

Tonbridge
Medway

26 July 2021

TM/21/02064/FL

Proposal: Section 73 Application: Variation of condition 1 (use of warehouse) of planning permission TM/98/01517/FL to extend the range of the goods that can be sold from the unit

Location: Unit 1C Cannon Lane Retail Park Cannon Lane Tonbridge Kent

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1. Description:

- 1.1 This is a broadly comparable resubmission of a previously refused application, proposing the variation of condition 1 (use of warehouse) of planning permission TM/98/01517/FL to allow the introduction of a food store to this retail unit (effectively, a new supermarket). The previous application, reference TM/20/02334/FL, was refused by the Council on the 28 May 2021 for the following reason:

“The Local Planning Authority is not convinced on the evidence presented by the applicant within the Transport Assessment and associated supporting documentation that sufficiently robust or up to date modelling has been undertaken to demonstrate the development can come forward in a wholly acceptable manner in highway terms. As such, the Local Planning Authority does not consider that sufficient evidence exists to demonstrate what potential significant impacts might arise from the development on the transport network in terms of capacity and congestion and subsequently whether any such impacts can be cost effectively mitigated to an acceptable degree. The development therefore fails to comply with the requirements of paragraph 108(c) of the National Planning Policy Framework 2019, policy CP2(e) of the Tonbridge and Malling Borough Core Strategy 2007 and policy SQ8 of the Managing Development and the Environment DPD 2010.”

- 1.2 An appeal has been lodged against the refusal of planning permission but at the time of writing no detailed programme had been set by the Planning Inspectorate regarding their consideration and determination.
- 1.3 This scheme is materially different in that it relates solely to Unit 1C instead of both 1C and 1B. The resulting floorspace that would change is therefore smaller than the previous scheme, with this unit having a GIA of 1,396 sqm, with a net sales area of around 995 sqm. A small mezzanine (95 sqm) will be included within the back of house area at the rear of the unit. The previous application would have seen a total floorspace of (GIA) of 1,900 sqm, and a new sales area of around 1,235 sqm. This scheme therefore has 504sqm less GIA, and a sales area 240sqm smaller.

- 1.4 Otherwise, the proposal raises fundamentally the same matters as the previously refused application. As before, no operational development is proposed, and the parking provision and external appearance of the store would remain the same.
- 1.5 Any advertisements would be dealt with under separate consent. This time the applicant confirms that the intended operator is “Food Warehouse” by Iceland Supermarkets; however this is not a material planning consideration and should not be taking into account when assessing the application.

2. Reason for reporting to Committee:

- 2.1 At the request of Cllr Matt Boughton to consider highways impacts and whether the application has overcome previous concerns.

3. The Site:

- 3.1 The site is currently a single retail unit within the Cannon Lane retail park development, currently occupied by Go Outdoors. The park falls outside of the Tonbridge High Street primary and secondary shopping areas and is also more than 300m away from these areas, and is therefore an “out of town” retail development for the purposes of retail planning policy, but does fall within the wider Tonbridge Central Area defined by the TCAAP.
- 3.2 The general character of the area reflects this, with a predominance of retail and commercial uses nearby, but also some residential elements including flats and houses adjacent to the site on Crabapple Road and Redbud Road.
- 3.3 The site is also within a Flood Zone 2 and 3.

4. Planning History (relevant):

TM/16/00820/FL	Approved	1 November 2016
New unit to accommodate an A3 occupier		
TM/16/00821/FL	Approved	1 November 2016
Extension to rear of building		
TM/16/00822/FL	Approved	1 November 2016
Insertion of mezzanine floors		
TM/16/03605/RD	Approved	2 February 2017

Details of condition 2 (materials) and 7 (emergency plan) pursuant to planning permission TM/16/00820/FL (New unit to accommodate an A3 occupier)

TM/16/03606/RD Approved 18 January 2017

Details of conditions 2 (materials) submitted pursuant to planning permission TM/16/00821/FL (Extension to rear of building)

TM/16/03607/RD Approved 24 February 2017

Details of acoustic fence submitted pursuant to condition 3 of planning permission TM/16/00818/FL, condition 5 of planning permission TM/16/00820/FL and condition 5 of TM/16/00821/FL

TM/16/03608/RD Approved 18 January 2017

Details of condition 2 (materials) submitted pursuant to planning permission TM/16/00819/FL (External alterations and alterations to forecourt to provide pedestrian route to Cannon Lane)

TM/16/03767/RD Approved 23 February 2017

Details of condition 4 (site management plan) submitted pursuant to planning permission TM/16/00818/FL (Variation of condition 1 of planning permission TM/98/01517/FL to extend the range of the goods that can be sold from the unit)

TM/17/01027/AT Approved 4 July 2017

Installation of shopfront signage

20/02334/FL Refused 28 May 2021

Variation of condition 1 of planning permission TM/16/00818/FL: to allow the sale of convenience goods from Units 1B and 1C

5. Consultees:

5.1 TMBC Environmental Health: The applicant discusses the change of Unit 1C to an Iceland Food Warehouse and the application includes an operations statement outlining the intended delivery pattern of one HGV per day with the delivery arriving between the hours of 7:00 – 21:00 Monday to Saturday; 9:00 – 17:00 Sundays and Bank Holidays and a home delivery service operated from the rear service entrance provided by Sprinter type vans despatched over the same times as above.

5.1.1 It is understood all previously imposed conditions on hours of operation and deliveries would be re-imposed for this unit and the site management plan will be updated to reflect the changed use of the units.

- 5.1.2 This Service remains concerned that the variation of this condition will impact the aural amenity of local residents. A food retailer occupying this site will cause increased noise impact due to delivery and chiller/associated equipment noise.
- 5.1.3 This application differs from the previous refused permission 20/02334 in that it is no longer for two stores merging into one so there will not be the previously assumed reduction in deliveries. It is noted Iceland propose to have a single hgv delivery per day (it would be of benefit if this can be conditioned) and the home delivery service will use smaller less noisy vans. There will be an increase to the background noise from the extra refrigeration equipment that will be needed for this store. The application does not include details of this.
- 5.1.4 It would be preferable if noise reports were provided prior to a decision being made. However, if on balance you are minded to approve this application the following comments are made:
- 5.1.5 Prior to first construction of the building the applicant is required to provide suitable reports to the Local Planning Authority for approval demonstrating the following:
1. Noise from all plant (including air-conditioning or refrigeration plant) installed on this site (including temporary units) shall not exceed NR35 at the nearest site boundary. The report to include details of such plant and any noise mitigation measures. After approval the work shall be carried out in strict accordance with the agreed details.
 2. The impact of all deliveries at this site. The report should consider the levels cited in BS8233:2014, namely:
 1. for gardens and other outdoor spaces, in particular those in para 7.7.3.2 which states a desirable limit of 50dB LAeq,1-hour, and a maximum upper limit of 55dB LAeq,1-hour; and
 2. to at least secure internal noise levels no greater than 30dB LAeq, 8-hr (night) and 35dB LAeq, 16-hr (day) in bedrooms, 35dB LAeq, 16-hr (day) in living rooms and 40dB LAeq, 16-hr (day) in dining rooms/areas (ref para 7.7.2). Particular attention is drawn to the notes accompanying Table 4 in para 7.7.2 and that these levels need to be achieved with windows at least partially open, unless satisfactory alternative means of ventilation is to be provided.
- 5.1.6 The Applicant's attention is also drawn to the ProPG on Planning and Noise issued by the Association of Noise Consultants (ANC), the Institute of Acoustics (IoA) & the Chartered Institute of Environmental Health (CIEH).
- 5.1.7 The report shall detail any mitigation/attenuation measure needed to attain the abovementioned levels. It is important that the applicant's noise assessment includes specific data, and we will require these details for approval before any

decision can be made. Specific details of any necessary noise insulation/attenuation requirements (e.g. acoustic glazing, acoustically screened mechanical ventilation, acoustic fencing etc) will also need to be submitted for approval.

5.2 KCC (H + T): Comments made as follows:

Site Access

5.2.1 Tonbridge Retail Park is located off A26 Cannon Lane, Tonbridge. The retail park is an existing development, which currently houses M&S Foodhall, Halfords, Costa, Jollyes, Carpetright and Home Bargains. Unit 1C which this application refers to is currently occupied by Go Outdoors.

5.2.2 Access to the site is a priority junction with single lane in either direction for ingress and egress. The give-way marking at the junction with A26, allows two vehicles to wait to exit from the retail park.

Sustainable Travel

5.2.3 The site is located approximately 1.5 km from Tonbridge Railway Station. Bus services operate along A26 Cannon Lane, with a stop located outside Tonbridge Retail Park. Further afield there are other stops on Hadlow Road, approximately 410 metres away from the site, which offer extended hours for staff and customers to access the site.

5.2.4 Existing infrastructure around Tonbridge provides for pedestrians. Tonbridge and Malling have a Cycle Strategy which identifies the existing network, as well as aspirational routes.

Trip Generation

5.2.5 The predicted trip generation between the proposed use and the existing use as Go Outdoors, and their respective floorspace, derived using TRICS, leave negligible change in traffic - 5 less vehicles during weekday PM hour and 4 more vehicles during Saturday peak hour. These numbers will not have a severe impact on the highway network, which is the criteria set out within Paragraph 111 of National Planning Policy Framework 2021 - 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.

Junction Improvement

5.2.6 The applicant, shown within Drawing number 9843/P/301, has proposed to improve the site access junction to help capacity, providing separation between left and right turning traffic to egress from the Retail Park, for approximately 35

metres stacking distance. This work will need to be undertaken by Section 278 Agreement.

Summary

5.2.7 As the change in traffic using the Retail Park between the extant planning permission and the proposed use are negligible, I can confirm that provided the following requirements are secured by Section 278 Agreement between applicant and highway authority, then I would raise no objection on behalf of the local highway authority:

- Access junction with A26 to be improved as per Drawing number 9843/P/301, labelled 'Proposed site plan car park' within Planning Application Documents on TMBC planning portal.
- Informative: It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.
- Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.
- Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.
- Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.
- Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

- Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel> Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

5.3 Private Reps: 12 + site notice/0X/12R/0S on the following summarised grounds:

- Increased traffic
- Poor connection/design
- Lack of infrastructure
- No need
- Noise
- HGV manoeuvring difficult
- Increased delays
- Car park at capacity
- Will not enhance town
- Deliveries should be at the same times
- Should not interfere with shutting of the park
- Lights should be switched off at night
- Response to store alarms should be more robust
- Bollards should be placed at the end of parking spaces to protect fences
- Details of noise and smell pollution should be provided
- Needs updated transport statistics

6. Determining Issues:

6.1 As noted before, no operational development is proposed. The key issues are therefore restricted to the effect of varying the condition on the vitality and viability of the Tonbridge High Street (in consideration of adopted and national retail policy), parking and highways, and the amenity of neighbouring properties. The matters raised are directly comparable to the previously refused scheme except now that the floorspace has reduced, and it is proposed to vary this in relation to a single unit rather than two.

Matters of principle and retail impact – policy context:

6.2 As the proposed variation would result in the introduction of a food/convenience unit at this location, it is necessary to consider and apply local and national policy on retail developments.

6.3 The site lies in the defined Tonbridge Central Area (TCA) but away from the primary and secondary shopping areas defined in the TCAAP. It is therefore not considered to fall within a "town centre" location. Furthermore, as it is more than 300m from the defined primary and secondary shopping, it would also fail to meet the definition of an "edge of centre" location as defined by the NPPF. It is therefore an "out of centre" location for the purposes of applying national policy;

this also reflects the previous permission in 2016 for an expansion of the limited assortment of good sales from the units, to avoid the introduction of town centre uses on this out of centre location.

- 6.4 The Council's development plan policy on new retail development is set out in policy CP22 of the TMBCS. It explains that new retail development will be permitted if it maintains or enhances the vitality and viability of the existing retail centres, and properly respects their role in the retail hierarchy in accordance with a sequentially preferable locational assessment. The policy sets out a sequential test for the preferred location for retail development. Firstly, it should be accommodated on sites located within the defined limits of the town, district or local centres. If this is not possible, then on edge-of-centre sites, but only if there is sufficient capacity and a retail need is demonstrated that cannot be accommodated within a town, district or local centre.
- 6.5 Thirdly, if an edge of centre site cannot be found, then on out-of-centre sites, but only if there is sufficient capacity and a retail need is demonstrated that cannot be accommodated within or on the edge of a town, district or local centre. Sites that are well related to an existing retail area will be preferred to ones that have no such relationship. Finally, policy CP22 is clear that proposals which might harm the vitality or viability of an existing centre either in terms of retail impact or, in the case of smaller centres, undermining the balance of uses or harming their amenity, will not be permitted.
- 6.6 Policy R1 of the DLADPD expands on policy CP22 but does not apply to the TCA, which is instead covered by the TCAAP policy TCA8. This policy explains that proposals for new retail floor space outside the defined shopping areas will be resisted. A sequential approach will be applied in accordance with Core Policy CP22 to ensure retail activity remains the dominant use within the defined shopping areas.
- 6.7 The prioritisation of new retail development to the primary shopping areas in TCA8 is broadly consistent with retail policy set out in the NPPF, as follows.
- 6.8 Retail policy in the NPPF is set out under chapter 7, "*Ensuring the vitality of town centres*". Under paragraphs 86 – 88, the NPPF explains that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Among other things, paragraph 86 states that planning policies should:
- a) define a network and hierarchy of town centres and promote their long-term vitality and viability – by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses (including housing) and reflects their distinctive characters;

b) define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre;

e) where suitable and viable town centre sites are not available for main town centre uses, allocate appropriate edge of centre sites that are well connected to the town centre. If sufficient edge of centre sites cannot be identified, policies should explain how identified needs can be met in other accessible locations that are well connected to the town centre

- 6.9 Paragraph 87 explains that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
- 6.10 Finally, paragraph 88 explains that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 6.11 An edge of centre location is defined in the glossary to the NPPF as *“For retail purposes, a location that is well connected to, and up to 300 metres from, the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the definition of edge of centre, account should be taken of local circumstances”*.
- 6.12 The requirements of paragraphs 86 and 88 for retail centres to be defined, to be established in a retail hierarchy, and the need to consider sequentially preferable locations starting with main town centre areas, then edge of centre, then out of town locations, are generally consistent with the aims of policy CP22 and TCA8. Paragraph 87 builds on this and gives preference to well-connected edge of centre locations that are readily accessible.
- 6.13 Additionally, paragraphs 90 and 91 of the NPPF explain further requirements for retail development outside of town centres (this includes edge of centre locations). The requirements of paragraph 90 set out that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold. If there is no locally set threshold, the default threshold is 2,500m² of gross floor space. This should include assessment of:

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

- 6.14 Paragraph 91 makes it clear that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused.
- 6.15 Before considering sites not within the defined limits of the retail centre, policy CP22 also requires an assessment as to whether *“there is sufficient capacity and a retail need is demonstrated that cannot be accommodated within a town, district or local centre”*
- 6.16 However, national policy in the NPPF does not require a specific retail need to be identified as part of the sequential test when considering edge of centre or out of centre sites when determining planning applications. The fact that the development is being proposed is sufficient grounds to then consider the sequential tests and if the development is satisfactory in this regard and all other matters, then it can be approved irrespective of whether a defined or specific “need” for the development is identified. This is also consistent with the National Planning Policy Guidance (NPPG) on Town Centres and Retail. The NPPG is a material consideration and aids in the interpretation of NPPF policy.
- 6.17 Within the NPPG there is a clear distinction between the requirements for a sequential test in plan making (i.e. production of a local plan) and when making decisions on planning applications. In relation to plan making, paragraph 010 of the NPPG section “Town centres and retail” says a need for main town centre uses must be assessed as part of the sequential test before allocating sites for retail development in a new local plan, but at paragraph 011 in relation to sequential tests for determining planning applications, there is no such requirement to assess a defined need for the development.
- 6.18 Therefore, policy CP22 is considered to be unduly restrictive in this regard. Because this test is not fully consistent with the NPPF, only limited weight can be afforded to this aspect of the policy. Therefore, whilst acknowledging the primacy of the adopted development plan as set out in legislation, it is considered that material considerations in the form of the more up to date NPPF justify not rigidly applying the terms of policy CP22 (b), insofar as a specific retail need has to first be identified. This interpretation has been confirmed by case law in *Warners Retail (Moreton) Ltd v Cotswold District Council & Ors [2016]* in which Lindblom LJ stated:

“The NPPF was published as planning policy for England in March 2012. It superseded much of the then extant national planning policy, including Planning Policy Statement 4 – “Planning for sustainable economic growth”, published in December 2009 (“PPS4”), which had replaced Planning Policy Statement 6 – “Planning for Town Centres”, published in March 2005 (“PPS6”). PPS6 had contained a policy requiring additional retail development outside a town centre to be justified by a demonstration of the need for the development, the two main elements of need being “quantitative need” and “qualitative need” (paragraphs 2.32 to 2.40). This component of national policy was not carried forward into PPS4, or subsequently into the NPPF. But the “sequential approach” was.” [Para 8 of his judgment]

- 6.19 The requirements for an identification of need in limb (b) to policy CP22 likely reflected the PPS guidance in place at the time the core strategy was adopted in 2007, long before the NPPF came into effect. This further demonstrates that an assessment of specific need should not be insisted upon.
- 6.20 Furthermore, the threshold for a refusal in terms of retail impact under policy CP22 is also significantly lower than the equivalent test set out under the more up to date NPPF. Paragraph 2 of policy CP22 sets out that “Proposals which might harm the vitality or viability of an existing centre either in terms of retail impact or, in the case of smaller centres, undermining the balance of uses or harming their amenity, will not be permitted”. However, the test under the NPPF for a refusal on retail impact on the vitality and viability of town centres is only where there is a “significant adverse impact”, as set out previously in this report under paragraph 91. “Significant adverse impact” is a much higher threshold than policy CP22’s “Proposals which might harm the vitality or viability of an existing centre”. “Might harm” is a particularly low threshold in comparison and suggests even when there is a vague prospect of a minor reduction in sales or footfall then planning permission should be automatically refused.
- 6.21 It is apparent from the framing of the wording in policy CP22 that its tests are not consistent with the requirements of the more up to date NPPF. As a result of this policy CP22 is again considered to be unduly restrictive in this regard. Because this test is not fully consistent with the NPPF, only limited weight can be afforded to this aspect of the policy. Therefore, whilst once more acknowledging the primacy of the adopted development plan as set out in legislation, it is considered that material considerations in the form of the more up to date NPPF justify not rigidly applying the terms of paragraph 2 of policy CP22, insofar as any retail development must be refused where it might harm the vitality and viability of retail centres.
- 6.22 Nonetheless, the overarching aim of CP22, TCA8 and the relevant sections of the NPPF and NPPG is to prioritise the placement of retail development within town centre locations, in order to encourage investment, footfall and purchasing in these places, and increase the likelihood of “linked trips” whereby consumers

visit multiple town centre businesses and help to support their vitality. Where retail development is located on edge of centre locations, the chances for this type of linked activity may decrease (although well connected sites may still enable this, hence their preference under paragraph 87 and CP22). With completely out of town locations the risk is that retail development will draw trade away from the town centre to the detriment of its vitality. For example, a very large out of town supermarket that can meet all the day to day needs of local people in a single trip, with no need to visit the town centre.

- 6.23 The application will therefore need to satisfy the locational requirements of policy CP22, TCA8 and paragraphs 86 – 89, have due regard to the established retail hierarchy set out in the TCAAP, and consider the policy requirements for retail impact highlighted under paragraphs 90 and 91, in order for this location for convenience goods development to be considered acceptable. Given that a number of third-party comments refer to there being no “need” for an additional supermarket in this location, it is also considered necessary to clarify this point.

Retail Impact – Whether there is a “need” for the proposed development:

- 6.24 As noted above, there is no policy requirement in the NPPF to consider if there is a particular identified need for an additional retail development. The fact that it is being proposed is sufficient grounds to apply the relevant policy tests. Whilst third party comments referring to the proximity of other supermarkets are noted, this does not preclude the applicant seeking permission for the proposed development. It is a matter for the applicant to satisfy themselves as to whether a further convenience store is viable in this location but this is not a material planning consideration. The planning merits of the proposed use must be considered rather than theoretical alternative uses or locations that are not before the Council.

Retail Impact – Location:

- 6.25 The applicants have provided a planning and retail assessment to consider whether there are any sequential preferable sites, as required by policy CP22, TCA8 and the NPPF.
- 6.26 The assessment sets out the following findings to determine whether a sequential preferable site exists for this this convenience store (as in, whether an available site exists within the primary or secondary shopping areas of the town). This is explained as follows:

“The Tonbridge Central Area Action Plan (April 2008) identified a number of development sites within Tonbridge, and their indicative capacity. The table below summarises the sites that have retail identified as a proposed use. In all cases, retail is identified as part of a mixed use development, none of the sites is solely allocated for retail development.

Of these seven sites, five sites (Tonbridge Station, River Lawn, Quarry Hill Road/Waterloo Road, Sovereign House and Waitrose/Iceland car park) either show no change in the amount of retail floorspace proposed, a reduction in retail floorspace, or only a small increase in retail floorspace that would not be able to accommodate the proposed food store, even when applying flexibility. These sites are therefore not considered suitable to accommodate the proposed development, and are not assessed further. In addition, the Sovereign House site has been redeveloped for residential use, and the Tonbridge Station site has also been developed to provide decked car parking for station use. These sites are also no longer available. The remaining two sites (Botany and Tonbridge Library) are considered below.

6.27 In respect of the Botany site (including Beales department store now closed), the assessment explains that the store is much larger than the Cannon Lane unit, being some 4,343sqm and, as the site is owned on a long lease by Sainsbury's, it was therefore unclear whether it is actually being marketed, such that it is "available" for the proposed development. Further information was sought from the applicants in this respect, and their agent approached Sainsbury's to inquire if the unit was available, potentially though sub-division.

6.28 The response from Sainsbury's is detailed in the letter from the agent dated 9th February 2021, who explains that:

"In respect of the former Beales unit I undertook a search of the local land registry which identified that the freehold is owned by Tonbridge & Malling Council and Sainsbury's have a 125 year lease from them. Beales had a further lease from Sainsbury's, but they are now in Administration. After extensive searches, I have not been able to find any marketing details, letting boards or particulars for the unit, so it is clear that the space is not currently being marketed for future occupation. Indeed, it has not been marketed since it became vacant in Spring 2020.

Notwithstanding the above, I spoke with Sainsbury's to understand the current position and was advised that the unit is not being marketed as Sainsbury's are currently reviewing its options for the space. It was suggested that at least part of the space could be incorporated into a reconfiguration of the existing Sainsbury's unit, but it was not known how much space this would involve. This is consistent with my understanding of Sainsbury's long held aspiration for the existing store.

My understanding is that even if there is some space available post a Sainsbury's extension, they would not let this to a competing food store operator."

6.29 Based on the information provided, it therefore appears that the site is not available since it likely to be incorporated into an enlarged Sainsbury's store, and any remaining space following this expansion (if there was any) would further be unlikely to be offered to a competing convenience goods operator, regardless of who the end company was.

- 6.30 Accordingly, it is considered that this site is not available for the broad type of development being proposed, even with some flexibility on size and footprint.
- 6.31 The assessment goes on to consider the Tonbridge Library site (owned by KCC and not currently available); the former Woolworth store (too small at 836sqm; even with some flexibility on the part of the operator, it is less than half that sought at the Cannon Lane site). All other vacant units are even smaller.
- 6.32 Beyond the shopping areas, the assessment has also considered edge of centre sites, including the following:
- “Key public car park sites have been considered in this assessment. All, however, are considered important facilities for Tonbridge, in terms of catering for both local residents and visitors, and all of these car parks have therefore been assessed as unavailable for development.*
- Public open space and recreation land has also been considered including identified important amenity areas. None of these sites is currently vacant or under-utilised and all perform an important local function, therefore none of these sites is considered suitable or available on the basis that the Council generally seeks to retain such facilities in the interests of preserving their use for residents and visitors to an area.”*
- 6.33 Overall, it is considered that the applicant has carried out a thorough assessment of all potentially available sites in the primary shopping areas and edge of centre sites and none are suitable or available for the type of development being proposed. Even with the reduced floorspace now proposed, the new store remains large and there is no evidence any new units of floorspace around 1,300sqm has subsequently become available since.
- 6.34 There is no evidence before the Council that the sequential assessment is flawed or has omitted a site that would be more preferable. As there are no sequentially preferable suitable or available sites within the primary and secondary shopping areas, or the edges of these centres, in accordance with policy CP22 and paragraphs 86 – 88 of the NPPF, out of town locations may be acceptable.
- 6.35 The Cannon Lane site falls within the wider Tonbridge central area, and there is a reasonable degree of connectivity via footpaths and adjacent roads, as well as public transport, to the primary shopping areas. Nonetheless, it is an “out of centre” location as it does not fall within the 300m distance of the shopping areas, which is the definition for an edge of centre site defined in the NPPF.
- 6.36 However, as the retail assessment has failed to identify any sequentially preferable suitable or available sites for the broad type of development being proposed, it is therefore considered that the out-of-town location of the proposed new retail store has passed the sequential tests set out under policy CP22, TCA8

and paragraphs 86, 88 and 89 of the NPPF. As such there are no policy objections on the principle of a new convenience store at this location.

Retail Impact – whether an assessment is required:

- 6.37 The final consideration on matters of retail policy is whether the introduction of a convenience store here would necessitate a retail impact assessment (RIA) to determine the impact on the vitality of the high street primary shopping areas.
- 6.38 Paragraphs 90 and 91 of the NPPF set out the circumstances in which a retail impact assessment (RIA) is required on retail development outside of a town centre location.
- 6.39 The NPPF is clear that where no local floor space threshold is set (CP22 is silent in this regard) then the default threshold is 2,500sqm. The proposed store is just 1,300sqm, falling very far below the default threshold set out in the NPPF. In choosing this threshold, it is apparent that in most circumstances the Government does not consider retail stores with a floor space below this level to warrant a RIA, or the wording of this paragraph would plainly have reflected this. It is clear that developments below this threshold, particularly in the absence of a locally defined threshold, are highly unlikely to have an impact on the main town centre that would be significant enough to warrant consideration through a full RIA. There is no evidence that a significant adverse impact would arise with a development so far below the default floor space threshold.
- 6.40 Policy CP22 is clear that proposals which might harm the vitality or viability of an existing centre in terms of retail impact will not be permitted, although as noted previously this test is inconsistent with the requirements of the NPPF and should not be used as a basis to justify refusal. However, given the comparatively low floor space against the threshold for assessment under an RIA set out in national policy, and the reasonable connectivity from the site to the primary and secondary shopping areas, it is not considered that there is sufficient evidence that the proposal would result in significant adverse impacts to the vitality or viability of the shopping areas in terms of retail impact.
- 6.41 Accordingly, it is not considered that there is any conflict with the requirements of paragraph 90 and 91 of the NPPF, and even where there is some limited conflict with policy CP22's stricter requirements, the weight that can be attributed to this conflict is greatly and decisively reduced as a result of inconsistencies with the NPPF.
- 6.42 Therefore, there is no policy basis for requiring an RIA.

Highways and Parking:

- 6.43 Paragraph 110 of the NPPF states that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
 - b) safe and suitable access to the site can be achieved for all users; and
 - c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
- 6.44 Paragraph 111 of the NPPF states 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. Paragraph 112 goes on to state that within this context, applications for development should:
- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
 - b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
 - c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
 - d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and
 - e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
- 6.45 Policy CP2 of the TMBCS advises that new development that is likely to generate a significant number of trips should:
- (a) be well located relative to public transport, cycle and pedestrian routes and with good access to local service centres;
 - (b) minimise the need to travel through the implementation of Travel Plans and the provision or retention of local services and facilities;

(c) either provide or make use of, and if necessary enhance, a choice of transport modes, including public transport, cycling and walking;

(d) be compatible with the character and capacity of the highway network in terms of the volume and nature of traffic generated;

(e) provide for any necessary enhancements to the safety of the highway network and capacity of transport infrastructure whilst avoiding road improvements that significantly harm the natural or historic environment or the character of the area; and,

(f) ensure accessibility for all, including elderly people, people with disabilities and others with restricted mobility.

- 6.46 Policy SQ8 of the MDE DPD sets out that before proposals for development are permitted, they will need to demonstrate that any necessary transport infrastructure, the need for which arises wholly or substantially from the development, is in place or is certain to be provided. It goes on to state that development proposals will only be permitted where they would not significantly harm highway safety and where traffic generated by the development can adequately be served by the highway network.
- 6.47 A number of third-party concerns have been raised regarding potential highways and parking impact. Following comments raised by KCC Highways and Transportation in the last application, the applicant provided updated traffic data to address initial concerns.
- 6.48 KCC's detailed response is set out earlier in the report. They note that the change in traffic would be - 5 less vehicles during weekday PM hour and 4 more vehicles during Saturday peak hour. They add that these numbers will not have a severe impact on the highway network, which is the criteria set out within Paragraph 111 of National Planning Policy Framework 2021, and accordingly raise no objections, subject to the implementation of the two way exit to ensure backing up does not occur into and out of the junction.
- 6.49 This scheme has already been granted planning permission under reference TM/18/00704/FL and the plans have been resubmitted with this application. It would provide a wider, two-lane exit from the site, easing traffic flow and reducing the chances of internal queuing that could then back up traffic trying to enter the site (**Appendix 1** – two lane exit approved plan).
- 6.50 The land for the revised access is within the control of the applicant and a Grampian style condition will ensure this is constructed before the use commences. The applicant has agreed in writing to the imposition of this type of condition.

- 6.51 These works would be implemented through a further S278 agreement with the County Council (if required). Subject to this, it is not considered that any unacceptable or severe highways impacts would result, being the specific test set out in national policy under paragraph 111 of the NPPF. Whilst it is noted that third parties raise objections on the existing traffic in the area, the proposal can only address the resulting effects from permission being granted, not any pre-existing traffic problems along the A26.
- 6.52 Furthermore, no changes to existing parking are proposed. Whilst some increased parking may result if the new use proves more popular than the existing, KCC Highways have not raised any safety objections in this regard. It is not considered that the existing parking arrangements would be inadequate even if there is some greater use.
- 6.53 Whilst the Council refused the previous application for the change of both units to comparison and convenience stores, this development proposes a lower level of floorspace and for the change of use of only a single unit.
- 6.54 Assessing this application on its own merits and in light of KCC Highway's lack of objection overall, the scheme would comply with Policies CP2 of the TMBCS, SQ8 of the MDEDPD and paragraph 111 of the NPPF, subject to the junction improvements being delivered prior to commencement of the new use. This will be secured by condition.

Neighbouring amenity:

- 6.55 In terms of neighbouring amenity, third party concerns are noted. It is important to recognise again that the scope of this application is to consider any greater impacts from varying the wording of the condition, and not any pre-existing problems with the operation of the retail park, including deliveries to other stores.
- 6.56 A separate planning enforcement investigation has also been conducted with regard to the closing of the barrier overnight to prevent anti-social use of the park, which was detrimental to the amenity of neighbouring properties. The landowners were reminded of their responsibility to securely lock the park at 9:30pm every night, after the investigation found the barrier to be open past this time on occasion. Since then, the land owners have confirmed their security team are reminded to lock the gate each night, as well as writing to existing tenants to ensure compliance with the site management plan, in accordance with previously imposed conditions. No further complaints from residents have been received since.
- 6.57 On this matter, all previously imposed conditions on hours of operation and deliveries would be re-imposed. This includes *"No delivery or despatch of goods shall be carried out outside the hours of 07.00 to 21.00 Mondays to Saturdays or 09.00 to 17.00 on Sundays, Bank and Public holidays, unless otherwise agreed in writing by the Local Planning Authority"* as well as a site management plan,

which should be updated to consider the changing use of the units. Furthermore, an updated noise survey has been provided to TMBC's Environmental Protection team, who raise no objections in regard to future noise of plant or ventilation subject to the imposition of conditions. At that time, the Council can consider whether it would achieve an appropriate noise climate based on the specific details and mitigation measures proposed.

- 6.58 Whilst there are concerns from Environmental Protection over any future proposals for any regular home deliveries service operating from that unit (due to the increased number and frequency), home deliveries are not an essential requirement for this type of use. The applicant has confirmed that there would be a maximum of 3 home delivery vehicles operating from the store and engines would not run whilst loading up at the bay.
- 6.59 Accordingly, it is considered that this matter can be addressed by planning conditions which would prohibit the operation of such a service unless and until a satisfactory noise mitigation scheme could be demonstrated and agreed by the EP team. This would not otherwise prevent the operation of the unit for a convenience and comparison store and it considered to meet the statutory tests to avoid undue disruption to nearby dwellings until further information has been provided.
- 6.60 Although it is noted that there have been complaints regarding the M&S store, that building is closer to a number of residential properties on Crabapple Road, whereas this building is located further away and with a deeper roof space to accommodate plant away from the nearest houses. If new plant and ventilation is required for the future use, it will be a matter for the applicants to resolve in a manner that does not result in unacceptable noise impacts to nearby residential properties. Unit 1C is also much further away from neighbouring dwellings
- 6.61 As to the number and frequency of general deliveries, there are no restrictions on this on the previous consent, only on the hours within which they can arrive. Given the location in an established retail park on which no restrictions apply to other units in terms of deliveries, it is not considered likely that the number of deliveries would change so substantially that any significant greater noise impact would arise. The hours of operation would continue to be restricted within the terms of the existing consent. Additionally, the improved two-way exit will ease traffic leaving the site and reduce the chances of car engines running whilst stationary close to neighbouring gardens. To consider this matter another way, it would not be considered reasonable (therefore failing the statutory tests for the imposition of conditions) to restrict the number of deliveries to this unit, but have an adjacent unit operating a far higher number of deliveries unrestricted.
- 6.62 Overall, whilst it is accepted that there would be some increase in activity, in the context of the existing park and adjacent road it is not considered that objections could reasonably be sustained with regard to any greater impact from the

variation of condition being sought. Therefore, the scheme would comply with policy CP24, SQ1 and SQ6 by not harming neighbouring amenity by reason of noise and disruption.

Planning Obligations:

- 6.63 Policy TCA19 of the TCAAP requires development proposals in the central area to provide an appropriate level of contribution towards the Tonbridge Central Area Regeneration Fund. Officers consider that the introduction of a food store at this location will place greater pressure on the public realm, particularly between the site and the primary shopping areas, as residents move between the two. This case was previously accepted by the applicants who agreed to provide a planning contribution to address this.
- 6.64 The Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) (Regulation 122) and paragraph 57 of the NPPF require that requests for development must comply with three specific legal tests, namely that they must be (1) necessary, (2) related to the development, and (3) reasonably related in scale and kind. It is considered that the contributions being sought meet these tests.
- 6.65 As a result of the introduction of a more intense use at this location, even for a single unit instead of two, it is considered that the development will still generate additional pressure on the public realm, triggering the requirements of policy TCA19. It is necessary and reasonable that the development provides funding to offset this impact, that is directly related to the introduction of this use at this location. Accordingly, officers consider that relevant statutory tests have been met.
- 6.66 Following discussions with the applicant, officers have secured a contribution of £11,500 towards the Tonbridge Central Area Regeneration Fund for public realm maintenance and enhancement to offset the impact of the development. This will be secured by a unilateral undertaking subject to a resolution to grant planning permission by APC1.

Conclusions:

- 6.67 The applicants have provided an extensive sequential search for more preferable sites located within or next to the primary and secondary shopping frontages. No alternative sites that are suitable or available have been identified. Although the development would result in an increase in traffic movements, subject to the provision of the two-lane exit Kent County Council Highways and Transportation are satisfied that no unacceptable safety or cumulative traffic impacts would arise. Furthermore, it is not considered that the proposal would result in any harmful impact on neighbouring amenity with open hours remaining controlled within original parameters. Any additional home delivery movements would first need a further approval with additional information.

6.68 Furthermore, a planning obligation, to be secured by a UU, would help mitigate from the additional pressure on the public realm as a result of the new use at this location.

6.69 Accordingly, it is considered that the proposed variation of condition to allow for a convenience/food store at this location would not result in any unacceptable impacts, subject to the agreed mitigation measures. There is no identified conflict with the development plan and national policy, and therefore the application is recommended for approval

7. Recommendation:

7.1 **Grant planning permission** in accordance with the following submitted details: Location Plan dated 26.07.2021, Existing Floor Plans dated 26.07.2021, Proposed Floor Plans dated 26.07.2021, Site Plan Car Park dated 26.07.2021, Letter covering dated 26.07.2021, Letter from applicant dated 26.07.2021, Flood Risk Assessment dated 26.07.2021, Statement Operations dated 26.07.2021, Assessment Planning and retail dated 26.07.2021, Transport Assessment dated 26.07.2021, subject to the following:

- The applicant entering into a planning obligation with the Borough Council to provide financial contributions towards public realm enhancements in the Tonbridge Central Area to mitigate development impacts.

7.2 It is expected that the section 106 agreement should be agreed in principle and the legalities completed within 3 months of the committee resolution unless there are good reasons for the delay. Should the agreement under Section 106 of the Act not be completed and signed by all relevant parties within 3 months, a report back to the Area 1 Planning Committee will be made either updating on progress and making a further recommendation or in the alternative the application may be refused under powers delegated to the Director of Planning, Housing and Environmental Health who will determine the specific reasons for refusal in consultation with the Chairman and Ward Members.

- The following conditions:

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2. The use of the retail warehousing shall be limited to the retail sales of DIY home and garden products, hardware, self-assembly or pre-assembled furniture, household furnishings, floor coverings, electrical goods, motor accessories and motor vehicles office equipment and supplies, bicycles, pets, pet food and drink and pet products, camping equipment and computer equipment.

Up to 1,396 sqm (GIA) within 1C shall additionally be permitted to be used for the sale of convenience goods and associated comparison goods.

Unit 1D shall additionally be permitted to be used for variety retailing including the retail sale of food and drink goods from an area not exceeding 30% of the net retail floorspace of Unit 1D, and otherwise shall be used for the sale of non-food comparison goods. It shall not be used for the principal purpose of the sale and display of clothing and footwear.

Reason: The site is located outside an area where general retailing would normally be permitted.

3. No delivery or despatch of goods shall be carried out outside the hours of 07.00 to 21.00 Mondays to Saturdays or 09.00 to 17.00 on Sundays, Bank and Public holidays.

Reason: In the interests of residential amenity.

4. Before the use hereby approved is commenced details of an updated site management plan to coordinate deliveries to and the removal of waste from the new use at Unit 1C shall be submitted to and approved by the Local Planning Authority, and the approved plan shall be adhered to by all occupiers of the building in perpetuity. The management plan shall include specific details of which party(s) is/are responsible for opening and closing the barrier at the entrance of the site and what times of the day it is to be opened and closed in order to facilitate the effective management of deliveries and waste removal. The units shall be strictly operated in accordance with the approved management plan.

Reason: In the interest of residential amenity and highway safety.

5. The development shall be carried out strictly in accordance with all the recommendations contained within the submitted noise survey reference 07011/3/1/4 received on the 28th October 2021. The rating level of the noise from fixed plant and equipment emitted from the site shall be lower than the existing background noise level by at least 5dB at the nearest noise-sensitive premises. The measurements and assessment shall be made according to BS4142:2014 +A1:2019.

Reason: In the interests of residential amenity.

6. The use hereby approved shall not commence until the improvements to the local highway network to provide a widened two lane exit in accordance with approved drawing number 9843 P 301 have been completed (via a s.278 Agreement with Kent County Council if required) and thereafter retained in perpetuity.

Reason: In the interests of local amenity and highway safety.

7. No home delivery service shall operate from the store until a further noise survey has been submitted to and approved in writing by the Local Planning Authority, setting out noise impacts on any affected receptors and any recommended mitigation measures.

Reason: In the interests of residential amenity.

Informative:

1. Substantiated complaints of noise nuisance may result in formal enforcement action under statutory noise nuisance legislation.

Contact: Adem Mehmet