flooding by routing of displaced flood water.
- NRW would not agree with the statements of Section 3.9 which states that the development "will not significantly adversely increase flood risk elsewhere", this does not agree with section 3.4 which states 280mm increase in depth to third parties. TAN 15 clearly states there should be no flooding elsewhere.

NRW cannot comment on the planning history or the flood evacuation as these are a matter for the local planning authority.

Summary

This application is for a new supermarket within Aberystwyth, which is classed as low vulnerable development and is accompanied by an FCA and a technical note. There is no new evidence provided by hydraulic modelling in the technical note.

The technical note provided admits that it is unlikely to be possible to make the proposal for development on the site and surroundings compliant with Tables A1.14 and A1.5 of TAN 15. Within the technical note, it is admitted that there could be increased flooding elsewhere, with increase in depths up to 280mm. This has not been assessed via hydraulic modelling, but this value does not comply with A1.12 of TAN 15.

Pollution Prevention Plan

Appropriate pollution prevention measures must be in place to ensure that the water environment (both surface water and ground water) are not polluted during the excavation, construction restoration and operation phase of the development.

Requirement 2 – Pollution Prevention Plan

All works at the site must be carried out in accordance with Guidance for Pollution Prevention GPP5 “Works and maintenance in or near water” has recently been updated (January 2017) and can be found at:

<http://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>

Also, the work must be carried out in accordance with PPG6: ‘Working at construction and demolition sites’ which are available on the Gov.uk website:

<https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.

Although this document is withdrawn, the advice it provides is still relevant.

Should any contaminated water or materials enter or pollute the watercourse or groundwater, Natural Resources Wales must be notified immediately on our incident hotline 03000 65 3000.

Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound should be 110% of the capacity of the tank, all filling points, gauges, vents and sight glasses must be located within the bund. Associated pipe-work should be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets should be detailed to discharge downwards into the bund, refuelling should always be supervised - and preferably done on an impermeable surface.

Waste

The activity of importing waste into the site for use as, for example hardcore, must be registered by the Natural Resources Wales as an exempt activity under Environmental Permitting Regulations 2010. The developer should contact Natural Resources Wales to discuss the necessity for an exemption permit for any material imported to and exported from the site.

Waste arising from the development must be disposed of in an appropriate way i.e. to a waste management facility, and where possible it should be recycled. Certain wastes, for example asbestos, are classed as Hazardous Wastes and shall only be disposed of by registered waste carriers to an appropriate facility, licensed to take such wastes.

Ground Contamination

Due to the history of the development of the town, there may be ground contamination on the site. www.naturalresourceswales.gov.uk / www.cyfoethnaturiolcymru.gov.uk

It is the responsibility of the developer to research whether any survey work for ground contamination is necessary, and any subsequent ground remediation works. Further guidance is available on our website:

<https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/advice-for-developers/land-contamination/?lang=en>

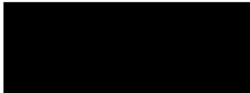
Please do not hesitate to contact us if you require further information or clarification of any of the above.

Our comments above only relate specifically to matters that are included on our consultation topics list (September 2018) which is published on our website:

(<https://cdn.naturalresources.wales/media/686847/dpas-consultation-topics-august-2018-eng.pdf?mode=pad&rnd=131819256840000000>). We have not considered potential effects on other matters and do not rule out the potential for the proposed development to affect other interests, including environmental interests of local importance.

The applicant should be advised that, in addition to planning permission, it is their responsibility to ensure that they secure all other permits/consents relevant to their development.

Yn gywir / Yours sincerely



Ymgynghorydd Cynllunio Datblygiad/Development Planning Advisor
Gwasanaeth Cynghori Cynllunio Datblygiad/Development Planning Advisory Service



Our Ref: X001/PW
Date: 10 June 2019

[REDACTED]
Ceredigion County Council
Canolfan Rheidol
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
Ceredigion
SY23 3UE

Dear Mr [REDACTED]

**REPRESENTATIONS ON BEHALF OF LIDL GREAT BRITAIN LIMITED
APP REF: A181062 - ALDI, PARK AVENUE, ABERYSTWYTH**

Background

WYG write on behalf of Lidl Great Britain Ltd (Lidl) in respect of the planning application referenced above. As you are aware, Lidl is the owner of the Rheidol Retail Park and made representations in respect of this application on 11 December 2018.

Having reviewed application A181062 we have noted a number of procedural issues (set out below) which we believe render the application invalid. Furthermore, there are significant policy conflict and material considerations which, notwithstanding the procedural issues, strongly suggest the application should be refused. Accordingly, Lidl object to the application on the basis that it is invalid and that any determination of the application would be legally flawed. The Local Planning Authority should review the points below and, if in agreement, should require the application to be withdrawn.

Design and Access Statement

Article 7 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (as amended by Article 9 of the 2016 Amendment Order) relates to Design and Access Statements (DAS). Sub section (4) sets out specific requirements which DAS "must" include, including (c) "explain the policy or approach adopted as to access, and how policies relating to access in the development plan have been taken into account". We note the committee report correctly identifies access policies DM03, DM05, DM09 as being relevant. While the application is accompanied by a document purporting to be a DAS, the document makes no reference to policies relating to access whatsoever and does not, therefore, set out how such policies have been taken into account.

Accordingly, the document does not comprise a "Design and Access Statement" in the terms described in the Development Management Procedure (Wales) Order.

What comprises a valid application is defined in Article 22(3) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (the "DMPO"). Sub section (c) confirms that where Article 7 applies, for an application



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to be valid it must include a DAS. As set out above, no DAS (in the terms described in Article 7) has been submitted and accordingly the application cannot be considered valid.

Statutory Pre-Application Consultation requirement

Part 1A of the DMPO (Amendment) Order 2016 sets out the requirements for Pre Application Consultation (PAC). Article 2C (1)(b)(i) requires consultation to include making available for inspection documents *"that would be required for a subsequent application, in the same or substantially the same form, to be a valid application..."* The PAC carried out prior to the submission of this application contained the above referenced DAS which, as set out above, fails to meet the minimum requirements for a DAS. Accordingly, the PAC was not carried out on the basis of documents required for a valid application and thus the requirements of Article 2C (1)(b)(i) have not been met.

Also, Schedule 4 of the DMPO sets out the 'specialist consultees' required to be consulted as part of the PAC process. Paragraph (1)(ii)(b) confirms that the Welsh Ministers must be consulted where development is likely to be visible from a Scheduled Monument where it is within 1km of the site and has an area of 0.2 hectares or more. The development at c.12m tall is likely to be visible from Aberystwyth Castle (as is much of Aberystwyth), and furthermore the site is approximately 0.6km from the castle and has an area of 0.48ha. However, section 4.5 of the PAC Report confirms that the Welsh Ministers were not consulted, contrary to Article 2D(3) of the DMPO.

Furthermore, Article 2C (1)(a)(ii) requires notice to be given in writing to any adjoining owner or occupier and Article 2F(2)(c) requires the subsequent PAC Report to include *"a list of the addresses of persons who were given notice of the proposed application"*. Notwithstanding this requirement, the PAC Report accompanying the application provides no such list and instead (at paragraph 4.3.2) states *"The letter was delivered to every property, seven in total, which are included within the yellow line in the map below."* This approach does not comply with the requirements of Article 2F(2)(c). Moreover, from our research, it appears there are many more than seven landowners within the yellow line provided in the PAC Report. It appears, therefore, that the requirements of Article 2C (1)(a)(ii) may not have been met (in that adjoining owners/occupiers may not have been consulted) and therefore that the requirement of Article 2F(1)(a) (which requires an applicant to give particulars of how s61Z of the 1990 Act have been complied with) may also not have been met.

Finally, in respect of PAC issues, Article 2F(1)(b) requires the PAC report to provide *"any response to the consultation received from any person consulted..."* while Article 2F(2)(f) requires the PAC report to include *"copies of all responses received from specialist consultees with an explanation of the account taken of each response."* Section 6 of the submitted PAC report sets out the comments received, however, these are heavily summarised and are thematic only. Accordingly, while NRW raise significant objection to the proposal, the PAC Report's only response is *"Clarification made to the Flood Consequence Assessment to further mitigate risk of flooding in exceptional weather to the ALDI store and the local community"*. This is insufficient to demonstrate the *"account taken"* of NRW's detailed objections and fails to comply with Article 2F(2)(f).

In summary:

- The DAS fails to clarify how policies relating to access in the development plan have been taken into account (contrary to Article 7(4)(c) of the DMPO);
- Accordingly, the application is invalid, according to Article 22(3)(c) of the DMPO;
- The PAC was not carried out on the basis of valid application documents due to the deficient DAS (contrary to Article 2C (1)(b)(i) of the DMPO);
- Welsh Ministers were not consulted, contrary to Article 2D(3) of the DMPO, despite the development's relationship with a Scheduled Monument;
- The PAC report failed to provide a list of addresses who were served notice (contrary to Article 2F(2)(c) and Article 2F(1)(a) of the DMPO);



- The PAC may have failed to notify all adjoining owners/occupiers (contrary to Article 2C (1)(a)(ii) of the DMPO) – this can only be confirmed once the above list has been provided; and
- The PAC report fails to provide an explanation of the account taken of each response received (contrary to Article 2F(2)(f) of the DMPO).

To continue to determine the application given the above fundamental procedural deficiencies would result in a challengeable decision. Our client is highly likely to seek Judicial Review in such circumstances.

Habitats Regulations Assessment requirements

Settlement strategy M0303 notes that *"The site is upstream of the Pen Llyn a'r Sarnau SAC which should be protected in accordance with national policies and Policy DM14. In particular development on this site could have an effect through disturbance."* This stems from the "Habitats Regulations Assessment for the Ceredigion LDP, Final Screening Report" (April 2013), which accompanied the preparation of the LDP, and provides an assessment of the LDP to ensure that key international nature conservation sites are safeguarded and that the Plan will not cause adverse effects on their integrity.

The Pen Llŷn a'r Sarnau SAC encompasses areas of sea, coast and estuary that support a wide range of different marine habitats and wildlife, some of which are unique in Wales. For the qualifying habitats, the SAC is considered to be one of the best areas in the UK for:

- Reefs
- Large shallow inlets and bays
- Sandbanks which are slightly covered by seawater all the time
- Estuaries
- Coastal lagoons

and to support a significant presence of:

- Mudflats and sandflats not covered by seawater at low tide
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- Salicornia and other annuals colonising mud and sand
- Submerged or partially submerged sea caves
- Bottlenose dolphin
- Otter
- Grey seal

According to the condition assessment, a large number of these are in 'unfavourable' condition; this document also includes relevant activities that could potentially impact each feature.

8.4.43 of the LDP HRA Final Screening Report notes that *"...mixed use allocations M0303, ... are on the river bank, have ditches/streams running through or are adjacent to ditches/streams that run into some of the International Sites. Therefore they could have a significant negative affect from suspended sediment entering the water courses from the construction process and run-off."* Paragraph 8.5.23 notes that *"...mixed use allocation M0303 ... are directly adjacent to or within 1 field of watercourses that could be used by otters and therefore could potentially have an effect of disturbance from construction or removing lying up areas."* These statements, the findings of the Final Screening Report generally, and the above reference to the SAC in settlement strategy M0303 all make clear that impacts on the Pen Llyn a'r Sarnau SAC are a material consideration for development of the site.

The purpose of a Habitat Regulations Assessment (HRA) is to identify any aspects of the development that would have the potential to cause a likely significant effect on Natura 2000 or European sites (including Special Areas of Conservation (SACs)), (either in isolation or in combination with other plans and projects), and to identify appropriate avoidance and mitigation strategies where such effects were identified.



The Habitats Directive applies the precautionary principle to protected areas. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the site(s) in question.

Nonetheless, the Ecological Appraisal submitted in support of the application contains a single paragraph of broad assertion to address the point (para 4.5): *"There will no direct impacts on habitats or species within any of the Ramsar, SPAs, SACs, LNRs or SINC's discussed in Section 3. The site habitats are not suitable to support the interest features for which the sites are designated. Owing to the scale and nature of the development, impacts that might be associated with potential increased disturbance are not likely. Therefore, no specific mitigation is required."* This is at complete odds with the LDP HRA Final Screening Report which specifically notes the potential for construction impacts and completely at odds with the settlement strategy M0303.

Stating that increased disturbance is "not likely" is insufficient to address the requirements of the Habitats Directive. This is particularly true given the finding of the "People Over Wind" Court of Justice of the European Union ruling, which confirms that mitigation cannot and should not be taken into consideration when screening projects for the requirements of Habitat Regulation Assessment. The conclusion of the ruling is: *"Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects [mitigation] of the plan or project on that site"* (our underlining).

Failure to at least screen the development for likely significant effects via a HRA and, in our opinion (and in the opinion of the author of the LDP HRA Final Screening Report) actually carry out an Appropriate Assessment prior to the determination of the application, and to take the findings into account in the decision making process, would result in an legally unsound decision. Our client is highly likely to seek Judicial Review in the event of a decision being made in the absence of an Appropriate Assessment.

Flood Risk

We have reviewed the NRW consultation response letter dated 29th March 2019. NRW:

- object to the proposal;
- recommend refusal;
- confirm that the FCA does not comply with TAN15;
- confirm that the site may be subject to flooding levels of 840mm in the 1% Annual Probability event;
- confirm there may not be suitable proposals to make this site compliant with Table A1.14 or A1.15 of TAN 15 (something which the submitted FCA accepts); and
- confirm there could be up to 280mm of additional flood depth to multiple third parties, which has not been assessed.

Notwithstanding the strength and severity of this objection, which confirms significant impact to multiple third parties, the matters is addressed in a single sentence: *"...the LPA maintains that, given that the proposed scheme is considered as being a less vulnerable development...and the strategic importance of the site, justifies the development coming forward despite the flood risk."*

We consider that reference to the 'less vulnerable' nature of the development is irrational as the NRW objection is made on the basis of that vulnerability classification. Furthermore, the vulnerability of the development itself is irrelevant in respect of the increased flood risk being imposed on multiple third parties (of up to 280mm). No effort has been made to explore the "strategic importance of the site" or the proposed development. We note that policy M0303 allocates the site for retail, office and community purposes and that the previous approval on the site comprised a mixed use development. The current



proposal comprises a single supermarket, in a town well served by supermarkets. It is irrational, and in our view unreasonable, to attach sufficient strategic importance to this application as to outweigh a significant increase in third party flood risk and the associated, robust NRW objection.

As an aside, we note that the committee report states at the end of the 'flooding and drainage' section that *"Matters regarding the disposal of surface water must be catered for via a sustainable drainage system and it is recommended that details of the arrangements be submitted to and approved by the Local Planning Authority prior to approval should the application be approved."* (underlining added) It is not clear from the report what conditions will be imposed to mandate a sustainable drainage system, however, it should be noted that the submission of the application in November 2018 means that the requirements of the Sustainable Drainage (Approval and Adoption)(Wales) Order 2018 will not apply (see Article 5(1)(b) specifically). Accordingly, for the above statement (and use of the word "must") to be true, stringent conditions would have to be imposed.

The Wellbeing of Future Generations duty

The Wellbeing of Future Generations (Wales) Act 2015 places a legally binding duty on each public body to carry out sustainable development. In the Act "sustainable development" means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals.

The action a public body takes in carrying out sustainable development must include:

- a) setting and publishing objectives ("well-being objectives") that are designed to maximise its contribution to achieving each of the well-being goals, and
- b) taking all reasonable steps (in exercising its functions) to meet those objectives.

Each of the wellbeing goals have equal weight and include:

- A resilient Wales: "A nation which maintains and enhances a biodiverse natural environment with healthy functioning ecosystems that support social, economic and ecological resilience and the capacity to adapt to change (for example climate change)".
- A globally responsible Wales: "A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being".

These goals in particular have clear implications in respect of the potential (and currently un-assessed) impact on the Pen Llŷn a'r Sarnau SAC and the actual (accepted) flood impact on multiple third parties.

We note that no reference to the legal duty imposed by the Wellbeing Act is made within the committee report which, particularly given the flood and SAC issued referred to, we consider to be an irrational and challengeable omission.

Conclusion

In conclusion:

1. The application is invalid due to a significantly deficient DAS;
2. The application is also invalid due to the PAC process not having been carried out in accordance with the legislation and associated regulations;
3. The above points can only be remedied by withdrawal of the application and recommencement of the PAC consultation process;
4. Notwithstanding the above, the application cannot lawfully be determined without the Habitats Directive being complied with, something which has not been addressed at all by the applicant or the Council as Appropriate Authority;



5. Even if the application were valid and the likely significant effects of the development on the Pen Llŷn a'r Sarnau SAC assessed, the application should be refused on the basis of an unacceptable impact on flood risk to third parties;
6. In recommending approval for the development, the LPA, as a public body, has failed to comply with the Wellbeing of Future Generations Act and has failed to demonstrate any consideration of the Act whatsoever in the committee report.

We consider that the application and its consideration are deficient and determination, particularly on the basis of the published committee report would be irrational and unreasonable. Accordingly, our client is highly likely to seek Judicial Review in the event of a decision being made on the current basis and we strongly urge that the application be pulled from the 13th June committee and the application be made to withdraw the proposal.

The above objections must be taken into account in the determination of this application. Should you wish to discuss further please do not hesitate to contact us.

Yours sincerely

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A smaller black rectangular redaction box covering the name of the Director.

Director

For and on behalf of WYG

cc Lidl Great Britain Limited



Our Ref: X001/RB/PW
Date: 13 June 2019

The Welsh Ministers

Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CARDIFF
CF99 1NA

By post and email:



Dear Ministers

**REQUEST FOR 'CALL IN' BY WELSH MINISTERS
TOWN AND COUNTRY PLANNING ACT 1990, SECTION 77
PLANNING APPLICATION REF: A181062 - ALDI, PARK AVENUE, ABERYSTWYTH, CEREDIGION**

WYG write on behalf of Lidl Great Britain Ltd in respect of the planning application referenced above.

The application was reported to Ceredigion County Council's Planning Committee on 12th June 2019. The Committee resolved to delegate authority to officers to grant permission subject to them reaching a conclusion that the application is legally sound, following their consideration of the matters raised in the WYG letter of objection dated 10 June (a copy of which is enclosed). The application therefore presently remains undetermined.

In addition to the WYG letter, we also enclose the following relevant documents:

- Ceredigion County Council Planning Committee Report (12th June)
- Natural Resources Wales (NRW) letter to LPA (29th March)

The WYG letter raises a number of procedural issues which we believe renders the application invalid. These are fully detailed in the letter, and in the interests of brevity are not repeated here, save for fact that they relate to matters including:

- The Development Management Procedure (Wales) Order 2012 and
 - i) 'Design and Access Statements'; and
 - ii) Statutory Pre-Application Consultation;
- Habitats Regulations Assessment compliance;
- Flood Risk and specifically compliance with TAN15; and
- The Wellbeing of Future Generations (Wales) Act 2015 public body duty.

The application raises several material factors which are considered to sufficient to merit the application being 'called in' for determination by the Welsh Ministers under Section 77 of the Town and Country Planning Act 1990.



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Planning Policy Wales Edition 10 (para. 1.35) lists examples of instances where the Welsh Ministers may 'call in' applications for their own determination. These include proposals that:

- *are in conflict with national planning policies;*
- *could have wide effects beyond their immediate locality;*
- *may give rise to substantial controversy beyond the immediate locality;*
- *are likely significantly to affect sites of scientific, nature conservation or historic interest or areas of landscape importance;*
- *raise issues of national security; or*
- *raise novel planning issues.*

The application is considered to meet the requirements of the first four the above. Specifically:

1. Conflict with National Planning Policies

NRW object to the application on the basis that the submitted Flood Consequences Assessment does not comply with the requirements of TAN15, and in accordance with guidance they state that **"the application must be refused"**. The failure of the Welsh Government to intervene in a circumstance of such clear non-compliance with TAN15 and such a strong objection from NRW would present a dangerous precedent to the status of TAN15, and compromise the ability of Local Planning Authorities to resist non-compliant proposals elsewhere.

2. Effects beyond immediate locality

As detailed in the Committee Report and the NRW letter, it is admitted that the proposal could **lead to increase flooding elsewhere**. No hydraulic modelling of the flood risk elsewhere to multiple third parties (of up to 280mm) has been undertaken.

3. May gave rise to substantial controversy beyond the immediate locality

As detailed above, the proposal fails to adequately assess off-site flooding and puts multiple third parties at flood risk. The Local Planning Authority proposes to disregard the unassessed implications of this risk, on the basis that the site is of 'strategic importance', yet this importance is not explored or explained in the Committee Report. Furthermore, it is not explained why the development of a single supermarket, in a town well-served by supermarkets is afforded such weight to overcome the acknowledged unassessed off-site flood risk. Such a matter has clear potential to be a source of substantial controversy in Aberystwyth and merits scrutiny by the Welsh Ministers.

4. Likely to significantly affect sites of scientific or nature conservation importance

The submitted Ecological Appraisal concludes that there will be no direct impact on designated habitats or protected species and impacts associated with increased disturbance are 'not likely'. This is at odds with the LDP Habitats Regulations Assessment Final Screening Report which specifically notes the potential for construction impacts and at odds with the LDP settlement strategy M0303.

The proposal has not been screened for likely effects on the Pen Llŷn a'r Sarnau SAC via a Habitats Regulations Assessment (HRA) and has not been subject of an Appropriate Assessment. Without doing so, the decision maker is not in a position to conclude that the proposal will not significantly affect sites of scientific or nature conservation importance.



We trust that the above information and enclosed documents will be duly considered by the Welsh Ministers, and we would urge that the application be 'called in' to ensure appropriate scrutiny by the Welsh Government on matters of fundamental importance.

We look forward to receiving an acknowledgement of receipt and outcome of this request in due course.

Yours sincerely

[Redacted signature]

[Redacted name]

Director

For and on behalf of WYG

[Redacted contact information]

cc [Redacted] Lidl Great Britain Limited

Welsh Government Planning Directorate [Redacted]

[Redacted] Ceredigion County Council [Redacted]