



Appeal Decision

Inquiry Held on 2 December 2020

Site visits made on 17 November and 4 December 2020

by **S R G Baird BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th December 2020

Appeal Ref: APP/N1025/W/20/3251415

Former Stadium Industrial Park, Nottingham Road, Long Eaton, NG10 2AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lidl UK GMBH and Clowes Developments against the decision of Erewash Borough Council.
- The application Ref ERE/1018/0038, dated 5 October 2018, was refused by notice dated 24 October 2019.
- The development proposed is the erection of a Lidl food store (1,925 sq. m gross) (Use Class A1) and 2 retail units (Use Class A1) (1,394sqm gross) and associated car parking servicing, infrastructure works and landscaping arrangements with access from Nottingham Road.

Preliminary Matters

1. Prior to being determined, the description of the proposal was amended. I shall deal with the appeal based on, the refusal of planning permission for the erection of a Lidl food store (1,944 sq. m gross) (Use Class A1) and one DIY retail unit (Use Class A1) (1,394 sq. m) with associated car parking, servicing, infrastructure works and landscaping with customer access from Nottingham Road and servicing from Springfield Avenue.
2. The application was refused for 3 reasons, (1). a failure to consider sequentially preferable sites, (2). an adverse impact on the vitality and viability of Long Eaton Town Centre and (3). an adverse impact on the street scene. The Statement of Common Ground (SoCG) confirms that the local planning authority (lpa) would not pursue the first reason for refusal (RfR) and in relation to RfR 2, the sole concern relates to the impact of convenience goods trade diversion¹.
3. Notwithstanding the comments and conclusions contained at paragraphs 5.4 and 5.7 of the proof-of-evidence on retail impact², the lpa confirmed that it did not intend to pursue the suggestion that the development would have an adverse impact on existing, committed and planned public and private investment in the town centre³.

Decision

4. The appeal is allowed and planning permission is granted for the erection of a Lidl food store (1,944 sq. m gross) (Use Class A1) and one DIY retail unit (Use Class A1) (1,394 sq. m) with associated car parking, servicing,

¹ Statement of Common Ground paragraphs 7.2 and 7.14.

² Proof of Evidence of Mr Birkinshaw.

³ National Planning Policy Framework paragraph 89 (a).

infrastructure works and landscaping with customer access from Nottingham Road and servicing from Springfield Avenue at the former Stadium Industrial Park, Nottingham Road, Long Eaton, NG10 2AU in accordance with the terms of the application, Ref ERE/1018/0038, dated 5 October 2018, and the plans submitted with it, subject to the conditions contained in the attached Schedule of Conditions.

Main Issues

5. These are: the impact on the vitality and viability of Long Eaton Town Centre with reference to convenience goods trade diversion, and the effect on the street scene.

Reasons

6. The development plan includes the Erewash Core Strategy adopted March 2014 (CS). Relevant policies are, Policy 6: The Role of Town and Local Centres and Policy 10 Design and Enhancing Local Identity.

Vitality & Viability

Quantitative Assessment

7. Consistent with the objectives of the National Planning Policy Framework (Framework), CS Policy 6 indicates that applications for retail uses over 2,500 sq. m will be refused if the impact on a town centre is significantly adverse. Planning Practice Guidance (PPG) indicates that impact assessments should be done in a proportionate and locally appropriate way, drawing on existing information where possible.
8. The lpa acknowledges that the appellants have undertaken an impact assessment using a standard methodology and an evidence base that is appropriate for a quantitative retail impact assessment⁴. The assessment concludes that the proposed food store would have a solus convenience goods impact of some 9.5% and an overall trade diversion of some 2.1% on the town centre. The assessment uses as a base, a Retail Needs Study commissioned by the lpa and published in 2007 and updated in 2010 to which the appellants' have applied professional judgement and company published information to provide an up-to-date base.
9. The lpa does not produce a quantitative assessment of its own. Rather it asserts that the appellants' quantitative assessment, "...appears to be an underestimate..." with the answer falling within, "...the range of 10-20%...". The lpa's conclusion is underpinned by criticism of the appellants' approach to store turnovers, which it suggests over-estimates the turnovers of non-town centre stores and underestimates the relative importance of the town centre and the level of trade diversion.
10. The key example the lpa uses to support its approach is the appellants' adjustment of the turnover of the edge-of-centre Tesco Extra. Here, the appellants' use a turnover assumed to be the mid-point between the turnover shown in the 2010 update of the 2007 Retail Needs Study and a comparator store. Based on data collected in 2006, the 2007 Study concluded that the Tesco store was under-trading; a not unreasonable conclusion given that the

⁴ Statement of Common Ground paragraphs 7.3 and 7.6.

store had only been open for 2 years. The 2010 update repeated this conclusion albeit with a qualification. However, this data is at least 10 years old and the likely level of current turnover needs to reflect informed observation: a process the appellants undertook. Moreover, I am wary of placing significant reliance on 10-year old trading positions when patterns of customer behaviour have changed dramatically in that time.

11. I observed the store operating during my pre and post-inquiry visits. The post-inquiry visit was undertaken on a Friday mid-morning, when weather conditions were foul, and Erewash was part of Tier 3 restricted area. Both conditions were, in my view, significant disincentives for shoppers to venture out. Whilst my observations are qualitative snapshots of likely performance, I was able to confirm that, even in these challenging circumstances, the appellants' conclusion that the Tesco store did not exhibit any of the classic indicators of under-trading was correct. The car park was well used, numbers entering and using the store were noticeably high, most of the tills were open and there appeared to be no shortage of staff. Similar observations, albeit at lower levels of activity, were made at the Aldi, Iceland and Farmfoods store.
12. A second point made by the lpa was the difference in the respective turnovers of the similarly sized edge-of-centre Tesco Extra and the out-of-centre Tesco Extra at Toton. Respectively the 2021 turnovers are estimated at some £37.5m and £25.5m. Apart from the obvious locational differences and the impact this might have on turnover, the turnover of the store at Toton was reduced to reflect the impact of the M&S food store at Chilwell. Given my observations of the level of activity at that store, I can fully understand the appellant's adjustment.
13. Drawing all the above together, the appellants' adjustments appear to me to be reasonable. As such and given the methodology is accepted, the appellants' quantitative assessment of convenience goods trade diversion from the town centre to the proposed food store at some 9.5% and an overall trade diversion of some 2.1% appears reasonable.

Qualitative Assessment

14. PPG⁵ identifies several indicators that may be relevant in assessing the health of a town centre. These include accessibility; diversity of uses; vacancy levels; pedestrian flows and environmental quality. My assessment of qualitative impact is, amongst other things, guided by an October 2020 report produced by the Head of Planning and Regeneration to the Town Deal Board and Health Checks published by the Council in 2006, 2018 and 2019.
15. The October 2020 report's context for assessing the health of the town centre, was that, of a national decline in small-town retailing, the 2008 financial crisis and the rise in on-line retailing. Following the relocation of Asda to and the opening of Tesco on edge-of-centre sites and Aldi opening within the town centre, the report notes that the town centre had "evolved" with space vacated by chain stores being taken on by independent retail services and that over 200 businesses occupied premises in the town centre. It was noted that service uses collectively build on the appeal of the town centre.

⁵ Town Centres & Retail Paragraph: 006 Reference ID: 2b-006-20190722.

16. The October 2020 report notes, that Long Eaton is accessible, being within easy walking distance of most of its population and benefits from several high-frequency bus routes and ample public parking. Health Checks, published in 2006, 2018 and 2019, show that the number of convenience goods units in the convenience category remained stable at 20 and that units in the retail services category rose from 31 in 2006 to 36 in 2018 and 38 in 2019. Overall, the number of Leisure, Financial/Business and other Commercial Services within the town centre has remained generally stable. On balance these proportions suggest a diverse town centre.
17. The 2019 Health Check identified a vacancy rate at some 10% when the national rate was some 11.66%. Whilst a 10% rate would seem high, a level of vacancies is required to allow existing businesses to relocate to larger or better located premises and to provide space for new businesses to open. Moreover, the vacant units are spread throughout the town centre with the majority located outside the primary shopping area. During my visits, it was apparent that there was no noticeable concentration of vacancies or that the overall level of vacancies, suggested a failing or fragile town centre.
18. As to pedestrian flows, details of monthly visitor figures and daily averages for the period April 2019 to April 2020 were provided. As one would expect, the April 2020 count, taken during the first national lockdown, fell dramatically. However, for the remainder of the time, monthly and average daily flows appear consistent. Again, recognising it was a snapshot, on my post-inquiry visit, I was surprised to see material levels of pedestrian flows, particularly in the primary shopping area.
19. Allied to pedestrian flows are linked trips and the lpa's concern that trade diversion to Lidl would reduce the potential for linked trips and as such the attractiveness of the town centre. Whilst I observed people walking from the car park at Tesco/Aldi, there is no objective evidence whether these pedestrians were making a linked trip or were just taking advantage of the free car parking to make a trip to the town centre service uses. In any event, as the October 2020 report notes, service uses are difficult to replicate online and are part of the appeal of the town centre. Indeed, despite on-line banking being available for several years, the town centre has a good representation of banks and building societies. This suggests they are continuing to service significant walk-in demand. In this context, it cannot be assumed that convenience goods shoppers using the out-of-centre Lidl would abandon the town centre. Moreover, given the acknowledged accessibility of the town centre, what is most likely to happen is that visits would be made separately rather than as linked trips.
20. The town centre has seen several environmental improvements in recent years, the most significant being the pedestrianisation of High Street from its junction with Market Place both of which form part of the primary shopping area creating an attractive environment. Overall, within the town centre the quality of buildings and the shopping environment is generally good.
21. No information on commercial rents/yields were produced. Instead, the lpa refer to static business rates and falling market incomes as indicators of the failing health of the town centre. Whilst PPG does not list these as factors that may be relevant when assessing the health of the town centre, I recognise that the list is not exclusive. The rateable value of a business

represents the Valuation Offices assessment as to the likely rental value of a property at the time of the valuation. The evidence produced by the lpa has been selective and should be treated with caution. The appellants have provided information on all the shops in the High Street and Market Place. This fuller picture throw-up several anomalies where apparently similar properties have materially different rateable values. In this context, using rateable values is not, in my view, a reliable proxy for commercial rents/yields.

22. Market income has fallen since 2006. However, other than suggesting that this is an indicator of fragile health, there is no attempt by the lpa to identify why this is happening and whether it is truly an indicator of a centre's health. Indeed, if the authors of the PPG thought that the presence of a market and its health was a significant factor in assessing the health of a town centre, I am in no doubt it would have appeared in the list of potentially relevant factors. Whilst the lpa assert that a Lidl has the potential to undermine the market, which it acknowledges has been in decline for the last 14 years there is no objective or subjective attempt to suggest why. Moreover, having viewed the nature of the current offer of the market, which is almost all non-food, and comparing this to the range offered in the Lidl middle isle there, is, in my view, no comparison or indeed scope for competition.
23. The lpa submit 2 other factors for consideration. These are the effect of HS2 running along the eastern edge of the town centre and the impact of Covid 19. The lpa indicate that construction of HS2 will form a physical and physiological barrier to east-west movement for up to a decade and the severance could significantly affect the town centre. Whilst the works will be substantial, there is no indication that the east-west link formed by Nottingham Road, one of the main routes into the town from the east, would be physically severed for all or even some of that time. Moreover, if as the lpa suggest that some 15% of the catchment area and 30% of the walking and cycling catchment area in the east would be cut off from the town centre, the corollary must be true in that a substantial part of the total catchment area to the west would be cut off from the Lidl store. On this basis, the assertions that the town centre would be significantly weakened has no evidential basis.
24. What the ultimate effect of the Covid 19 pandemic will be on retailing in general and this town centre is unknown. Whilst it may prove the final straw for some commercial activities that were already struggling before March 2020 it may also, once life without restrictions returns, provide opportunity for others to emerge. In this context, to weigh such a significant unknown and hopefully short-term factor in the balance when assessing economic investment of the scale and nature proposed by the appellants is, in my view, either impossible or short sighted.

Conclusion on Vitality and Viability

25. Drawing all the above together, the potential impact of this proposal on convenience goods retailing and town centre trade would not be significantly adverse and would not conflict with the objectives of CS Policy 6.

Street Scene

26. The Framework, the National Design Guide and CS Policy 10 seek to ensure that, having regard to context, new development is designed and laid out to create high quality buildings and places.
27. Nottingham Road is one of the main roads into Long Eaton. To the east, the road is wide and for the most part contains mature dwellings of varying ages styles and types. Whilst most of the dwellings are set close to the road on a consistent building line, the straightness and width of the road creates a strong sense of spaciousness. That said, there is nothing in the nature of the road or the style and position of the buildings that elevates this part of Nottingham Road above anything other than an ordinary and unassuming main route into a town centre.
28. The proposed layout has the retail units set to the rear of the site with the Nottingham Road Frontage occupied by the access, customer car parking and landscaping. The SoCG confirms that, *"...the scale, bulk, massing, visual appearance and design of the proposed buildings and proposed boundary treatment are acceptable."* Thus, the issue is narrowly confined to whether the open frontage would harm the character of the street scene.
29. Change in the street scene happens over time and this stretch of Nottingham Road is no different. A substantial commercial building has been demolished creating an open frontage and the open gap formed by the frontage of the former race car circuit and access to the Half Moon Public House has been replaced with houses fronting the street and a road serving an estate behind. However, these changes, the creation of one gap and the loss of another have not materially altered the overarching character of Nottingham Road. Thus, given the acknowledgement that the design and appearance of the proposed buildings is acceptable, the creation of a landscaped open frontage to Nottingham Road would not materially alter or harm the overriding character and appearance of this stretch of Nottingham Road. Whilst the SoCG indicates that the landscaping of the site boundaries shown on the submitted plans is acceptable, the appellant has provided details of how this could be enhanced. Therefore, on this issue, I conclude that the proposed development would not conflict with the objectives of CS Policy 10, the Framework or the National Design Guide.

Other Matters

30. Vehicular access for customers would be from Nottingham Road with service vehicles using Station Road and Springfield Avenue. The highway authority has no objection to these arrangements, and I have no reason to disagree with those conclusions. Station Road and Springfield Avenue provided access to the former Stadium Industrial Park. Reflecting its previous function, Springfield Avenue is wide and could accommodate the relatively low level of service traffic that would be generated by these stores. In terms of noise, the existing environment of Springfield Avenue is affected by trains using the elevated line on the western side. A 6-day survey at the end of September beginning of October indicates that between 0700 and 2300 hours there were an average of 9 trains per day and between 2300 and 0700 hours there were an average of 4 trains. In this context, the additional service traffic generated by the store would not materially add to the noise environment. Potential

noise from manoeuvring in the service yard could be acceptably mitigated through appropriate screening of the areas.

CONCLUSIONS

31. For the above reasons and having taken all other matters into consideration, I conclude that the proposal would not materially affect the vitality and viability of Long Eaton Town Centre or have an unacceptable effect on the character or appearance of the street scene. As such the proposal would not conflict with the Erewash Core Strategy and the Framework when read as a whole. Accordingly, this appeal is allowed.

Conditions

32. A list of suggested conditions, including pre-commencement conditions were discussed and agreed during the inquiry. For the avoidance of doubt and in the interests of proper planning, conditions specifying the approved plans (2); the scale of the units and the nature of the goods to be sold (18, 19 & 20) are reasonable and necessary. Conditions relating to the submission of details and the implementation of approved schemes for: construction management (3 & 4); surface water drainage (5); ground remediation (6 & 7); the treatment of groundwater abstraction boreholes (8 & 9); finishing materials (10); hard and soft landscaping (12 & 13); vehicular access (11); noise mitigation (15); hours of operation (16); delivery times (17); and travel planning (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, and the protection of neighbours' living conditions. In the interests of precision and enforceability several of the suggested conditions have been reworded.

George Baird

Inspector

APPEARANCES

FOR THE APPELLANTS

Christopher Lockhart-Mummery QC, instructed by Vicky Fowler, Partner, Gowling WLG (UK) LLP.

He called:

Sean McGrath, BA (Hons), MSc and MRTPI.
Director, WSP.

Conditions Round Table Discussion

Julie White.
WSP.

FOR THE LOCAL PLANNING AUTHORITY

Scott Stemp of Counsel, instructed by Brendan Morris, Head of Law and Corporate Governance, Erewash Borough Council.

He called:

Steve Birkinshaw, BSc, MSc, MRTPI.
Head of Planning & Regeneration, Erewash Borough Council.

Richard Snow, BA (Hons), Dip TP, MRTPI.
Development Manager, Erewash Borough Council.

DOCUMENTS SUBMITTED DURING THE INQUIRY

Doc 1 - Email dated 3 December 2020 confirming appellants' acceptance of pre-commencement conditions.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
Proposed Site Plan A-PL-003-E;
Proposed Store Plan A-PL-004-C;
Proposed Retail Unit Elevations A-PL-009-B;
Proposed Surface Treatment Plan A-PL-013-E;
Proposed Boundary Treatment Plan A-PL-014-E;
Proposed Retail Units Building Plan A-PL-005-B;
Proposed Store Roof Plan A-PL-006-C;
Proposed Retail Roof Plan A-PL-007-B;
Proposed Site / Building Sections A-PL-010-B;
Proposed Drainage Strategy 000950-JPL-ZZ-XX-DR-D- 4101 Rev PO4);
Landscape masterplan 801-LEN-01-C;
External Works Sheet 1 PL-0011 Rev B;
External Works Sheet 1 PL-0012 Rev A;
Site Access Nottingham Road VN81037-SK-001;
Swept Path Analysis SK-001-TRK;
Proposed Store Elevations A-PL-008-Rev B; and
Proposed Lighting Layout DWG01.
- 3) The development hereby permitted shall not commence until a Construction Management Plan (CMP) has been submitted to and, and approved in writing by, the local planning authority. The CMP shall include details of the following;
 - plant and materials storage within the site curtilage;
 - loading and unloading of materials within the site curtilage;
 - management of surface water run-off from the site during the construction phase; and
 - measures to minimise dust and noise nuisance during construction activities.
- 4) Construction works and deliveries to the site shall not take place outside of the following hours: 0730 and 1800 Monday to Friday; 0800 and 1300 Saturday; and no work on Sundays, Bank and Public Holidays.
- 5) No development shall commence until, a detailed design and associated management and maintenance plan of the surface water drainage for the site, has be submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the principles outlined within:
 - a. Proposed Drainage Strategy, March 2019, Referenced JPL-ZZ-XXDR-D-41017- Rev P04 by Jackson Purdue Lever, "including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team":
 - b. Drainage Strategy Additional Technical Note, 13th August 2019, Referenced CWC00950: and

- c. DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015).

The approved drainage system shall be implemented in accordance with the approved detailed design, prior to the use of the buildings commencing.

- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.
- 7) If, during development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
- 8) No development shall commence until a scheme to manage the risks associated with any former groundwater abstraction boreholes/water wells on site has been submitted to, and approved in writing by, the local planning authority. The scheme shall:
 - a. locate, and ascertain the condition of, any such structure(s) on site;
 - b. propose mitigation measures to ensure that any such structure(s) shall not provide a residual pathway for fluid contamination to migrate down into the ground;
 - c. propose mitigation measures to ensure that geological gasses and artesian discharge of water will be prevented from migrating up through the structure(s) into development above; particularly in any location(s) where new development is proposed immediately overhead a former borehole/well.
- 9) No development shall commence until the work required by the approved scheme relating to groundwater abstraction boreholes/water wells, has been implemented and a borehole decommissioning report to be provided by an independent third party documenting the works, actions taken and providing photographic evidence, has been submitted to and approved in writing by the local planning authority.
- 10) Notwithstanding the details shown on the plans hereby approved, no development above slab level shall take place until details (and samples in the case of masonry and render) of the materials, colour, and finish to be used in the construction of the external surfaces of the building hereby

permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 11) Notwithstanding the details shown on drawing VN81037-SK-001, no development above slab level shall take place until details of the proposed access onto Nottingham Road, Long Eaton have been submitted to and approved in writing by the local planning authority. The details shall include 2.4m by 37m visibility splays in either direction, with 6 metre kerbed radii on either side. The approved details shall be implemented prior to the first occupation of any part of the development and the area in advance of the sightlines maintained throughout the life of the development clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 12) Notwithstanding the submitted landscape masterplan (drawing ref: 801-LEN-01-C), the development shall not be brought into use until an enhanced scheme of hard and soft landscaping and works has been submitted to and approved in writing by the local planning authority.
- 13) The approved scheme of hard and soft landscaping shall be carried out no later than the first planting season following the occupation of the building or the completion of the development whichever is the sooner. All planted materials shall be maintained for 5 years and any trees or plants removed, dying, being damaged or becoming diseased within that period shall be replaced in the next planting season with others of similar size and species to those originally required to be planted unless the local planning authority gives written consent to any variation.
- 14) Prior to the occupation of each unit, a Travel Plan comprising immediate, continuing and long-term measures to promote and encourage alternatives to single-occupancy car by staff of the development hereby approved shall be submitted to and approved in writing by the local planning authority. The approved Travel Plans shall then be implemented, monitored and reviewed in accordance with the agreed Travel Plan targets.
- 15) Prior to the occupation of the food store and in accordance with the findings of the Miller Goodall noise assessment (Ref 101867-2, April 2019), a 3m high barrier shall be erected around the external plant yard and alongside the loading bay ramp. A 2.5m high solid gate shall be erected at the access to the service yard, which shall be kept closed except for access to the service yard.
- 16) The development hereby permitted shall only open for use by customers between 0700 and 2300-hours Monday to Saturday and 0900 and 1800 hours on Sunday.
- 17) Deliveries to the retail units hereby approved shall only take place between 0700 and 2300-hours Monday to Saturday and 0900 and 1800 hours on Sunday.
- 18) The total Class A1 (retail) floorspace in the food store hereby permitted shall not exceed 1,944 sq. m (GIA) and the net sales area (defined as all areas to which customers have access, including checkouts and lobbies) shall not exceed 1,265 sq. m.

- 19) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any Order revoking or re-enacting that Order, the Class A1 (retail) floorspace of the food store hereby approved shall be used primarily for the sale of convenience goods, with a maximum 253 sq. m for the sale of comparison goods.
- 20) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any Order revoking or re-enacting that Order, the Class A1 (retail) floorspace of the DIY retail unit hereby approved shall be used for the sale of DIY and bulky goods only.