



## COMMITTEE REPORT

**Item Number:**

**Application Number:** S/17/1771/SASM

**Ward:** Blunsdon And Highworth

**Parish:**  
Highworth

**Proposal:** Erection of class A1 foodstore and associated access, parking and landscaping.

**Site Location:** Land North Of Blackworth Industrial Estate, Highworth, Swindon

**Case Officer:** Mrs Sarah Smith

**Agent:**

Mr Taylor Cherrett  
Turley  
The Pinnacle  
20 Tudor Road  
Reading  
Berkshire  
RG1 1NH

**Applicant**

ALDI Stores Ltd  
ALD Cardiff  
Wentloog Avenue  
Cardiff  
CF3 2GJ

### Officers Report

**Background:**

0.1 Members considered this application in June 2018 and resolved that:-

'The Head of Planning, Regulatory services and Heritage be authorised to grant permission in respect of application numbered S/17/1771 subject to appropriate conditions and for the following reasons:-

- (a) Meeting local needs, as evidenced by representations made by the public having to travel outside of Highworth for groceries and other shopping.
- (b) The proposal would not adversely affect the vitality and viability of Highworth town centre, given that conditions can be imposed to restrict the items sold by the proposed store, and the goods sold at the proposed store are largely different from those in the town centre.
- (c) The proposal does not in real terms result in the loss of an employment site as the store will create jobs.

0.2 Following the grant of Planning Permission a claim was made on 3<sup>rd</sup> August at the High Court for a Judicial Review of the Council's decision on behalf of Midcounties Co-operative Ltd on a number of grounds that the Council had acted unlawfully in granted

planning permission.

0.3 The process of defending the decision in a court of law can be both lengthy and costly and there is no guarantee that the High Court would not agree with the claimant. Members agreed at Planning Committee 14th August to resolve that the Director of Law and Democratic Services Consent to Judgement to quash the planning permission.

0.4 The papers were duly considered by the High Court and an Order quashing the permission was made on 11<sup>th</sup> October 2018. The application is therefore brought back before the Planning Committee for re - determination.

0.5 Since the application was considered in June, The Revised NPPF was published in July 2018. The thrust of the policy framework on retail development remains. The NPPF (2018) policy framework with regards to biodiversity is strengthened, as explained in the main report. The NPPF (2018) policy framework has also been updated with regards to the employment land and sustainable transport planning. The updated NPPF text is included in the report.

0.6 A pre application (S/PRE/17/0313) was submitted in early 2017 for this proposal. Officers considered that the proposal was contrary to the Swindon Borough Local Plan 2026(2015) and in the letter to the applicant in March 2017 stated the following reasons why the proposal could not be supported by officers:-

- i) The site is an employment allocation and it is not considered that the proposal meets the criteria in which changes of allocated employment land to non Class B uses are supported.
- ii) The site is not within a defined centre and sequential and impact assessments will be required to support any planning application.
- iii) It is considered that sequentially preferable suitable and available sites are likely to exist and officers are concerned that the proposed development could significantly adversely impact on the vitality and viability of Highworth's Town centre.
- iv) Finally, the site is poorly served by sustainable transport options, in particular walking.

Summary of Recommendation:

1 That planning permission be **REFUSED**

The Proposal:

2 The application proposes the erection of a Class A1 foodstore with a gross external area of 1,804 sq metres with associated access, parking and landscaping.

The Site and Surroundings:

3 The site is located to the north of the Blackworth industrial estate on a greenfield site with Lechlade Road to the east and surrounded by open countryside in all directions other than to the south. The application site comprises just over 1 hectare of land and is currently an agricultural field with woodland perimeter on the south eastern part of the site.

This woodland perimeter was excluded from the employment allocation in the Local Plan.

Representations:

4 Highworth Town Council Comments:

- Response dated 6<sup>th</sup> December 2017 - recommend acceptance but with provision for acoustic shielding particularly in respect of the property adjoining the site to the north and that the footpath be upgraded from the bus stop to the site in accordance with the submitted proposal.
- Response dated 16<sup>th</sup> February 2018 following an email from the planning officers outlining concerns with the proposal:- do not agree that the proposal would damage the High Street since there are very few retail premises in the High Street and consensus is that these businesses would not lose significant trade to the Aldi store and some consider that it would bring more footfall to the town centre and consider there would be a boost to trade. Councillors and residents consider the store will attract visitors to Highworth and a significant number would then visit the High Street and use local cafes, shops and hostelryes.
- At present, the town is losing trade and the Town Centre is in decline as most residents go out of Highworth to do their main shopping. The Saturday Market is the only attraction to the High Street on a Saturday and without it the High Street would be virtually deserted.
- There is lack of competition and the existing supermarket is complacent and doesn't offer a good service.
- Residents are forced to own a car to get to a decent main shop and adds to their cost of living. They want a supermarket that is renowned for its ability to provide goods for sale at a significantly lower price than other similar establishments.
- The location of the store is appropriate since it will provide employment. Adequate parking will be provided and will allow for expansion to take place in the employment area.
- Do not consider that there is any conflict with Policy 3 of the Neighbourhood Plan.
- Agree that access, transport and a proper noise assessment in relation to residential properties needs to be addressed.

5 Letter received in response to the letter from the agent representing the Co-op:-

- Unhappy with use of language in response
- Town Council supporting views of people in the town who want more choice
- Numerous complaints received about how the Co-op operates in the town
- Wrong to suggest that the town fixated on one operator
- Neighbourhood Plan already undermined by housing supply
- Town Council took account of the NPPF regarding employment and economic development
- Town Council consider impact on the town will be beneficial not harmful
- Should be up to the residents to decide how much choice they want or expect in the town
- Town Council believes the express wishes of the people of Highworth are being totally ignored in favour of vested interests and large business.

6 Local residents:- Letters of support from 52, 122, Sevenfields, 15, 104 Home Farm, 46 Barra Close, 32 Kings Avenue, 53 Grove Hill, 2 St Michaels Avenue, 31 Bydemill

Gardens, 18 Folly Crescent, 20 Windrush, 24 Crane Furlong, 29 Wessex Way, 41 Cricklade Road, 32 Swindon Street and Councillor Weisinger on some or all of the following grounds:-

- Increased competition
- Relieves traffic pressure in the town centre
- Allows for easy access and parking at new store.
- Employment opportunities.
- Will encourage people to shop at other places in the town.
- Will regenerate an industrial area.
- Allow people to shop at a discount store who don't have the means to travel out of Highworth.
- Lead to improvement of Co-op service, Co-op too expensive, prevent people travelling out of the area and Co-op has limited range.
- Faringdon has a number of supermarkets but its centre isn't affected.
- Bus route could be altered to accommodate people without a car.
- Will still use the town centre shops.
- Town centre shops won't be affected.
- Currently travel to Aldi in Swindon so store would be more convenient.

291 local residents' cards received which had been provided through the applicant expressing support for a new Aldi store with a few caveats from some supporters with regard to traffic issues around Pentylands Lane and bus facility.

7 Local residents:- Letter of objection from 22, Lechlade Road on the following grounds:-

- Whilst we have no objections to the building of the new Aldi store in principle, we do have an issue with the noise from the proposed development which will have a significant adverse effect on our property without appropriate acoustic shielding.
- We request this be made a condition of the planning permission to prevent the burden of prolonged and costly assessments for Swindon Borough Council in the future.
- We had raised our concerns regarding noise at the consultation stage and we are surprised and disappointed these have not been adequately addressed prior to submitting plans. The plant and loading bay is on the north side of the development which directly faces our property.
- The application includes a noise impact assessment (KR05816) which is flawed in several areas. The report appears not to have included the reversing beepers of delivery vehicles, service vehicles and customers vehicles in the delivery noise assessment (section 5.4). This noise will also be reflected off the end wall of the building which faces our property. Service vehicles can arrive any time, day or night as indicated in other areas of the application. These beepers are the loudest part of the process and are widely reported as one of the most complained about irritants from such situations. Noise levels of such beepers can be 110 dB and this will be clearly audible from our property in an otherwise essentially rural location if no acoustic shielding is provided.
- NPPF says planning policies and decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new developments. Clearly to comply with this, some acoustic shielding will be required.

- The background noise assessment was carried out during a period when significant noisy construction work was being undertaken at the sewage works on the industrial estate. This work continued throughout the night and therefore the levels of background noise measured will be significantly higher than normal. Peak levels of 82dB and an average of 38dB were recorded at night in the report with recording equipment positioned on the industrial estate. Section 8.5.e of the report says the background assessment was measured on a “Lamp post on Blackworth. In order to record remote background levels the noise meter had to be left in a secure position. The position represented the assessment position with the constraints of the site”.
- The background noise level was measured some 230m from our property (the “Assessment property” in the report). The measured location was on an industrial estate where as we live in a rural, remote position outside the main town of Highworth (see section 2.2 of the report “Key Positions, source, assessment and background”). This location is NOT representative of the background noise level at our property. The equipment could have been positioned on our boundary or on our property quite securely had we been asked. The background noise will be significantly less at our property than the measurements made on the industrial estate because of our remote location.
- Whilst the noise from the plant from the proposed new development has been attenuated (sections 5.3.1, 5.3.2, 5.3.3) with the distance calculation (section 5.1.2), the background noise has not. Since the true local background noise has not been measured at the assessment property, then to be consistent, the background level should be attenuated over the distance of 230m and I calculate it would drop by 58dB over this distance using the equation in the report.
- This gives a completely different picture when comparing the results as the plant machinery noise will be well above the background noise by 32dB. Using the criteria in BS4142, a +10dB increase in noise is listed as having a “significant adverse effect” and therefore should be avoided.
- It is inconceivable that a development creating these noise levels, this close to properties in a rural location be allowed to proceed without any attempt to attenuate the noise by shielding or enclosing the loading bay. Even without a noise assessment it is obvious the development will cause issues.
- The report (section 4.8) says “Swindon Borough Council requires compliance with BS4142 ie -0dB” noise increase.
- NPPF says planning policies and decisions should aim to: avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Whilst the report has attempted to prove compliance with these policies I believe it has been selective in the recording and interpretation of the results.
- I have demonstrated the report is flawed and that the development will not comply with Swindon Borough Council requirements without acoustic shielding on its northern boundary. I therefore request this be made part of the planning condition if the development is to proceed to avoid prolonged costly subsequent assessments in the future by SBC and in order to preserve the remote and quiet rural location of our property and the surrounding countryside.

A further email received in April from 22 Lechlade Road stating the following concerns in relation to the Acoustic Assessment:-

- The analysis in the Acoustic Assessment is fundamentally flawed. He says the A361 has a national speed limit but in fact it is restricted to 50mph past our house and 40 nearer the roundabout.
- Traffic past our house north of the proposed site is restricted by the bridge at Lechlade which has a significant weight restriction precluding many HGV's. Therefore any road traffic monitoring south of the site will record a higher level of HGV's. There is also a 4 way roundabout junction at Blackworth between the traffic monitoring site and our house so it is unreliable to assume the traffic flow is the same.
- The Acoustic Consultant says that the uses on the northern part of the industrial estate are unlikely to impact the measurements (car park for a car garage and a precision engineering company). However there is significant dominant noise from plant and lorry movements from TS Tech and the sewage works 24 hours a day. This noise is clearly audible standing by the lamp post where the background noise was measured on the industrial estate and WILL have affected the results.
- Our assessment of the plant and delivery noise from the Aldi Store used the following values based on the measurements".etc This implies these are actual measurements but the figures are derived from published data and further calculation. This is very misleading, I guess to try to give some legitimacy to the figures.
- There has been standing water on the site recently. This water will have to be accommodated and pumped as per the Drainage Strategy published on the portal whatever development ends up on the site. I do not believe these pumps have been included in the noise assessment which will create additional noise and should be included.

#### 8 Letter of objection from 11 Bydemill Gardens on the following grounds:-

- contrary to Local Plan policies and the Highworth Neighbourhood Plan. Policy RA1 clearly states that development at Highworth should maintain and enhance the character of Highworth Town Centre and, prevent the loss of existing shops, services and facilities.
- the proposal would seriously prejudice the retail and community heart of Highworth by prejudicing the vitality and viability of the town centre. The proposed edge of town site is remote from the centre of Highworth where the Co-operative Store acts as the essential anchor store to the High Street –it's proximity and good links with the High Street ensures many linked shopping trips with the small independent shops in the town centre.
- There is evidence that both the Co-op, and some of the High Street shops, undertrade and the presence of an edge of town convenience store will seriously prejudice the retention of town centre shopping and the overall vitality of the community heart of Highworth and the potential loss of the Co-op would seriously impact the town centre, depriving it of its anchor store, convenient and essential car parking which crucially serves the town centre, as well as potentially leading to the loss of the Post Office and Library, which are both located within the CO-OP store.

- Aldi's standard claim repeated in the recent "letter-drop" to residents that Aldi encourages linked trips and therefore promotes the vitality of town centres is not valid in the context of this proposal and the particular circumstances that relate to Highworth, the proposed store is too remote from the town centre to attract linked shopping trips and there is no safe or convenient pedestrian link with the site, located as it is on the extreme edge of the town and north of the heavily trafficked Lechlade roundabout.
- The applicant indicates that there are no sequentially preferable sites in Highworth for its proposed store. This does not outweigh the negative impact that an edge of town store would have on the town centre.
- The Aldi proposal is presented by the applicant as enabling development supporting the provision of employment uses at Blackworth. The proposal has not been submitted as a hybrid planning application, but rather a separate application has been submitted for the employment use. This clearly demonstrates that it is not "enabling" development as suggested by the applicant. In fact, the Aldi proposal significantly reduces the employment land allocation to the detriment of providing land for B2/B8 industrial and employment proposals. There is a shortfall in allocated employment land in the borough and the loss of land at Blackworth should be resisted.

9 Letter of objection from 6 Islay Crescent on the following grounds:- concern that there is a potential increased use of Pentylands Lane to the detriment of highway safety

10 Letter of objection from 22 Knowlands on the following grounds:- misconception that everyone in Highworth wants an Aldi and that there is a hidden agenda.

11 Letter of objection from the Old Rectory on the following grounds:-

- It is highly likely that it will bring people to the town, but to the outskirts of the town and I fail to see how the other businesses will benefit from this. I cannot imagine that people will drive to Aldi, shop, then drive back into the town to visit the High Street.
- In Swindon the provision of out of town shopping areas has pretty much killed the centre of the town and I would hate to see the same happening in Highworth.
- Particularly concerned about the increased traffic on the Lechlade Road that would result from this - it would increase the number of residents driving around the town to shop at Aldi. I cannot imagine that many people will be walking to Aldi and carrying their shopping back to their homes as many do when shopping at the Co-Op.
- Concerned that this development will break the boundary of Highworth and start development moving towards Inglesham and Lechlade.

#### Other Representations

- 4 Shrivenham Road  
Expresses concern that representations made in support of an Aldi have criticised the co-op store

12 Letter of objection from Richard Holmes on behalf of Midcounties Co-operative Society on the following grounds:-

- First of all it is understood that there is a Council covenant over the access to the

site and it is important for open government and trust in the planning system that any financial benefits to the Council are fully clear in determining the application.

- The proposal is contrary to the NPPF and its emphasis on retail development taking place in town centres.
- Contrary to Policies SD2, RA1, EC3 of the recently adopted Swindon Borough Local Plan and Policy 4 of the Highworth Neighbourhood Plan which aims to protect the Town Centre.
- There are serious flaws in the Retail Assessment although the scenarios estimate the impact on the Town Centre as being either 17% or 12% which nevertheless are significant adverse impacts.
- Proposal would impact badly on the buildings in the centre as shops close and fails to attract new retailers
- Proposed store would not be accessible by means of transport other than the car, the willingness to walk would be reduced by the uphill return carrying shopping, all 3 potential routes would be hazardous for pedestrians and should not be encouraged whereas the survey had shown that 37% of respondents had walked to the town centre to do their shopping and this level cannot be achieved by the proposed site.
- Even where there are no more central sites available the NPPF requires that out of centre sites should be accessible and well connected to the town centre and the application site is neither and would simply encourage car use.
- Nothing in the Viability Report that would suggest there are abnormal costs with developing the employment site. Seems highly improbable that the 'profit' from the Aldi site would provide for all the infrastructure for the employment site since it could take a long time to develop.
- The applicant's attempts to promote retail use on the site through the Neighbourhood Plan process were not supported by the Neighbourhood Plan Examiner who recognised that the allocation was based on the need to provide an appropriate balance of employment opportunities to serve the town thus supporting the position of the Local Plan.

13 Further letter from Richard Holmes on behalf of the Co-op responding to a number of documents posted on the Council's website since the application was originally consulted on stating the following:

- Asda has raised objections to the application which is unusual and is indicative of the concern with which it regards this particular application
- Asda broadly agrees with our objections but the letter is more evidence from another retailer that Aldi operates in a similar fashion to the main grocery chains and should not be distinguished from them in determining applications
- Although a Condition restricting sales is now proposed we doubt that such a condition could pass the test of necessity. i.e. that it is needed to overcome the retail impact objection.
- The impact assessment is based on Aldi as the retailer and is unacceptable on that basis. The condition could not limit the impact to acceptable levels. Much of the local support for the proposal is based on it being an Aldi store but this is misconceived.
- Need to respond to the comments made by the Town Council which the Co-op would not normally do so. Its comments are untenable and brings itself and



neighbourhood planning into dispute. The proposal is very obviously contrary to the Neighbourhood Plan.

- The inclusion of the site within the settlement boundary to enable retail development was considered by the Examiner on the Neighbourhood Plan and rejected.
- The Town Council adopted the Plan very recently and it forms part of the development plan to which S38 (6) of the Planning and Compulsory Purchase Act 2004 applies. This requires applications to be determined in accordance with the Plan unless other material considerations indicate otherwise. Development plan status confers a number of benefits to the initiators of the plan but with these come certain responsibilities. Plans are designed to provide some certainty to future developments to all parties concerned and consistency in public decision making. For the Town Council to support a proposal that is so clearly contrary to the plan and was found to be so by the independent Examiner, undermines the purpose of the plan and will undermine its credibility. If the Council can act contrary to its policies so soon after its completion, there can be no confidence that its other policies will be given any weight. It will have been a waste of time and money.
- There are no reasons advanced in the Town Council's representation as to why the policies (and those of the Swindon Plan) should be overridden in this case and no evidence to support such a course of action. The matters raised by the Town Council such as the need for more food shopping in the town were all apparent when the plan was being prepared and could have been taken into account in the Plan. They were not. The Council's recent Retail study in fact belies the claim. The Town Council's complete disagreement with the assessment that the siting of this supermarket will have a damaging effect on the High Street is contradicted by the applicant's own assessment, is evidence free and irrational in the light of the evidence that has been submitted. The key policy for retail development in the Plan is Policy 4 and this is not referred to at all in the Town Council's representation.
- Furthermore it is considered highly irresponsible of the Town Council to promote a petition in support of this proposal. In the absence of overriding considerations any decision to permit the proposal can only lead to the potential for judicial review.
- The Policy analysis from the Forward Planning team is clear that the site is outside the settlement boundary and town centre, does not contain an exception for retail development in the countryside, the site is allocated for B Class employment use and is needed to meet the employment land requirements of the Swindon Plan. The officer has similar concerns about the retail impact methodology and concerns about the impact on the town centre. Given this advice any other material considerations would have to be very substantial indeed to override the policy presumption against the proposal.
- The agent's response to the Forward Planning policy analysis is one which repeats what it has done in the retail assessment but does not address the criticisms of the Forward Planning Team or objectors. It repeats the claim that 'the diversion of expenditure would therefore principally affect distant rather than local competing facilities (such as the Co-op in Highworth) which fulfil a different shopping function'.
- This flies in the face of both common sense and retail assessment good practice. The greatest impact is inevitably on the nearest stores. It would be unreasonable to expect Highworth to fulfil all its retail needs any more than it would meet its employment needs when Swindon can provide so much more choice and is less than 5 miles away. Furthermore any clawback would not benefit the town centre which is the focus of both local and neighbourhood planning policy.

- Since its own analysis indicates a severe retail impact (17%) on Highworth Town Centre there is no need to comment further. Although the agent disputes the town centre's poor state of health the Council is fully aware of its current condition as, for instance documented in the Neighbourhood Plan. The agent has not responded to these points made by the Forward Planning Team.
- The agent accepts that the proposal is beyond the settlement boundary and does not accord with Policy RA1. It accepts that Policy EC2b of the Swindon Borough Local Plan does not apply. It offers a Condition restricting the sale of goods to food but does not explain how this would overcome the retail impact objection since as already noted its assessment which demonstrates the proposal's unacceptability had already factored in Aldi as the operator. Doubt that such a condition could be considered necessary to overcome objections.
- With respect to the employment land issue the Forward Planning team consider little weight should be given to the employment generation from the development and the Employment Land Review 2017 found a shortage of employment land in the Borough.
- The agent suggests the proposal as an enabling development but there is no indication that access costs have held back the development of the site or, that the retail development is necessary to bring forward the employment development. Access to the employment site would be possible now (and would avoid the difficulty arising from a substandard right hand turn lane proposed with insufficient distance from the roundabout and which only arises because of the Aldi proposal). There is no basis for the Council to conclude that the Aldi proposal would bring forward employment development of the site or that this is sufficient to override the fundamental conflict with the employment, retail and countryside policies.
- Whether the design objections raised can be overcome or not should not obscure the fact that the site is unusually poor in terms of its accessibility except by car. Planning policy requires out of centre sites to have good access by walking, cycling and public transport and its extreme poor accessibility, even with the improvements proposed is sufficient reason to refuse planning permission.
- Need to comment on claims made in the press that the Co-op had received 'vast amounts of money' from the Borough Council towards the cost of building its store in Highworth. The Council will be aware of the true situation. The Council negotiated with the Co-op to obtain a new library which was located above the store. The Council paid 'extra over cost' of the construction but basically received a 'free site' and had the ability to either sell or use the former library site for other purposes. This provided a potential capital income for the Council who at the same time obtained a brand new library at considerably less than it would have cost to provide on another dedicated site.
- In summary the proposal is recognised by the applicant to be contrary to the policies of the Swindon Local Plan and the Neighbourhood Plan. It is in a rural area where there is no provision for retail development. It would have a severe adverse impact on Highworth Town Centre even on the basis of the applicant's retail impact assessment. It would lead to the loss of employment land and is an unsustainable site for retail development, being isolated from residential areas and with inadequate accessibility except by car. The Forward Planning team has objected on these grounds. There is nothing in the response since then which would lead to a different conclusion. Nor are there any material considerations advanced by the applicant or others that could be considered to override the conflict with policy.

14 Since the Council's decision was quashed by the High Court and further to a letter being received from the agent on behalf of the applicant Richard Holmes has made a further submission ( dated 6<sup>th</sup> November) on behalf of the Midcounties Co-operative society as follows:-

- I am not responding to the legal matters raised. The Turley letter addresses the reasons for refusal of the application recommended by officers in its Committee Report (June 2018) and I am responding to these. For the avoidance of doubt the objections to the proposal raised in our previous letters still stand.
- The key consideration in considering the Turley letter is whether there is anything in it which indicates that policy should not be followed and was not apparent before. Unless there is, it follows that the Committee report must come to the same conclusions now.
- The assertion that the proposal does not in real terms result in the loss of an employment site as Aldi will create jobs misunderstands the nature of the policy objection as set out in paras 19-21 of the Committee Report (June 2018). The site lies in the rural area outside the settlement and would be contrary to Policy SD2 'unless it is in accordance with other policies in this Plan permitting specific development in the countryside.' It is allocated under Policy RA1 for B class employment uses and there would be no conflict with Policy SD2 if it were used for B Class employment but there is no provision for retail development to take place under Policy RA1 and the proposed development would therefore be contrary to Policy. The applicant had in fact pressed for the site to be included in the settlement boundary in the Neighbourhood Plan, specifically to allow retail development on this site but this was rejected by the Examiner of the Neighbourhood Plan.
- The Committee were also wrong to conclude that the jobs created by Aldi would compensate for the loss of employment land. In our original objection it was noted that retail development leads to substantial job losses in other retail outlets and the net gain is very limited and this was independently commented upon in the Committee Report. If there is no retail need (i.e. unaccommodated expenditure to support the additional floorspace) the economic impacts on existing stores means that net increase may be negligible is relevant. The recent Swindon Retail and Leisure Needs Assessment 2017 has established that there was no need for further retail development now or throughout the period to 2036 and certainly means that it would be unreasonable to conclude that there would be no loss of employment land (or opportunity) as a result of the proposal.
- Turley's letter states that officers have made assertions on the impact on job displacement without any evidence to support their conclusions. This illustrates the fact that Committee reports are inevitably summaries of the available information. However we submitted details of the likely job impacts in our objections using the recognised approach and parameters. The agent merely responds 'that it is the applicant's view that there are unlikely to be any job losses in other shops.' This is the only counter-balance that the applicant offers. I can categorically state that the Co-op could not absorb turnover losses on the scale even as the applicant contemplates without adjusting employment levels commensurately.
- The applicant in their letter of 29<sup>th</sup> October acknowledges that the proposal is contrary to the Development Plan policies but considers this is not significant since the site is not protected as a key employment area and that the retail development

would be a catalyst for the development of the rest of the land (still failing to recognise that the site is protected against other uses by Policy SD2 and RA1 which between them specify that only B class uses would be acceptable).

- The applicant in the Turley letter of October 29<sup>th</sup> letter states that it has 'demonstrated that there is no reasonable prospect of employment development coming forward without a catalyst to fund/deliver the necessary enabling works.' The Committee Report of June 2018 concluded that 'it has not been demonstrated that there is no reasonable prospect of employment development on the allocated site' and commented on the lack of evidence offered on the marketing of the site. The evidence now submitted comprises one response to an email enquiry in June 2017 enclosing a google aerial photograph and illustrative layout and a letter from local estate agent saying that the site is well known to be available and the firm has dealt with a number of enquiries. This seems to demonstrate how far short the evidence is in this case which fails to demonstrate active or consistent marketing. There has been nothing submitted in this letter that could reasonably change the officers' conclusion on this matter.
- The applicant asserts that the Committee report misunderstood what the retail proposal was offering in terms of enabling development which has a specific meaning in Planning. The Committee report noted that there was no reassurance or mechanism which the Council would be able to seek if it were to accept the loss of a portion of the employment land. Turley's letter states that the works associated with the planning application can be secured by condition but it is an obvious truth that this would give no guarantee that the remaining employment land would be developed if permission is granted and therefore provide the assurance necessary to justify (on the applicant's own terms) the departure from policy it seeks.
- Turley states that it 'held discussions with a range of potential occupiers- none of whom were willing or able to commit to the site due to various constraints.' There is no indication what these constraints are or even if they relate to the development of the site rather than other business issues. The Council still has not been given evidence that there are abnormal costs associated with the development which might justify 'enabling development' to use the applicant's term. There is nothing in Turley's further submission which could lead to a change of view on the loss of employment land.
- The June Committee Report concludes that even on the applicant's own figures the retail impact would be significantly adverse. The Turley letter does not seek to alter its assessment evidence put forward in the Planning Statement and offers no basis for the Council to come to any different conclusion now. However despite the latest letter it is clear that Turley was unaware of the Swindon Borough Retail and Leisure Need Assessment 2017 when it produced its Statement. The issue of survey sample size and dates is wholly immaterial because it is the Applicant's survey on which the assessment of, and the officer's conclusions on, retail impact have been based.
- There are a number of inconsistencies with Turley's retail assessment but since the officers concluded their view on retail impact based on the applicant's own figures which the applicant does not seek to change with this further letter then there are no reasons to change the conclusions reached by officers in the June Committee report.
- Turley refers to the 2017 Study now emphasising there were no vacant units but their report records 8 vacant units and gives a vacancy rate of 11.4%. I cannot find any comment in the June Committee Report which suggests the applicant's

assessment of the composition of the town centre is factually incorrect. The assessment of its performance is not a factual matter and the Committee report considers a range of sources of available information, as it is obviously required to do.

- Linked Trips – there is no quantitative assessment of linked trips to set against the retail impact assessment and without this that issue cannot be given significant weight. It is impossible to judge whether linked trips would compensate for the direct loss of trade without some measurement of the effect claimed.
- The Condition proposed by the Committee would not restrict competition between the centre and the proposal or reduce impact. In summary the Aldi store would sell the 1500 leading convenience goods which also comprise the majority of the Co-op's turnover. We note in this connection the Competition and Merger's Authority has widened the scope of its investigation of the proposed Asda/ Sainsbury merger to include Aldi and Lidl. This clearly indicates that the stores are in direct completion with the 'mainstream' rivals.
- Ecology/Biodiversity – Appendix 4 of the Turley letter comprises copy emails between the applicant and the Town Council. It does not seem to take matters forward in that there is no site suggested for mitigation and the understanding can have little meaning unless there is an understanding of what the unspecified mitigation is. We doubt that condition 16.2 is enforceable in that it would apply to an unidentified site outside of the applicant's control.
- We have carefully considered the contents of the Turley letter and conclude that there is nothing in it that would lead us, or could reasonably lead officers, to change their views on the application. We therefore confirm our earlier objections. For the avoidance of doubt, we do not consider that the points raised in the Turley letter overcome the grounds contained in our clients' recent successful application for judicial review of your previous decision on this application. Our client's position in that regard is, of course, reserved.

15 Letter of objection by Jigsaw Planning on behalf of Asda Stores Limited on the following grounds:-

- The proposal does not comply with Policy SD2 of the Swindon Borough Local Plan 2026 and the Highworth Neighbourhood Plan adopted in 2017. The Examiner into the Neighbourhood Plan considered the prospect of allocating the site for 2,000 sqm of commercial development, including retail. The Examiner concluded that such a proposal was contrary to Local Plan Policy RA1 which allocates the wider site for Use Class B employment uses with no more than 50% being for B8. Therefore as such the proposal was not taken forward into the Highworth Neighbourhood Plan.
- The pre application advice that the loss of employment land was an 'in principle' concern. The applicant's claim that the proposal would enable the remainder of the site to come forward as employment land is flawed as there is no direct link or guarantee that the development could do this.
- Consider that the levels of retail impact shown on various centres is underestimated.
- Aldi will be replicating an offer which is available through numerous other foodstores in the area. A sensitivity test should be undertaken and the impact figures provided would be higher than given.

16 Letter of objection from TPS Transport Consultants on behalf of Asda Stores Ltd on the

following grounds:-

- The proposed site access design is not to standard and there are a number of road safety concerns as a consequence.
- The location of the site will encourage car borne trips with provision for trips on foot and by bus being considered inadequate contrary to both local and national policy.
- Over provision of car parking provision would further encourage car travel to and from the site.
- Concerns over road safety resulting from the intended servicing arrangements with potential for conflict between both customer vehicles and pedestrians with HGV deliveries
- The trip generation potentially underestimates significantly the likely trip generation and thus the highway impact of the development proposals and as such the operational assessments should be revisited.

17 Letter of objection from Womble Bond Dickinson on behalf of Asda Stores Limited following the application decision being quashed by the high Court and it being remitted back to the Council for redetermination on the following grounds:-

- The Statutory Plan remains unchanged for the purpose of the redetermination of the application. It is accepted by Turley that the application is contrary to the statutory development plan taken as a whole. Therefore the law dictates that the application should be refused unless the Council is able to identify material planning considerations – relevant to the application- which indicate it should be granted.
- The NPPF has been revised since the application was considered at June Planning Committee. Importantly none of the revised NPPF policies material to the recommended reasons for refusal contain any inconsistencies with the statutory development plan policies referenced therein.
- It is notable that the Turley letter does not seek to identify any additional change in circumstances which may indicate a good reason to depart from the statutory development plan, save in respect of a single email in response to an enquiry and a single letter from an agent stating that the wider employment allocation is known by the market to be available – neither of which materially alter any of the information previously supplied by the applicant within its Property Report dated 11<sup>th</sup> October 2017. This additional information cannot reasonably be relied upon, in itself, to undermine the Officer's June report's conclusions that the application fails to demonstrate that there is no reasonable prospect of employment development on the application site.
- The Turley letter is expressed as a plea for Committee Members to reach the same flawed decision as they reached in June. While the Turley letter addresses a number of conclusions reached in the Officer's June report, in substance the Turley letter amounts only to a re-presentation of the case already presented as part of the Application, and already considered in the Officer's June report.
- The Turley letter rather boldly puts forward wording for a 'proposed resolution' which Committee Members are invited to adopt in granting planning permission for a second time.
- The Turley letter is correct in its statement that Planning Committee is entitled to reach its own view on the planning application and grant planning permission even if Officers recommend refusal. Equally, it is accurate, in principle, to state that if a

planning application proposal is considered not to accord with the development plan when considered as a whole, the Planning Committee is entitled to reach the conclusion that material considerations indicate that planning permission should be granted and outweigh the indication given by the development plan.

- The Turley Letter also rightly references the Dover case and the Supreme Court's endorsement of a duty to give reasons when fairness demands it, for example when a proposal gives rise to public controversy, is contrary to policy or when a decision is made contrary to officer recommendation.
- However the ability of Committee Members to reach a different conclusion from officers, subject to the giving of adequate reasons, should not be conflated with the duty to determine planning applications reasonably: i.e. in accordance with the statutory development plan unless material planning considerations indicate otherwise - as emphasised by the Supreme Court in *Tesco Stores Ltd v Dundee City Council*. Therefore the 'proposed resolution' in the Turley letter should be treated with caution. A decision which is reasoned, but not reasonable, is equally fatal to its lawfulness.
- The Turley letter's proposed reason to grant a) amounts to a judgement that the application proposal will not undermine the vitality and viability of Highworth Town Centre. However the Officer's June report assessment is based on the Applicant's own figures, which themselves indicate an adverse impact. The June Committee Report considers that this is significant, and is likely to undermine the vitality and viability of the town centre. The Turley Letter does not offer any basis for Officers to reach a different conclusion now.
- Proposed reason for grant b) relies on a conclusion that Highworth Town Centre is both vital and viable. However occupancy should not be equated with vitality or viability a point recognised by the Officer's June Report and countered by the letter of objection by Richard Holmes on behalf of the Co-operative Society. In relation to the cited benefits, while the Planning Committee may give due weight to considerations which it considers to be planning benefits, any benefits must be weighed against the harm caused by the conflict with the identified statutory development plan policies, and must not be considered to eliminate the identified harm. Further the Swindon Borough Retail and Leisure Needs Assessment 2017 indicated that there is no additional expenditure capacity to support additional convenience retail in Highworth. It does therefore follow that any job gains are likely to be offset, at least to a degree, by staffing reductions elsewhere and can only be afforded, at best, very limited weight.
- In relation to proposed reason for grant c) the identity of the end retailer is not material to the core planning objections to the Application. Both the harms to Highworth Town Centre demonstrated by the Applicant's own figures and the harm to the key statutory development plan policies are engaged irrespective of the identity of the end operator. There are no planning reasons for ascribing a benefit to the proposed end retailer.
- In relation to proposed reason for grant d) while the Officer's June report accepted that there were no objections on the basis of the sequential test, in the context of Policy EC3, the fact that the sequential test is met is no more material than the fact that the proposals would not harm or undermine the regeneration of Swindon's Central Area.
- Proposed reason for grant e) is framed as an 'enabling development' argument which may in principle constitute a material consideration in a planning determination. However, so far as we are aware, the Application does not propose

a link between the Application proposals and the development of the wider employment allocation, and there is no mechanism within the suggested planning conditions or any linked planning obligation (that we are aware of) that will tie the retail development into the wider employment allocation. Furthermore, there is no evidence within the Application papers to indicate that the wider employment allocation is not viable without the enabling highway works proposed by the Applicant.

- In relation to proposed reasons for grant f) and g) the Applicant has provided only a single example of site marketing together with a single letter indicating market awareness of the wider employment site. This cannot sensibly be said to alter the June Committee report's conclusions. As the June Committee report notes, the proposals would be contrary to the statutory development plan irrespective of whether the proposals also undermined the delivery of an employment land allocation.
- In relation to proposed reason to grant h) we note the Applicant proposes that a condition be imposed which requires some form of offsite compensation to address the ecological impact of the development. To the extent that the Council considers that such a proposal would be capable of overcoming the ecological harms of the development, little weight can be given to the proposal in the absence of a contractual mechanism by which the offsite mitigation can be secured and enforced.
- For the avoidance of doubt Asda maintains the objections made on its behalf by Jigsaw Planning and TPS, and endorses the conclusions previously reached in the Officer's report.

#### Planning Considerations:

18 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Swindon Borough Local and Highworth Neighbourhood Plan are the principal development plan documents applicable to the determination of this application.

19 The site is outside of the Rural Settlement Boundary of Highworth as defined in the Swindon Local Plan 2026 Policies Map and Highworth Neighbourhood Plan 2017. The Neighbourhood Plan settlement boundary is more recently 'made' and so takes precedence. The settlement boundary runs to the south of Blackworth Industrial Estate.

20 Material considerations are found within the National Planning Policy Framework, National Planning Practice Guidance & Supplementary Planning Documents.

#### Swindon Borough Local Plan Policies RA1 and SD2

21 Although not within the settlement boundary, the application site forms part of an employment allocation under Local Plan Policy RA1. Policy RA1(b) states that "Land north of Blackworth Industrial Estate, as shown on the Policies Map, is allocated for B Use Class employment use, with no more than 50% being used for B8-Use Class". However the proposal is for an A1 foodstore.

22 The site lies outside of the Rural Settlement Boundary of Highworth under Local Plan Policy SD2 (Sustainable Development Strategy). Policy SD2 permits development outside of rural settlement boundaries only in certain prescribed circumstances. One of



those circumstances is where “it is in accordance with other policies in this Plan permitting specific development in the countryside”.

23 As noted above, the site forms part of an employment land allocation under Local Plan Policy RA1. Policy RA1 (b) is a policy which permits specific development in the countryside. The specific development Policy RA1 (b) permits in the countryside is B Use Class employment development. The proposed development is not for B Use Class employment use and so does not accord with policy RA1 (b). As the proposed development is not for employment use in accordance with Policy RA1 (b), it is in conflict with Policy SD2.

#### Local Plan Policy EC2 (b) and Policy EC3

24 Local Plan Policy EC2(b), which is considered in detail below and which applies to Key Employment Areas and Central Swindon, is not a policy which permits specific development in the countryside. Policy EC2 (b) and the accompanying Policies Map designation applies to sites which are either existing employment areas or are within settlement boundaries, or both.

25 Similarly, Policy EC3, which applies to retail uses, is not a policy of the Local Plan which permits specific development in the countryside.

#### Highworth Neighbourhood Plan

26 Similarly, the proposed development is in conflict with Highworth Neighbourhood Plan 2017 (HNP) Policy 3 which states that outside the defined settlement boundary land is defined as ‘open countryside’ and development here will not normally be permitted unless it complies with rural development policies in the Swindon Development Plan.

27 The proposed retail development in the countryside is not in accordance with a Swindon Local Plan or HNP policy which permits such development.

28 Policy SD2 is an important policy which sets the sustainable development strategy for the Borough. Similarly, Policy RA1 and Policy 3 of the HNP are important policies in defining the development that is planned at Highworth. In light of the conflict with Policies SD2, RA1 and HNP Policy 3, the proposal is in conflict with the development plan for the Borough read as a whole.

29 In such circumstances, it is necessary to consider whether other material considerations indicate in favour of the grant of permission.

30 Yet before considering other material considerations there are other policies of the development plan which need some consideration in the light of the applicant’s justification submitted with the application.

#### Policy EC2 (Employment Land and Premises)

31 Local Plan Policy EC2 (b) applies to the Key Employment Areas and in Central Swindon and these Key Employment Areas are shown on the Policies Map. While the Blackworth Industrial Estate is a Key Employment Area and is identified as such on the Policies Map, the application site is not shown as a Key Employment Area but is instead covered by the separate employment allocation designation. Policy EC2 (b) applies to the ‘change of use or redevelopment of land and buildings’ within Key Employment Areas.

The proposed development does not conform to that description and so cannot be considered as being within the scope of Policy EC2 (b).

32 Policy EC2(c) applies to employment land allocations under policies NC1, NC2, NC3, NC4 and NC5. This Policy sets a different approach to employment allocations to that applicable to existing Key Employment Areas. It states that such sites will be protected in employment use for a period of 18 months from completion and thereafter will be subject to Policy EC2(b). Land north of Blackworth Industrial Estate is not referred to in Local Plan Policy EC2(c).

33 Thus neither Policy EC2 (b) or (c) is applicable to the proposed development. This interpretation is consistent with Local Plan Policy SD2, as outlined above, as Policy EC2 (b) and (c) do not permit non-employment development in the countryside.

34 Consequently Policy EC2 is not considered applicable to this proposal.

### Retail Policy

#### Policy EC3 (The Role of Centres and Main Town Centre Uses)

35 Policy EC3 sets the framework for retail development. It does not provide support for retail development in countryside locations.

Under Policy EC3, retail uses are subject to three tests:

1. That they would not harm or undermine the regeneration of Swindon's Central Area;
2. That they would not harm or undermine the vitality and viability of existing Primary Rural Centres.
3. That a sequential approach to site selection has been taken, with priority for Swindon Town Centre, then the edge of the town centre, then District and Primary Rural Centres, and finally in Local Centres.

36 Applying these tests, it is not considered that the proposed development would harm or undermine the regeneration of Swindon's Central Area. The remaining two tests are considered below.

#### Impact on Highworth Primary Rural Centre

37 The applicant's submitted Planning and Retail Statement (at para 7.4 onwards) does not refer to and appears unaware of the existence of the Swindon Borough Retail and Leisure Needs Assessment (NLP 2017) (RLNA 2017) and refers to its predecessor Retail Capacity Study from 2009.

38 The applicant's planning and retail statement uses the results of an on-street survey with 158 respondents and a household survey with, it appears, 600 respondents, undertaken on behalf of the applicant to understand current shopping patterns.

39 The household-survey based estimate of existing turnover of the Coop, Brewery Street at £6.67m is higher than the estimate in the RLNA 2017 of £5.73m.

40 In calculating the increase in expenditure in the study area between 2017 and 2021, the applicant's retail statement uses a Pitney Bowes long-term growth trend of +0.5% per annum. The RNLA 2017 uses an Experian long-term trend of +0.1% per annum for convenience goods after 2017. This was justified by the Council's consultants on the following basis: "These growth rates are relatively cautious when compared with past growth rates, but in our view represent realistic forecast for future growth". As a sensitivity test, the Experian long-term trend should be used.

41 The 2017 benchmark turnover of the proposed store with 1,254sqm of tradeable floor area is said to be £9.01m for convenience and £1.86m for comparison. By contrast an identically sized store on Rodbourne Road, Swindon was in November 2016 said to have a 2016 benchmark turnover of £10.87m for convenience and £2.23m for comparison. The applicant's agent says that this difference is due to the proposed store not being projected to trade as well as urban stores because of its location at a small market town with a limited catchment population. The catchment population used in the planning and retail statement submitted with the application is 37,081 (applicant's table 1). By contrast, the catchment for the Rodbourne Road store was stated in that application to be 34,673. Additionally, the level of competitor stores within the proposed store's catchment area is considerably less than that for the store in Rodbourne. It therefore appears to officers that a turnover assumption in line with the company benchmark should have been used.

42 The proposed store's convenience turnover is projected to increase from £9.01m in 2017 to £9.19m in 2022. If the turnover were to increase in line with the long-term trend of +0.5% per annum used for calculating expenditure growth in the study area, the 2022 convenience turnover should be £9.24m. By contrast, the store's comparison turnover is shown as increasing from £1.86m to £2.04m, outperforming the projected study area expenditure growth. While these differences are not large, they should be explained and they have not been. It appears incongruous that the application proposal would draw a declining proportion of local convenience spend in its first five years of operation.

43 The applicant presents two impact scenarios, A and B. Scenario B is said to be informed by an assumption that few people use Highworth Town Centre as a main shopping destination. This scenario appears to be principally based on findings from the on-street survey. Officers have a number of concerns about the use of this scenario:

- The sample size for the on-street survey is small and it has produced some confounding results. The answers to question 10 of the on-street survey suggest that 0% of Highworth shoppers surveyed undertake their main food shop at the Brewery Street Co-op in Highworth whereas 14.6% undertake their main food shop at the similarly sized (652sqm net floorspace) but distant Cavendish Square Co-op in Swindon.
- The results for the on-street survey do not accord with the results of the larger sample-size household survey, which shows a higher proportion using Highworth as a main shopping destination.
- The Coop store in Highworth town centre has a net floor area of 677sqm which is of a size that can support main shopping.

44 Looking at Scenario A, the diversion of convenience spending from Highworth town

centre is assessed to be -16.9% in 2022 with Coop Brewery Street modelled to experience a -17.3% drop in 2022. These are considered significant figures provided by the applicant and suggest a severe retail impact on Highworth Town Centre. Furthermore as highlighted above, some of the assumptions used in the applicant's calculations mean that the impact on Highworth town centre may actually be underestimated in these figures. If a benchmark turnover consistent with that used for the Rodbourne application and a more conservative expenditure growth assumption consistent with the RNLA 2017 were to be used, the impact on Highworth town centre would be shown to be greater.

45 The next step is to consider whether these modelled levels of impact would undermine the vitality and viability of Highworth town centre. National Planning Policy states that permission should be refused if the impacts would be significantly adverse.

46 In our assessment, the impact of the proposed store on Highworth town centre would be significantly adverse. This is due to the following:-

- The RLNA 2017 observes that stores in Highworth town centre appear to be trading below average levels. This indicates that stores may be vulnerable to a diversion of trade.
- The RLNA 2017 (Appendix 2, Tables 14 and 16) indicates negative capacity for additional convenience retail floorspace in Highworth in the period to 2036. This supports the assessment that the proposed development would divert spending from Highworth Town Centre.
- The Highworth Neighbourhood Plan's supporting text records that the number of shops in A1 retail use in the centre has fallen below the target in Local Plan Policy EC3.
- The applicant's agent downplays the role of convenience shopping in supporting the vitality and viability of Highworth town centre. However, the RLNA 2017 shows that Highworth town centre has more convenience than comparison shopping floorspace. In our assessment the Co-op store on Brewery Street which is co-located with Highworth's post office and library, acts as an important anchor store for the town centre. Thus, a reduction in convenience shopping in the centre would be likely to have wider adverse impacts on the centre's vitality and viability.
- We do not consider that applicant's suggestion that the proposed foodstore would promote linked trips with Highworth town centre is realistic because of the comparatively long distance and significant hill between the two locations.

47 As a result of the potential impact on Highworth town centre officers consider that the proposed development is in conflict with Local Plan Policy EC3(a).

48 Highworth Neighbourhood Plan Policy 4 provides support for the continuation and rejuvenation of the town centre's retail and social hub in the town. Officers do not consider that the proposed development would accord with these objectives. Similarly, the proposed development's impact on Highworth town centre would not accord with the Local Plan Policy RA1 (Highworth) priorities of maintaining and enhancing the function of Highworth town centre, preventing the loss of shops and focusing shops at the town centre.

#### Sequential approach to site selection

49 A sequential approach to site selection is required by Local Plan Policy EC3 and by national policy. In light of the type and format of the food store to be occupied by a single occupier, we do not consider that there is scope for disaggregation. Car parking adjacent is likely to be necessary for a food store of this size.

50 There is one potentially suitable and available sequentially preferable site, the New Eastern Villages District Centre which is not considered in the applicant's agent's statement. The New Eastern Villages district centre is allocated under Local Plan Policy NC3. Policy NC3 states that the New Eastern Villages will comprise about 12,000m<sup>2</sup> (gross) of retail floor space including a high quality District Centre. The existing Sainsbury's store accounts for approximately 7,000sqm of this space. The exact configuration of additional space within the district centre is at this stage unclear. In principle, it could include an additional convenience retail store of the size proposed in the current application. Although the New Eastern Villages District Centre is a potentially suitable and available sequentially preferable site, it is not well located for Highworth. Therefore there is no objection to this application on the basis of the sequential test.

#### Other material considerations

51 As the proposed development is not in accordance with the development plan read as a whole, it must be considered whether there are other material considerations which indicate that the application should be determined otherwise than in accordance with the development plan.

#### Local support for the proposal

52 There is a significant level of local support for the proposal, however little weight can be applied to strength of support.

53 However whilst some of the support for this proposal has been made on an expressed need for more choice and concern about the current foodstore in the town centre a significant number of residents express support on the basis of the identity of the proposed operator. Planning decisions are made by reference to land uses, not individual operators and therefore decisions must be 'fascia blind'. Retail stores may be occupied by multiple different occupiers during their useable lifespans.

54 The proposal is for a an A1 food store and therefore needs to be assessed as such. It should not receive more favourable consideration because it is proposed to be an Aldi food store and there is local desire for Aldi to locate at the town. Whilst the assessment against the NPPF tests should be undertaken on the basis of the estimated turnover and trading characteristics of the operator (a discount food store operator), the assessment should be carried out objectively in the same way as the Council would assess a planning application by any other retail operator.

#### Enabling development

55 The applicant states that the development of the A1 foodstore would achieve the wider benefit of enabling the development of the remainder of the site for employment uses in accordance with the Local Plan allocation. Yet the application has not been submitted as a hybrid application but two separate applications. There is also no indication that there are abnormally high set up costs of accessing the employment land in the Viability Report. For instance the site does not have any history of contamination.

56 The applicant's supporting information states that the demand for the allocated employment land is weak. However, little evidence has been provided of marketing. Material provided by the applicant refer to a number of confidential discussions with potential occupiers, but limited information is provided about these discussions. There is no information as to whether the site was publically marketed, and if so how was it marketed and to whom and no copies of marketing material for the site have been provided. If the site was not openly marketed, why not?

57 The applicant's assessment is that the development of the allocated employment land is not viable. The material submitted suggests that the sale of land to Aldi, and the land receipt that would create for Highworth Business Park Limited, would overcome this and make the development of the employment land viable. The applicant's viability material suggests that the sale of land to ALDI would pay for enabling works for the employment land (principally providing access and services to the employment land), the costs of which are suggested to be holding back delivery of employment land. However, leaving aside the validity of the applicant's viability evidence there are problems with the applicant's enabling development argument as follows:-

- The development of the A1 food store and the remainder of the employment land are subject to separate applications by different applicants. There would be, as far as we are aware, no mechanism to secure that the land receipt to Highworth Business Park Limited is applied to delivery of the employment land.
- The separate outline application for the balance of the employment land provides little comfort that the land would be developed for employment purposes. We can see no mechanism for ensuring that the employment land is delivered in tandem with the food store.

58 Overall, we do not consider that significant weight should be given to the applicant's enabling development argument.

59 Nevertheless even if an enabling development argument could be substantiated, it would not outweigh the other adverse impacts of the proposed retail development sufficiently to recommend in favour of granting the proposal.

Loss of allocated employment land

60 The applicant has provided a report, prepared by Whitmarsh Lockhart in support of a planning application elsewhere in the Borough, which suggests that there is a significant oversupply of employment development land in Swindon Borough. Yet the Whitmarsh Lockhart report appears to be principally concerned with office, rather than industrial and distribution, development land.

61 The Whitmarsh Lockhart report is not consistent with the findings of the Swindon Borough Employment Land Review (Lichfields, 2017) (ELR). The ELR finds that, although there is sufficient employment land allocated to meet future demand, delivery delays mean that some allocated sites will not come forward in the short term. It observes that "The low vacancy in the local market reflects the limited supply of available industrial space in the Borough, particularly in terms of good quality, modern space. In this context, property agents indicate that they are unable to satisfy demand for a variety of sizes of industrial

premises in the Borough, with a particular shortage of good quality, large premises in the local industrial market.”

62 The ELR suggests that unless further industrial land becomes available, there is a risk that potential economic opportunities will be diverted from the Borough, and the growth potential of existing occupiers in the market will be constrained.

In this context, the loss of part of the industrial allocation is a material consideration telling against the proposed development.

63 Paragraph 120 of the NPPF states that “planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs ( or, if appropriate deallocate a site which is undeveloped); and
- b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

64 In the officers view, it has not been demonstrated that there is no reasonable prospect of employment development on the allocated site. No comprehensive marketing information has been submitted by the applicant. The proposed use would not appear to meet an unmet need for development where the most up to date Swindon Borough Retail and Leisure Needs Assessment (NLP 2017) (RLNA 2017) indicates negative capacity for additional convenience retail floorspace in Highworth in the period to 2036. Furthermore, for the reasons outlined above, an application for retail development would, assessed on its own merits, be contrary to the development plan in this location.

#### Employment creation

65 Jobs would be created within the proposed development. However, as the RLNA 2017 indicates that there is no additional expenditure capacity to support additional convenience retail in Highworth and these job gains are likely to be offset to a degree by staffing reductions elsewhere. Minimal weight is given to the benefits of the proposed development in terms of job creation.

66 The Applicant has submitted a further letter through their Agent ( 29<sup>th</sup> October 2018) which seeks to address the reasons for refusal set out in the June Committee Report and proposes the reasons below as to why the applicant considers planning permission should be granted for the development:

*The main policies that the development is contrary to are policies RA1 (Highworth (including the employment allocation) and SD2 (sustainable development strategy) of the Local Plan 2016 and Policy 3 (Development and Rural settlement boundary) of the Highworth Neighbourhood Plan 2017. Although the application is contrary to the development plan when considered as a whole, there are other material considerations that indicate that planning permission should be granted, and outweigh the indication given*

by the development plan as follows:

a) *The range of potential impacts associated with the proposed limited product line foodstore (as identified within Scenarios A and B of the applicant's Planning and Retail Assessment), will not give rise to a significant adverse impact upon or undermine the vitality and viability of Highworth Town Centre in either Scenario, although it is considered that on the basis of the Applicant's evidence Scenario B is to be preferred.*

b) *Evidence agreed by the Planning Committee submitted by the applicant and in the Council's evidence base (Swindon Retail and Leisure Needs Assessment, January 2017) confirms that Highworth Town Centre is vital and viable. The proposal will bring material benefits including: an increase in local consumer choice and competition; an increase in the level of expenditure and trade retained in Highworth; a reduction in shopping trips to foodstores further afield leading to a more sustainable pattern of local foodstore development; and improved investment and employment opportunities in Highworth. The assessment carried out in accordance with paragraph 89 of the NPPF and Policy EC3 of the Swindon Borough Local Plan leads to the conclusion that the proposals will not have a significant adverse impact and will not undermine the vitality and viability of existing centres, in particular, Highworth.*

c) *Proposed Condition 22 as set out in the Applicant's letter dated 29th October 2018 meets the policy test for conditions as set out in the NPPF. It limits the foodstore to the sale of no more than 1,500 lines; restricts comparison goods to no more than 20% of the proposed floorspace; prohibits various concessions, including a butcher, fish counter, delicatessen/cheese counter, pharmacy, dry cleaning, café and banking facilities; and limits the lines of newspaper and magazines that can be sold from the store. Condition 23 set in the Applicant's letter dated 29<sup>th</sup> October 2018 also restricts the subdivision of the unit for use as a single Class A1 foodstore. The foodstore could not be occupied by any other operator other than a limited product line food retailer because of the limitations imposed by Conditions 22 and 23.*

d) *The evidence submitted by the applicant demonstrates that the proposal complies with the sequential test as set out at paragraph 86 of the NPPF and in Policy EC3 of the Swindon Borough Local Plan, the Council officer's Committee Report does not recommend refusal on the basis of the sequential test and this is agreed by the Planning Committee.*

e) *Although there is a loss of allocated employment land to retail use, the proposal is considered acceptable because:*

i) *The Applicant's evidence is accepted that there is no reasonable prospect of employment development coming forward without a catalyst to fund/deliver the necessary infrastructure works to unlock development of the wider site for B class uses.*

ii) *The proposals will ensure that an infrastructure package can be delivered that is necessary to facilitate access to the proposed store, but will also provide the access that is required to bring forward development on the remainder of the allocated site for employment uses in the Local Plan under allocation RA1 (b) (Highworth) and consented under application S/OUT/17/1772.*



*iii) The foodstore will create jobs in its own right to provide for local employment opportunities.*

*f) Although the proposal does not accord with Local Plan policy RA1(b) the object of the policy, namely to promote B class employment use on land north of Blackworth Industrial Estate, would be advanced as necessary access infrastructure would be provided.*

*g) Although the proposal does not accord with Local Plan policy SD2, and Neighbourhood Plan policy 3, as the application site lies outside the settlement boundary, the site does lie within an area which Local Plan policy RA1(b) contemplates will be developed, albeit for different purposes.*

*h) With the imposition of the proposed conditions 16.1 and 16.2 set out in the Applicant's letter dated 29th October 2018 and considering all other material considerations, it is considered that the proposal complies with policy EN4 as biodiversity will be protected and a condition can be imposed to require the submission of measures on site that can achieve net local biodiversity gain, or if this cannot be achieved, the implementation of compensatory measures.*

67 It is not considered that there is anything substantive within the applicant's suggested reasons for approval, or within the wider letter, which would lead officers to alter their opinion about the conflict with the Development Plan Policies in relation to the allocation of employment land and the impact on Highworth Town Centre.

#### Transport issues

68 Local Plan Policies TR1 (Sustainable Transport Networks) and TR2 (Transport and Development) apply in relation to this proposal. Policy TR1 states that the Council will exercise its planning powers to maximize opportunities to walk and cycle, promote equality of access to services and facilities to all, reduce the need to travel, and promote sustainable transport choices. Similarly, Policy TR2 states that new development should be located and designed to reduce the need to travel and encourage the use of sustainable transport alternatives. Policy RA1 supports improving the accessibility of Highworth by means of public transport, walking and cycling.

69 Paragraph 103 of the NPPF advises that 'significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.' In sustainable transport terms the site is poorly related to existing residential areas and public transport links. At present there are no pedestrian facilities by which to reach the site. The Blackworth roundabout is a multi-lane roundabout. Since originally submitted the applicant has provided more information on trip generation and access to satisfy the Highways Officer's concerns. Yet it is understood that there is no space for any bus link directly into and out of the site and there would be cost implications in any event which could affect the viability of the bus service. The applicant has agreed to provide a pedestrian route and cycleway on the west side of the main road down to the proposed development site which is considered an improvement on the original proposal. However this does not alter the fact that the site is not well sited to encourage more sustainable modes. The nearest bus stop is some 400m away.

## Design

70 Policies DE1 and DE2 of the Swindon Borough Local Plan should be applied in considering the suitability of the design.

Policy DE1 denotes the following:

71 Each place has its own distinctive character and possesses inherent design assets and opportunities. As such, all development must be in context with the existing natural, built and historic environment and proposals must respond positively to enhance or create distinctive character and identity. Appreciating and responding to the context and character of a site and its surrounds requires the following aspects to be positively addressed by development.

- Existing built characteristics such as views & vistas, points of access, rights of way, servicing requirements, buildings, density, scale, form, access and street patterns;
- Acknowledged features of importance (natural and historic) such as: landscape character, historic landscape, flood protection, tree and hedgerow protection, protected habitats, archaeology and heritage assets;

72 The structure of the proposed supermarket will be highly visible coming from the north along Lechlade Road. Given the inherent landscape character and tree dominated views along this road, this will represent a significant departure from the existing views and setting of this road. However with enhanced planting this is not considered sufficient to recommend refusal on landscape grounds. As far as the form is concerned the structure is of a dark external appearance which would sit better within the rural environment and would be noticeably less 'prominent' than brighter structures. Therefore there are not considered to be any concerns about the proposed external appearance of the building.

## Trees and Landscaping

73 Policy EN5 (Landscape Character and Historic Landscape) states that developments will only be permitted where the intrinsic character, diversity and local distinctiveness of the landscape are protected; unacceptable impact on the landscape must be avoided.

74 This is a visually important location which is currently fronted by a dense thicket of mixed planting which is outside the employment allocation in the Local Plan. Whilst this has probably had very little if any management since it was planted, it does provide good habitat and is an important landscape feature.

75 The originally proposed landscape scheme did not contain enough new tree planting, notably across the site frontage and especially bearing in mind the significant area of vegetation to be removed for the required access. Whilst there is an overhead cable as a constraint on the 'inside' of the site it is considered that there is adequate space on the 'outside' to provide some better long term cover. The Landscape Officer was concerned that if the frontage vegetation was removed there would be an unsightly view into the underside of the existing vegetation. However it was agreed that this could be rectified with the planting of a new hedge preferably beech which could then be properly managed to become an attractive and well managed feature in its own right. It could be planted in a gently curving line broadly following the line of existing vegetation to be retained as shown

on the submitted plan. This hedge could curve around the back of the new sign and also replace the narrow strip of planting on the immediate right-hand side of the access road. In terms of the size, this would need to be planted as a 1.5m tall, but still in a double staggered row. In this way the hedge would have immediate screening value and attractiveness.

76 In addition the Landscape Officer proposed that the triangular / wedge shaped space between H1 and the building be infilled with some more native shrub / woodland mix planting to offset the loss elsewhere.

77 The concerns of the Landscape Officer have been addressed since the application was first submitted in line with the above and the proposed landscape scheme is now considered acceptable.

### Ecological impact

78 Since this application was first determined, but subsequently overturned at Judicial Review, the National Planning Policy Framework (NPPF) has been revised (July 2018), with greater emphasis on achieving net biodiversity gain on development sites and protecting ecological networks. In view of the significant area of planted semi-natural broadleaved woodland and semi-natural grassland which is proposed to be removed for this development the Council's Ecologist remains of the view that this proposal cannot meet the tests of the revised NPPF:

"When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused." (NPPF, para 175)

79 The applicants will need to demonstrate how net biodiversity gain can be achieved and ecological networks e.g. the band of planted broadleaved woodland, can be protected and enhanced (ref NPPF, para 174b). Satellite photos indicate that the woodland on site forms part of an exceptionally long line of almost continuous hedgerow and tree lines extending far to the west, at least as far as Kempsford, and then to some extent north along the A361. This indicates a potential ecological network. Removal of part of this linear feature for this development could be expected to reduce its function as an ecological network.

80 By offering off-site mitigation to provide net biodiversity gain elsewhere, the applicants implicitly acknowledge that net biodiversity gain cannot be achieved on site (Turley letter dated 29.10.18). If off-site mitigation is considered acceptable in planning terms then this should be secured by legal agreement, ecological management plan for the site selected, ecological monitoring programme, and up-front payment of the sum needed. The scope of works required should be quantified by using a biodiversity offsetting calculator, such as the Defra metric. These should be agreed prior to determination of the application.

81 In detail some key impacts of the development have not been addressed by the applicant such as lighting and light spill. The ecological consultants for the applicant state

that 'the proposed development would result in a net loss of overall habitat'. Many of the recommendations in their report are too weak to be meaningful. The report contrasts with ACD Environmental's report for the adjacent site, where the recommendations were clear and specific. Whilst the report concludes that the loss of habitat would have a neutral impact this does not appear to be supported by the assessment earlier in the report or the agent for the application who acknowledges environmental loss. A Construction Environmental Management Plan (CEMP) is needed for the site and should be conditioned. There is a main badgers' sett close by, with a risk that badgers could get trapped in open excavations. The recommendation in the report is too weak. Construction should be prohibited between sunset and sunrise to protect badgers, which are nocturnal. Disturbance levels will be lower during the operational phase, when badgers will get used to night time activity.

82 The report refers to an outlier badgers' sett to the west of the site. Detail is needed on whether this sett is active and whether connectivity between the setts will be affected by this development, and that on the neighbouring site. The other ACD report on the adjacent site says there is a disused outlier sett, but it is not clear whether this is the same one. Clear proposals are required for this site which address the concerns they raise about loss of habitat connectivity for badgers. This needs to be developed as a lighting strategy informed by ecological input. There is currently no ecological assessment of the lighting proposed: this is needed, and should include assessment of light spill from windows. There should be method statements for breeding birds, dormice and reptiles. There is no reason why biodiversity net gain cannot be achieved on the site. For example, additional bat and bird boxes could be provided within the patch of woodland, together with a commitment within the LEMP to monitor, clean and repair them. Bat and bird boxes could also be in-built in to the new supermarket. While a log pile may have some conservation value, it won't create biodiversity gain as it would be far better to leave the trees growing, rather than fell them and pile them in a heap. Log piles are a convenient way for reducing site clearance costs.

### Archaeological Issues

83 An archaeological evaluation has been carried out during late March/early April this year on both this site and the adjacent proposed employment site (S/OUT/17/1772). This evaluation confirmed the results of a geophysical survey that in a central area there is a 'farmstead' complex of late Iron Age to early Roman date with peripheral agriculture related features.

84 The County Archaeologist has recommended that in the event that permission is granted, a Condition to allow for a full scale archaeological excavation to be carried out.

### Noise Pollution

85 An acoustic assessment has been carried out by the applicant and further information provided which has satisfied the original concerns expressed by the Environmental Health Officer who has also carried out a site visit and monitoring at Lechlade Road.

86 The Environmental Health officer is satisfied that the work carried out to date shows that the development would not have any adverse impact on the nearby residential properties including the dwelling at 22 Lechlade Road.

### Drainage Issues

87 The finalised Drainage Strategy submitted by the applicant has been approved by the Council's Drainage Engineer subject to a Condition.

### Concluding Comments:

88 The proposed retail development is in a location not in accordance with the allocation under Local Plan Policy RA1 is in conflict with Local Plan Policy SD2 and Neighbourhood Plan Policy 3.

89 The proposed retail store would have a significantly adverse impact on the vitality and viability of Highworth Town Centre contrary to Local Plan policies EC3 and RA1 and Neighbourhood Plan Policy 4.

90 There would on the basis of the details provided to date, be an unacceptable loss of biodiversity on the site contrary to Policy EN4 of the Swindon Borough Local Plan 2026(2015).

91 There are not considered to be any material considerations which would outweigh these conflicts with development plan policy.

### Recommendation

92 That planning permission be **REFUSED**

## Reasons

1. The proposed retail development would result in the loss of part of an employment land allocation without adequate justification to mitigate the impact on the Highworth Town Centre contrary to Policies SD2 and RA1 (b) of the Swindon Borough Local Plan 2026 (2015) and Highworth Neighbourhood Plan 2017 Policy 3.

2. The proposed retail development would have a significant adverse impact on the vitality and viability of Highworth Town Centre contrary to Policies EC3 and RA1 of the Swindon Borough Local Plan 2026 (2015) and Highworth Neighbourhood Plan 2017 Policy 4.

3. The proposed development would have an unacceptable loss of biodiversity on the site contrary to Policy EN4 of the Swindon Borough Local Plan 2026 (2015).

### Reasons to Grant

In the event that Members are minded to grant planning permission, it is recommended that the Head of Planning, Regulatory Services and Heritage be authorised to grant planning permission subject to appropriate conditions for the following reasons:

- a) The proposal would support delivery of the wider Swindon Borough Local Plan 2016 employment allocation, through delivering the access and associated infrastructure needed to unlock development of the site for employment uses. Further, the proposal would deliver jobs at a level akin to an employment use at this location.

- b) The proposal would not result in a significant adverse impact on Highworth Town Centre, by virtue of the strong health of the Centre, which is currently experiencing high occupancy rates. Further, the proposed store would provide a limited retail offer which has a limited degree of overlap with the more experiential retail and leisure offer in Highworth Town Centre. A limitation on the range and type of goods that can be sold from the store, to limit the degree of overlap with the goods and services sold in Highworth Town Centre, can be controlled by way of planning condition.
- c) Whilst the scheme has been assessed as giving rise to a loss of biodiversity from the site, a Condition can be imposed to require the submission of measures on site that can achieve net local biodiversity gain, or if this cannot be achieved, the implementation of off- site compensatory measures through the completion of a legal agreement.

Members should note that since 1st October 2018 agreement is required from the applicant before a pre-commencement condition is imposed on a planning permission.

## **Informatives**

1. Reason for Refusal no. 3 may be able to be overcome if sufficient protection and achievable mitigation measures are proposed by the developer.

### 2 CIL Liable Development:

This development constitutes Community Infrastructure Levy 'CIL' liable development. CIL is a mandatory financial charge on development. For more information on CIL visit [www.swindon.gov.uk/cil](http://www.swindon.gov.uk/cil) or telephone the SBC CIL Team on 01793 466289 or 466397 or email [cil@swindon.gov.uk](mailto:cil@swindon.gov.uk) . To avoid additional financial penalties the requirements of the impact of CIL must be managed before development is commenced and subsequently payment made in accordance with the requirements of the CIL Demand Notice issued. Information on possible exemptions that may be capable of being applied for can be found at:

[https://www.planningportal.co.uk/info/200126/applications/70/community\\_infrastructure\\_levy](https://www.planningportal.co.uk/info/200126/applications/70/community_infrastructure_levy) and <https://www.gov.uk/guidance/community-infrastructure-levy>. CIL remains relevant in the event that planning permission is allowed by Planning Appeal.

End of Report