
Appeal Decision

Inquiry Held on 29/30 November and 1 December 2022

Site visits made on 28 November and 1 December 2022

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 1st February 2023

Appeal Ref: APP/H1515/W/22/3301674

Land at Wates Way, Ongar Road, Brentwood, Essex

- 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 Great Britain Ltd against the decision of Brentwood Borough Council.
 - The application Ref 20/01221/FUL, dated 14 August 2020, was refused by notice dated 23 December 2021.
 - The development proposed is the demolition of all buildings and structures and the construction of a Class A1 foodstore and Class C3 dwellinghouses, together with access/egress from Ongar Road and Burland Road, car parking, landscaping, replacement substation, and associated engineering works.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of all buildings and structures and the construction of a Class A1 foodstore and Class C3 dwellinghouses, together with access/egress from Ongar Road and Burland Road, car parking, landscaping, replacement substation, and associated engineering works at land at Wates Way, Ongar Road, Brentwood, Essex in accordance with the terms of the application, Ref 20/01221/FUL, dated 14 August 2020, subject to the conditions contained in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Lidl Great Britain Ltd against Brentwood Borough Council. This application is the subject of a separate Decision.

Preliminary matters

3. Ongar Road, the A128, lies in a direction of NNW to SSE, but for the ease of denotation in this decision I will refer to it as North to South. The knock on effect of this is that the minor arms off of the proposed signalised junction will be seen in this decision as west and east.
4. I made an unaccompanied visit to the environs of the site on the late afternoon of 28 November 2022 and a second site visit, accompanied by representatives of the main parties during the late morning of 1 December 2022.
5. I allowed the parties time following the closing of the Inquiry to submit a Planning Obligation (PO) under Section 106 of the Town and Country Planning

Act. I subsequently received a PO signed and dated the 5 January 2023. This will be discussed later in this decision.

Main Issues

6. The main issues are:

- a) The effect of the proposed development on highway efficiency, highway safety and air quality, and
- b) Whether or not, given the location of utility services, the proposed access is viable.

Reasons

7. The appeal site lies to the east of Ongar Road (A128), and is a short distance from Brentwood Town centre to the south. At the time of my visit the site contained five industrial style units, arranged in three blocks, all of which would be demolished to make way for the proposed development, which would comprise a Lidle Store and 46 flats.
8. Access to the site is currently provided by a priority controlled junction about 50m north of a mini-roundabout that connects North Road (to the west) to Ongar Road. The proposed development would result in the closure of the existing access to the site and the replacement of the mini-roundabout with a signal controlled four arm junction giving access to the site. It is the proposed presence of this junction that gives rise to the reasons for refusal that translate into the main issues identified above.
9. Before moving on to deal with the main issues though, I will deal with the matter of design standards which is a bone of contention between the parties.

Design standards

10. One of the overarching concerns of the Council is that the proposed junction has not been designed to DRMB¹ standards. Paragraph 1.2.1 of the introduction to DMRB informs that its requirements may be applied to other roads with the approval of the specific highway authority or local authority acting as the Overseeing Organisation.
11. However, the introduction to the document makes clear that it is *a suite of documents containing requirements and advice relating to works on motorway and all-purpose trunk roads*. In section 2 the DMRB further informs that *where the works are to be carried out on roads that are not part of the trunk road network and the use of the DMRB could result in significant over-specification, alternative documents such as Manual for Streets (MfS) may be used with the approval of the Overseeing Organisation*.
12. I also note that Manual for Streets 2 (MfS2) states that *the strict application of DMRB is rarely appropriate for highway design in built up areas, regardless of traffic volume*.

¹ Design Manual for Roads and Bridges

13. It follows that whilst the highway authority in this case prefer the use of the standards set out in DRMB, using it is not mandatory in such circumstances and could lead to over-specification. However, to my mind, the fundamental issue is not which set of standards is used but whether or not the resulting design is safe and fit for purpose. To this end I will therefore move on to deal with the main issues.
14. The first main issue has several limbs and I will deal with each in turn, starting with the matter of safety, which itself impacts upon the other issues.

Highway safety – off-side collisions

15. There were several safety issues identified by the Council and I will start with the fact that the signals as proposed would have three phases, the first being north-south flows, the second east-west flows, and third pedestrian only. The east-west arms of the junction (that is North Road and the site access), would be slightly offset, and the Council consider that this would result in unacceptable conflict in the form of off-side collisions; they consider this conflict to be so potentially dangerous that the east-west movements should be the subject of different phases, resulting in four overall, which would in turn have a knock-on effect for the effectiveness of the junction.
16. This potential problem was initially identified in a combined stage one and two Road Safety Audit (RSA) carried out by Taylor Bowie Ltd (TB) in July 2020, which concluded that *running the signal phases for these two side arms together may increase the potential for conflicts within the junction*. The RSA specifically mentioned the lack of guidance (lining) for vehicles exiting the two minor arms, although I note that no mention was made of the offset nature of the junction. However, a further stage 2 RSA was undertaken by TB in May 2022 and this did not identify any potential safety issues with the proposed junction. I also note that a RSA carried out by ECC in early 2020 did not identify the potential problem of off-side collisions.
17. The proposed junction has been assessed using LinSig software which is the standard for signalised junctions. The wider network including the junction with William Hunter Way and Wilson's corner, both to the south, have also been modelled using a Vissim model of the study area. Table 7 of appendix 8 to the submitted Traffic Assessment shows the flows that would emanate from the various arms of the proposed junction and also the William Hunter Way junction.
18. The flows are for 2024 and the modelling includes not only the predicted flows from the proposed development but also future local growth and other development traffic. They show that the maximum likely right turners in any one period would be during the AM peak, with 26 vehicles leaving the proposed store and turning right and 98 vehicles leaving North Road and turning right.
19. Whilst at first sight this seems to be a considerable number of vehicles it translates to only about 2 per minute overall. I also note that drawing SCP/18254/ATRSK800-06 shows swept paths that demonstrate that there would be enough room within the junction for cars from the two arms to turn right without impacting one another and that traffic speeds from both North

Road and the Lidl access would be low. Given these factors I consider that the potential for collisions would be very low and therefore the risk would not be unacceptable.

Highway safety – New North House

20. Secondly there is a potential problem with vehicles exiting the parking area of New North House on the north-west side of the junction. However, parking in this area is limited, the occurrence of vehicles exiting would be very small, and any drivers who did reverse out onto North Road would be able to see the signal head on the opposite side of the junction. This cannot, to my mind, be seen as a 'showstopper' as described by the Council.

Highway safety – 76 Ongar Road

21. Thirdly, there is already parking occurring on the footway outside 76 Ongar Road to the south-west of the junction. However, this parking is illegal as double yellow lines are in place and I cannot accept that this should be seen as a reason for preventing the proposed junction. Furthermore, the proposed development will result in a considerable amount of parking being available only a short distance away.

Highway safety – overrunning of kerbs

22. The appellant is of the opinion that the design of the junction would allow for a stacking capacity of three cars turning right into the proposed development, and that that, given the predicted flows, would be sufficient. The Council contest this and are concerned that vehicles backing up to turn right will be tempted to overrun the kerb, thereby posing a threat to pedestrian safety.
23. It seems to me though that such a manoeuvre could easily be prevented by either the positioning of the signal poles, guard rails or bollards. Furthermore, I note that on drawing SCP/18254/ATRSK800-05 the swept path for articulated lorries shows a space to the left that would allow for a certain level of manoeuvring.

Highway safety – HGVs entering and exiting the site

24. Concern was also expressed by the Council that articulated lorries turning into and out of the proposed development would collide with stationary vehicles waiting to turn right. However, the statement of common ground makes clear that lorries delivering to the site will not be routed to the site from the north. Also, the number of delivery vehicles would be only two per day and not in the peak periods. With a right turn filter in operation when approaching the store from the south, the vehicles waiting to turn right into the store would have been released from the waiting right turn lane. If for any reason vehicles were still in the right turn lane they would be clearly visible to waiting HGV drivers.

Highway safety – collisions with stationary buses

25. The potential for an HGV to collide with a bus parked in the bus stop to the north-west of the site is a possibility that already exists. However, I have not

been made aware that this has occurred and note that the proposed design of the junction would result in a widening of the carriageway at this point.

Highway safety – pedestrian safety

26. Concern was expressed by the Council that there are some inconsistencies in the submitted drawings with a signal pole shown within tactile paving and the presence of tactile paving on pedestrian refuges. To my mind however, such inconsistencies can be designed out at a later stage and should not be deemed a problem so significant as to render the proposal un-allowable.

Conclusion on highway safety

27. The National Planning Policy Framework (the Framework) makes clear in paragraph 111 that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. Policy BE12 of the Brentwood Local Plan 2016-2033 (LP) is similar in requiring that development should not have an unacceptable impact on highway safety. Whilst the Council have brought forward their concerns regarding the safety aspects of the proposed junction, to my mind none of these, either individually or cumulatively, can be described as likely to have an unacceptable impact on highway safety. It follows that no conflict exists with either the Framework or policy BE12 of the LP.

Highway efficiency

28. The Framework at paragraph 111 informs that development should only be prevented if the cumulative impacts on the road network would be severe. The effect on the efficiency of the highway network (i.e. the impacts) can be evaluated by a number of factors including the delays through the modelled network and overall journey times through a particular section of the network.
29. The introduction of traffic signals at the Ongar Road/North Road junction in place of the existing mini-roundabout would inevitably cause longer delays than at present. This in turn would have an impact upon the local network, which in this case includes the junction of Ongar Road with William Hunter Way (a mini roundabout) and the junction at Wilson's corner (a double mini-roundabout).
30. I have already discounted the need for a four stage signal scheme which means that the model to be assessed is a three stage arrangement. To do this it is firstly necessary to determine the trips that would be generated due to the proposed development.
31. There are two basic trip types for a new retail store, these being new and secondary. New trips means vehicles on the local network that would not have been there before the development was in place. Secondary trips can be sub-divided into linked (to other stores) and pass-by.
32. In the various traffic models presented to the Inquiry two different assumptions regarding the types of traffic were represented. One assumption was that 70% of traffic would be new, with 30% secondary and the other assumption was the reverse of this. It seems reasonable to me to assume

that new stores built close to town centres and existing stores are most likely to generate a smaller proportion of new trips and a larger proportion of secondary trips.

33. The proposed new store would be very close to Brentwood Town Centre and also very close to an existing Sainsburys Store. It would also be on a commuter route such that traffic from the north would be passing directly by it. Traffic from the town centre and the existing Sainsburys would have only a short distance to travel. I also note that the proposed store would be classed as a convenience store by virtue of its size and that this in itself would mean that it would be likely to experience higher rates of pass-by traffic.
34. Evidence was presented to the Inquiry regarding research into this matter, with the highest level of secondary trip types being 72% and the lowest 20%, with an average of about 48%. Given the precise details of the proposed store relating to its size and location I consider that an assumption that 70% of the trips to the store would be newly generated to be a gross over-estimate and that 30% would be nearer the mark.
35. In arriving at this conclusion I note that the mediation report produced by David Ubaka Placemakers opines that *given our study of the existing shopping offer in the area, knowledge of the place and its surrounding hinterland – we feel that the more realistic scenario is that a significant proportion of existing network users will add Lidl to their shopping choice and therefore 70% is too high.*
36. I also note that the assumed trips generated by the proposed store in the modelling were based on a slightly larger store (1522 sqm RFA as opposed to the now proposed area of 1413.8 sqm) and 80 flats as opposed to the now proposed 46. This in itself will result in fewer trips being generated than shown in the modelling.
37. Taking a new trip generation of 30% and assuming the three stage scenario at the proposed junction there would be only about a 24 second delay per vehicle over the modelled area compared to the existing scenario with the mini-roundabout in place at the proposed site of the new signalised junction. Furthermore, average speeds would be decreased by less than two miles per hour.
38. Even if the assumption was made that the proposed store generated 70% new traffic then the delay per vehicle would only be between 42 and 54 seconds.
39. In terms of journey times through the modelled area, there would be four movements where drivers would experience an increase of journey time by more than 90 seconds in the first pm peak hour. The worst of these would be drivers exiting High Street onto Ingrave Road, where there would be an increased journey time of 149 seconds. The other three movements (Ongar Road-Ingrave Road, Ongar Road-High Street and High Street-Ongar Road) would encounter delays less than this of around 100 seconds.
40. I have previously mentioned under the highway safety issue that the Council contests the appellant's view that the right turning lane into the proposed store could accommodate three vehicles and that therefore if vehicles were

waiting to turn right then this could cause backing up. However I note that the greatest number of right turners into the proposed store would be during the Saturday peak when 81 vehicles would make the manoeuvre. This number equates to only about 1.3 vehicles per minute. I am not therefore persuaded that backing up, even if the right turn lane could only accommodate 2 vehicles (and I have been supplied with little evidence to show this) would be severe.

Conclusion on highway efficiency

41. I have concluded that assuming a new trip generation for the proposed development of 30% would be reasonable. Taking into account this scenario and assuming a three stage functioning of the proposed traffic signals would result in about a 24 second delay per vehicle over the modelled area, with a maximum increased journey time of about 149 seconds. I acknowledge that the area suffers from congestion with long queues in the peak times, and that the Linsig modelling shows that on a Saturday at midday the junction would be very close to capacity. Nonetheless, I cannot conclude that the values given above constitute a severe impact. It follows that there is no conflict with the Framework or with policy BE12 of the LP.
42. In arriving at this conclusion I am aware that the capacity of the proposed signalised junction could be optimised by being vehicle activated, which has been proposed by the appellant. I am also aware of suggestions by the appellant for the improvement of the Ongar Road/William Hunter Way and that there is a condition agreed by both parties for details of this to be submitted to and approved by the Council. Any approved works would be in place before the appeal scheme is brought into use. Both of these factors would lead to an improvement in the traffic situation.
43. I am also conscious that whilst signalised junctions inevitably cause some delay for vehicles, they considerably improve the safety of pedestrians.
44. I acknowledge that there is disagreement between the parties in relation to the modelling for the junction and the percentage of traffic allocated to Sawyers Hall Lane. I also note the proposal for traffic calming to Sawyers Hall Lane. However, none of these factors are of such magnitude that they lead me to a different conclusion.

Air quality

45. The appeal site is located adjacent to (but not within) Brentwood Air Quality Management Area No 7 (AQMA7), and the Council consider that any increased queuing and congestion would lead to a corresponding increase in emissions on the highway network within the AQMA. However, no detailed evidence has been provided to support this view.
46. Conversely the appellant has provided evidence to show that there has been no exceedance of the relevant standard for Nitrogen Dioxide since 2016 and that since that time the levels have decreased significantly. From the evidence before me therefore I can only conclude that there would be no conflict with policy NE08 of the LP. This seeks to ensure that development proposals do not compromise the achievement of compliance targets within

AQMAs, do not create new exceedance areas or create an unacceptable risk of high levels of exposure to poor quality air.

Viability of delivery

47. The Council's fourth reason for refusal concerned the feasibility of delivering the proposed signalised junction taking into account the congested nature of the site and the presence of underground utilities. The Council were concerned that should the proposed signalised junction prove not to be deliverable then the site could be left for a considerable time in an unkempt state, to the detriment of the character and appearance of the area. There is no policy basis for this and it seems to me that whether or not a development is deliverable or not is a risk taken by the developer.
48. At the Inquiry two alternative conditions were suggested within the agreed list of conditions. One would have the effect of preventing any works from going ahead until such time as it had been shown that the junction was viable, whilst the other prevented any works other than demolition until such time as it had been shown that the junction was viable. The decision as to whether either of these conditions would be suitable and reasonable was left to my discretion. At the Inquiry a further condition was suggested that would ensure that the appeal site was left in a suitable condition should demolition have occurred and it transpired that the signalised junction could not be delivered.
49. On reflection I consider it not unreasonable for the developer to be able to start demolition work whilst proving that the junction can be provided. The extra condition discussed means that there would be no detriment to the character and appearance of the area if, for whatever reason, the junction could not be provided. It follows that there is no conflict with the LP in relation to this issue.

Other matters

50. There were several issues brought forward by interested persons other than those that have been discussed above. Some local residents were concerned about the possibility of losing privacy due to the height of the proposed flats and also the presence of the roof terrace. However, the nearest property to the proposed scheme would be 1 Burland Road and this would be side on to the proposed scheme and about 18m away. The proposed roof terrace would be located away from the properties on Burland Road with its narrowest side facing the rear gardens of the properties in Brentwood Place. A landscaping condition that could be imposed would provide the opportunity to create suitable screening. Overall I do not consider that the proposed development would give rise to unacceptable levels of overlooking or indeed overshadowing.
51. Other matters brought up by local residents included the amount of parking provided and the possibility of noise pollution. The parking provision within the site for both the flats and the store are in line with Essex County Council's parking standards and I have been given no significant evidence that would lead me to question the proposed provision. The Noise Report submitted with the application shows that the impact on existing residents would be low

with the mitigation provided. Additionally conditions regarding opening hours and delivery times could be imposed.

Planning obligation

52. I have been supplied with a Planning Obligation under Section 106 of the Town and Country Planning Act. The Obligation is signed by both parties and dated 5 January 2023. Execution of the Obligation would result in the provision of the agreed quantum of affordable housing as well as a financial contribution of £17250 towards increasing the capacity of surgeries operating within the vicinity of the site and £6132 as a Travel Plan monitoring fee. All three of these matters are agreed between the parties and from the information before me would comply with the relevant tests given in paragraph 57 of the Framework. That is that they are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.
53. There are however several other inclusions within the Obligation where the quantum is disputed by the parties and it has been left to me to conclude on this. The Obligation is written in such a way that my conclusion would trigger the appropriate payment should the appeal be allowed.
54. In respect of the requested contributions the Council have supplied me with a CIL Compliance Statement (CCS). This document explains that the schemes that are the subject of the disputed contributions derive from an Infrastructure Delivery Plan (IDP) that is a 'live' document that is updated periodically; the last update being in January 2021. The approach utilised in the IDP was found to be satisfactory by the Inspectors' who examined the current LP.
55. The IDP contains a range of required infrastructure projects under a number of headings such as Transport and Movement, Waste, and Education, which have all been allocated indicative costs. From these indicative costs any secured funding has been deducted leaving the current funding gap. This calculated funding gap is then apportioned amongst the LP site allocations in terms of numbers of units, to arrive at a figure for a particular site. This approach has been subject to a Local Plan Viability Assessment. On the surface, the approach adopted by the Council seems to be a reasonable one.
56. However, the appellant contests the contributions, taking the view that the Council's methodology is somewhat crude in that, depending on the particular contribution, either the number of car parking spaces, bed spaces or cycle parking spaces should be considered rather than just the number of units. To this end the appellant has supplied a series of alternative calculations that would see the contributions differently apportioned amongst the sites within the LP, but still giving the Council the total amount of funding overall. I will now look at each disputed contribution in turn.

Brentwood Town Centre Public Realm Enhancement

57. This would include such items as pavement improvements, pedestrian and vehicle accessibility improvements and landscaping and streetlighting. The

proposed development would be in close proximity to the town centre, such that residents would undoubtedly walk into and use the centre.

58. The contribution is supported by policy BE12 (2b) of the LP, which makes clear that new development proposals are required to be supported by proportionate financial contributions to mitigate the cumulative transport impact of the development to an acceptable degree, including relevant highways measures identified in the IDP. It also requires that reasonable measures should be taken to accommodate the use of sustainable modes of transport including borough-wide sustainable transport measures identified in the IDP. In light of this it seems to me that the proposed contribution would be necessary to make the development acceptable in planning terms.
59. As mentioned above, the Council have utilised the number of units to arrive at a required contribution of £277,946. The appellant considers that the number of car parking spaces (based on ECC Parking Standards) would be more appropriate, and they also have factored in a weighting based on the proximity of the site to the town centre, resulting in a figure of £53,817. However, the Parking standards document (PS) is dated 2009, prior to the Framework, and I note that the appeal site has only half the number of spaces specified within the PS.
60. Furthermore, the weighting given by the appellant is lower for sites nearer the town centre than those further away. It seems to me that residents of sites nearer the town centre would be more likely to walk into the centre, thereby utilising the outcome of any proposed improvements more than those located further out. The reduced number of parking spaces for the proposed development is also presumably based on the proximity to the town centre, which to my mind means that using the appellant's method effectively results in a 'double whammy' situation in respect of the reduction in contributions. I am also conscious that the LP Inspectors were satisfied overall with the Council's approach. In light of this I consider the Council's figure of £277,946 to be the most satisfactory, and that the three tests have been met.
61. In arriving at this conclusion I note the appellant's comments relating to overlap between the works proposed under this item and the works that the appellant will carry out associated with the site access and associated off-site improvements. However, these latter works are needed as a direct consequence of the scheme and should not to my mind be conflated with the works required under the Section 106.

Brentwood and Shenfield Railways Stations Public Realm Improvements

62. Policy BE08 (a) requires that in order to support and address the cumulative impacts of planned and other incremental growth, allocated development within the LP shall provide reasonable and proportionate contributions towards the circulation arrangements, public realm and multi-modal integration around Brentwood, Shenfield and Ingatestone stations. The Council's requested contribution is for the sum of £215,870 based on the number of units. Both Shenfield and Brentwood Stations are within relatively easy reach of the appeal site and it is reasonable to assume that residents of the proposed development would at times avail themselves of the train service.

63. The appellant has based their calculation on the number of bed spaces which in itself would increase the proposed contribution. They have then used a weighting of either 1 or 2 for each site within the LP allocations based on the distance from the railway stations. However, the weighting of 1 is given to sites less than a one mile walk from the stations. This seems to indicate that, utilising the appellant's methodology, the further away from a railway station, the more the residents would contribute towards the improvements. It seems to me that residents living nearer the stations would be more likely to use the facilities and therefore should contribute a greater proportion of the costs.
64. I consider therefore that in this instance the Council's figure of £215,870 is the correct figure and that the three necessary tests have been satisfied.

Quietway cycle routes in Brentwood Urban Area.

65. Policy R15 (4b) is specific to the appeal site and requires that financial contributions are made, via planning obligations, to 'Quietway' cycle routes connecting transfer hubs to schools in Brentwood Town Centre. In this case the appellant has utilised the allocated number of parking spaces as the primary factor in his calculations. This on its own would increase the contribution towards the Quietway cycle routes project.
66. However, the appellant has then applied a weighting factor, with a lesser factor applied to sites near the town centre on the basis that residents from these developments would be more likely to walk than cycle. I have no evidence to support this theory which seems to assume for its validity that the majority of cycle trips are likely to be made into the town centre. I cannot accept this and consider that trips to school, railway stations and other areas of the town (for example work purposes) could all be valid destinations. I therefore consider the Council's figure of £98,123 to be the more appropriate figure. I also consider that all three tests have been met.

Railway Station Cycle Infrastructure

67. This contribution would be directed towards introducing high quality cycle parking and supporting facilities at Brentwood, Shenfield and Ingatestone railway stations. It is supported by policies BE08 (a) and BE12 (2b) of the LP. Once again the appellant has utilised the number of bedspaces rather than units which on its own would give a larger contribution than the Council are asking for.
68. However, once again the appellant has used a weighting system based on the distance of proposed developments from the railway stations. I have been given no evidence to show the validity of this weighting system, i.e. that residents of sites over a mile away would be more likely to use a bicycle than those living within a mile. Consequently I consider that the Council's figure of £5524 is the more reasonable one. I also consider that the three tests have been satisfied.

A128 Ingrave Road/The Avenue/A128 Brentwood Road/Running Waters double mini roundabout mitigation

69. This contribution would be directed towards signalling the mini roundabouts at the above location and is contested in its entirety by the appellant. The

contribution is supported by several LP policies and whilst the location of the junction is some way from the proposed development, it is more than likely that residents of the proposed development would pass through the junction.

70. To my mind therefore the contribution satisfies the three tests and the Council's figure of £21,831 is the correct figure.

Brentwood cycle action plan route 25

71. Policy BE08 (d) requires mitigation measures to strategic transport infrastructure including additional and/or improved cycling infrastructure to key destinations such as railway stations.
72. The contribution sought by the Council is not based upon the number of units on the proposed development but upon the length of cycleway (just under 0.5km) likely to be utilised by residents of the proposed scheme. The figure is then derived by using the approximate cost of £1m per km of cycleway, arriving at a sum of £450,000. This process does not seem to take into account whether or not other proposed developments would utilise or contribute towards this cycle route and is at best based on a series of approximations and unjustified assumptions.
73. Conversely the appellant has based his figure on the number of cycle spaces and has applied a weighting based on the distance of various proposed developments from the town centre. Whilst once again I take issue with the principle of the weighting system I nonetheless consider that in this case the appellant's figure of £7,548 has far more validity than the Council's. Overall therefore I consider the appellant's figure to be the more reasonable and also consider that the three tests are met.

Conclusion on planning obligations

74. I have found that in respect of the schemes that come under the category of Highways and Transport contributions the Council's figures are to be taken into account in the PO. This therefore gives a total under this category of £619,294.
75. In respect of the Highway Contribution I have concluded the appellant's figure of £7,548 to be the more appropriate figure.

Planning balance

76. The appeal site is allocated under policy R15 of the LP. This proposes a residential led mixed use development with about 46 new homes, retail, commercial and leisure floorspace sufficient to meet the needs of the new community and vehicular access via Ongar Road. The proposed development is therefore in general in line with the policy. The site is previously developed land and the proposed development will provide 46 new homes and about 40 new job opportunities. The local economy will gain from both the new jobs and those temporary ones created during the construction process.
77. I have found from the evidence before me that there would be no conflict with the LP or the Framework in respect of either highway safety, highway

efficiency or air quality. I have also found that the issue of viability cannot be a reason for dismissing the appeal.

78. It follows that the presumption in favour of sustainable development applies and that the appeal should be allowed.

Conditions

79. The conditions contained within the attached schedule are those agreed by the parties and discussed at the Inquiry.
80. In the interest of the appearance of the final development I have imposed conditions requiring further details of materials to be used in the external surfaces of the development, and also requiring details of landscaping and boundary treatment. For certainty I have imposed a condition detailing the plans and documents that were supplied during the application process.
81. To prevent future flooding I have imposed various conditions requiring details of drainage systems. To prevent damage to existing underground sewerage infrastructure I have imposed a condition requiring a piling method statement. To protect the wildlife and ecology of the area I have imposed conditions requiring an ecology survey and a Construction Environment Management Plan and a condition requiring the submission of an Arboricultural Method Statement.
82. In the interest of the amenity of future occupiers I have imposed a condition requiring further details of sound insulation measures to be submitted and approved in writing by the Council. To protect the amenity of local residents I have imposed conditions controlling the opening of and delivery times to the new store and a condition requiring further details of a lighting scheme. A condition requiring the submission of a Delivery, Servicing, Waste Management and Routing Plan has also been imposed to help maintain the safety and efficiency of the local road network.
83. To help achieve the Government's carbon reduction target I have imposed a condition requiring a scheme to be submitted and approved that will ensure a reduction of 10% of CO₂ emissions over and above those required by Part L of the building regulations. To further minimise emissions I have also imposed a condition requiring two electric vehicle charging points. To promote sustainable travel I have imposed conditions relating to cycle parking and the provision of a travel plan and travel pack.
84. To avoid future disruption to the local area I have imposed a condition requiring that high speed broadband is connected to the dwellings associated with this development prior to their first occupation. To safeguard future users of the development I have imposed conditions relating to investigating for and dealing with any contamination on the site and, in the interest of the future security of occupants of the development, I have imposed a condition to ensure that the scheme adheres to the principles of Secure by Design accreditation.
85. For reasons of highway safety and efficiency I have imposed conditions requiring a construction management plan, the removal of the existing access to the site off of Ongar Way, the submission of a scheme to mitigate the

impact of the development on the Ongar Road/William Hunter Way junction, and that the approved parking is provided in a timely manner. For the same reason I have imposed conditions to ensure that the existing access onto Burland Road is maintained and that pedestrian facilities such as dropped kerbs and tactile paving are provided at this junction.

86. Finally, and in connection with my reasoning relating to the viability of building the proposed access, I have imposed a condition preventing any work other than demolition before detailed technical drawings regarding the construction of the proposed signalised access have been submitted and approved. This is in the interest of highway safety. In connection with this and with the agreement of the parties at the Inquiry, I have imposed a condition requiring that, in the interest of the visual amenity of the area, the site is restored, following demolition, to a standard in line with a restoration plan previously agreed by the Council.

Conclusion

87. In light of my above reasoning and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Wilde

INSPECTOR

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 not be carried out except in complete accordance with the approved drawings and specifications.
 - Site Location Plan (Ref. PL_01 Rev B)
 - Existing Site Plan (Ref. PL_02 Rev B)
 - Proposed Block Plan (Ref. PL_04 Rev B)
 - Proposed Block Plan with Aerial Background Plan (Ref. PL_04 Rev F)
 - Proposed Ground Floor Residential and Retail Unit Plan (Ref. PL_05 Rev C)
 - Proposed First Floor Residential Plan (Ref. PL_06 Rev C)
 - Proposed Second Floor Residential Plan (Ref. PL_07 Rev C)
 - Proposed Roof Plan (Ref. PL_08 Rev B)
 - Proposed Elevations (Ref. PL_09 Rev C)
 - Proposed Sections Plan (Ref. PL_10 Rev B)
 - Proposed Landscaping Plan (20-05201 Rev D)
 - Proposed Demolition Plan (Ref. PL_3 Rev C)
 - Planning & Retail Statement Design & Access Statement Part 1-4
 - Transport Assessment Draft Travel Plan Air Quality Assessment
 - Arboricultural Impact Assessment
 - Ecology Report
 - Noise Impact Assessment
 - Outline Drainage Strategy and Drainage Maintenance and Management Plan (Rev H)
 - Drainage and Maintenance and Management Report (Rev I)
 - Intrusive Investigation Report
 - Drawing SK800 Rev A – site access proposal against GPR stats survey results, showing 2.2m wide footways either side of Ongar Road to the south of the junction, a residual carriageway width of 6.6m, widened footway on the left turn into North Road and a widened footway on the left turn out of North Road
 - Drawing ATRSK800-01 – swept paths of articulated HGV, left turns
 - Drawing ATRSK800-02 – swept paths of articulated HGV, right turns
 - Drawing ATRSK800-03 – swept paths of fire tender, left turns
 - Drawing ATRSK800-04 – swept paths of fire tender, right turns
 - GPR stats survey results from Location Surveys
- 3) Notwithstanding the details shown on the drawings hereby approved, no development above ground level shall take place until details of the

materials to be used in the construction of the external surfaces of the buildings and of ground surfaces, and details for fenestration and doors (e.g., typical reveals, blind, concealed vent strips), eaves (to support ecology) and rainwater goods hereby permitted, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 4) No development above ground level shall take place until further details of the brickwork to be used in the development has been submitted to and approved in writing by the local planning authority. The details shall include: sample panels of the proposed brickwork to include mortar colour and jointing, and bonding. Panel samples shall be made available for inspection by the Council on site. Development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of any part of the development, the landscaping scheme shall be implemented in accordance with the approved drawing 20-052- 01 rev D (with the exception of the boundary treatment which is subject to details being submitted and approved in writing by the LPA under a separate condition). Any trees or plants which, within a period of 5 years of it planting, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of similar size and species, unless the local planning authority agrees in writing to vary or dispense with this requirement.
- 6) No dwelling shall be occupied until a scheme for the ongoing maintenance and management of the approved landscaping scheme has been submitted to and approved in writing by the local planning authority. The landscaping shall be managed and maintained in accordance with the approved scheme.
- 7) The development shall not be occupied until details of the treatment of all boundaries including drawings of any gates, fences, walls or other means of enclosure have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be completed prior to the first occupation of the development and shall thereafter be permanently retained and maintained.
- 8) No works except demolition shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - a) Limiting discharge rates to 2.3l/s for all storm events up to and including the 1 in 100 year plus 40% allowance for climate change storm event subject to agreement with the relevant third party/ All relevant permissions to discharge from the site into any outfall should be demonstrated.
 - b) Demonstrate that all storage features can half empty within 24 hours for the 1 in 30 plus 40% climate change critical storm event.
 - c) Detailed engineering drawings of each component of the drainage system

d) A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.

e) A written report summarising the final strategy and highlighting any minor changes to the approved strategy.

The scheme shall subsequently be implemented in accordance with the approved details prior to occupation.

- 9) The development shall not be occupied until a maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and approved in writing by the Local Planning Authority. Should any part be maintainable by a maintenance company, details of long term funding arrangements should be provided. The maintenance scheme shall provide for yearly logs of maintenance to be carried out in accordance with the approved maintenance plan, and details of how they are to be made available for inspection upon request by the Local Planning Authority. The development shall be managed and maintained in accordance with the approved details.
- 10) No piling shall take place until a piling method statement detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure and the programme for the works has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.
- 11) No hardstanding areas shall be constructed until the works have been carried out in accordance with the approved surface water strategy "Outline Drainage Strategy, Drainage, Maintenance and Management report Rev I dated 19/4/21 (Booth King Partnership Ltd).
- 12) No development shall pursuant to this permission take place unless and until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. The arboricultural method statement shall detail measures to protect existing trees during construction and provide details of suitable replacements for those trees identified as to be removed. The method statement should include those trees identified within the submitted Tree Protection Plan as being in third-party ownership and covered by a TPO. The development shall be carried out in accordance with the approved details.
- 13) Prior to demolition of the buildings on site, a bat building inspection shall be carried out (as set out in the findings of the approved Ecology Report version D dated 27/07/2020) to determine absence of bats immediately prior to demolition, comprising a dusk emergence and dawn re-entry survey the night before and morning of building demolition. Should evidence of any roosting bats be discovered, suitable protection measures shall be implemented prior to demolition. The conclusions of the Ecology Report shall be carried out in all other respects.

- 14) No development shall take place, including works of demolition, unless and until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP should define best practice measures for ecological protection (including but not limited to protected species, in particular badgers) and include a method statement to avoid injury to any animals entering the site of this permission during construction. The CEMP shall identify that construction activities so far as is practical do not adversely impact amenity, traffic or the environment of the surrounding area by minimising the creation of noise, air quality pollution and vibration during the site preparation and construction phases of the development. The CEMP shall also include a site specific risk assessment of dust impacts in line with guidance provided by IAQM see https://iaqm.co.uk/text/guidance/guidance_monitoring_dust_2018.pdf The demolition and construction works shall be completed in accordance with the information approved within the CEMP by the Local Planning Authority.
- 15) Prior to occupation of any of the residential units, the following details shall be submitted to the local planning authority. a) Details of glazing and ventilation for habitable rooms within the development to ensure suitable internal noise levels; and b) Results of further acoustic testing to be carried out following installation, to confirm that the measures operate as designed to provide appropriate internal noise levels. c) Details of design between the retail store and the residential areas demonstrating that noise transfer between the two components is minimised between common partition walls and floors. No dwelling pursuant to this permission shall be occupied unless and until the above details have been approved in writing by the Local Planning Authority and have been implemented in accordance with the approval of the Local Planning Authority. The measures approved and implemented in accordance with this condition shall be retained in perpetuity thereafter.
- 16) Prior to occupation of any dwelling pursuant to this permission an external lighting scheme shall be submitted for the approval in writing by the Local Planning Authority. The lighting scheme shall be designed to ensure the amenity of local residents, ensure highway safety and protect ecology by preventing excessive light spill onto sensitive habitats is avoided or mitigated. No dwelling pursuant to this permission shall be occupied unless and until the details have been approved in writing by the Local Planning Authority and the development has been implemented in accordance with the approved details.
- 17) Service vehicles shall use the service area solely between the hours of 7.00am and 10.00pm Mondays to Saturdays and 09.00am to 12 noon on Sundays and public holidays.
- 18) The retail store shall be open only between the hours of 7.00am and 22.00.
- 19) No development shall take place unless and until a scheme has been submitted to and approved in writing by the Local Planning Authority demonstrating that the development can be designed and built to achieve at least a 10% reduction in carbon dioxide emissions above the requirements as set out in Part L Building Regulations, as amended. The

approved scheme shall be implemented prior to first occupation of the development and retained thereafter.

- 20) The retail store shall not be first opened, and the dwellings shall not be occupied until a drawing indicating the inclusion of vehicle charging points for both the store and residential parking area have been submitted to and approved in writing by the Local Planning Authority. The retail element shall provide at least 2no Rapid EV car parking spaces (1 charging facility) and passive infrastructure (ducting etc) for 20% of parking spaces overall. The residential element shall provide as a minimum, the passive infrastructure (ducting etc) for at least one charging point per every two spaces. The retail store shall not be first opened, and the dwellings shall not be first occupied until the scheme has been implemented in accordance with the approved details, and the vehicle charging points and ducting shall be retained as approved thereafter.
- 21) No dwelling pursuant to this permission shall be occupied until an FTTP Statement has been submitted to and approved in writing by the Local Planning Authority detailing a scheme for the installation of a high speed wholly FTTP connection to each premises within the approved development OR supplying evidence detailing reasonable endeavours to secure the provision of FTTP and where relevant, details of alternative provision for superfast broadband in the absence of FTTP. The FTTP infrastructure or alternative provision for superfast broadband in the absence of FTTP shall be laid out at the same time as other services during the construction process and be available for use on the first occupation of any dwelling, or such other date agreed in writing by the Local Planning Authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that have been made in the absence of FTTP).
- 22) No development shall take place until a scheme to deal with contamination of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be undertaken to avoid risk to the public/buildings/environment when the site is developed, including a phasing and timing plan for all required mitigation. Development shall not commence until the measures identified as pre-commencement matters in the approved scheme have been implemented and completed to the written satisfaction of the Local Planning Authority. The development shall not be brought into use or occupied until the approved remediation measures have been implemented and completed to the written satisfaction of the Local Planning Authority.
- 23) Should contamination be found that was not previously considered or identified during any stage of the contamination remediation scheme approved pursuant to the preceding condition, that contamination shall be made safe and reported immediately to the Local Planning Authority. The site shall be assessed, and a remediation scheme shall be submitted for approval by the Local Planning Authority. The development shall not be brought into use or occupied until the approved remediation measures have been implemented and completed to the satisfaction of the Local Planning Authority.

- 24) No development shall be occupied until a Secure by Design Statement has been submitted to and approved in writing by the Local Planning Authority, detailing how the design of the residential element of the development adheres to the principles of Secure by Design accreditation, Secured by Design Homes 2019 Version 2, March 2019, and Secured by Design Commercial Developments 2015 Version 2 for the retail element (<https://www.securedbydesign.com/guidance/design-guides>). The development shall not be occupied until the approved measures applied to the development have been implemented and they shall be permanently retained thereafter.
- 25) No development shall take place, including any ground works or demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved plan shall be adhered to throughout the construction period. The Plan shall provide for:
- i. vehicle routing
 - ii. the parking of vehicles of site operatives and visitors
 - iii. loading and unloading of plant and materials
 - iv. storage of plant and materials used in constructing the development
 - v. wheel and underbody washing facilities.
- Development shall take place only in accordance with the approved Construction Management Plan.
- 26) No development other than demolition shall take place unless and until detailed technical drawings for the proposed signalised access junction on Ongar Road at its junction with North Road, and associated statutory undertaker's diversions, have first been submitted to and approved in writing by the Local Planning Authority. The retail store shall not be brought into use until the approved scheme has been implemented.
- 27) No development shall take place until a scheme to mitigate the traffic impact of the proposals on the Ongar Road / William Hunter Way junction has been submitted to and approved in writing by the Local Planning Authority. The retail store shall not be brought into use until the approved scheme has been implemented.
- 28) The existing Wates Way site access on Ongar Road shall be suitably and permanently closed incorporating the reinstatement to full height of the footway immediately the proposed new access on Ongar Road is brought into first beneficial use.
- 29) The access on Burland Road to the residential element of the development shall be maintained in perpetuity and shall be used for access to the residential element of the development only, and shall not be used for access to the retail element of the site.
- 30) Prior to occupation, pedestrian facilities including dropped kerbs and tactile paving shall be provided at the Burland Road access, in accordance with a scheme which has first been submitted to and approved by the Local Planning Authority.
- 31) Prior to occupation, the vehicle parking area indicated on the approved plans, including any parking spaces for the mobility impaired, shall be

hard surfaced, sealed and marked out in parking bays. The vehicle parking area and associated turning area shall be retained in this form at all times. The vehicle parking shall not be used for any purpose other than the parking of vehicles that are related to the use of the development.

- 32) No development shall take place until details have been submitted to and approved in writing by the Local Planning Authority setting out the provision of cycle parking in accordance with EPOA Parking Standards. The approved facilities shall be secure, convenient, covered and provided prior to first occupation of the development and retained at all times thereafter.
- 33) The residential units hereby approved shall not be occupied until a Residential Travel Information Pack for sustainable transport (to include six one-day travel vouchers for use with the relevant local public transport operator) has been submitted to and approved in writing by the Local Planning Authority. The approved Residential Travel Information Pack shall be provided to each dwelling prior to or upon first occupation of each unit.
- 34) The retail store hereby approved shall not be brought into use until a Delivery, Servicing and Waste Management and Routing Plan for perpetuity has been submitted to and approved in writing by the Local Planning Authority. The Routing Plan shall detail measures to ensure that all Lidl service and delivery vehicle routing shall be via Ongar Road South and all HGV vehicle routing shall be via William Hunter Way and Ongar Road. The approved Delivery, Servicing and Waste Management and Routing Plan shall be implemented in perpetuity.
- 35) No demolition shall take place until a Site Restoration Plan has been submitted to and approved in writing by the Local Planning Authority. The Site Restoration Plan shall include details, including timeframes, of how the site will be restored to a level, safe and tidy condition, in the event that construction pursuant to this planning permission does not commence within 6 months of the commencement of the demolition pursuant to this planning permission. A Demolition Commencement Notice shall be submitted to the Local Planning Authority within 14 days of the commencement of demolition, specifying the date on which demolition commenced. In the event that construction pursuant to this planning permission does not commence within 6 months of the date specified in the Demolition Commencement Notice (or such longer period as may be agreed in writing by the Local Planning Authority) then the measures specified in the approved Site Restoration Plan shall be implemented in full, in accordance with the timeframes specified in the approved Site Restoration Plan, and shall be maintained as such thereafter until such time as construction (whether pursuant to this or a subsequent planning permission) commences.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr William Upton KC	Instructed by Steven Bell, Birketts LLP
He called	
Mr Ian Henderson BSc	
(Hons), MSoRSA, CMg,	
Inc IMAPS	
Mrs Hilary Gore BA	
(Hons), MCIHT	

FOR THE APPELLANT:

Mr Rueben Taylor KC	Instructed by Rapleys
He called	
Mr Jim Budd MSc, FCIHT	

INTERESTED PERSONS:

Mr Francis Garbutt	Local resident
--------------------	----------------

DOCUMENTS HANDED IN DURING THE INQUIRY

- 1 Council's list of appearances
- 2 Opening submissions on behalf of the appellant
- 3 Opening submissions on behalf of the Council
- 4 Draft Section 106
- 5 Statement from Mr Garbutt
- 6 Extract from POE of Mr Budd with additional columns
- 7 Copies of POE and other Inquiry documents for the Inspector
- 8 Appeal notification letter
- 9 Signed statement of common ground
- 10 Suggested additional condition

PLANS

- A SCP/18254/SK800A Site access proposal with improved footways along Ongar Road and North Road
- B SCP/18254/ATRSK800-01 Left turn manoeuvres of 16.5m long articulated HGV around site access junction with improved footways at North Road
- C SCP/18254/ATRSK800-05 Site access proposal with improved footways and swept path of max legal artics north bound and southbound
- D SCP/18254/ATRSK800-06 Site access proposal with improved footways and swept path of large saloon car out of both side roads
- E SCP/220074/0000/002 General arrangement Section 278 works
- F 22014-101 Traffic signal design