

**DELEGATED**

**AGENDA NO 5**

**PLANNING COMMITTEE**

**20 MARCH 2019**

**REPORT OF DIRECTOR,  
ECONOMIC GROWTH AND DEVELOPMENT  
SERVICES**

**18/2403/FUL**

**Land North Of Blair Avenue Ingleby Barwick**

**Application for the erection of food store with associated car parking and landscaping.**

**Expiry Date: 25 March 2019**

**UPDATE REPORT**

**SUMMARY**

1. This report updates the report for agenda item 5.
2. In response to the letters circulated to Members by Pegasus on behalf of Asda the LPA would like to address the comments raised to provide clarity to Members. The applicant's agent has also responded to the letter and this has been appended to this update report.
3. The three issues raised by Pegasus were as follows;
  - The lack of detail within the committee report relating to the transfer of land to the Council to enable an area of public open space;
  - The enforceability of Condition 16 as currently worded; and,
  - Deliveries to the store are effectively restricted to a 45-minute window which may not be feasible.

**Public Open Space**

4. To address the first point, to provide Members with a background, when permission was granted for the erection of 40 no. apartments with associated communal facilities (ref. 15/2431/FUL) it was done so with a S106 Agreement for the land to the west to be transferred to the Council with a Commuted Sum to allow for the maintenance. This parcel of land was then subsequently adopted as open space within the recently adopted Local Plan. The land presently remains in private ownership and is currently fenced off. During the pre-application enquiry process it was brought to Lidl's attention that this land was previously agreed to be provided as public open space.
5. Lidl agreed that as part of this application process that they would look to transfer the land to the Council to retain the public benefit of opening this site to the public. As the land is not required to make the proposed development acceptable on planning grounds it therefore did not form part of the assessment of material planning considerations within the Officers report. The purpose of this update is to clarify to Members that the provision of the open space is a planning gain but is not a

material consideration and cannot be given any weight within the assessment and determination process.

### **Condition 16**

6. The purpose of Condition 16 is to ensure that the future development is conducted in the way in which the assessment was based. Lidl are very clear within the Planning and Retail Assessment that their sequential test is based on the 'Deep Discount Model'. A model which has been widely accepted by the Planning Inspectorate. The Sequential and Retail Assessment has been based on this. However, having reviewed the condition and in light of the comments received both by Pegasus and the Agent Rapleys a minor amendment is proposed to Condition 16 by removing the reference to the number of product lines to be stocked. The condition by limiting the area of retail floor space and the percentage of comparison goods is considered to achieve the purpose of the condition. With the exception of the product lines the condition remains unaltered. The condition is considered on this basis to be both reasonable and necessary.

7. Pegasus also argue that this condition is not enforceable. The retailer will keep a register of all stock held and therefore would be able to provide the Local Planning Authority with a register. Attention is also drawn to a recent appeal decision for an Aldi supermarket in which an Inspector conditions the amount of retail floor space (Ref A PP/N1215/W/18/3195092).

### **Condition 06**

8. The typo within Condition 06 has already been noted and updated condition will be verbally presented at the meeting.

9. With regards to the 45 minute window, as has also been clarified by Rapleys in the attached letter, the wording of Condition 06 enables greater control over when the deliveries can be made to ensure that there is no adverse impact in terms of highway safety and residential amenity

### **Additional Consultation Responses**

10 in addition to Pegasus letter which has already been circulated and addition two letters of objection has been received. Whilst both letters have been appended to this report the main concerns raised highway safety, traffic and location

### **CONCLUSION**

11. This update report has provided Members in light of Pegasus letter that no weight should be given to the proposed S106 regarding the transfer of designated public open space to the Council.

12. The minor revisions to the recommended conditions do not alter the purpose of the conditions as originally proposed or the recommendation of the main report, which is that the application be approved with conditions.

**Director of Economic Growth and Development**  
**Contact Officer Helen Boston Telephone No 01642 526080**

## **WARD AND WARD COUNCILLORS**

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**Ward**                      **Ingleby Barwick West**

**Ward Councillor**      **Councillor Ken Dixon**

**Ward Councillor**      **Councillor Ross Patterson**

**Ward Councillor**      **Councillor David Harrington**

### **IMPLICATIONS**

#### **Financial Implications:**

**Section 143 of the Localism Act and planning obligations as set out in the Report.**

#### **Environmental Implications:**

**The proposal relates to the creation of a new food store and its visual impacts, along with matters relating to traffic and associated noise and disturbance are considered and addressed within the report and are considered limited**

#### **Human Rights Implications:**

**The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.**

#### **Community Safety Implications:**

**The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report**

#### **Supplementary Planning Documents**

**SPD1 – Sustainable Design Guide**

**SPD2 – Open Space, Recreation and Landscaping**

**SPD3 – Parking Provision for Developments**

**SPD6 – Planning Obligations**