

# **Proposed Foodstore Development at Former Spotted Cow Public House, Huddersfield**

Appraisal of Retail and Town Centre Policy Issues

**on behalf of Kirkless Council**

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## 1.0 Introduction

### Instruction

- 1.1 Kirklees Council (hereafter referred to as 'the Council') has instructed Nexus Planning to provide advice in respect of planning application reference 2020/62/93308/W. The application relates to a site at the Former Spotted Cow Pub on New Hey Road in Huddersfield, and seeks full permission for the erection of a foodstore with associated access, car parking, servicing and hard and soft landscaping. The site is currently occupied by the former Spotted Cow public house, which closed in 2013 and was demolished in 2018, and an area of open land to the rear of the site which is surrounded by a number of trees.
- 1.2 The application has been submitted by Lichfields on behalf of Lidl GB Limited ('Lidl'), and was validated on 2 October 2020. It is accompanied by a number of supporting documents, including a Planning and Retail Statement (dated October 2020), prepared by Lichfields.
- 1.3 The planning application has been submitted subsequent to the Council's refusal of a previous application (reference 2019/62/91433/W) in December 2019 for a materially similar development. The previous application was refused for three reasons, namely: loss of housing land; adverse impact on the vitality of existing local centres; and, harm to the character and visual amenity of the area. The Council secured retail planning advice on the previous application from Cushman & Wakefield.
- 1.4 The purpose of this appraisal report is to consider the merits of the current application in terms of its compliance with retail and town centre planning policy, as set out by the statutory development plan and by the National Planning Policy Framework ('NPPF'). Whilst we are familiar with the previous advice provided by Cushman & Wakefield, the appraisal which follows objectively reviews the application submission and the evidence provided at this stage in respect of the key sequential and impact tests.

### Proposal and Application Site

- 1.5 The application site comprises approximately 1.0 hectare, and includes an area of hardstanding associated with the former Spotted Cow pub together with open land to the rear. The application site is located on the A640 New Hey Road, which is the primary road linking Huddersfield Town Centre with Junction 23 of the M62. It is bounded by: residential properties to the north and east; new residential development and Salendine Nook Baptist Churchyard to the west; and, New Hey Road to the south.

- 1.6 The entrance of the proposed store would be situated approximately 340 metres to the east of Salendine Nook local centre<sup>1</sup>. As such, we consider it to be 'out of centre' for the purpose of retail and main town centre planning policy (albeit it is a well-connected 'out of centre' site in respect of its relationship with the local centre).
- 1.7 Key details of the application proposal are provided by paragraphs 3.1 to 3.3 of the Planning and Retail Statement, which indicate that:

**'The proposed development includes the following:**

- **a 2,061 sqm gross internal area/1,377 sqm net (sales) Lidl foodstore;**
- **113 car parking spaces including 7 disabled spaces, 2 electric vehicle charging points and 8 parent and toddler spaces;**
- **servicing areas to the side of the store;**
- **a co-ordinated scheme of landscaping around the site and stone boundary wall on New Hey Road;**  
**and**
- **vehicular access from New Hey Road.**

**The new Lidl store would be accommodated within the north-western (i.e. rear) part of the site. The entrance to the store would be located on the south-eastern corner of the building, adjacent to the trolley store, and be linked to parking spaces to the south by a dedicated pedestrian route.**

**Vehicular access to the site in approximately the same location as the existing easternmost access point to the former pub, with car parking located to the south and east of the store, between the store and New Hey Road. The western access point would be closed off, and a new right turn lane into the site would be created on New Hey Road.'**

- 1.8 Paragraph 6.21 of the Planning and Retail Statement indicates that 80% of the identified net retail sales area will be dedicated to convenience goods (equating to 1,102 sq.m) and 20% to comparison goods (equating to 275 sq.m). Our appraisal proceeds on this basis.

### **Structure of Our Report**

- 1.9 In the above context, our appraisal focuses on the proposal's compliance with retail and town centre planning policy as set out by the statutory development plan and by the NPPF. All other planning policy

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<sup>1</sup> Based on the quickest and most direct route 'on foot'.

matters and other material considerations fall outside the scope of our instruction and it will be necessary for the Council to take appropriate account of such matters in its determination of the application.

1.10 Our report is therefore structured as follows:

- Section 2 sets out the retail and town centre planning policy of relevance to the application proposal;
- Section 3 considers the compliance of the proposal in respect of the sequential approach to development;
- Section 4 considers the acceptability of the impacts arising from the proposal; and
- Section 5 provides our conclusions in respect of the compliance of the application proposal with retail and town centre policy.

## 2.0 Planning Policy Context

2.1 We identify below the principal planning policies of relevance to retail and town centre matters.

### National Planning Policy Framework

2.2 The most recent iteration of the National Planning Policy Framework ('the revised NPPF') was published in February 2019. It emphasises the Government's commitment to securing economic growth and building a strong, responsive and competitive economy. With regard to the assessment of proposals for main town centre development, the revised NPPF provides two principal national policy tests relating to the sequential approach to development and to impact.

2.3 In respect of the first of the two tests, paragraph 86 of the revised NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in accordance with an up-to-date plan.

2.4 Paragraph 86 goes on to state that:

**'Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'**

2.5 Paragraph 87 then identifies that:

**'When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.'**

2.6 Paragraph 89 of the NPPF sets out a twin impact test, stating that:

**'When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq.m of gross floorspace). This should include assessment of:**

- **the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and**
- **the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).'**

2.7 Paragraph 90 indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused. However, this direction cannot extinguish the requirement set out in statute to first consider development plan policy and then all material considerations in assessing the 'planning balance' when making a decision.

### **Adopted Development Plan**

2.8 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

**'...if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.'**

2.9 The statutory development plan in this instance is the Kirklees Local Plan, which was adopted in February 2019.

2.10 The Local Plan Policies Map identifies that the application site is allocated for housing development through Policy LP65 (Site HS38). An indicative housing capacity of 32 dwellings is provided for the site. The site housing allocation and the weight to be afforded to it falls outside our instruction and is a matter for the Council's consideration.

2.11 In retail terms, Policy LP13 is of particular relevance.

2.12 Policy LP13 relates to town centre uses, and sets out the tests which should be applied to such development. The policy sets out a hierarchy for development (with Huddersfield and Dewsbury town centres at the top), and provides a sequential test which indicates that:

**'Proposals which come forward for main town centre uses, which are located outside of the defined centre boundaries, will require the submission of a Sequential Test. For retail proposals the boundary shall form the Primary Shopping Area; for all other main town centre uses this shall be the extent of the centre**



**boundary. Main town centre uses shall be first located in the defined centres, then edge of centre locations, and only if there are no suitable sites shall out of centre locations be considered.**

**The scope and content of any Sequential Test shall be agreed with the council and shall be reflective of the scale, role and function of the proposal.**

**Proposals which fail to pass the sequential test will not be supported.'**

2.13 In respect of the matter of impact, Policy LP13 indicates that an impact assessment will be required for all retail proposals across the authority area that provide more than 500 sq.m gross floorspace. Where a proposal is within 800 metres of a defined local centre, the local impact threshold is 200 sq.m gross floorspace. As such, there is clearly a requirement to consider the impacts arising from the application proposal in this instance.

2.14 In terms of impact, Policy LP13 indicates that proposals which have a significant adverse impact on the vitality and viability of a centre, or compromise the role and function of a centre will not be supported.

#### **Overview in Respect of Relevant Retail and Town Centre Planning Policy**

2.15 Policy LP13 is broadly consistent with national retail planning policy as set out in the NPPF. However, the NPPF provides additional detail in identifying two particular strands in respect of the impact test. As such, we first consider the application proposal's compliance with the key retail tests as articulated by national planning policy, before then returning to the matter of the proposal's compliance with the relevant retail policies of the development plan in the concluding Section 5 of our report.

## 3.0 The Sequential Test

### Requirements of the NPPF and Planning Practice Guidance

- 3.1 Paragraph 86 of the NPPF sets out the order of preference in applying the sequential approach. The first preference is for main town centre use development to locate in town centres, followed then by edge of centre locations, and only if no other suitable sites are available should out of centre sites be considered. Paragraph 87 indicates that, when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.
- 3.2 Additional guidance on the application of the sequential test is provided by the Town Centres and Retail Planning Practice Guidance ('the Town Centres PPG'), which was last updated on 18 September 2020.
- 3.3 Paragraph 011 of the Town Centres PPG provides a 'checklist' for the application of the sequential test in decision taking. It indicates the following considerations:
- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
  - Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
  - If there are no suitable sequentially preferable locations, the sequential test is passed.
- 3.4 In this instance, the application site is out of centre. As such, there is a need to consider in and edge of centre sites, and whether there might be any better connected out of centre sites, as part of the NPPF test.
- 3.5 In reviewing sequential alternative sites, it is necessary to review the parameters of relevance to the

application of the test in order to determine which sites have realistic potential. In this context, it is first helpful to consider how the Courts and the Secretary of State have considered the matter of flexibility in applying the test before then considering the appropriateness of the site search parameters identified by the applicant.

### Suitability and Flexibility

3.6 Case law has emphasised that the 'suitability' of sequential alternatives must be considered with reference to the subject application proposal and whether the proposal (or a variant thereof, allowing for some flexibility in respect of its format) could be accommodated at a sequentially preferable location.

3.7 In particular, it is appropriate to take into account the *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13 Supreme Court judgment which gave specific consideration to the meaning of 'suitable' in respect of the application of the test.

3.8 Paragraph 38 of the Dundee judgment states that:

**'The issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism...they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so.' (Our emphasis.)**

3.9 The Supreme Court has jurisdiction over England and, whilst there is a clearly need to consider its findings in the appropriate local policy context, both the Courts and the SoS have found the direction to apply the test 'in the real world' to be of some relevance to the English planning system. This is demonstrated by the 'call in' decision in respect of an application by LXB RP (Rushden) Limited to provide for large-scale retail-led development at land adjacent to Skew Bridge Ski Slope at Rushden Lakes (Planning Inspectorate reference APP/G2815/V/12/2190175).

3.10 Paragraph 8.46 of the Rushden Lakes Inspector's Report states that:

**'It is important to bear in mind that the sequential test as set out in NPPF require applications for main town centre uses to be located in town centres and it then runs through the sequence, edge and then out-**

**of-centre. This makes good the very simple point that what the sequential test seeks is to see whether *the application* i.e. what is proposed, can be accommodated on a town centre site. There is no suggestion here that the sequential test means to refer to anything other than the application proposal. So Dundee clearly applies to the NPPF.’** (Inspector’s emphasis.)

3.11 Given the above, it is evident that sequential alternatives must be viewed in the context of whether they meet the broad ‘real world’ requirements of a development of this nature.

### Parameters

3.12 Paragraph 6.8 of the submitted Planning and Retail Statement identifies the criteria adopted to consider the potential of sites. This includes:

- the need for potential alternative sites to be able to accommodate new retail development of a similar scale and nature;
- whether the site lies within, or on the edge of, existing centres;
- whether the site can be satisfactorily serviced and accessed by vehicles;
- whether there are any land assembly issues which could constrain future development;
- what the current land use are at alternative sites and whether there is a requirement for these to be relocated;
- whether the site is commercially attractive to operators; and
- other potential constraints, such as conservation area and listed building designations, tree preservation orders, topography, and so on.

3.13 We can confirm that we consider the above to be relevant matters to be afforded some consideration when reviewing the potential of alternative sites.

3.14 Furthermore, we note that paragraph 6.3 of the Planning and Retail Statement suggests that the application proposal would draw the majority of its trade from the western side of Huddersfield, and that Zone 5 of the Study Area utilised by the Kirklees Retail Capacity Study 2016 would act as the proposed store’s primary catchment area. On this basis, the applicant’s sequential search is focused around Lindley district centre, Salendine Nook local centre, Birchencliffe local centre, and New Hey Road/Acre Street local centre.

- 3.15 We note the existing distribution of foodstores across Huddersfield and believe that there is a relative qualitative deficiency in respect of 'main food shopping' grocery provision in Zone 5. Having reviewed the location of existing foodstores and the geography of the surrounding area, we are satisfied that the applicant's approach is appropriate and that no other centres offer genuine potential to serve a similar catchment area in a similar manner.
- 3.16 In this regard, we note that Marsh district centre is located approximately 2 kilometres to the east of the application site which, in this instance, is considered to be sufficient distance that the district centre could not appropriately support the proposed retail operation in practice. In any event, Marsh district centre is situated within a densely developed area and we are unaware of any available sites of an appropriate scale.
- 3.17 Accordingly, we accept that the four centres identified in the applicant's Planning and Retail Statement appropriately comprise the area of search in respect of sequential alternative sites.
- 3.18 Notwithstanding the above, we reiterate our view that the entrance of the proposed store would lie approximately 340 metres from the boundary of Salendine Nook local centre. We consider the application proposal to be 'out of centre' as a consequence and it is therefore necessary to review the potential offered by in and edge of centre sites, and consider whether there may be any other out of centre sites which are better connected to a defined centre.

#### **Assessment of Potential Alternative Sites**

- 3.19 We review the sequential alternative sites identified by the applicant below.

##### Sites in Proximity to Salendine Nook Local Centre

###### *Land North of New Hey Road*

- 3.20 This site has been built out by Space Homes as the Whinfield Park residential development; as such, it is not available to accommodate the application proposal.

###### *Land East of Celandine Avenue*

- 3.21 Land East of Celandine Avenue is used for recreation purposes as a sports pitch and children's play area, and is allocated as Urban Green Space (reference UG136) under the provisions of Policy LP61 of

the Local Plan. Policy LP61 seeks to generally safeguard against the loss of such facilities. We are also unaware of the site being available for redevelopment (or that it is likely to become available within a reasonable timeframe). As a consequence, we do not believe that Land East of Celandine Avenue comprises an available or suitable site.

#### Sites in Proximity to Birchcliffe Local Centre

##### *Land off Yew Tree Road*

3.22 This site is located to the south of Yew Tree Road and to the east of Halifax Road. It is utilised as allotments, recreational land and a wooded area. This site is also allocated as Urban Green Space (reference UG123) by Policy LP61 of the Local Plan and there is no indication that it is available for redevelopment. It can be discounted from the sequential assessment on these grounds.

##### *Land East of Halifax Road*

3.23 The above site is located to the south-east of the junction of Halifax Road and Yew Tree Road, and forms Local Plan housing allocation reference HS35. We are aware that parts of the site have already been built out for residential development (pursuant to planning application reference 2017/62/90180/W), and that a further residential planning application at the site (reference 2020/62/90942/W) was resolved to be approved subject to legal agreement by Members at Strategic Planning Committee in October 2020.

3.24 Whilst a substantial part of the site still remains, we are unaware of it being made available for a non-residential use and anticipate that the remaining land will come forward in accordance with its allocation. As such, we do not believe that the site is available to accommodate the application proposal.

#### Site in Proximity to Lindley District Centre

##### *Land South of Thomas Street*

3.25 The site is bounded by Thomas Street to the north, Thorncliffe Street to the east and Brian Street to the south. The site comprises approximately 0.3 hectares and is therefore far too small to accommodate a foodstore of a scale broadly comparable to the application proposal. As such, it does not comprise a suitable site.

*Land off Daisy Lea Lane*

- 3.26 The Daisy Lea Lane recreational ground accommodates a number of sports pitches and is allocated as Urban Green Space (reference UG131) by Policy LP61 of the Local Plan and there is no indication that it is available for redevelopment. It can be discounted from the sequential assessment on these grounds

*Land South of Union Street*

- 3.27 The site comprises open land which is bounded by: Union Street to the north; Acre Street to the east; School Street West to the west; and, industrial buildings and the Acre Mills Outpatients department of Huddersfield Royal Infirmary to the south. The site is used as a surface car park in association with the nearby Infirmary, with the eastern part appearing to be particularly well used.
- 3.28 We are unaware of the site being marketed for redevelopment and we are similarly unaware of any representations being made by an interested party to suggest that it is available (or will become available) to accommodate the proposed use. Furthermore, if part of the site were to become surplus to the hospital's operational requirements, then this would most likely be the western part of the site (i.e. the land which is furthest away from hospital buildings). This element of the site would be accessed via Union Street or School Street West, both of which are quiet 'back streets' which could not appropriately support a foodstore use in practice.
- 3.29 As a consequence of the above, we find that the site is not available and that at least part of it would not be suitable to accommodate a broadly similar foodstore use.

*Land West of Lidget Street*

- 3.30 The site is bound by Lidget Street to the east, allotments to the south, residential properties to the west and Woodlands Children's Home to the north. It comprises of 0.8 ha of open space and car parking and is allocated for residential development in the Local Plan (allocation reference HS37). Notwithstanding the site's housing allocation, the majority of the site is set back from Lidget Road and is unlikely to provide a sufficiently visible location for a foodstore. Accordingly, in the 'real world' in which the sequential test should be applied, we do not believe that the site is suitable to accommodate the application proposal (or a variant thereof).

New Hey Road/Acre Street Local Centre*Former Oakes Mill, New Hey Road*

3.31 The Oakes Mill site is located to the east of New Hey Road and has planning permission for the development of a new Aldi foodstore (reference 2019/62/91656/W).

3.32 In considering the site, we note that paragraph 7.33 of Lichfields' Planning and Retail Statement states that:

**'This store will comprise 1,785 sq.m gross sales area. Pre-commencement conditions are currently being discharged prior to works commencing onsite. The site is therefore coming forward for an alternative form of retail development and is not available.'**

3.33 In this regard, the Courts have found that the sequential test should generally be applied with reference to the broad use applied for and not with regard to a particular operator. In considering a proposal for a discount foodstore in Mansfield (*Aldergate v Mansfield District Council & Anor [2016] EWHC 1670 (Admin)*), Ouseley J concludes (at paragraph 35 of the judgment) that:

**'In my judgment, "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer.'**

3.34 Given the above, we do not believe that the Oakes Mill site can be discounted on the basis that it is only available to Aldi.

3.35 Notwithstanding this, we have reviewed the details of the extant planning permission and estimate that the entrance of the proposed Aldi store is approximately 360 metres from New Hey Road/Acre Street Local Centre. We believe that both sites are out of centre for the purpose of the sequential test, and that Oakes Mill does not provide any sequential advantage over the Spotted Cow application site.

*Site East of Oakes Mill, New Hey Road*

3.36 The site to the east of Oakes Mill was formerly occupied by Kepak Group and operated as a meat processing plant. The site is located approximately 180 metres from the boundary of New Hey



Road/Acre Street Local Centre, and therefore has the potential to accommodate a foodstore in an edge of centre location. The site is not allocated for any particular purpose by the Local Plan Policies Map.

3.37 Paragraph 7.35 of the submitted Planning and Retail Statement indicates that the site was being marketed by CBRE subsequent to it being vacated. However, we have made enquiries of CBRE<sup>2</sup> which has confirmed that the site is currently under offer and that its sale is due to be completed very shortly. As such, we do not believe that the site is likely available for a foodstore use.

### **Conclusion in Respect of the NPPF Sequential Test**

3.38 We have reviewed all of the sites and locations considered by the applicant in its submission and do not believe that any one is both available and suitable to accommodate the application proposal. Whilst we note that other sites are being marketed in the area<sup>3</sup>, we are unaware of any which are in a sequentially preferable location relative to the application site and are available and suitable for the proposed development (even when allowing for appropriate flexibility in terms of format and scale).

3.39 Given the above, we find that the application proposal conforms to the requirements of the sequential test as articulated by paragraphs 86 and 87 of the NPPF.

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<sup>2</sup> By exchange of emails on 1 March 2021.

<sup>3</sup> Including playing fields off Longwood Edge Road and adjacent to Huddersfield New College and Salendine Nook High School, which we estimate is located approximately 380 metres from the boundary of Salendine Nook local centre, based on the most direct pedestrian route.

## 4.0 The Impact Test

### Requirements of the NPPF and the Ensuring the Vitality of Town Centres PPG

4.1 Paragraphs 89 and 90 of the NPPF indicate that application proposals for retail and leisure development should be refused planning permission where a significant adverse impact is likely to arise from development. In assessing the significance of impacts arising from development, it is necessary to reflect upon the advice set out in the Town Centres PPG. In this regard, paragraph 017 states that:

**'A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.'** (Our emphasis.)

4.2 It should also be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice and competition. It is therefore necessary to differentiate between those developments that will have an impact and those that will undermine the future vitality and viability of established centres, i.e. have a 'significant adverse' impact.

4.3 Paragraph 016 of the Town Centres PPG is also of some relevance in considering how the impact test should be applied. It states that:

**'As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities.'**

4.4 In this case, we anticipate that the foodstore will trade most directly against other convenience goods retailers capable of supporting some main food shopping trips within and close to Kirklees Retail Study Zone 5.

4.5 The two key impact tests identified by paragraph 89 of the revised NPPF are considered below. The tests relate to:

- the impact of the proposal on existing, committed and planned public and private sector

investment in a centre or centres in the catchment area of the proposal; and

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

4.6 The compliance of the proposal with each of the two strands of the test is set out below.

#### **The Impact of the Proposal on Existing, Committed and Planned Public and Private Sector Investment in a Centre or Centres in the Catchment Area of the Proposal**

4.7 Paragraphs 8.3 and 8.4 of the submitted Planning and Retail Statement indicate that there is no comparable investment planned in any relevant centres. In this regard, we can confirm that we are unaware of any such development within Lindley district centre, Salendine Nook local centre, Birchencliffe local centre, and Ney Hey Road/Acre Street local centre (i.e. the four defined centres within Retail Study Zone 5, which acts as the primary catchment area for the proposal).

4.8 We are aware that a discount foodstore (to be operated by Lidl) forms part of the proposed redevelopment of the former Kirklees College site at Trinity Street, which is located within the Huddersfield town centre boundary. The Kirklees College site is the subject of planning application reference 2018/62/92647/W, which provides for its redevelopment for a range of uses, including retail, office and residential. The application was considered at Strategic Committee on 24 February 2021 and benefits from a resolution to delegate approval of the application and issue of the decision notice to the Head of Planning and Development.

4.9 We estimate that the Kirklees College site is around 3.5 kilometres from the application site, based on the most direct route by road. The distance between the two sites is such that they will serve predominantly different catchment areas. This is consistent with Lidl being formally associated with both the application proposal and the Kirklees College site; it is unsurprising that they would take both stores, as there would be little overlap in respect of how the two trade in practice.

4.10 As a consequence of the location of the Kirklees College site, we do not believe that there is any realistic prospect that the grant of planning permission for the proposed development at the Spotted Cow site could have a prejudicial impact on the implementation of the mixed-use Kirklees College scheme.

4.11 We are unaware of any other investment of relevance to the first part of the NPPF paragraph 89 impact

test. Accordingly, we conclude that proposal conforms to the requirements of the first strand of the national impact test.

### **The Impact of the Proposal on Town Centre Vitality and Viability, Including Local Consumer Choice and Trade in the Town Centre and Wider Area**

- 4.12 The applicant sets out its approach to trade diversion impact at Sections 6 and 8 of its Planning and Retail Statement. Nexus Planning has subsequently exchanged emails with Lichfields in order to secure additional clarification in respect of the estimated trading performance of Sainsbury's stores at Salendine Nook and Lindley. We have also discussed with Lichfields issues with its household shopper survey which we expand upon below.
- 4.13 We set out below our appraisal of the principal inputs and assumptions relied upon by the applicant in assessing the impact of the convenience goods floorspace. At the outset, it is accepted that the comparison goods floorspace associated with the application proposal is limited and that this floorspace will trade against a number of competing destinations (including other foodstores). We accept that there would be no significant impacts arising from this element of the proposal, subject to the convenience goods element of the proposed development being found to be acceptable.

#### Assessment Period

- 4.14 The applicant undertakes its impact assessment based on a test year of 2025. In this regard, we note that paragraph 017 of the Town Centres PPG directs that the design year for impact testing should be the year that the proposal has achieved a 'mature' trading pattern. It states that this is conventionally taken to be the second full calendar year of trading after the opening of a new retail development. We consider that a development of this nature could commence trading in 2022 and, on this basis, 2024 could well equate to the second full calendar year of trading. The adopted test year is therefore appropriate.

#### Baseline Position

- 4.15 The applicant's estimation of the trading performance of existing foodstores is derived from a household shopper survey which has been specially commissioned to support the application proposal. The survey was undertaken by NEMS Market Research in October 2019, which is experienced in undertaking such research. Whilst the household survey has not been submitted as part of the package

of documents which support the current application, it is publically available as part of the case file for the previous application at the same site<sup>4</sup> and we have reviewed it in providing this advice. A total of 675 surveys were undertaken across six zones, with a minimum of 100 surveys in each zone (and 125 surveys taking place in the three largest zones by population).

- 4.16 The survey suggests that the turnover of the Sainsbury's at Salendine Nook is substantially in excess of the expected 'benchmark' turnover of a store in this located (determined with reference to the company average sales density for Sainsbury's<sup>5</sup>).
- 4.17 As a consequence of the identified performance of the Sainsbury's store, we have reviewed the October 2019 household survey results in some detail and have identified the following concerns in respect of the results.
- 4.18 Firstly, we note that, for each survey question relating to where shoppers go to purchase convenience goods<sup>6</sup>, the Sainsbury's at Salendine Nook is listed twice in the collated survey responses – once as 'Sainsbury's Superstore, Moorhill Road, Salendine Nook' and once as 'Sainsbury's Superstore, Salendine Nook Shopping Centre, Huddersfield'. Whilst this is not problematic of itself, it perhaps helps explain our other concerns with the survey.
- 4.19 The second matter relates to the fact that, in our view, the two listings in the survey results in respect of the Salendine Nook Sainsbury's store identify markedly different shopping patterns. In our view, the second listing for the store ('Sainsbury's Superstore, Salendine Nook Shopping Centre, Huddersfield') suggests that it draws trade from some unlikely places beyond its expected catchment. In this regard, we note that the survey results indicate that the store draws some trade from Zones 6 and 7, which are rather distant and provide better access to alternative provision, including the Sainsbury's store at Southgate (at the edge of Huddersfield town centre).
- 4.20 When the two sets of results for Salendine Nook Sainsbury's<sup>7</sup> are read together, we note that:
- In total, 13 respondents indicate that they shopped at 'Sainsbury's superstore, Moorhill Road, Salendine Nook'. Of these, 12 originate within Zone 5 and one (or 8% of all respondents identifying

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<sup>4</sup> Planning application reference 2019/62/91433/W

<sup>5</sup> As identified by GlobalData Convenience and Comparison Goods Sales Densities of Major Grocers 2020e dataset.

<sup>6</sup> Questions 1, 7, 10 and 12.

<sup>7</sup> This again relates to the results for Questions 1, 7, 10 and 12.

shopping trips to this destination) originate outside Zone 5.

- In total, 40 respondents indicate that they shopped at 'Sainsbury's Superstore, Salendine Nook Shopping Centre, Huddersfield'. Of these, 23 originate within Zone 5, but 17 (or 43%) originate outside Zone 5. Not only are these responded outside Zone 5, but some of them are drawn from unlikely destinations (Zones 6 and 7).

- 4.21 The third matter of relevance to these results relates to the fact that not only is the second 'Sainsbury's Superstore, Salendine Nook Shopping Centre, Huddersfield' dataset inconsistent with the other results of the October 2019 household survey, it is also clearly inconsistent with the household survey which underpins the Kirklees Retail Capacity Study Update of 2016 (which was undertaken by NEMS in March 2013). Whilst shopping patterns change to some degree over time, we are uncertain why a store of this scale in this location would now start to secure trips from relatively distant parts of Huddersfield.
- 4.22 Given all of the above, we believe that household survey results appear implausible and likely overstate the catchment and turnover of the Sainsbury's store.
- 4.23 Our concerns were brought to the attention of Lichfields via a telephone conversation and email on 4 March 2021<sup>8</sup>. As a consequence, Lichfields responded on 5 March 2021<sup>9</sup>, providing a letter from NEMS (also dated 5 March 2021) which seeks to provide assurance in respect of the survey results.
- 4.24 We can confirm that we have reviewed the letter, but that, in our view, it does not satisfactorily explain why the two datasets would provide materially different results. We note that the NEMS letter suggests that the differences are 'not statistically significant', but the area of concerns relates to a relatively large number of responses which in our view are material to Lichfields' estimation of how the Sainsbury's store currently trades.
- 4.25 As a consequence of all of the above, we are of the view that the trading performance of the Sainsbury's at Salendine Nook has not been appropriately established, and that the baseline position adopted by Lichfields is not a robust position from which to determine the impacts arising from the application.
- 4.26 In addition, we note that, in estimating the trading performance of existing retailers at the test year of 2025, Lichfields has sourced Experian expenditure and population data, and applied future growth

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<sup>8</sup> Email from Richard Shepherd of Nexus Planning to Daniel Gregg of Lichfields.

<sup>9</sup> Email from Daniel Gregg of Lichfields to Richard Shepherd of Nexus Planning.

projections as set out in Experian Retail Planner Briefing Note 17, in order to estimate the turnover of key foodstores and convenience goods shopping destinations at 2024. Experian’s data has 2018 as its base year. We note that this data was updated by Experian earlier this year and is therefore no longer reflective of the latest position.

Turnover of the Application Proposal and the Aldi Commitment at Oakes Mill

4.27 The applicant’s assessment of the turnover of the application proposal is set out at Table 8(a) of Appendix 2 of the submitted Planning and Retail Statement. Its assessment of the turnover of the committed Aldi foodstore is provided at Table 6(a) of Appendix 2.

4.28 We note that the supplied sales densities (which are used to estimate the likely turnover of floorspace) are no longer reflective of the company-wide Aldi and Lidl convenience goods sales densities provided by Globaldata<sup>10</sup>. As such, Lichfields has clarified its understanding of the most up to date convenience good sales density for each retailer<sup>11</sup>. Based on these figures (which we have verified and adjusted to account for changes in sales efficiency in the period to 2025), we assume that:

- the proposed Lidl will have an estimated convenience goods turnover of approximately £11.83m at 2025; and
- the committed Aldi will have an estimated convenience goods turnover of approximately £11.74m at 2025.

4.29 We confirm the inputs and approach in estimating the convenience goods turnover of the stores below at Table 4.1.

**Table 4.1: Estimated Convenience Goods Turnover of Application Proposal**

Proposal	Net convenience goods sales area (sq.m)	Company average convenience goods sales density at 2020 (£ per sq.m)	Company average convenience goods sales density at 2025 (£ per sq.m)	Estimated Convenience goods turnover of store at 2025 (£m)
Lidl Application Proposal	1,102	11,174	10,734	11.83
Aldi Oakes Mill Commitment	1,118	10,936	10,505	11.74

Note: Estimated changes in sales efficiency applied between 2020 and 2025 in accordance with Table 4b of Experian Retail Planner Briefing Note 18

<sup>10</sup> As updated in December 2020.

<sup>11</sup> By exchange of emails on 3 March 2021.

### Patterns of Trade Diversion, Impact and the Acceptability of the Proposal

- 4.30 The remainder of an appraisal of this nature would ordinarily seek to address trade diversion, impact and the ability of defined centres to withstand identified impacts.
- 4.31 However, the nature of the identified issue in respect of the identified baseline trading position is such that we do not believe that it forms an appropriate position to consider trade draw, diversion and the acceptability of impacts arising from the proposal.
- 4.32 In terms of impact, we note the letter from Planning Potential on behalf of Aldi to the Council, which is dated 17 March 2021. The letter notes the proposed relocation of Lidl from its existing Castlegate store to the former Kirklees College site at Trinity Street. The Planning Potential letter notes that Castlegate site could be re-occupied by a food retailer. Whilst it goes on to recognise (as we do) that Castlegate and the Spotted Cow site '**cover a different catchment area**', it states that trade could potentially be diverted from the same stores.
- 4.33 Should Lichfields be minded to respond to this appraisal report prior to the Council's determination of the application, we recommend that it also addresses the above matter in any supplementary submission.

### **Conclusion in Respect of Impact**

- 4.34 As we set out above, we are unaware of any town centre investment which would likely be prejudiced as a consequence of the application proposal, which we find accords with the requirements of the first part of the NPPF impact test.
- 4.35 In terms of the second part of the test, we have identified some issues in respect of the applicant's methodological approach and its household survey. We note that the Council has previously refused a materially similar proposal, with retail impact being one of the reasons for refusal. In this context, we find that the information submitted by the applicant is such that it has not demonstrated that the application proposal accords with the requirements of the second strand of the NPPF impact test in respect of the potential impacts arising at relevant centres, including Salendine Nook local centre.
- 4.36 In this regard, we note that paragraph 017 of the Town Centres PPG states '**It is for the applicant to demonstrate compliance with the impact test in support of relevant applications.**' In our opinion, this



requirement has not yet been satisfied.

## 5.0 Summary and Recommendations

- 5.1 Planning application reference 2020/62/93308/W relates to a site at the Former Spotted Cow Pub on New Hey Road in Huddersfield, and seeks full permission for the erection of a foodstore. The entrance of the proposed store would be situated approximately 340 metres to the east of Salendine Nook local centre<sup>12</sup> and, as such, we consider it to be 'out of centre' for the purpose of retail and main town centre planning policy (albeit it is a well-connected 'out of centre' in respect of its relationship with the local centre).
- 5.2 Paragraph 90 of the NPPF indicates that planning applications for retail uses that are not in an existing centre and not in accordance with an up to date development plan should be refused planning permission where they fail to satisfy the requirements of the sequential approach or are likely to result in a significant adverse impact.
- 5.3 In respect of the sequential approach to development, we have reviewed all the sites identified by the applicant and do not believe that any are both available and suitable to accommodate the application proposal, even allowing for appropriate flexibility. We are unaware of any other sequential sites offering realistic potential to accommodate the proposal and, as such, find that it accords with the requirements of paragraphs 86 and 87 of the NPPF.
- 5.4 With regard to the first part of the NPPF impact test, we do not believe that the grant of planning permission for the proposed foodstore would lead to an adverse impact in respect of any existing, committed and planned public and private sector investment.
- 5.5 In terms of the second part of the test (relating to the vitality and viability of town centres), our review of the submitted retail impact assessment has identified a limited number of issues. We have identified significant concerns in respect of shopping patterns identified by the household survey in respect of the Salendine Nook Sainsbury's store and, as a consequence, have reservations in respect of the pre-impact trading performance of this store.
- 5.6 In our view, this issue undermines the findings of the submitted retail impact assessment. In this context, we find that the applicant has not demonstrated that there would be no significant adverse

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<sup>12</sup> Based on the quickest and most direct route 'on foot'.

impact arising from the proposal and has therefore failed to demonstrate that the proposal complies with the requirements of the second part of the NPPF impact test. It follows from the above that we find that the application proposal accords with the Local Plan Policy LP13 insofar as it relates to the sequential test, but the part of the policy relating to impact is again not satisfied.

- 5.7 We trust that the above appropriately sets out our view in respect of the application, but we would be happy to provide further assistance should it be required. We would also be happy to liaise further with the applicant in respect of the abovementioned matters.



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