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## Appeal Decision

Inquiry Held 11 to 13, and 18 June 2024

Site visit made on 14 June 2024

**by M Shrigley BSc (Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12<sup>th</sup> August 2024**

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**Appeal Ref: APP/U2235/W/24/3339531**

**Land At Newnham Court Way, Weaving, Kent ME14 5LH**

- 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 Aldi Stores Limited against the decision of Maidstone Borough Council.
  - The application Ref 22/505560/FULL, dated 18 November 2022, was refused by notice dated 30 August 2023.
  - The development is for the erection of a new food store (Use Class E(a)), with access, car and cycle parking, landscaping, and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction and operation of a new food store (Use Class E(a)), with access, car and cycle parking, landscaping, and associated works on land at Newnham Court Way, Weaving, Kent ME14 5LH in accordance with the terms of the application, reference 22/505560/FULL, dated 18 November 2022, subject to the 'Schedule of Conditions' set out at the end of this decision.

### Procedural Matters

2. Revised plan information, largely related to landscaping provision was submitted by the appellant in the lead up to the Inquiry. The revisions have been subject to public consultation in agreement with Maidstone Borough Council (MBC). Due scope for potential planning condition use is also applicable. Given those circumstances, I am satisfied no material disadvantage arises from their consideration.
3. The reason for refusal relating to Biodiversity Net Gain (BNG) calculation was agreed by the main parties as being able to be overcome via planning obligation and condition use. To that end, a draft obligation was provided in the appellants' bundle. Without prejudice to the outcome of the appeal, it was agreed during the Inquiry any completed obligation would need to be submitted by no later than 26 June 2024. A completed obligation was subsequently received within that timeframe and has legal effect. Hence, my decision is made in that context.
4. Various elements of the dispute entail high level aspects of MBC's development plan as well as adopted economic strategy. I have dealt with the majority of local policy implications within the main issues. However, the arguments also extend to the overall planning balance triggered, as indicated in my reasoning.

## Main Issues

5. The main issues are: i) the acceptability of the principle of a food store use in the location proposed having regard to planning policy; ii) the visual impact of the development on the character and appearance of the area; and iii) the planning merits informing any overall planning balance.

## Reasons

### *Principle of a food store use in the location proposed*

6. The dispute largely centres on recently adopted local allocation policy contained within MBC's Local Plan Review 2021–2038 (LPR), adopted March 2024 post the Council's decision to refuse planning permission for the appeal scheme.
7. In that regard, I acknowledge that the policies in the LPR update those identified in the 2017 Local Plan (LP) including: SS1 (Maidstone Borough Spatial Strategy); SP1 (Maidstone Urban Area) and RMX1 (retail and mixed use allocations) which have been replaced by LPRSS1; LPRSP2; and LPRSO11(B), respectively. Collectively, those policies set out the Borough's employment site provision aims subject to a number of criteria.
8. Through policy LPRSS1, between 2021 and 2028 a 'minimum' of 119,250m<sup>2</sup> employment floorspace for office, industrial and warehousing uses is identified to be provided for. And for the same period a 'minimum' of 14,360m<sup>2</sup> of retail, food, and beverage floorspace. Urban renewal being broadly prioritised within the town centre to ensure that the majority of benefits are focused there.
9. Point 8 of LPRSS1 specifically refers me to the continued build out of the Kent Medical Campus (KMC)/Newnham Park site as providing a significant contribution to the provision of employment uses. In turn, Point 15 advocates that only new commercial development will be supported if sufficient infrastructure capacity is available or can be provided in time to serve it.
10. The KMC currently includes the Kent Institute of Medicine and Surgery (KIMS) Hospital, the Maidstone Innovation Centre, the Invicta Care Home and Cygnet Hospital, accessed via Newnham Court Way and Gidds Pond Way.
11. LPRSP2 at point 3, d,(i) identifies key infrastructure requirements are to be delivered either through Section 106 obligations or via Community Infrastructure Levy (CIL). This includes improvements to highway and transport infrastructure, junction improvements, and capacity improvements to part of Bearsted Road, A274 Sutton Road, and the A229 alongside improved pedestrian/cycle access and bus prioritisation measures.
12. Together with LPRSP2 the Local Transport Plan 4: Delivering Growth without Gridlock 2016–2031, referred to in the wider evidence sets out the Bearsted Road capacity improvements as a key priority for the Maidstone district.
13. I recognise that the role of Policy RMX1(1), has been retained and unchanged by the LPR. Its purpose is to ensure the delivery of employment and retail floorspace at Newnham Park. It allocates some 28.6 hectares of land for: (i) a medical campus 'up to' 100,000m<sup>2</sup>; (ii) a replacement retail centre of up to 14,000m<sup>2</sup>; and (iii) a nature reserve. In doing so it incorporates successive local economic strategies and acknowledges the consents for KMC buildings.

Furthermore, it highlights that Newnham Court Shopping Village (NCSV) has been developed in a piecemeal fashion, and its visual appearance is poor. The LPR Policies Map (March 2024) defines the appeal land as part of the area RMX(1) specifically relates to.

14. Bearing in mind the LPR's recent adoption, the main parties agree its policies should be given full weight. On top of that, Section B makes clear that where there is a conflict between the supporting text (reasoned justification) to the policy and the new policies contained within it, the new LPR policies should take precedence. In addition, where reference is made in policies and supporting text to LP 2017 policies that are not saved, reference should instead be to any relevant new policies within the LPR.
15. In that context, the appellant indicates they have met the requirements of the sequential and impact retail tests as required by outdated LP policies DM16, DM17, updated by Policy LPRCD1 (concerning retail and leisure development), and Policy RMX1(1) part 6, as well as the content of the National Planning Policy Framework (the Framework). Given the technical information submitted alongside MBC's agreement to the Statement of Common Ground, I have no strong basis to disagree with those conclusions when gauging the level of policy compliance evident for out of centre retail impacts.
16. Outside of those points, recognition of wider economic strategy as well as that linked to the LPR itself is a crucial component of my decision. In that regard, the South East Local Enterprise Partnership's (SELEP) Strategic Economic Plan (SEP) explicitly refers to the role of the KMC in attracting companies of all sizes in the medical technology industry to the region.
17. A suite of other important information is contained in the Maidstone Economic Development Strategy 2021 (MEDS). The MEDS highlights there will be additional scheme and sector specific sources of potential funding that MBC and its partners may also need to explore, and the nature of funds available will change over time in line with national and local priorities or as future rounds are launched.
18. Linked to priorities of the MEDS, MBC specifically support the appeal site is needed to realise distinctive sector growth and innovation opportunities associated to the Kent Science and Innovation and Thames Estuary Production Corridors. Medical technology representing a key opportunity in this sense.
19. Maximising economic impact from the Maidstone Innovation Centre at the KMC, through supporting related new and burgeoning business ecosystems being the desired action to achieve such economic strategy aspirations. Consequently, MBC argue the LPR site allocation is a central plank of achieving its economic strategy.
20. I note that the LPR and its detailed content highlights that Maidstone's assets, combined with its convenient access to London and the channel ports for Europe, make it an appealing location for people to live and work. The LPR ultimately focusses on making sure that new development is sustainable of which economic interests are inextricably linked to achieving.
21. Given all those factors, I am mindful that local economic drivers and incentives for Maidstone should not be undermined. To that end, the North Kent

- Enterprise Zone (NKEZ) was confirmed as running from 2017 until 2042, with the primary role of supporting economic growth and job creation for multiple Enterprise Zone (EZ) sites. I acknowledge that the KMC, as part of the overall NKEZ suite of sites has received support at County and Borough levels.
22. Yet, an agreed factual note was sought during the Inquiry from the main parties providing further details about the NKEZ. Strikingly, it identifies the initial application plan tabled evidencing the KMC's EZ status does not include the appeal site. Plus, benefits to new business occupiers within the EZ ceased from 1 April 2022.
  23. Moreover, the planning history behind the KMC coming forward is relevant. The original outline planning permission was first granted in 2014 setting out an 'indication' of the overall quantum of achievable development, together with the potential scale of each use.
  24. Although an associated masterplan working to certain scale parameters features in the history, I appreciate it is illustrative and that reserved matters applications (RMAs) would be market led. For that reason, the masterplan although informative, carries little weight towards end use considerations.
  25. Recognition of that point ties to the appellant's arguments that the appeal site: has never been promoted as part of the KMC through the Plan process and the KMC should be taken as the outline planning permission site area only. Thus, they argue that the generality of the principle of the allocation is already supported by prevailing local policy.
  26. Equally, I am cognisant that there is nothing compelling to prevent future EZ incentive changes, wider public funding initiatives, nor contiguous site proposals from coming forward, within or beyond the EZ being taken up at any future point within the plan period. Indeed, local strategy is well placed for such circumstances potentially occurring, in line with the allocation of RMX1(1).
  27. In gauging the arguments made, I recognise that the allocation policy in dispute must be read objectively and in accordance with the specific terminology it contains. Such interpretation principles are underscored within the *Tesco v Dundee [2012]* judgment contained within the evidence. At the same time there are adopted economic strategy aspirations threaded within the LPR connected to aspects of allocation policy compliance.
  28. Based on the overall analysis figures provided some 52,015 square metres of medical campus floor space can be potentially delivered under the outline planning permission giving a total of around 90,658m<sup>2</sup>. Furthermore, I accept the appeal site could potentially deliver around 8,886m<sup>2</sup> of further medical campus floor space if reserved for that sole purpose.
  29. Importantly the 100,000m<sup>2</sup> allocation stated in the precise wording of RMX1(1) is a maximum figure based on the 'up to' terminology it specifies. Whilst a lesser amount would not necessarily be in breach of the threshold wording, I agree the appeal scheme does prevent the maximum being notionally realised within the KMC and the application site combined. Albeit by a modest amount.
  30. Moreover, I am also aware the origin of the maximum figure seems to have arisen from the outline planning permission to the KMC based on the indicative

- masterplan considered with it, of which the appeal site was never part of, and consequently subject to detailed design delivery.
31. Nonetheless, it is the adopted threshold endorsed by the local plan review process, which any decision maker must pay regard to. Thus, I give full weight to the maximum cap featured in the policy wording.
  32. Joined to that argument RMX1(1)(2) refers to 14,300m<sup>2</sup> of 'replacement' retail floor area confined to the vicinity of the existing footprint of the current retail area. Tellingly, RMX1(1)(6) then refers to 'additional' retail floor area. In this case that is therefore additional to the existing 14,300m<sup>2</sup> replacement amount referred to. I agree the clarity of the wording leaves no room for interpretation doubt. Such retail floor area must be different to the allocation of the replacement floorspace it requires, based on the terms used.
  33. Remaining undeveloped plot design sensitivity to local surroundings addressed at the Inquiry also gives me further reasons to allow flexibility on what is realistically achievable bearing in mind all physical site constraints.
  34. I appreciate there is less than 3 years remaining currently for RMAs to come forward under the extant outline planning permission to the KMC. However, the Maidstone Economic Development Needs Study (EDNS) Addendum Final Report (2021) offers me some useful retrospective insights towards how national changes and agile working have impacted on office and retail space demand. Additionally, MEDS acknowledges sources of likely future funding later in the plan period which could come to fruition.
  35. All in all, despite the appellant's submissions concerning market conditions and the probability for medical or office development I cannot discount the possibility of further planning applications being made within any part of the RMX1(1) area, or adjacent to it. That is in light of all considerations relevant to the plan period for public funding streams and private enterprise sources.
  36. Separate to those points, the appellant makes a strong case that the new store would create around 45 jobs and that around 20% of these would be managerial positions, with the remaining being 'shop floor' roles.
  37. The majority of jobs would be accessible to Borough residents who are either already in lower skilled occupations, have lower level qualifications or are seeking to re-enter the labour market. In that regard, it is evidenced that at present over 40% of the local population have qualifications below Level 2, meaning they have no post-16 education and could be excluded from higher skills employment that may lie within the KMC.
  38. In assessing the overall economic betterment arguments, acknowledgement of the wider content of the LPR is important. The LPR makes a number of strategic commitments. For instance, the supporting text to LPR Policy SP11 (Economic Development), indicates that the health and social care sectors are expected to be key drivers of employment growth within the Borough.
  39. Likewise, the 'spatial objectives' of the LPR respond to the 'strategic issues' of Table 3.1. Spatial Point 6 (redressing the low wage economy by expanding skills). At Paragraph 4.16 it specifically recognises that the Plan will need to work in parallel with other strategies such as the Economic Development

Strategy, and with other agencies such as: the Local Enterprise Partnership; Invest in Kent and further education providers.

40. The LPR otherwise sets out the collective priority points of: embracing growth and enabling infrastructure; achieving a safe, clean, and green and thriving place; as well as regard to homes and communities around the central vision of *'Maidstone a vibrant, prosperous, urban and rural community at the heart of Kent where everyone can realise their potential'*.
41. I see nothing arising from the broad principle of the appeal scheme in conflict with the collective priorities of the LPR taken as a whole. There would remain much potential to attract further high value, knowledge intensive employment and businesses within the emerging cluster of uses KIMS Hospital is part of.
42. Indeed, there would be notable economic benefit attributed to allowing construction work as well as a variety of long term employment opportunities directly linked to the store. Albeit the nature of such employment opportunities are not the high value tech roles the Council's economic strategy is seeking to develop relative to the Plan allocation.
43. Nevertheless, I do not find the scheme is prohibitive to achieving the short, medium, or long term economic aspirations set out for Maidstone. Consequently, I give the overall economic betterment from the combined job opportunities which would be delivered by the scheme substantial weight.
44. Accordingly, I conclude that the appeal proposal demonstrates full compliance with RMX1(1). The principle of the development is supported by the LPR allocation because of the specific policy wording RMX1(1) contains within its individual listed sub-criteria, but also when read as a whole. That said, MBC have provided me with robust wider economic strategy reasons why achieving the maximum 100,000m<sup>2</sup> allocation figure would be desirable, which is material to the case. I have factored this into my overall decision.

#### *Character and appearance*

45. At my site visit I could see that the appeal land was elevated and sloping grassland close to the KMC main entrance accessed from a central roundabout. It is flanked by the separate small scale linear NCSV containing low rise discretely positioned buildings. Existing KMC buildings with contemporary facades and dedicated parking area are set on lower undulating ground levels elsewhere. From public views along the highway network, although sporadic buildings can be seen at a distance within the KMC, the immediate locality is dominated by trees and high levels of established greenery, giving rise to emerging parkland characteristics. Further afield the M20 motorway bisects a heavily sylvan landscape terrain, reinforcing the perception of abundant natural greenery in this part of Maidstone, additional to sizable, manicured crematorium landscaping surrounded by other established trees also nearby.
46. Essentially, MBC allege that the appellant has failed to understand the current and emerging character of the area, and that building forms within the KMC should be positioned at a similar level to the street and set back with a landscaped frontage strip. That said, I recognise those points are also linked to what a food store design response by way of functional parameters can reasonably comprise of relative to other uses.



47. The reasoning applied in the Decision Notice refers me to Policy DM1 (ii) and (v) of the MBC LP (2017). Although the content of the policy has been retained its reference in the LPR is now rebadged as Policy LPRSP15 (Principles of Good Design). The Kent Design Guide (2005) is also referred to in LPRSP15 at point 17, as part of the expected local assessment of design issues.
48. The preliminary text to LPRSP15 informs me that the Council aspires to achieve high quality design throughout the Borough. In that context, it seeks to realise this aim through proposals that will positively respond to, and where appropriate, enhance the character of their surroundings. It highlights that key aspects of built development design assessment are scale, height, materials, articulation, mass, bulk, and site coverage. All of those features are required to relate well, and positively, to the context in which they are seen.
49. This adopted local approach ties in with Paragraph 135(d) of the Framework which advocates achieving good design including ensuring that developments establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming, and distinctive places to live, work and visit. In tandem, the National Design Guide (NDG) gives me further advice which local policy provision aligns with.
50. In measuring the design against prevailing policy, I have had regard to the reasoned approach set out in the Design and Access Statement (DAS) applicable to developing detailed plans.
51. Aside from adopted design policy, the arguments made by MBC place emphasis on the illustrative 2014 masterplan conceived at outline stage. However, I give the document little weight owing to its indicative nature. I also note that none of the approved RMAs are consistent with the 2014 masterplan.
52. Based on the DAS I appreciate that existing site topography is an overarching constraint impacting on any design response which could be envisaged for the land. In that vein, limiting cut and fill and enabling a site access at a safe gradient has been a clear part of the appellant's underpinning design rationale.
53. Such an approach aligns with the detailed text introducing Policy RMX1(1) within the LPR which requires that all buildings be designed and sited to respond to a site's undulating topography and avoiding any significant site levelling.
54. Owing to functional store requirements, I appreciate it is necessary for any reasonable design response to enable a workable retail area, with ancillary warehouse, freezer store and loading bay.
55. The DAS evidences the appellant's design approach to: considering topography and minimising excavations; minimising retaining structures; the presence of adjacent road improvements; and designing the appeal building to be high quality. Based on all of those elements I accept that the layout and articulation of the building has been well thought out to respond to its prominence within the locality of which the generous green landscaping provision forms a large part of the response.
56. Similarly, based on the submissions I am satisfied that the appellant has properly analysed and understood the character and appearance of the locality including regard to the consistency with the existing and emerging character of

- the area. That is because the appellant has clearly factored the desirability of retaining a sylvan parkland campus character with prominent landscaping relative to building coverage central to its design approach.
57. MBC maintain that the new store building should be set further forward closer to the road network. Nonetheless, I agree that in making that assertion they have not paid due regard to the issue of topography and likely subsequent gradient changes in their overall design assessment.
58. Furthermore, I accept that a further limitation of MBC's assessment stems from not properly understanding the specific functional requirements behind the appellant's design methodology which directly impact on the layout of the appeal scheme. Such functional requirements include achieving a workable gradient for HGVs carrying food produce for store delivery, as well as, for shopping trolley transportation to be undertaken safely.
59. Testament to that, it is notable that MBC's preferred or alternative layout indicated during the Inquiry was already considered and rejected in the DAS rationale following the pre-application process. Largely for the reason the alternative could not be technically delivered with operational requirements in mind.
60. I am also aware that the appeal store elevations are deliberately orientated to provide the effect of enclosure as well as an active frontage and design interest from vantage points concerning the customer carpark and from New Court Way.
61. In parallel, the appellant proposes an extensive package of landscape mitigation, comprising of native hedgerow and tree planting, which would further screen and filter views of the development from wider public vantages. Once that mitigation has reached full maturity, only sparse and non-prominent views of the car park would remain relative to surrounding topography.
62. That is because the two banks of landscaping and landform raises would filter views of it. But even without the site landscaping envisaged by the appellant the development of the carpark and access would be seen in the context of wider placed trees, and therefore would not be a dominant feature.
63. The design attributes of the overall layout, specifically incorporating substantial natural landscaping together with the stores well thought out elevational architectural treatments, and expected hard standings subject to condition, all suggest to me a high quality design would be ensured.
64. Thus, the appeal scheme would respect existing surroundings and the emerging parkland campus setting of the locality. The development would be successfully integrated from surrounding nearby public vantages along Newnham Court Way, Gidds Pond Way, Bearsted Road and New Cut Road.
65. Furthermore, with respect to the conceptual alternative food store layout information posed by MBC, I note that no meaningful visual improvement or other benefit would be obtained by the changes they support. Even if such a concept was taken forward, the site coverage would remain similar; the access is in the same position; and an access road still fronts the building but with less overall landscaping achieved.



66. Instead, the alternative suggested would lead to demonstrably poorer urban design outcomes. It would create undesirable blank elevations for the building and impractical servicing arrangements. Because of that situation, it leads me to the conclusion that the rationale of the selected layout within the DAS is the most optimal design approach having regard to all opportunities, constraints, and functional requirements.
67. With respect to MBC's proposition that the site can deliver 8,886sqm of office floorspace in a 3 storey building, I agree some office development may be capable of being delivered. However, the likelihood is that the offices would need to be located at the rear of the site, with car-parking in front. Consequently, regardless of the end use, based on all arguments heard such arrangement appears the most feasible and realistic way in which the site could be developed owing to physical constraints and relative to what the LPR encourages.
68. Accordingly, I find that the appeal scheme's design is well reasoned. It would constitute high quality bearing in mind what a food store design can reasonably exhibit in terms of operational layout and architecture. The building and parking to plot coverage would not be inappropriate because they would integrate with the parkland campus concept further afield through generous landscaping provision, and through thorough future consideration of relevant discharge of condition applications by MBC. Therefore, the design credentials of the appeal scheme inclusive of landscaping conditions which can be applied to enable further visual refinement and enhancement would accord with Policies RMX1(1) and LPRSP15 as well as the design policies of the Framework and NDG which all collectively seek to encourage good design principles.

*Other planning merit considerations*

69. Newnham Court Farm, a grade II listed building, lies roughly adjacent to the appeal site. The statutory duties contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to have special regard to the desirability of preserving designated heritage assets or their setting, or any features of special architectural or historic interest which they possess.
70. The setting of Newnham Court Farm as well as its principal elevation is already dominated by surrounding modern development and a car park. I agree with MBC that as the appeal scheme is positioned northwards of the listed building and because further landscaping is proposed along the nearby boundary there would be no harm to its setting.
71. A minimum 10% BNG would be achievable when including off-site Environmental Bank BNG provision and verification. Attainable net gain would align with Policy LPRSP14a and LPRSP15 combined which support ecological and landscape enhancements.
72. The off-site BNG provision component is reliant on the planning obligation submitted. Even so, the on-site BNG provision would include: enhancement and creation of species-rich wildflower grassland comprising of a mix of both native grasses and herbaceous species; establishment of native shrub habitat along the southern, eastern, and western boundaries; the provision of some 79 individual trees site wide offering green infrastructure for insects, bats, and birds; and ornamental planting for invertebrates. Alongside other habitat

- opportunities of a green roof, green walls (under the revised landscape proposals). All of which would tie in with good design policy. The level of BNG achieved would be small and carries limited positive weight. And any notional increase above 10% is not a clear commitment made by the appellant.
73. Outside of the main issues, I have carefully considered other interested party objections including: increased traffic and congestion in an area which is well over capacity; highway improvement funding being unsuccessful; highway and pedestrian safety detriment; run off pollution to the River Len; other pollution, noise, and littering; harm to wildlife; wider visual and landscape harm having regard to the Kent Downs Area of Outstanding Natural Beauty; a lack of SuDS in the design; and that the proposal could lead to the closure of an existing Aldi store nearby, and there is no need for an additional food store.
74. However, none of those points constitute convincing reasons relative to the technical advice MBC has already considered and accepted, to prevent construction of the scheme.
75. With respect to strategic highway matters and connectivity, the site via the road network offers opportunities for customers to make trips by foot or cycling including the opportunity to undertake linked trips to the NCSV, nearby Eclipse Retail Park and the KMC.
76. Paragraph 115 of the Framework advises me that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
77. I note that three bus stops are located within approximately 560m of the site, providing services to the Town Centre, Maidstone West and East train stations, Grove Green, Canterbury, Sheerness, and Sittingbourne. I also accept there is realistic prospect of increasing accessibility levels later into the Plan period owing to local initiatives.
78. MBC submits that an award of £4 million was made by the Department for Transport during 2017 and subsequently further funding has been secured to provide for widening and signalisation of the roundabouts at the A249/Bearsted Road junction and the New Cut Road/Bearsted Road roundabout at the entrance to the KMC.
79. I also appreciate that Maidstone Valley Invicta Academies Trust Secondary School, Bearstead Primary Academy and Snowfields Academy all opened during 2020. Notably, those developments have not been considered within the Transport Assessment (TA). But that is because school trips are typically low in number during the weekday PM or Saturday road network peak periods, when discount food store retail trips are likely to be at their greatest. Scope for customers undertaking linked trips is also a consideration I have borne in mind.
80. The Bearsted Road roundabout and New Cut roundabouts are planned to be improved as part of an existing Bearsted Road improvement scheme. The Bearsted Road works would result in substantial capacity upgrades resolving local traffic movement issues, and is under the control of Kent County Council.

81. The TA assumptions and assessment methodology shows that a negligible 10 additional trips would pass through the M20 junction, on the A249, during the Saturday peak hour.
82. Taking into account existing Aldi stores in Maidstone, the catchment area of the appeal scheme would be compact and contained to near the site. Thus, as evidenced by the TA no new primary trips would therefore arrive or depart from the M20 that would not have visited another store in the absence of the proposed Aldi. The proposed Aldi would therefore not exacerbate any pre-existing traffic concerns at the M20 Junction 7.
83. I have considered the potential for other store closures, but the evidence does not indicate that to be a likely scenario. Besides, I have given most weight to the consultation response of the Highway Authority.
84. There would be short lived harm to local amenity arising from construction traffic movements and site-work. Such construction period activity is likely to result in unavoidable impacts to residents, drivers, and pedestrians. Nonetheless, all the evidence suggests that there would be no significant breach of policy nor highway safety detriment if the appeal was allowed. That is because construction period impacts would be able to be mitigated by management arrangements achieved through planning condition use.
85. Bearing in mind all of the technical consultee responses received by MBC, there are no other public safety or pollution issues arising that are incapable of being addressed by planning condition. Furthermore, I am satisfied ecological interests could be properly safeguarded, controlled, and enforced through planning condition use.
86. Additionally, the appellant's Drainage Technical Note<sup>1</sup> adequately explains to me the site specific reasons why sub-terranean storm water attenuation rather than SuDS would be appropriate. Those reasons pertain to the sloping ground and the plateau formation needed without requiring retaining walls, unlike larger plots within the KMC capable of accommodating customised drainage ponds on undulating ground.
87. In relation to aspects of the appeal I have been referred to other decisions and judgements. Considering those, I do not find any conflict with the broad principles of decision making triggered by this particular case. Collectively, the other cases also involve a combination of different sites and sets of circumstances which do not lead me to alter my findings.

### **Planning Obligation**

88. The covenants applicable are contained within 5 Schedules which have been agreed between the main parties. I note the obligation includes an appropriate clause whereby any individual covenant it contains would cease to be operable if it was found to be non-compliant with relevant legislation. This includes compliance with Regulation 122 of the CIL Regulations.
89. Schedule 1 defines the appeal site by way of reference to a 'plan' which is Location Plan Drawing No. 17200-100 Rev D prepared by The Harris Partnership 6 October 2021, as per Appendix 1. The plan is consistent with

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<sup>1</sup> 17 March 2023

relevant plans informing the appeal. I am content the Schedule successfully links the appeal land to the obligation entered into.

90. Schedule 2 includes the landowners covenants for providing the expected notifications to MBC for commencement, occupation, and completion of the development. Such provision is necessary and appropriate.
91. Schedule 3 sets out specific financial contributions committed to in the form of a sum of £100,000 towards bus infrastructure provision in the vicinity, and £948 towards Travel Plan monitoring. The provision accords with the broad aims of LPR policies LPRSP2 (Maidstone Urban Area); LPRSP12 (Sustainable Transport); LPRSP13 (Infrastructure Delivery); and Policy RMX1 (1) combined which encourage appropriate forms of public highway infrastructure and travel mechanisms to come forward in a sustainable manner together with new development.
92. Schedule 4 relates to BNG provision and the purchase of sufficient biodiversity units from the Environment Bank and verification of that. Such overall provision aligns with policies LPRSP14a and LPRSP15, the LPR taken as a whole, as well as, the advice of the Framework.
93. Schedule 5 relates to local labour and employment opportunity scheme alignment, enabling the provision of training and employment during the construction phase and the end use of the scheme once occupied. It also incorporates review mechanisms as part of it. I accept such provision expectation is embedded within Policy LPRSP11 (Economic Development) and the content of Schedule 5 is appropriate to meet sustainable local employment strategy commitments.
94. I find that the obligations within Schedules 1, 2, 3, 4 and 5 are all justified and meet the provisions of Regulation 122 of the CIL Regulations. All of the Schedule provisions within the obligation are necessary; directly related to the development; and fairly related in scale or kind. Those Schedules also all accord with the terms of the Framework and National Planning Practice Guidance, combined.

### **Conditions**

95. Without prejudice, the main parties have compiled an agreed list of conditions (inclusive of pre-commencement conditions) in the event the appeal were to be allowed, which was also subject to refinement discussion at the Inquiry itself for some elements of landscaping. I agree that the conditions detailed are appropriate and meet the statutory tests, subject to minor adjustment to ensure their successful delivery.
96. Standard conditions would be needed to specify the time limit and plans in line with statutory provision and to provide a formal mechanism for amendment.
97. A range of conditions would be necessary and appropriate securing agreed: resultant slab levels; trolley bay appearance; boundary treatments; external finishing materials inclusive of incorporating Kentish Ragstone sample approval as well as the hardstanding materials to be applied; additional landscaping scheme detail approval implementation and retention; and ecological management measures, including those linked to BNG provision. This is to

- ensure successful visual integration, high quality design and that biodiversity is respected along with an appropriate level of future ecological management.
98. Separate conditions requiring photovoltaic panel (PV) installation; suitable electric vehicle charging provision together with Travel Plan adherence would ensure the sustainability credentials of the scheme are maximised in line with the development plan. As would a condition seeking the verification of a very good BREEAM Retail rating also linked to ensuring the design is high quality.
99. A suite of conditions relating to vehicle parking, turning, cycle parking, loading, and unloading would ensure highway safety is acceptable during construction and operation periods. In tandem, completion of the off-site Bearsted Road improvement scheme<sup>2</sup> would be necessary given the wider highway network arguments posed and associated to the appellant's TA findings.
100. The restriction of permitted development rights outside of those under class E(a) retail use as well as a cap on retail floor space provision would be necessary in this case, given the sensitivity of the out of centre retail arguments accepted by MBC. The absence of such adequate control is likely to materially harm the Town Centre.
101. Additionally, further detailed conditions would be required to ensure: suitable drainage and ground water pollutant management; appropriate overall construction management (inclusive of foundation construction activity); hours of operation are respectful to surrounding uses; resultant noise levels are acceptable; that new lighting does not give rise to ecological or other wider amenity harm; and appropriate archaeological investigation concerning any unexpected historic asset discovery.

### **Planning Balance and Conclusion**

102. Pursuant to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, local planning authorities and other decision makers should first have regard to the development plan and then to any other material considerations.
103. If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
104. Even though it may be desirable to achieve the maximum medical campus floor space figure allocated by RMX1(1) I have still found that the appellant demonstrates full compliance with the adopted development plan for the area, taken as a whole bearing in mind all contentions made by MBC.
105. As the development accords with the development plan, subsequently it leads me to apply paragraph 11 (c) of the Framework which means that planning permission for the appeal scheme should be granted without delay.
106. Irrespective of my finding, the appellant makes the further contention that even if a breach of the development plan were to be found having regard to the

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<sup>2</sup> Consented under planning permission reference KCC/MA/0271/2019

precise wording of RMX1(1), the overall benefits still outweigh the harm arising from such a potential breach. I agree.

107. RMX1(1) remains allocated for a 'mix' of uses. In particular, I give substantial weight to the job opportunities attributed to the development. The overall benefits of the proposal are material considerations which outweigh the notional reduction in the maximum 100,000m<sup>2</sup> medical office space allocation figure featuring in the dispute, and all the other harms that I have identified. Subsequently, the direct benefits arising from the development give me sufficient reasons to allow the development to proceed in any event.

108. For the reasons set out above the appeal succeeds.

*M Shrigley*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Giles Cannock KC

Counsel

### WHO CALLED:

Justin Griffiths

Design Witness

Alistair Macquire

Landscape and Visual Witness

Tim Sturgess

Planning Witness

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Morgan

Counsel

### WHO CALLED:

Michael Lowndes

Urban Design Witness

Ben Simpson

Planning Witness

### INTERESTED PARTIES (WHO SPOKE AT THE INQUIRY):

Tony Harwood

Cllr

Denis Spooner

Cllr

Anne Brindle

Boxley Parish Council

### DOCUMENTS SUBMITTED DURING THE INQUIRY:

INQ1 – Appellant's Opening



INQ2 – Council’s Opening

INQ3 – Technical Note on the status of Kent County Council Bearsted Road highway improvements

INQ4 – Factual note agreed by the main parties concerning the North Kent Enterprise Zone

INQ5 – Agreed revised suggested landscaping condition wording (18 June)

INQ6 – Written closings of the Council

INQ7 – Written closings of the Appellant

#### DOCUMENTS SUBMITTED AFTER THE INQUIRY:

A signed Planning Obligation (s106).

#### **Schedule of Planning Conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out strictly in accordance with the following approved plans: 110 Rev R; 111 Rev D; 112 Rev P; 113 Rev D; 115 Rev F; 117 Rev A; 119 Rev B; 121 Rev A.
3. No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to, and approved in writing by, the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment and Drainage Statement prepared by Craddys (18/10/22) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):
  - that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
  - appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.The drainage scheme shall be implemented in accordance with the approved details.
4. No building hereby permitted shall be brought into use until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to, and approved by, the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall

- contain information and evidence (including photographs) of details and locations of inlets, outlets, and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the drainage scheme as constructed.
5. No development shall take place until details of the proposed slab levels of the building and associated development and the existing site levels have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be completed strictly in accordance with the approved levels thereafter.
  6. Details for the provision of 14 publicly accessible electric vehicle charging points including the EV charging speed are required to have been submitted to, and approved in writing by, the Local Planning Authority prior to the commencement of the use of the building. The approved charging points shall be provided and fully available for use prior to the operation of the retail store and shall thereafter be retained permanently for that purpose.
  7. Details of the trolley bays shall be submitted to, and approved in writing by, the Local Planning Authority prior to commencement of the use of the building. The development shall thereafter be carried out in accordance with the subsequently approved details.
  8. Details of all boundary treatments shall be submitted to, and approved in writing by, the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first use of the building(s) or land and maintained thereafter.
  9. No development shall commence until a Construction Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. Such details as approved shall be fully implemented on site. The Construction Management Plan shall include the following:
    - (a) Routing of construction and delivery vehicles to / from site
    - (b) Parking and turning areas for construction and delivery vehicles and site personnel
    - (c) Timing of deliveries
    - (d) Provision of wheel washing facilities
    - (e) Temporary traffic management / signage.
    - (f) Precautionary ecological mitigation methodology to avoid impacting protected/notable species.
    - (g) Maps showing the areas where the precautionary mitigation is to be implemented and areas of habitat to be retained.
  10. Within 3 months of works commencing on site an ecological management plan for the site boundaries must be submitted to the Local Planning Authority for written approval. The management plan must clearly set out what management is required to ensure the habitats within the site boundaries can

benefit biodiversity. The management plan shall be carried out as approved inclusive of all implementation dates it is to contain.

11. A verification noise report is required to have been submitted, and approved in writing by, the Local Planning Authority prior to commencement of the use of the building. The report shall be undertaken on completion of the works and installation of all plant. The rating level of noise emitted from the plant and equipment to be installed on the site (determined using the guidance of the current version of BS 4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound). The rating level from fixed plant shall not exceed the following criteria:

- 46 dB during daytime period (0700 – 2300 hrs) and
- 39 dB during night time period (2300 – 0700 hrs)

Thereafter, no new plant shall be installed without written approval by the planning authority.

12. The use of the building shall not commence until details of lighting have been submitted to, and approved in writing by, the Local Planning Authority. Details shall include designs, heights, luminance levels and measures to shield and direct light from the light sources so as to prevent light pollution. The proposed hours of operation of the lighting must also be provided. The development shall thereafter be carried out in accordance with the approved details.
13. Use of the development shall not commence until a Travel Plan in accordance with the Planning Practice Guidance and following the principles of the submitted draft Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority. The approved Travel Plan shall thereafter be fully implemented and maintained throughout the life of the development, or that of the Travel Plan (whichever is shorter).
14. The building hereby approved shall be constructed strictly in accordance with the facing materials and colours as shown on drawing no. 17200-112 Rev P and as listed in the 'Materials Key' section on that drawing unless otherwise agreed in writing with the Local Planning Authority.
15. No development above floor slab level shall take place until photographs of at least a 1.5m x 1.5m sample panel of the Kentish ragstone for the building (which has been constructed on site) have been submitted to, and approved in writing by, the Local Planning Authority including written details of the mortar mix. Such details as approved shall be fully implemented on the building and thereafter retained.
16. Details of the ground surface materials and colours shall be submitted to and approved in writing by the Local Planning Authority prior to installation. Development shall be carried out strictly in accordance with the approved details.
17. The use of the building shall not commence until a landscaping scheme following the principles of drawing no. 17200-VL\_L01 Rev N (Landscape Plan) has been submitted to, and approved in writing, by the Local Planning Authority. The landscaping scheme shall include:

- a) Details of an increased number/amount of proposed native trees and landscaping, including their size, species, maturity, spacing and position.
  - b) Details of an avenue planting scheme of no less than 12 metres in depth along the frontage of the site to Newnham Court Way.
  - c) A 5 year landscape management plan.
18. All landscaping specified in the approved landscape details shall be carried out in the first planting season (1 October to end of February) following the first use of the building or in accordance with a timetable previously agreed with the Local Planning Authority.
- The approved landscaping shall be retained for at least 5 years following its implementation and shall be managed and retained strictly in accordance with the approved specification/management plan, and any approved or retained seeding or turfing which fails to establish or any trees or plants which, before a period of 5 years from the completion of the development has expired, die or become so seriously damaged or diseased that their amenity value has been adversely affected, shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation. No replacement planting or removal of any planting shall take place without the prior written consent of the Local Planning Authority.
19. The use of the building shall not commence until details of the implementation and long term management of the approved landscaping scheme, commensurate with the development/occupation of the site, has been submitted to, and approved in writing, by the Local Planning Authority. The planting shall be carried out in accordance with the approved details.
20. The approved details of all vehicle parking/turning, cycle parking areas and vehicle loading/unloading shall be completed before the commencement of the use of the land or buildings to which they relate and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them.
21. The retail unit shall achieve a Very Good BREEAM Retail 2018 rating. A final certificate shall be issued to the Local Planning Authority for written approval to certify that a Very Good BREEAM Retail 2014 rating has been achieved within 6 months of the first use of the development.
22. The building or land shall be used for Class E(a) retail use only and for no other purpose, including other uses within Use Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any statutory instrument revoking and re-enacting those Orders with or without modification).
23. The development shall not exceed: 1,810 square metres gross internal area; 1315 square metres net internal retail area, of which no more than 1,052

- square metres net shall be used for the sale of convenience goods; and no more than 263 square metres net shall be used for the sale of comparison goods.
24. No additional floorspace shall be created through the use of mezzanines or other structures to increase the amount of usable floor area.
  25. The use hereby permitted shall only open to customers within the following times: 07.00 to 22.00 Monday to Saturday and up to 6 hours between 10.00 and 18.00 on Sunday and Bank Holidays.
  26. Deliveries shall only take place or be accepted at the store within the following times: 06:00 to 23:00.
  27. The use of the retail building hereby permitted shall not commence until the off-site highways works under the 'Bearsted Road Improvement Scheme' as approved under Kent County Council application KCC/MA/0271/2019 has been completed.
  28. The proposed on-site pedestrian links shall be lit in accordance with details to be submitted to, and approved by, the Local Planning Authority prior to commencement of the use of the development.
  29. No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority.
  30. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater.
  31. Prior to the commencement of development archaeological field evaluation works must be secured in accordance with a specification and timetable which has been submitted to, and approved by, the Local Planning Authority and if required:
    - i) further archaeological investigation, recording/ reporting, determined by the results of the evaluation, in accordance with a specification and timetable which has been submitted to, and approved by, the Local Planning Authority; and if required
    - ii) programme of post excavation assessment and publication.
  32. Details of the PV Panels to be installed at roof level shall be submitted to, and approved by, the Local Planning Authority prior to installation. Use of the development shall not commence until installation of the PV panels is completed.

## **End of Schedule**