

Addendum Report

Application Number:	22/1347/FH
Location:	Land Opposite Century House, Park Farm Road, Folkestone, (Former Silver Springs site)
Application Description:	Hybrid Planning Application comprising of: Full Planning Application for demolition of existing buildings / structures and erection of retail unit (Use Class E), provision of car parking, landscaping, internal access roads, alterations to site access and highways layout (Park Farm Road) and associated works and infrastructure; and Outline Planning Application (all matters reserved) for demolition of existing buildings / structures and erection of employment floorspace (flexible Use Classes B2, B8, E(g)(ii) and / or E(g)(iii)) including erection of 2 x café / restaurant units with 'drive-thru' facility (flexible Use Class E and / or hot food takeaway), provision of car parking, internal access, landscaping and associated works and infrastructure.
Applicant:	Channex Project Management Ltd
Agent:	Savills Ltd
Officer Contact:	Andrew Byrne

Recommendation

That planning permission be granted subject to the conditions set out in the June committee report and in this addendum and the applicant entering into a S106 legal agreement securing a bus contribution and travel plan (including monitoring), and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

1. Reason for consideration by the Committee and Background

- 1.1. This application was reported to the meeting of the Planning and Licencing Committee on 18th June 2024, with a recommendation that planning

permission be granted for the development, subject to completion of a S106 Agreement. The Planning Committee voted unanimously in favour of the recommendation. A copy of the June Planning Committee report is attached as Appendix A, the and the minutes of the meeting as Appendix B.

- 1.2. Following the meeting, the Council has received a letter from solicitors acting for Lidl GB Ltd. The letter sets out that in its opinion, the processing of the planning application and report to Planning Committee fails to address a number of matters to the extent where a judicial challenge to any decision could arise. The matters raised are summarised as follows:
 - The extent of changes made under the current planning application.
 - Failure to advertise the application as a departure from the Development Plan
 - Lack of up-to-date survey information on shopping habits
 - Lack of planning conditions in the planning committee report to restrict the extent of retail operations
 - Failure to publish the Council's Retail Assessment on the public file, and consultee comments such as Environmental Health
 - Lack of reference to paragraph 126 of the NPPF
 - Failure to address the representations specifically submitted on retail impact and the sequential test in the committee report.
- 1.3. Officers have reviewed the matters raised. It is not accepted that all the concerns raised would be vulnerable to a successful judicial challenge, however it is considered appropriate to report the application back to the Planning Committee to include further assessment and clarification on a number of the matters raised.
- 1.4. This addendum focuses on the specific issues raised on behalf of Lidl. However it is important for members of the Planning Committee to be clear that they are considering this application on the content of both this addendum and the June committee report. The Planning Committee is not bound by the committee resolution to grant permission in June, although the focus should be on whether the additional material and assessment in this addendum, when read together with the June committee report, would lead it to agree with the recommendation that in the overall planning balance permission should be granted.
- 1.5. Some of the issues raised are procedural and are considered further below. Other matters relate to the assessment of the application and are set out in the appraisal section of this addendum.
- 1.6. Following the June Planning Committee meeting, the applicant has provided further landscaping to the development, as sought by the Planning Committee resolution. In addition the applicant has agreed to a sum of £35,000 as a bus contribution. It should also be noted that National Highways has provided

further comments and raises no objection to the proposal subject to a condition to secure a construction traffic management plan.

2. Procedural Matters

The extent of changes made to the application

- 2.1 The application was originally submitted in hybrid form, comprising a full planning application for the erection of retail units (7,535sqm GIA), a café/restaurant with drive-thru (167 sqm GIA), car parking, landscaping and highways / access works, and in outline form for the erection of employment floorspace (Classes B2, B8, E(g)(ii) & E(g)(iii)), including provision for a builders merchant (employment floor space totalling up to 7,446 sqm GIA). The application originally extended over a site area of 4.4 Ha. 4 retail units were proposed in total, including 2 x food stores and sited towards the rear (west) of the site in one large building, with the drive-thru restaurant located at the front (east) of the site, and the employment land to the south of the site.
- 2.2 The application was subsequently amended in July 2023 to comprise full permission for a single retail unit (a food store of 1,858 sqm GIA) to be located to the front (east) of the site, together with details of access, parking and landscaping; and outline permission for employment uses (Classes B2, B8, E(g)(ii) and / or E(g)(iii) over 9,406sqm GIA) on the west side of the site and 2 x café /restaurant units with drive-thru facilities (427 sqm GIA) on the east side of the site. The site area has been reduced to approx. 3.5Ha, involving removal of an area of land to the south of the site. As is evident from the above, the amendments have incorporated a substantial reduction in retail floor space and an increase in employment / restaurant floorspace, and has involved the re-siting of buildings / uses on a smaller application site.
- 2.3 There is no statutory provision under the Planning Acts for making amendments to an application for planning permission. Planning Practice Guidance (Making an application – paragraph 061) sets out that it is possible for an application to be amended, and that it is at the discretion of the Local Planning Authority whether to accept such changes, whether further re-consultation is required or if the changes are so significant that a new application should be submitted.
- 2.4 The amended application remains as a mixed-use development comprising retail, restaurant drive-thru and employment uses, albeit that the quantum and siting of such uses has changed following amendments and the drive-thru restaurants are now in outline form. Paragraph 7.73 of the June committee report sets out that amendments were accepted to the application and did alter the scheme, but not to the extent that a new planning application was necessary. It also makes clear that the Council

carried out a re-consultation exercise and publicised the amended scheme via a site notice and press advert (albeit that such publicity did not make explicit that the proposal would represent a departure from the development plan, which is discussed further below). The re-consultation letter (dated 25th July 2023) sent by the Council to consultees and surrounding owners/occupiers states that amended plans have been received and that the description of the development has changed.

- 2.5 It is considered that the Council is entitled to exercise its discretion in accepting the changes as amendments, that re-consultation to consultees and surrounding properties on such amendments was properly carried out, and that the extent of changes are not so significant that a new planning application is required.

Failure to advertise the application as a departure from the Development Plan

- 2.6 The application departs from Policy RL11 of the Local Plan insofar that the proposal incorporates food retail, and directly conflicts with the policy, and does not incorporate the mix of uses as allocated under the policy, namely office floorspace, a hotel, leisure or non-food floorspace (other than a small area for comparison goods as part of the retail unit).
- 2.7 Whilst the application has been publicised by site notice display and press advert as a major application, it had not been specifically advertised as a departure from the development plan. It is accepted that this is a requirement under the Town and Country Planning (Development Management Procedure)(England) Order 2015 and this publicity has now taken place.

Omission of documents on the public file

- 2.9 The retail assessment (and subsequent addendum) by Lichfields, commissioned by FHDC, on the retail planning issues raised by this application has been made available to view on the public file, as are all consultee comments.

3 Publicity

- 3.1 In addition to the public / neighbour consultation undertaken as set out in the June Planning Committee report, the application has now been advertised as a departure to the development plan by way of a site notice and press advert. No further representations have been received to date following this.

4 Appraisal

Further Assessment of retail impact

- 4.1 The June committee report sets out a summary assessment of retail impacts arising from the proposed food store in paragraphs 7.31 - 7.39. The key local plan policies are RL8 (development of town centre uses outside of town, district and local centres) and RL11 (the site allocation policy for Silver Springs). Concern has been raised that the report did not fully address objections previously raised on behalf of Lidl (by its consultant Carney Sweeney), particularly that retail data used by the applicant in their assessment was out of date, and under-estimates the impact on Folkestone town centre and on Hawkinge District Centre (both of which contain Lidl food stores). In addition there are no conditions in the recommendation restricting the food store, and the Council's own retail consultant's report was not placed in the public domain, and as such the detail of this report is unknown (This report and subsequent addendum is now on the public file).
- 4.2 A key area of concern raised is that the retail impact assessment submitted by the applicant relies on shopping habits from data derived from 2014 which is out of date and does not reflect current shopping patterns, and as such does not accurately assess impacts on existing food stores in the area. The retail critique commissioned by the Council (the Lichfields report) acknowledges this and recognises that shopping habits have changed over the years. The Lichfields report applies sensitivity testing using current retail data to provide updated turnover for each foodstore considered in the assessment and a "benchmark turnover" based on the size of store and company average sales density, which provides a sense-check to use against the 2014 base data used by the applicant. Planning Practice Guidance is clear that *'the impact test will need to be undertaken in a proportionate and locally appropriate way, drawing on existing information where possible.'* Given the scale of the proposals fall below the thresholds for a retail impact assessment set out in the NPPF (albeit within the local thresholds set by Policy RL8 of the Local Plan), this sense-check is considered to be a proportionate approach to provide an updated position in the circumstances.
- 4.3 In terms of convenience goods trade diversion, the applicant's assessment identifies that approximately 17.5% of trade for the proposed store would be drawn from stores operating in Folkestone Town Centre (including 1.5% from the existing Lidl town centre store), and that 48.5% of trade would be drawn from other out of centre stores in Folkestone. It also identifies 18% trade diversion from the Aldi store in Hythe to the new store. The Lichfields report challenges the trade draw from the existing Aldi store and considers the trade diversion from Folkestone Town Centre (and the Lidl store) to be under-estimated. As a sensitivity analysis, the Lichfield Report considers that half the trade diversion attributed from the Aldi in Hythe would be likely to be diverted from the Lidl in Folkestone. The Lichfields report has therefore considered that the proposed store would draw 10.5% of its trade from Lidl, and that total trade draw from Folkestone Town Centre would be

- 26.5% rather than 17.5% as assessed by the applicant, equating to £3.21m trade diversion from the town centre.
- 4.4 Representatives for Lidl suggest that a trade diversion of 18% from its town centre store would be likely (and 34% from the wider town centre). The advice from the Lichfields report is that this would be an overcorrection and although a matter of professional judgement, the report does not consider a trade diversion of that scale to be justified by the evidence, taking into account the location, turnover, scale and offer of the Aldi Hythe store.
- 4.5 The Lichfields report identifies that the proposed store would have a comparison goods turnover estimated at between £1.31m and £2.22m, based on 20% of the retail sales area being provided for such use. The majority of trade diversion in comparison goods is estimated to be from stores in the Park Farm area (56%), with 30% from Folkestone Town Centre. The impact on comparison goods trade in the Town centre would be -0.3%.
- 4.6 The health check analysis for Folkestone Town Centre provided by the applicant identifies that the number of convenience goods shops is in line with the national average with the comparison goods offer slightly above the national average. Vacancy rates are 13% compared with a national average of 14%. The Lichfields report estimates that the existing town centre stores (Lidl, Asda and Sainsburys) are currently collectively trading at approximately 62% of benchmark value. The proposed store would reduce this to 58% but is not considered to be a significant reduction that would be likely to directly lead to store closures.
- 4.7 The overall impacts as assessed by Lichfields on Folkestone and Hythe town centres are summarised in paragraph 7.36 of the June report. They identify a forecast -7.18% convenience goods impact (or -2.07% combined convenience and comparison goods impact) on Folkestone Town Centre, and a 0.76% convenience goods impact (0.37% combined impact) on Hythe Town Centre, and advise that neither would represent a significant adverse impact on these centres.
- 4.8 The application identifies a trade diversion of 5% from Hawkinge District Centre. The Lichfields sensitivity testing of this forecasts a trade diversion of 6.7% in convenience goods, and advises that this would not represent a significant adverse impact on the vitality and viability of this centre.
- 4.9 Policy RL8 of the Local Plan also requires that the following retail impacts are assessed for out of centre developments –
- *The extent to which the market profile of the proposal would compete with existing facilities in town centres* – the Lidl town centre store shares a similar market profile and this has been assessed above as not being significantly adverse or likely to lead to store closures.

- *The potential for relocation of businesses from the town centre* – the use of planning conditions (see paragraph below) to restrict the use of the unit would restrict interest from existing town centre businesses. As set out above, the impact is not forecast to threaten the ongoing operation of the Lidl town centre store.
- *The impact on linked trip spending between different town centre uses* – there is no industry standard approach to the quantification of linked trips and associated impacts. In paragraph 6.52 of the applicant’s Planning and Retail Statement (August 2022) it suggests that visitors to the application proposals would continue to visit centres “*for their clothing and footwear offer, wider leisure, service and tourist provision*”. The advice from Lichfields is that in light of the breadth of provision across centres and the limited direct overlap of trade for these other town centre facilities with the application proposals, the broad spread of convenience retailers across Folkestone (Asda, Sainsbury’s, and Lidl) and other related centres that the proposals would divert trade from, as well as the relatively limited town centre impact figures identified, the loss of linked trips is likely to be limited.
- *The cumulative effect of more than one development coming forward at the same time* – not applicable.
- *The impact through trade diversion on the role and function of a centre or centres* – the assessment of trade diversion does not identify any significant adverse impacts would arise.

4.10 As the development is for an out of centre food store and it has been assessed carefully against impacts arising from the sales area proposed and an 80/20 split between the sale of convenience and comparison goods, it is agreed that a condition should be imposed restricting the use of the store, to ensure that any wider impacts on existing centres that could arise through a different retail format are controlled. An additional condition to the list provided in the June report is therefore recommended and is set out at the end of this report.

4.11 The applicant has carried out a sequential assessment of sites and the reasons why those identified are unsuitable. This has been assessed as acceptable under paragraph 7.35 of the June committee report.

Impact of proposed Drive-thru restaurants

4.12 Concern has been raised that no assessment of the potential impact of the proposed drive-thru restaurants has been undertaken, noting that these are main town centre uses and that the impact and sequential tests apply to these uses as well.

- 4.13 An assessment of this is set out in paragraph 7.74 of the June committee report. The Lichfields report identifies that the relevant area of the site to be given over to main town centre uses (i.e. retail and drive-thru units) measures approx. 1.4 hectares, and that the seafront site (not defined as town or edge of centre), bus station and guildhall sites (unsuitable and unavailable) can be discounted. Furthermore, Lichfields advise that the vitality and viability health check of Folkestone and other relevant centres carried out by the applicant sets out an overview of the provision of food and beverage uses across the centres, including a broad mix of national multiple and independent cafes/restaurants, takeaways and public houses. It is likely that the proposed drive-thru units would primarily cater for passing traffic, visitors to the proposed foodstore, and residents and workers located north of Folkestone. A proportion of trade would be impulse visits from passing traffic and, in practice, any diversion of trade resulting from the proposed drive-thru unit would be spread across a range of facilities in the wider surrounding area, including existing drive-thru facilities, many of which are located outside of existing centres. Any adverse impacts arising from the drive-thru units would be limited given the character of the food and drink offer in existing centres.
- 4.14 The applicant also sets out in their planning and retail statement that a previous permission (18/0066/FH) for development of the site and including 2 x drive-thru units has been commenced and therefore represents a material fallback position. Although this cannot be formally determined unless an application for a lawful development certificate is made, it would appear that a material commencement of this development has taken place on site within the relevant time period. On this basis, the impacts would be no greater than this fallback proposal.

Alternative development on allocated site

- 4.15 Paragraph 126 of the NPPF sets out that planning policies and decisions need to reflect changes in the demand for land. Where the Local Planning Authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan, it should be reallocated through a local plan update. In the interim it states that 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.
- 4.16 There is no policy requirement to demonstrate a need for retail development, instead the key policy tests relate to the impacts of such developments on designated centres and whether other sequentially preferable sites are available. This has been assessed in paragraphs 7.31-7.39 of the June committee report and in this addendum.

- 4.17 The proposal does not accord with policy RL11 of the Local Plan insofar that it does not include office, hotel or leisure development, and includes a retail food store. Paragraphs 7.10-7.30 of the June committee report assess the allocated uses for office, non-food retail and hotel and leisure development and conclude that the absence of such uses is justified. As such an alternative use for the land is considered acceptable.

Compliance with Policy RL11 of the Local Plan

- 4.18 The uses proposed under this application differ to those allocated under Policy RL11. However the impact of such uses being located on this out of centre site, and particularly those classed as main town centre uses, is considered acceptable, as set out in paragraphs 4.1-4.17 above and paragraphs 7.3-7.49 and 7.74 of the June committee report. In terms of the other criteria under Policy RL11;
- The application provides a comprehensive approach to development on the majority of the allocated site, providing a range of uses, access, parking and landscaping. The central access provides vehicle and pedestrian access to all parts of the application site, albeit detail layout of the rear section would be subject to reserved matters. Whilst the southern section of the wider allocation no longer falls within the application site, access to this section is available from Park Farm Road. It would be separated from the drive-thru restaurants by car parking and landscaping. The omission of this part of the allocated site would not be likely to prejudice its future development.
 - The access arrangements, including off-site highway improvements to the immediate environs of Park Farm Road, are acceptable to KCC Highways
 - The proposal would improve pedestrian and cycle facilities and provides a bus stop (see paragraphs 7.50-7.53 of the June committee report).
 - A bus service contribution of £35,000 has been agreed with the applicant and will be secured via a S106 Agreement. This is considered to be reasonable and proportionate to the nature of the development proposed, and in accordance with Section 122 of the CIL Regulations.
 - The design and visual impact, is considered to be of suitable high quality taking into account the setting of the Kent Downs National Landscape (see paragraphs 7.56-7.66 of the June committee report). In response to the June Planning Committee resolution, further tree planting has been incorporated into the development. Although this is limited in the number of additional trees (5), it does help strengthen planting on the site boundaries and is considered acceptable.
 - A contamination report has been submitted. The Council's contamination consultant raises no objection subject to a suitable condition to secure a remediation scheme, and confirmation that any necessary works have been carried out.

- In terms of archaeology, advice from Kent County Council is that the site lies within an area of general archaeological potential including industrial heritage, and close to an area of Bronze-Age archaeological potential. Although former quarrying in the area of the site may have impacted any below-ground remains, it is possible that in other areas the potential for remains still exists, and a planning condition is recommended to deal with this. The June committee report includes recommended condition H1 relating to archaeology, although the KCC Archaeologist has now requested that an updated condition is used, which is set out at the end of this addendum report.

3. CONCLUSION

- 3.1. The appraisal section above provides further information, in particular on the assessment of impacts relating to the provision of town centre uses on the site, taking into account the applicant's planning statement and impact assessment, the concerns raised on behalf of Lidl GB and the critique undertaken by the Council's retail consultant. The overall conclusion, when read together with the June committee report, is that there are no sequentially preferable sites available, and although the proposed development would result in some trade draw from existing centres this would not amount to a significant adverse impact and meets relevant policy tests under RL8 of the Local Plan for out of centre developments and national policy. Whilst the proposal would result in a mix of uses that differs from the range allocated under Policy RL11 of the Local Plan and would not accord with the development plan in this respect, the reasons for this are accepted and it would not give rise to harm to the vitality and viability of existing centres or any wider harm. Other planning impacts including highways, landscape and visual amenity, and residential amenity are considered acceptable and in accordance with policy.
- 3.2. Further to the resolution from the June Planning Committee, a bus service contribution has since been agreed with the applicant and amended plans received to improve landscaping on the site.
- 3.3. On this basis it is recommended that planning permission is granted, subject to completion of a S106 Agreement to secure the bus contribution and Travel Plan (including monitoring).

4. RECOMMENDATIONS

That planning permission be granted subject to the conditions and the applicant entering into a S106 legal agreement in accordance with the recommendation of the original report appended as Appendix A, and subject to the following additional /amended conditions.

Additional condition

- 1 The net sales floor area (defined as all internal areas to which customers have access, including checkouts) of the foodstore hereby permitted shall not exceed 1,315sqm, of which no more than 80% shall be for convenience goods and 20% for comparison goods at any time.

Reason: To manage the impacts of the development upon the vitality and viability of the town centre economy.

Amendment to condition H2

- 2 No development shall take place within any individual phase or part of the site, including any works of demolition, until a Construction Method Statement and Traffic Management Plan for that phase or part has been submitted to, and approved in writing by, the Local Planning Authority. The approved document shall be adhered to throughout the construction period. The document shall provide for:

- i. the parking of vehicles of site operatives and visitors.
- ii. loading and unloading of plant and materials.
- iii. storage of plant and materials used in constructing the development.
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- v. wheel washing facilities.
- vi. measures to control the emission of dust and dirt during construction.
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- viii. details of construction phasing
- ix. construction routing plans and permitted construction traffic arrival and departure times.

Reason: In the interests of the amenities of the area and highway safety and

Convenience, and to mitigate any adverse impact from the development on the M20 and on the A20.

Amendment to condition H1

To ensure that features of archaeological interest are properly examined and recorded during development works:

A) Prior to any development works the applicant (or their agents or successors in title) shall secure an archaeological watching brief so that excavations and other development groundworks are observed and heritage assets with archaeological interest are recorded. The watching brief shall be undertaken by an archaeologist approved by the Local Planning Authority and in accordance with a Specification which has been submitted to, and approved in writing, by the Local Planning Authority.

B) The archaeological watching brief, recording, post excavation assessment, analysis and reporting shall be carried out in accordance with the agreed Specification.

C) Within 6 months of the completion of the watching brief a Report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded in accordance with local and national planning policy.

It is also recommended that condition O14 in the June report is moved from the list of outline conditions to those which apply to all elements of the development.

