

## **Committee Report Item No: 1**

**Application No: DER/02/18/00176**

**Type: Full Planning Application**

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### **1. Application Details**

**1.1. Address:** Site of the Rose and Crown PH and the St Ralph Sherwin Centre, Swarkestone Road, Chellaston.

**1.2. Ward:** Chellaston

**1.3. Proposal:**

Demolition of existing buildings and structures and erection of retail store (Use Class A1), car parking and servicing areas, access and associated works.

**1.4. Further Details:**

Web-link to application:

<https://eplanning.derby.gov.uk/online-applications/plan/02/18/00176>

Web-link to previous application (under code DER/12/15/01570) for member's reference:

<https://eplanning.derby.gov.uk/online-applications/plan/12/15/01570>

**Brief description**

The site of the proposal comprises approximately 0.71 ha of land fronting Swarkestone Road. The site is currently occupied by the Rose and Crown PH (and associated garden and buildings) and the St. Ralph Sherwin Centre (place of worship) and the associated parking area.

The majority of the site is allocated as part of the Chellaston District Centre and for reference the boundaries of the District Centre are shown on the Ordnance Survey base at the end of this report.

To the immediate north of the site is the Corner Pin Public House, with fencing and vegetation demarking the boundary; to the east is the A514 carriageway; to the south are the grounds and buildings of Chellaston Academy; to the west is the Bowling Club and pavilion and beyond to the north-west are residential properties on Station Road. The Rose and Crown PH building is a part two storey part single storey structure which fronts Swarkestone Road. The St. Ralph Sherwin Centre is an angular block shaped mono-pitched roof building set back from the highway, with a side blank brick gable facing Swarkestone Road. Two separate existing car parks occupy the site serving both the Public House and place of worship. Land levels are relatively flat across the site. The existing buildings would be demolished to accommodate the proposed development.

Tree Preservation Order (TPO) 585 covers three individual trees, two groups and one area of trees within the curtilage of the Rose and Crown PH and the St. Ralph Sherwin Centre. The site is not located within a Conservation Area. The tree stock includes a group comprising 1 Willow tree, 2 Oak trees, 1 Beech tree, 1 Rowan tree, 3 Ash trees and 1 Cherry tree situated to the rear of the Rose and Crown PH, adjoining an outdoor seating area. A group of 6 Hornbeam trees are situated on the boundary between the St. Ralph Sherwin Centre and the Chellaston Academy. A group of Ash and Damson trees are situated on the boundary between the St. Ralph Sherwin Centre and Rose and Crown PH.

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### The submission

In addition to a package of drawings and plans the application is accompanied by a suite of documents which include:

- Draft Section 106 Agreement Heads of Terms
- Design and Access Statement
- Tree Survey
- Arboricultural Impact Assessment and associated reports
- Noise Assessment
- Noise Assessment update letter
- Ecological Appraisal
- Phase II Bat Survey
- Heritage Statement
- Planning Statement
- Phase I and Phase II Site Investigation
- Draft Local Labour Agreement
- Transport Assessment
- Statement of Community Involvement

### The proposal

Members will be familiar with the proposed re-development of this site and the previous application which was debated at the meeting in July 2017. Planning permission was refused for that scheme for the reasons included below.

*1. In the opinion of the Local Planning Authority the proposed development would create, by virtue of the excessive footprint of the building, the sub-standard architectural design of the building and the poor overall layout of the car park, an unacceptable form of development in design terms that would be distinctly out of character with the Chellaston District centre. As such, the proposal is contrary to policies CP3 and CP4 of the adopted Derby City Local Plan Part 1: (Core Strategy), saved policy GD5 of the adopted City of Derby Local Plan Review and the guidance in paragraph 56 of the National Planning Policy Framework which attaches great importance to the design of the built environment.*

*2. In the opinion of the Local Planning Authority the proposed development would create, by virtue of the proposed single point of access to the site and the relationship of that access to the neighbouring Chellaston Academy, an unacceptable form of development in terms of vehicle and pedestrian safety on the public highway, particularly at peak times when pupils and others are travelling to and from Chellaston Academy. As such, the proposal is contrary to policy CP23 of the adopted Derby City Local Plan Part 1: (Core Strategy) and the guidance in paragraph 32 of the National Planning Policy Framework which requires development proposals to provide safe and suitable access to sites for all people.*

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Details of the application are available via the web-link in Part 1.4.

An appeal against that decision has been lodged and the format is a Public Inquiry to be hosted in late September. Members will recall that Councillor Care was nominated as the Council's witness given that the refusal was against the Director's recommendation. This is normal Council practice. An initial case conference has been hosted with the Council's Barrister and the Council's statement of case has been sent to the Planning Inspectorate in accordance with the initial stages of the appeal timetable. This application has, therefore, been 'twin tracked' with the appeal process.

Full planning permission is sought for the construction of a single retail unit covering approximately 1,950sqm gross external floor area with a proposed net sales area of approximately 1,265sqm. The applicant is the 'deep discount' retailer Lidl UK and the 'deep discount' retail philosophy is addressed in the submitted Planning Statement.

The proposed retail store itself would be positioned to the south of the site with its main elevations fronting both the proposed car park and Swarkestone Road. The proposed footprint of the building would accommodate a large rectangular sales area and the north-eastern corner would accommodate the main entrance which would include 'wrap-around' glazed curtain walling along the majority of the eastern elevation. This part of the proposed building would sit beneath a projecting canopy which would provide shelter for mobility scooter parking and other storage. The north-western corner of the proposed building would house the delivery bay component which would project forward of the main elevation.

The proposed roof design would include a shallow mono-pitch with a maximum height at the front of the store of approximately 6.55m sloping down to approximately 5.5m at the rear of the building. The proposed elevations would comprise glazed curtain walling for the main entrance which would return around the side elevation facing Swarkestone Road. The proposed north elevation would be dressed with horizontal timber cladding sat on a brick plinth for a section extending some 29m in length. The remainder of the north elevation would be clad in grey horizontal panels in white. Upper level grey panelling would be included to provide a continuous band around the building.

The applicant indicates that they seek to operate the proposed retail store between the hours of 07:00 - 22:00 Monday to Saturday and 10:00 – 17:00 on Sundays and Bank Holidays. The development, once operational, would employ between 25 and 40 full-time and part-time staff members.

In summary the revisions to the scheme following the previous refusal are as follows:

- A 3m wide footpath along the frontage to Swarkestone Road to enhance pedestrian safety
- The removal of two existing additional trees subject to TPO that are located on the Swarkestone Road frontage in order to enhance visibility splays and increase pedestrian visibility
- A dedicated, safe pedestrian route through the car park from the north towards the store entrance

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- A dedicated, safe pedestrian route towards the store entrance from the south
  - A reduction in the scale of the proposed building
  - Revised elevational treatment to the building
  - Adjustments to the proposed package of improvements to the highway network
  - Minor alterations to the proposals to account for the above revisions

### **2. Relevant Planning History:**

<b>Application No:</b>	DER/12/15/01570	<b>Type:</b>	Full Planning Application
<b>Decision:</b>	Refused (reasons included in Part 1.4)	<b>Date:</b>	25/07/2017
<b>Description:</b>	As current application		

### **3. Publicity:**

Neighbour Notification Letters sent to surrounding properties

Site Notice displayed near the site

Statutory Press Advert in the Derby Telegraph

*This publicity is in accordance with statutory requirements and the requirements of the Council's adopted Statement of Community Involvement.*

### **4. Representations:**

As with the previous application highlighted in part 2, this application has generated a large number of comments from neighbours and other interested parties. At the time of writing the report there are 350 representations in objection to the application and 46 representations in support of the application.

Ward Councillors Grimadell and Ingall object to the proposed development and indicate that their grounds of objection expressed in relation to the previous application remain in place. They consider that the proposal is not in keeping with the current street scene, it will increase traffic on what is already a busy road, it will cause issues with children crossing the roads on the way to school and it will create a high level of light pollution.

The representations are summarised in bullet point format below for member's consumption. The representations can also be accessed via the web-link in Part 1.4.

#### Summary of representations in objection

- Building not in keeping with rest of village, which would be destroyed, dividing the community
- Building will detract from the setting of nearby Listed Corner Pin PH
- More trees will be felled, and this will lead the centre of the village with few trees
- Store is not required as another low cost supermarket is located nearby

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- The store will have a negative impact on the other shops in the village, which would ultimately lead to its downfall
- Despite amendments from previous application there remains a concern regarding the safety of children accessing the school site
- The site entrance is too close to the school entrance. As the school has a large and rising population the level of risk to the children is unacceptable
- The demolition of the Rose and Crown PH is a loss to the community, and it is an asset of community value and the only PH in Chellaston with disabled access
- The proposal will lead to an increase in congestion on the A514 which is already a cause for concern, particularly with large delivery lorries
- The store will add to congestion in the village as it will attract shoppers from other areas
- Children coming from school will probably still walk along the pavement and not use the dedicated walkway
- The building is too big for the site
- The building would be sited on the 'Bonnie Prince' estate
- The building is very large by Chellaston standards, the proposed changes to the choice of materials will not mask the bulk of the store
- There is potential for accidents as vehicles move across the carriageway of Swarkestone Road
- No account has been taken of the impact on High Street which is very narrow
- Statutory consultees have made assumptions on the revised scheme and comments rely upon the previous application comments provided
- There are errors on drawing numbers and details on the drawings
- Land would need to be transferred from Lidl to DCC to achieve adoption/maintenance
- There is no dedicated drop off space adjacent to the store entrance for disabled people
- The application makes no mention of cycling to and from the academy.
- Drainage details were only added to the website after the closure of the public consultation
- The drainage details supplied can be at best described as 'incompetent' as they are missing information or contain inaccurate information
- Further crossings for pedestrians would be helpful to reduce congestion
- Customers will not walk to Lidl as it is a shop where a 'major shop' can be done, not just top-up shops, so the level of traffic has been underestimated

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- The additional traffic generated by recently built and proposed new housing has not been fully assessed
- The Lidl is not required because an Aldi has already been built nearby
- The current district centre is well set out in terms of architectural style and the new proposal will turn this into an industrial wasteland
- The changes to the design since the last application are only cosmetic
- The store will dominate the street scene
- The proposed monstrosity will create traffic chaos
- The additional traffic generated will add to pollution
- Other local businesses will suffer and ultimately close through loss of business. This will lead to dereliction and vandalism in the area
- The proposed development is not wanted. If the Councillors vote in favour against the wishes of the community this is undemocratic and would be an act of corporate fascism
- There are already two warden crossing places on the road which impact on traffic flow. Does the Council not have guidelines for high schemes which generate a high volume of traffic in close proximity to schools? Traffic numbers are already excessive, how does traffic modelling data justify the new development
- The Council is seeking to reduce pollution from vehicles, yet this scheme will generate more traffic. Have the pollution impacts of this development been considered
- The proposed 3m wide footway will have very little impact for the safety of pedestrians
- The addition of the safe pedestrian route may result in the car parking spaces on site being reduced
- People visiting the store will not walk to do their shopping
- The store could be built on Infinity Park Way where there is less congestion
- Teenagers walking to and from the school will not be observant of surrounding traffic as they are distracted by mobile phones etc
- The city is awash with shops and retails outlets but there are few good community pubs like the Rose and Crown
- The Rose and Crown is the only pub in the area with a good outside play area for children
- Drainage problems already exist on the A514 in periods of heavy rain. The propose development will make this worse
- Lidl will have scant regard for the community as a whole unlike other traders in the village

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- Chellaston should remain a community with a picturesque main road and social dwellings which is safe to walk and drive through. A supermarket should not be allowed to take centre stage
- Traffic modelling is incorrect/inaccurate
- The development is motivated by greed
- The mass of the development will overshadow the surrounding area and result in a loss of character and amenity for residents
- The Rose and Crown is a pub of some history and this will be lost
- If built the development may result in the loss of employment in other existing retail outlets impacted by the development
- Deliveries to the store by large vehicles will make the weigh restriction already in place meaningless because it is difficult to enforce
- The additional traffic generated in an already congested area will impact upon the ability of the emergency services to get to cases in time
- The Corner Pin Pub is badly run and often closed. The Rose and Crown is well run and its loss will be felt in the community
- Sixth formers from the school may park in the library car park as the land by the Ralph Sherwin Centre will not be available to them, preventing library users from accessing it
- It is inappropriate to refer to Chellaston as a 'town'. It is a village as this gives a misleading impression of the area
- Loss of the Rose and Crown, which hosts many social events, will have a detrimental effect on the well-being of older people as these social activities help to combat loneliness which has a significant impact on health and well-being

### **Summary of representations in support**

- New application shows willingness to address issues raised by Committee in previous refusal as the revised design has made changes to overcome the reasons for refusal
- The current unregulated parking and accesses are far more dangerous than the proposed one access point
- Having the store in this location will reduce trips/traffic congestion as parents will combine shopping with picking up children
- Chellaston is in need of more good retail outlets – fewer people will need to travel in cars out of the area if retail provision is improved
- The store will be of real benefit to the local area
- This application, which addresses the reasons for refusal should be approved to avoid a costly public inquiry
- The new store will bring diversity and jobs to the area

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- The new store will bring cheaper shopping to the area which will benefit residents who can't get out of Chellaston
- The existing shops in the area are either small or expensive so this new store will provide more choice
- The increase in the number of houses in the area means the existing retail provision is inadequate
- The vitality and viability of the Chellaston District Centre will be enhanced. Local businesses will benefit from the increased footfall. The 90 min free car parking period will allow people to visit other shops nearby – currently car parking is difficult and dangerous
- Proposed road safety measures will improve highway safety. The current right turn causes hold-ups and delays
- The unregulated nature of parking and turning currently is dangerous for children walking to and from school. The new highway layout better manages traffic flow and will improve safety for pedestrians
- There is no harm to residential amenity
- The bowls club will benefit from guaranteed access and controlled parking
- The rear part of the church site is often very muddy and this is the only vehicular access to the bowls club. Currently the site is often subject to fly tipping and 'dubious activities'. This will all be improved by the development
- The current church building is dilapidated so the new store would improve the appearance of the area
- The site is currently ugly, abused and in need of redevelopment
- Lidl has guaranteed to provide proper access to the bowls club and allow use of the car park. This will secure the position of a well-used community sports facility. This shows a gesture of community spirit by the company
- The revised proposals will turn this area Chellaston into a tidy well-lit area under the control of a responsible company
- The design of the new store is in keeping with the modern library opposite and an improvement on the appearance of the pub and church which are eyesores
- There will be no detrimental impact on the exposed timber wall of the Corner Pin (Listed Building) – this building has already been defaced by the addition of security cameras, cables and signage
- Removing the public house will reduce the possibility of drivers in the area whose abilities have been impaired by the consumption of alcohol

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### **5. Consultations:**

#### **5.1. Chellaston Neighbourhood Planning Forum:**

The Chellaston Neighbourhood Planning Forum (CNPF) is a statutory consultee for applications where the location falls within the Chellaston Neighbourhood Planning Area.

The CNPF commented on the previous application by Lidl Supermarkets (REF: DER 12/15/01570) and made the following observations:

- The proposed building was inappropriate both in respect of its size and its location
- The development would create traffic pressures which could not be mitigated
- The development would create unacceptable hazards for Chellaston Academy children walking to and from school
- The development would not only have a major visual impact on the street scene but also there would be the loss of the visual amenity of the large number of trees to be removed.

In summary, the CNPF concluded that the building was not appropriate for the chosen site and the applicant had not addressed the problems that the development was likely to create.

The CNPF notes that, in this new application, cosmetic changes have been made to the appearance of the store, the footway along the A514 has been widened and a new walkway has been proposed to pass through the car-park. However, the store will still dominate the street-scene and, as the number of parking spaces remains almost the same as previously proposed, it is expected that the amount of traffic that it will generate will be the same as previously envisaged, which the road network in the area will not be able to absorb despite the proposed road widening.

The CNPF considers that it is totally inappropriate to place a large supermarket next to the Chellaston Academy which is due to increase in size to over 2000 students in the next few years. This is due to safety concerns for children crossing the car-park entrance/exit which would mean a high risk of accidents when they are walking to and from school.

The loss of a further two trees in the new proposal on top of those already earmarked for removal is against the CNPF policy that trees should be retained wherever possible, particularly when protected by a TPO, in order to maintain the environment of the area.

#### **5.2. Conservation Area Advisory Committee:**

The application was presented to the meeting of Conservation Area Advisory committee at its meeting on 8 March and the comments provided in relation to the previous application were re-iterated. These are...

...The committee recommends refusal on the grounds that the loss of a building which complements a nearby listed building adversely affects the street scene.

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### **5.3. Built Environment:**

#### **4 Swarkestone Road**

The application site is adjacent to NHLE ref 1229612 No 4 Swarkestone Road, a small Grade II listed cottage with exposed cruck frame visible in the south gable. Although the frame is thought to date from the 1600s, it is a remnant of a now demolished building and embedded within the wall of a later cottage, probably of C18 construction. No 4 now forms part of the Corner Pin public house, with the cruck frame facing the application site and immediately adjacent to the road. Development on this site will therefore affect the setting of the listed building.

#### **The Rose & Crown**

The Rose & Crown public house is not on either the statutory or local list, and does not lie within a conservation area. It is of brick construction, with elements dating from the late C18-early C19, and possibly earlier. These have been largely obscured by C20 extensions, albeit of an appropriate form, and the building forms a group with No 4 and the Corner Pins as a remnant of the historic street scene on Swarkestone Road.

The application is accompanied by a detailed Heritage Appraisal, which analyses the survival of historic features internally and externally. The buildings have been substantially altered both internally and externally in the C20, and it is conceded that the building is not of sufficient historic interest to merit inclusion on the local list. However, it does have historic form and character which provides context to the setting of the adjacent Grade II listed No 4, as well as having evidential value for potential evidence of earlier historic structures.

#### **The Development**

The Rose & Crown and The Corner Pin are the sole survivors of the historic street scene on Swarkestone Road, being otherwise surrounded by later C20 development of widely varying character. Demolition of the Rose & Crown would remove the surviving historic neighbours of No 4, which contribute to its setting and the understanding of its former historical context. It is noted however, that the buildings are not necessarily contemporary with No 4 and the original setting of the cruck-framed building, and that demolition would open up views of the cruck frame in more distant approaches from the south along Swarkestone Road. Nevertheless their replacement with a car park and standard modern retail building would be detrimental to the setting of No 4 overall.

The listed building currently has a sense of enclosure created by the historical north wall of the Rose & Crown and some boundary trees. Previous concerns with the boundary treatment have been addressed by the introduction of a 1.1m high brick wall on the northern site boundary, which would maintain the existing historic enclosure to the rear of the Corner Pin group and create a better sense of separation between the two sites.

Subject to materials, this would be an enhancement of the immediate setting and curtilage boundary of the listed building.

However despite some revisions to the entrance bay in the north-east corner, the current proposal would remain a large-scale utilitarian building, with few concessions

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to context, and combined with the large expanse of car parking, it is considered that it would not make a positive contribution to the wider setting of the listed building.

### **Conclusion**

The Rose & Crown has evidential value as a historic building, and NPPF paragraph 141 accepts that such loss could be mitigated by recording prior to demolition. However that would not address the harm to the setting of the adjacent listed building and notwithstanding the terms of the 2017 decision, the in-principle conservation objection to the scheme therefore remains.

Harm to the setting of a listed building is contrary to Local Plan Review policy E19, the NPPF and S. 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the harm would amount to 'less than substantial' in NPPF terms, so paragraph 134 accepts that it must be weighed against the other public benefits of the development.

### **5.4. Highways Development Control:**

The following comments are provided in response to the latest planning application (DER/02/18/00176) presented by Lidl and seeks to highlight the differences between the current and original proposals. The latest proposals are shown on Drg No A-PL-003 Rev B. It should be noted that the original highway comments remain relevant and are included below in *italics* under the heading 'previous consultation response under code no DER/12/15/01570'.

### **Differences between the current and original proposals.**

#### **Transport Assessment**

#### **Background Traffic**

The table below shows that there is relatively little difference between the traffic counts undertaken in 2015 and 2018 as peak hour traffic can potentially vary up to 10% per day:

<b>Time</b>	<b>Direction of Travel on A514 at High St traffic signals</b>	<b>Traffic Count Nov 2015</b>	<b>Traffic Count Jan 2018</b>	<b>Difference</b>
<b>Fri (17-18)</b>	S/B	757	756	<b>-1</b>
	N/B	599	640	<b>+41</b>
<b>Sat (12-13)</b>	S/B	583	584	<b>+1</b>
	N/B	510	555	<b>+45</b>

#### **Development Traffic**

**Store Size** – The current application proposes a slightly smaller food store than that considered by planning committee. In terms of transport assessment the reduction in the size of the store theoretically reduces the traffic generation in direct proportion to the reduction in floor area. However, as the original highway comments explain, actual traffic generation at discount food stores can vary considerably depending on their location and proximity to other similar stores.

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**Parking Provision** – The current transport assessment (TA) reports that **113** parking spaces are being provided plus **6** spaces for disabled drivers. However, Drg No A-PL-003 Rev B shows **99** parking spaces plus **8** parent/toddler spaces a total of **107** plus **6** spaces for disabled drivers. Parking spaces for mobility scooters are also indicated and **4** Sheffield cycle hoops. The earlier application proposed **115** parking spaces including 6 disabled spaces and 6 parent and child spaces. Consequently the current proposal includes 2 less parking spaces.

**Sustainable Transport Modes** – as a consequence of the assessment of the original application the Council asked Lidl to widen the footway across the store frontage to 3m to seek to accommodate the pedestrians at school peak times. Drg No 106747-102 Rev A shows that Lidl have accepted this request and is now proposing to undertake this widening. The widening of the footway will be addressed as part of the Section 278 agreement governing the off-site works, should the development proceed.

The latest application also includes a new pedestrian access at the northern end of the car park adjacent the new refuge being provided as part of the off-site highway improvements. The footpath extends through the car park linking the new store to the Co-op and Library.

**Store Vehicular Access** - Drg No 106747-2102 Rev A shows the latest proposals for the site access and off-site highway improvements, which are considered acceptable subject to the S278 process.

**Road Safety** - Road Safety audits will be carried out as part of the S278 process.

**Conclusion** – The conclusion generally remains the same as that given in the highway comments for the previous application. Therefore should you be minded to approve the above proposal it is recommend any consent should be subject to the following conditions and notes:

**Suggested Conditions:**

The proposed development shall not become operational unless or until the following have been provided in accordance with details to be submitted to and approved in writing by the LPA:

1. The highway improvements including the proposed vehicular access, ghost island and widened footway as shown on Drg No 106747-102 Rev A bearing the name Systra;
2. The car and cycle parking and servicing areas as shown on Drg No A-PL-003 Rev C bearing the name Lidl;
3. A travel plan;
4. The reinstatement of any access made obsolete by the development.

**Notes to Applicant** – The above conditions require works to be undertaken in the public highway, which is land subject to the provisions of the Highways Act 1980 (as amended) and over which you have no control. In order for these works to proceed, you are required to enter into an agreement under S278 of the Act. Please contact Robert Waite Tel 01332 641876 for details. Please note that under the provisions of

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S278 Highways Act 1980 (as amended) commuted sums may be payable in respect of all S278 works.

### **Previous consultation response under code no DER/12/15/01570**

#### **Introduction**

*The proposal seeks full planning approval for the development of a 2,312sqm Gross Floor Area (GFA) Lidl Discount food store. The proposed store is Lidl's new format and is significantly larger than existing discount stores in Derby. By way of comparison, the Nottingham Road Lidl Store is 1576sqm GFA, making this proposed development approximately 46% larger. The proposed store is well located within the Chellaston District Centre. There is other nearby discount food stores at:*

<b><i>Store name and Location</i></b>	<b><i>Distance from Lidl Chellaston</i></b>
<i>Co-op – Swarkestone Road, Chellaston</i>	<i>adjacent</i>
<i>Tesco – Swarkestone Road, Chellaston</i>	<i>210 metres</i>
<i>Proposed Aldi, Swarkestone Road, Chellaston adjacent to the A50 – South Derbyshire App No: 9/2016/1208</i>	<i>700m</i>
<i>Co-op – Swarkestone Road, Chellaston</i>	<i>1.7 miles</i>
<i>Aldi – Coleman Street, Alvaston</i>	<i>2.5 miles</i>
<i>Lidl – Nottingham Road, Chaddesden</i>	<i>5.9 miles</i>
<i>Aldi – Southmead Way, City Centre</i>	<i>4.5 miles</i>
<i>Aldi – Nottingham Road, Chaddesden</i>	<i>5.8 miles</i>

#### **National Planning Policy Framework (NPPF)**

*Set out below is the criteria against which the highway impact of the proposed development should be tested. It is important that this is the criteria used, as it is the NPPF that will be considered by an Inspector should the application be determined by the Secretary of State.*

*Paragraph 32 of the NPPF says:*

*“All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:*

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- safe and suitable access to the site can be achieved for all people; and*
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”*

*The following comments are provided in the context of the above guidance from NPPF:*

#### **Transport Assessment (TA)**

*When assessing a new development it is standard industry practice to consider existing traffic (background traffic) i.e. traffic on the road at present, plus the future*

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traffic from any committed development, plus trip making by all modes generated by the development.

Committed development can include developments with planning permission or development allocated in a current local plan. This also includes infrastructure improvements such as T12 and these elements of the transport assessment process are considered in greater detail below.

### **Background Traffic**

At the time that the scope of transport assessment (TA) for the above was being considered the new link road between the A50 and Wilmore Road called T12 was under construction. The modelling for T12 showed that the new route would remove traffic from the A514, however as the new route was not open the actual impact of the new road was unknown. Therefore to seek to ensure the proposed store was considered in a robust manner the developer was advised to assess the proposed store without T12 in place i.e. using existing traffic levels on the A514. Then, to make allowance for future development, growth was applied to the surveyed flows by applying a local traffic growth rate for Derby (TEMPRO 7).

Whilst the above application has been being considered the T12 link road has opened providing the opportunity to understand the actual impact of the new road on the A514, albeit the new road has only been open for a relatively short period and therefore traffic patterns may still be changing. To seek to understand if the background traffic flows used in the modelling are robust DCC have compared current observed flows on the A514 (17/18 March 2017) obtained from the MOVA controlled traffic signals at High Street. The results are shown below.

<b>Background Traffic: Comparison of Nov 2015 to March 2017</b>				
<b>Day/Time</b>	<b>Direction of Travel on A514 at High St. traffic signals</b>	<b>Traffic Count 13/14 Nov 2015</b>	<b>Mova Count 17/18 March 2017</b>	<b>Difference</b>
<b>Fri 16-17</b>	S/B	783	679	<b>-104 (15%)</b>
	N/B	589	529	<b>-60 (11%)</b>
<b>Fri 17-18</b>	S/B	757	645	<b>-112 (17%)</b>
	N/B	599	597	<b>-2</b>
<b>Fri 18-19</b>	S/B	623	629	<b>+6</b>
	N/B	455	501	<b>+46 (10%)</b>
<b>Sat 12-13</b>	S/B	583	669	<b>+86 (15%)</b>
	N/B	510	504	<b>-6</b>
<b>Revised survey Figures from the Systra tech note dated</b>				
	<b>Direction of Travel on A514 at High St traffic signals</b>	<b>Survey flows from the revised TA Note</b>	<b>Mova Count March 2017</b>	<b>Difference</b>
<b>Fri</b>	S/B	771	645	<b>-126</b>
	N/B	594	597	<b>+3</b>
<b>Sat</b>	S/B	629	669	<b>+40</b>
	N/B	564	504	<b>-60</b>

(N.B. The figures entitled 'Revised survey Figures from the Systra tech note' are the figure that have been modelled but differ from the actual survey data. The reason is unknown.)

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The results generally show there has been a reduction in southbound traffic on the A514 between 1600-1800 hrs, which is probably explained by Rolls Royce employees using T12 to get to the A50. The results for the northbound flows are mixed but does not show a reduction in the Friday development peak hour 1700 to 1800 which has been modelled. On Saturday the southbound flows have increased and the northbound flows stayed the same.

### **Development Traffic**

#### **Foodstore Trip Generation**

It is industry standard practice to obtain predicted development related traffic generation figures from a national data base of traffic surveys called 'TRICS'. At Derby we request that 85<sup>th</sup> percentile trip rates are extracted from TRICS to provide a robust assessment. The Council made the applicant aware of surveys it had undertaken which indicated that the trips rates for discount food stores as shown in TRICS may be underestimating the level of trip generation produced by this type of development. This view came from experience of a recently completed Aldi on Coleman Street, which opened in April 2015. To seek to validate trip rates at another similar development proposal the Council undertook a survey at the Coleman Street store, the result of the survey was so surprising that other pm peak traffic surveys were undertaken at other discount food stores in the area.

The results of those surveys are shown below, and demonstrate that discount food stores observed trip rates are significantly higher when compared to those shown in TRICS (highlighted in yellow).

<b>Name of the Store</b>	<b>Friday pm peak trip rate per 100sqm GFA</b>	
	<b>In</b>	<b>Out</b>
Aldi Coleman Street, Derby (1859sqm GFA)	9.09	10.22
Lidl Nottingham Road, Derby (1576sqm GFA)	6.28	5.96
Lidl Beeston, Nottingham (1810sqm GFA)	6.57	6.63
Lidl Arnold, Nottingham (2461sqm GFA)	3.738	3.576
Proposed Lidl Swarkestone Road (2,312sqm GFA)	4.238	4.758
	<b>Tuesday pm peak trip Rate</b>	
Aldi Coleman Street Derby	9.93	8.7

It is considered the increased trip rates may be because the status and popularity of discount food retailers has surged in recent years, becoming brand leaders. This has influenced shopping habits where shoppers have moved away from traditional large food stores to smaller discount food retailers such as Lidl and Aldi.

DCC advised Lidl's consultants Systra of their findings in a technical note dated 5th October 2016. Systra responded by undertaking their own comparative traffic generation survey at Lidl's food store in Arnold Nottingham. The Arnold store was considered to be comparable in size and location to the proposed Chellaston food store. The Arnold store is approximately 2,461sqm of GFA, 149sqm GFA bigger than the proposed Chellaston food store.

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Lidl undertook surveys at Arnold on Friday 21<sup>st</sup> and Saturday 22<sup>nd</sup> October 2016 of all arrival and departures during the peak periods of 1600-1900 (Friday) and 1000-1400 (Saturday). The results shown below:

<b>Lidl Arnold GFA 2461sqm Surveyed 21/22 Oct 2016</b>	<b>Friday pm peak trip rate per 100sqm GFA</b>	
	<b>In</b>	<b>Out</b>
	3.738 (4.238)	3.576 (4.758)
	<b>Sat peak trip rate per 100sqm GFA</b>	
	<b>In</b>	<b>Out</b>
4.795 (7.529)	3.941 (8.101)	

The surveyed results are lower than the trip rates used to assess the Chellaston store, which are shown in brackets in the table above. The Arnold store is located on the A60 Mansfield Road, a major route into Nottingham City Centre. The access is adjacent a major 4 armed staggered signalised junction which is difficult to access. This means any traffic wishing to enter the Arnold store will have to cross 3/4 lanes of traffic. This is equally difficult for exiting right turners who also have to cross 3 or 4 lanes of traffic. Consequently, the low trip rates could be influenced by the difficult access to the site.

Comparison of trip rates at different stores is difficult because the actual level of traffic produced by a particular trip rate depends on the size of the store. Therefore below is a comparison of the actual number of trips generated by each of the surveyed stores when compared to the trip generation that has been assessed for the proposed Chellaston store.

<b>Name of the Store</b>	<b>Friday pm peak trips</b>	
	<b>In</b>	<b>Out</b>
Aldi Coleman Street, Derby	169	190
Lidl Beeston, Nottingham	119	120
<b>Proposed Lidl Swarkestone Road (2,312sqm GFA)</b>	<b>98</b>	<b>110</b>
Lidl Nottingham Road, Derby	99	94
Lidl Arnold, Nottingham	92	88
<b>Tuesday pm trips</b>		
Aldi Coleman Street, Derby	129	162
<b>Sat peak trips</b>		
Proposed Lidl Swarkestone Road (2,312sqm GFA)	174	187

It can be seen from the above table that arrivals range from 92 to 119 trips in the peak hour and departures 94 to 120 (with the exception of Coleman Street, which sits well outside the range). The traffic numbers that have been used to assess the above site lie within these ranges and are above those for the store at Arnold.

### Foodstore Trip Distribution

During the PM peak the developer suggests that the split of trips departing at the access will be approximately **65** trips heading Northbound towards the High Street junction and **45** trips heading southbound towards the A50. The split of trips arriving at the access will be **82** trips traveling southbound from the High Street junction and

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*16 trips travelling northbound from the A50. It should be noted that during the Friday peak trading hours many of the trips visiting the above site are likely to be either diverted trips from people who are normally turning left into High Street or people who are passing the site.*

### **Parking Provision and Servicing**

*The development seeks to provide 112 car parking spaces. This includes 6 disabled spaces and 6 parent and child spaces. DCC raised concerns with Lidl in their briefing note dated 5<sup>th</sup> October 2016 over whether the proposed level of parking provision is adequate to meet the demands for a store of this size. Particularly, when the level of parking proposed is comparable to the other smaller discount food stores in Derby (see surveyed sites below).*

*Currently the site provides unauthorised parking for Chellaston Academy sixth form students and the bowls club. Lidl have agreed to provide authorised parking to the bowls club by means of a valid permit system; however this could be revoked at any time as there is no guarantee in the future that Lidl won't revoke their agreement due to "operational reasons". Lidl have confirmed they will not be allowing parking for Chellaston Academy sixth form students.*

<b>Name of Store</b>	<b>GFA</b>	<b>No Spaces</b>	<b>Space/100sqm GFA</b>
<i>Lidl Arnold Nottingham</i>	<i>2461</i>	<i>114</i>	<i>21.6</i>
<i>Lidl Chellaston</i>	<b>2312</b>	<i>112</i>	<i>20.6</i>
<i>Aldi Coleman Street Alvaston</i>	<i>1859</i>	<i>91</i>	<i>20.4</i>
<i>Lidl Beeston Nottingham</i>	<i>1660</i>	<i>100</i>	<i>16.6</i>
<i>Aldi Southmead Way</i>	<i>1577</i>	<i>106</i>	<i>14.9</i>
<i>Lidl Nottingham Road Derby</i>	<i>1576</i>	<i>89</i>	<i>17.7</i>

*To seek to address the Council's concerns Lidl commissioned parking surveys and the parking surveys were carried out were on Friday 21<sup>st</sup> October 2016 and Saturday 22<sup>nd</sup> October 2016 on both days the surveys were undertaken from the hours of 8am to 9pm in line with the store opening hours. The food store in Arnold currently provides a total of 114 car parking spaces. The survey results demonstrated that parking occupancy levels did not exceed 50% and 40% respectively, indicating spare parking capacity at this store. Lidl consider the provision of 112 parking spaces can adequately accommodate the demands of the proposed store in Chellaston and is comparable with the surveyed Arnold food store. However the low demand for parking is directly related to the low trip rates at the store.*

*A tracking assessment was undertaken on the original layout as shown at Appendix F of the original TA. I am content the revised layout can be serviced adequately.*

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*Concerns have been raised about the displacement of vehicle who currently park in the existing car parks at the pub and church. The private car parks at the church and the pub are just that, private. If the site owners choose to sell their sites including the car parks then the users who have benefited from the use lose that benefit, with the exception of any agreement with Lidl as part of their acquisition of the development site. Under the terms of the legal agreement required to undertake the highway improvements the Council has the ability to require Lidl to fund traffic regulation order to address issues directly related to the development.*

- ***the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;***

### **Sustainable Transport Modes**

*The site is well located in respect of sustainable modes of transport.*

- ***safe and suitable access to the site can be achieved for all people; and***

*The difficulty in providing access to the above site is the proximity of the traffic signals at the junction of the A514/High Street as traffic often queues back across the site frontage. One reason for this is that the lack of stacking space for vehicles turning right into High Street, consequently right turners can block drivers wishing to go ahead reducing overall capacity. This means that visitors to the store will have to access the store through queuing traffic at certain times.*

*The location of the access to the store was raised with Lidl at the pre-application stage. The Council suggested that the access to this site should be located as far from the High Street traffic signals as possible because of traffic blocking back from the traffic signals. Lidl's response was that they could not do this as the large format store they wished to place on the site could not fit on the site other than at the location proposed. The planning application was lodged with the access located approximately 65m from the High Street Traffic signals. However following further discussions with the applicant, Lidl revised the application relocating the access approximately 80m from the traffic signals, which is the location of the access being considered.*

*To seek to improve the space available for the right turning traffic into High Street, Lidl were asked to relocate the existing refuge further south to provide a long right turn lane. Lidl agreed to do this increasing the length of right turn lane to approx. 30m and would be able to store 5 vehicles. This longer right turn lane would significantly improve the operation of the signals throughout the day.*

*Another concern raised was the impact of drivers waiting to turn right into the store, particularly as has been pointed out above there will be times when the entrance to the store may be blocked by traffic queuing from the traffic signals. To address this concern Lidl were asked to undertake localised carriageway widening to form a 'ghost island' to provide a space for drivers wishing to turn right into the store to wait safely. The ghost island can hold approximately 5 cars. The ghost island will also assists drivers wishing to turn right out of the store as it provides them with a space to wait in the centre of the road thus allowing the right turn to be undertaken in two stages.*

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*A third concern is the proximity of the proposed development to Chellaston School, which is immediately to the south of the site. Twice a day significant numbers of children walk past the site. 'Manual for Streets' provides some advice about footway widths, see below:*

*Para 6.3.22 "there is no maximum width for footways. In lightly used streets (such as those with a purely residential function), the maximum unobstructed width for pedestrians should generally be 2m. Additional width should be considered between the footway and a heavily used carriageway, or adjacent to gathering places, such as **schools and shops**.*

*Para 6.3.23 "Footway widths can be varied between different streets to take account of pedestrian volumes and composition. **Streets where pedestrians walk in groups or near schools or shops, for example need wider footways.** In areas of high pedestrian flow, the quality of the walking experience can deteriorate unless sufficient width is provided. The quality of service goes down as pedestrian flow density increases. **Pedestrian congestion through insufficient capacity should be avoided. It is inconvenient and may encourage people to step into the carriageway.**"*

*The Council asked Lidl to widen the footway across the store frontage to 3m to seek to accommodate the pedestrians at school peak times. The current plan of the access Drg No NW91354\_006 currently shows the footway across the front of the site widened to 2.5m. However, Lidl have agreed that should the proposed store obtain planning permission they will work with the Council through the detailed design process to seek to provide a path as close to 3m as is possible (see condition below)*

- ***improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.***

*To seek to address the concerns raised above, Lidl have agreed to fund local widening scheme as shown on Drg No. NW91354\_006. The improvement consists of widening the through lanes to 3.65m and providing a 3m wide ghost island (waiting space) in the centre of the road. As mentioned above the scheme also increases the length the right turn lane into High Street. It also provides a wider footway across the store frontage to accommodate pedestrians. The bus stop will also be relocated albeit the exact location is to be determined through the detailed process.*

### **Conclusion**

*In general terms the above proposal is well located being within the Chellaston district centre. This affords the opportunity for linked trips with other shops within the centre. It is also likely that the car park will be used by shoppers visiting the centre. There are however a number of issues to be considered:*

- *proximity of the site to the High Street traffic signal junction;*
- *proximity to Chellaston School;*
- *Uncertainty over the level of traffic generation.*

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*The proximity of the access to the High Street traffic signals means that at certain times visitors will have to enter and leave the site through a queue of traffic blocking backing from the traffic signals. Albeit this manoeuvre currently happens at present.*

*The proximity to Chellaston School means twice a day significant number of school children will walk past the site.*

*To seek to address the above issues Lidl have agreed to fund a localised widening scheme to form a ghost island adjacent to the proposed access and also to lengthen the right turn lane at the traffic signals for driver wishing to turn right in to High Street. They are also proposing to widen the footway across the site frontage.*

*The above report shows that smaller discount foodstores have been surveyed and do attract significantly more traffic than is suggested by the applicant. It is not possible to know what the actual trip attraction will be at this store until the day it opens however if the store attracts the same level of trips that has been recorded at Coleman Street it is likely to result in some congestion in the vicinity of the store.*

*Should you be minded to approve the above proposal it is recommend any consent should be subject to the following conditions and notes:*

### **Suggested Conditions:**

- 1. No development shall take place on the application area unless or until details of the widening of the footway across the site frontage have been submitted to and approved in writing by the LPA. The footway shall be widened to 3m unless otherwise agreed by the LPA.*
- 2. The proposed development shall not become operational unless or until:
  - a. the proposed vehicular access and ghost island, as shown on Drg No NW91354\_006 have been constructed to the satisfaction of the LPA in accordance with details to be submitted and approved in writing;*
  - b. The proposed car parking and servicing areas have been provided to the satisfaction of the LPA in accordance with details to be submitted and approved in writing;*
  - c. secure cycle parking has been provided to the satisfaction of the LPA in accordance with details to be submitted and approved in writing;**
- 3. A travel plan is in place the details of which have been submitted to and approved in writing by the LPA.*
- 4. Any access made obsolete by the development shall be reinstated to the satisfaction of the LPA in accordance with details to be submitted and approved in writing.*

### **Notes to Applicant**

*The above conditions require works to be undertaken in the public highway, which is land subject to the provisions of the Highways Act 1980 (as amended) and over which you have no control. In order for these works to proceed, you are required to enter into an agreement under S278 of the Act. Please contact Robert Waite Tel 01332 641876 for details. Please note that under the provisions of S278 Highways Act 1980 (as amended) commuted sums may be payable in respect of all S278 works.*

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### **Additional Comments in response to amendments which have been received:**

*The following additional comments are provided in response to the latest revised proposal presented by Lidl. The original highway comments remain extant.*

*Reduction in Store Size - Lidl has revised the store type and are now seeking full planning approval for a store of 2,051sqm Gross Floor Area (GFA), which is a reduction of 261sqm GFA.*

*Traffic Generation - as a result of the reduction in GFA, the revised proposal is likely to reduce the two trips in the Friday PM peak by approximately 22 (-11 in and -13 out) and 41 (-20 and -21) in the Saturday peak.*

*Parking Provision - Lidl are proposing to increase availability by 3 spaces to 115. This includes 6 disabled spaces and 6 parent and child spaces.*

*Sustainable Transport Modes - The Council asked Lidl to widen the footway across the store frontage to 3m to seek to accommodate the pedestrians at school peak times. The current plan of the access Drg. No AD022-Rev B currently shows the footway across the front of the site widened to 2.5m. However, Lidl have agreed that should the proposed store obtain planning consent they will work with the Council through the detailed design process to seek to provide a path as close to 3m as is possible (see condition below) The widening of the footway will be addressed through the Section 278 agreement governing the off-site works.*

*Store Access - DCC requested that the alignment for inbound vehicles should not be directed towards the hatched area behind the disabled parking space. Lidl have revised their entrance in proximity for inbound vehicles by providing lining to guide vehicles to pass around the disabled parking hatching. DCC considered this acceptable. The latest access layout is shown on Drawing No NW91354\_009 Rev A.*

*Drawing No NW91354\_009 Rev A shows the latest proposals for the site access and off-site highway improvements. However as well as the footway mentioned above there are other matters that will be resolved through the S278 detailed design process, these are:*

- 1. The bus stop will be relocated to the most appropriate location to minimise the disruption to through traffic, whilst at the same time ensuring the bus stop is well located for bus users;*
- 2. Lidl have agreed to undertake additional localised widening in front of the co-op and library to ensure as much as is possible, free flow for southbound traffic.*

*Road Safety - Road Safety audits will be carried out as part of the S278 process.*

## **5.5. Environmental Services (Health – Pollution):**

### **Land Contamination**

- 1. I note that the proposals and accompanying Phase I and Phase II Geoenvironmental Site Investigation (Remada Ltd, December 2015) have been commented on by the Environmental Protection Team previously under application ref: 12/15/01570 (see submitted comments of 17th February 2016).*

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2. The current proposals do not affect the conclusions of the earlier assessment and therefore do not affect our earlier comments. I would therefore reiterate our earlier conclusions which were:
  - I would accept the report's conclusions based on the information provided, namely that "no further assessment is recommended for the purpose of risk of soil contamination to human health".
  - Whilst there does not appear to be any need for further site assessment or remediation, it may be prudent to require the submission of a validation report confirming that the recommended gas protection measures (in accordance with CIRIA CS2) have been incorporated into the development, before it is occupied.

### Noise

3. You will recall a series of communications and reports regarding the assessment of noise arising from the proposals under previous application ref: 12/15/01570.
4. The previous concluding noise mitigation recommendations have been reproduced by the applicant as a submission with the current application, in a letter dated 2nd February 2018 (NoiseAssess Ltd, Ref: 11651.04.v1).
5. The current proposals do not appear to affect the earlier conclusions regarding noise and therefore the proposed mitigation should still be adequately protective.
6. I would therefore reiterate this Department's earlier conclusions, namely that "it would be hard to argue that the development would create a substantially greater impact upon local amenity from noise than the existing land use as a public house. The evidence appears to support this view and therefore, **provided that the proposed mitigation is implemented in full, there would be no justification under planning policy to refuse the application on noise amenity grounds**".
7. **Consequently, the Environmental Protection Team would recommend the attachment of a condition, should consent be granted, requiring the full implementation of all mitigation measures proposed in the NoiseAssess Ltd letter of 2nd February 2018 (Ref: 11651.04.v1). The measures should be implemented in full before the proposed supermarket development can begin operations.**

### Construction Noise and Dust

8. **As for the previous application, the Environmental Protection Team would recommend a condition requiring the submission of a detailed Construction Management Plan, designed to mitigate the impacts arising from construction noise and dust.**

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### **5.6. Derbyshire County Council Archaeologist:**

The proposal site is outside the historic core of Chellaston and appears to have first been developed during the mid-18th century with the development of the Rose and Crown pub. This building has been much altered subsequently and the applicant's heritage appraisal suggests that much of the existing fabric represents 20th century rebuilding, with however some earlier fabric surviving at the northern end. Because of the extent of this alteration it is difficult to make the case for the building to be considered a 'heritage asset' sensu NPPF chapter 12, with anything beyond the most minimal of local significance.

The site as a whole was not substantially developed beyond the Rose and Crown pub until the 20th century, thus remaining outside the medieval and post-medieval village. Historic map evidence suggests an orchard use, possibly associated with the Rose and Crown. There is consequently little potential for significant below-ground archaeological remains on the site.

In the light of the above observation I advise that the proposals will have minimal archaeological impact, and recommend that the policies at NPPF chapter 12 do not require the applicant to undertake any archaeological work.

### **5.7. Environment Agency:**

No comments.

### **5.8. Derbyshire Wildlife Trust:**

No comments.

### **5.9. Police Liaison Officer:**

The application is a resubmission of refused application 12/15/01570, with some revisions, none of which in my view impact upon crime, disorder or community safety.

Consequently I've nothing to add to prior comments made initially on the 20.1.16 and subsequently the 3.8.16.

I would again ask that approval is conditional upon no further revision to boundary treatments, and the inclusion of general conditions requiring an approved external lighting scheme, and CCTV coverage of external areas to mitigate against the lack of a visual connection between the store interior and external grounds.

## **6. Relevant Policies:**

The Derby City Local Plan Part 1 - Core Strategy was adopted by the Council on Wednesday 25 January 2017. The Local Plan Part 1 now forms the statutory development plan for the City, alongside the remaining 'saved' policies of the City of Derby Local Plan Review (2006). It provides both the development strategy for the City up to 2028 and the policies which will be used in determining planning applications.

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### Derby City Local Plan Part 1 - Core Strategy (2017)

CP2	Responding to Climate Change
CP3	Placemaking Principles
CP4	Character and Context
CP12	Centres
CP16	Green Infrastructure
CP19	Biodiversity
CP20	Historic Environment
CP21	Community Facilities
CP23	Delivering a Sustainable Highway Network

### Saved CDLPR Policies

GD5	Amenity
E13	Contaminated Land
E17	Landscaping Schemes
E19	Listed Buildings and Buildings of Local Importance
E24	Community Safety
T10	Access for Disabled People

The above is a list of the main policies that are relevant. The policies of the Derby City Local Plan Part 1 – Core Strategy can be viewed via the following web link:

[http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/planning/Core%20Strategy\\_ADOPTED\\_DEC%202016\\_V3\\_WEB.pdf](http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/planning/Core%20Strategy_ADOPTED_DEC%202016_V3_WEB.pdf)

Members should also refer to their copy of the CDLPR for the full version or access the web-link:

[http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/planning/CDLPR\\_2017.pdf](http://www.derby.gov.uk/media/derbycitycouncil/contentassets/documents/policiesandguidance/planning/CDLPR_2017.pdf)

An interactive Policies Map illustrating how the policies in the Local Plan Part 1 and the City of Derby Local Plan Review affect different parts of the City is also available at – <http://maps.derby.gov.uk/localplan>

*Over-arching central government guidance in the NPPF is a material consideration and supersedes earlier guidance outlined in various planning policy guidance notes and planning policy statements.*

## **7. Officer Opinion:**

### **Key Issues:**

Members will be familiar with this site and the previous application which was debated at the meeting in July last year. Access to the previous report is available via the web-link in Part 1.4. As part of the officer opinion of that report there is reference to a letter challenging an earlier version of the report and its recommendation (scheduled for the meeting in May last year) which was submitted by Irwin Mitchell Solicitors on behalf of the Chellaston Residents Association. The letter from Irwin Mitchell was appended to the report as Appendix 1.

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For members benefit and particularly new members of this committee I would recommend that the content of the previous report is considered as part of the overall appraisal of this application.

Where necessary, I will also refer to the letter from Irwin Mitchell in this report given the nature of the proposed development and, in relation to the material considerations, the issues raised warrant due consideration. This has inevitably created some repetition and a lengthy report as a result. However, although case law indicates that committee reports should be written with a level of benevolence given member's local knowledge of sites, I'm sure that members will also appreciate that the level of detail is necessary to ensure that all issues are addressed in a pellucid manner.

In this case the following issues are considered to be the main material considerations which are dealt with in detail in this section.

- 7.1. Over-arching policy context**
- 7.2. Access, parking and highway issues**
- 7.3. Design, layout and residential amenity**
- 7.4. Heritage issues**
- 7.5. Trees and wildlife habitats**
- 7.6. Other matters**

### **7.1. Over-arching policy context**

The site of the proposal comprises approximately 0.71 ha of land fronting Swarkestone Road. The site is currently occupied by the Rose and Crown PH (and associated garden and buildings) and the St. Ralph Sherwin Centre (church) and the associated parking area.

The majority of the site is allocated as part of Chellaston District Centre in the Derby City Local Plan – Part 1: Core Strategy and is therefore considered to be 'in-centre'.

The proposal seeks planning permission for the construction of a new retail unit (A1) covering approximately 1,950sqm of floorspace (gross) and is proposed to be occupied by the deep discount convenience retailer, Lidl. The net sales area of the store would be approximately 1,265sqm. Community facilities such as the St. Ralph Sherwin Centre are protected by Policy CP21 of the DCLP. Policy CP21 relates to community facilities and requires proposals to demonstrate lack of need, alternative provision or restructured provision.

Importantly, para 5.21.1 of the supporting text also acknowledges that 'public houses' can be considered as community facilities.

The Rose and Crown PH has been designated as an 'Asset of Community Value' (ACV) by the Council. This gives the community an opportunity to bid for the asset before it is disposed of by the current owners. Whilst not directly relevant to consideration against the provisions of Policy CP21, the ACV status does highlight the importance of the asset to the community and the need to robustly assess the proposal against that policy.

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In the submitted planning statement the applicant provides a policy justification for the loss of the two community facilities. In terms of the Rose and Crown PH, the applicant has argued that there are a range of community facilities available within easy walking distance of the proposal site, including other public houses and facilities providing a similar function. I agree with the applicant on this point and am satisfied that the 'function' provided by the pub can be adequately accommodated elsewhere in the locality. Whilst alternative locations may not be the preferred choice of patrons of the Rose and Crown PH, the over-riding function is the main consideration from a planning perspective. Therefore it is fair to conclude that the 'need' for the facility could be replaced by alternative provision in the local area, meeting the requirements of Policy CP21.

As part of the previous report members were informed that the Irwin Mitchell letter correctly makes reference to criteria (a) of Policy CP21 which deals with the loss of community facilities. The supporting text of Policy CP21 recognises that pubs can be regarded as a community facility – and therefore criteria (a) of CP21 applies.

Criteria (a) states that the Council will support the retention of existing facilities unless, 'there is no longer a need to retain the use, alternative provision is made or where we can assist strategic partners to renew or restructure their provision'.

In my opinion the 'need' for the facility could be replaced by alternative provision in the local area, thus meeting the requirements of Policy CP21. The Irwin Mitchell letter contends that this conclusion is flawed on the basis that the requirement of the policy is *only* to consider whether there is no longer a need.

I would argue that this is a misinterpretation of the policy, which allows for loss to be justified in three different ways. It does not require all three to be met, as demonstrated by the word 'or' being used at the end of the list.

The policy is in general a carry forward of the approach set out in Policy L12 of the adopted CDLPR, which is clear that there is an 'or' between the different criteria. Therefore, on the basis that the 'need' for a public house function can be met by other similar facilities in the area, the proposal is, in my opinion, consistent with Policy CP21.

The equalities implications of the loss of the Rose and Crown PH is a slightly separate issue to consistency with Policy CP21 as the policy is essentially concerned with the loss of the primary function of the building.

As part of the previous report members were informed that, in terms of equalities implications, the Irwin Mitchell letter states that the Rose and Crown PH is... 'the only venue [their emphasis] within the District Centre that properly caters for disabled people by having ground level wheelchair access, with wide doorways to facilitate entry and a large garden where families can relax and play with their children'. It is assumed that Irwin Mitchell refers only to eating / drinking venues in that context and, in any case, the other eating / drinking establishments in the area *should* be accessible, under the Equality Act 2010.

The Equality Act 2010 is civil law. It would mean an individual disabled person or someone associated with a disabled person would need to sue any business

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concerned in the County Court for failure to make any reasonable accessibility adjustment(s). It would then be up to the Judge to decide if they were breaching the Act.

I am advised by the Council's Lead on Equality and Diversity that the Rose and Crown PH is fully accessible and hosts features such as a disabled people's toilet, level access through the main entrance, an accessible garden and disabled people's parking bays.

In Chellaston there are other similar facilities nearby in the form of the Corner Pin PH, the former Royal British Legion ('R&R') and the Lawns Hotel. As part of the previous report members were advised about an application at the former British Legion ('R&R') site (under code no. DER/02/17/00167) for various alterations and extensions to the building. These included accessibility improvements and permission was granted conditionally on 24 July last year. Before that permission was granted the Councils Lead on Equality and Diversity visited the site to assess the facilities and to encourage the proprietors to meet the requirements of the Equality Act. Any further comments about improvements to that building will be reported orally at the meeting. The Lawns Hotel is not an accessible facility.

In terms of the St. Ralph Sherwin Centre, the applicant has confirmed that the land sale to Lidl... *'will enable the creation of a new place of worship on an alternative site within Chellaston, with terms having been agreed for a specific alternative site'*. Whilst not able to provide details on the precise location, they state that terms have been agreed. On this basis, the provisions of Policy CP21 are again satisfied.

On the basis that the proposed store is considered to be in-centre, the NPPF and local planning policies do not require compliance with the sequential and impact tests. However, Policy CP12 of the DCLP does seek to ensure that retail proposals located within centres are compatible with the general scale, role, character and function of the centre. In-centre locations are generally considered to be appropriate locations for retail development (in-principle), due to the potential for linked trips and accessibility of such locations by non-car borne travel. District Centres should serve relatively large residential catchments and generally do contain supermarkets of this scale, or in the case of Mickleover and Sinfin, even larger. Therefore, I am satisfied that the proposal is in-keeping with the role and function of the District Centre location.

Like many of Derby's suburbs, Chellaston is a former village that has gradually been enveloped into the built extent of the City. Importantly, Chellaston is a growing suburb both in terms of population growth, with land allocated at Fellowlands Way and Chellaston Fields / Holmleigh Way for new housing. Significant growth is also planned at Boulton Moor, both within the city and in South Derbyshire, which is well related to the Chellaston area via Snelsmoor Lane and High Street. The District Centre itself is centred around the historic centre of the village, split between two areas on Swarkestone Road and High Street. Whilst the centre of the former village has a number of statutory and locally listed buildings which make a positive contribution to the townscape, it is not a Conservation Area. Chellaston District Centre is one of the smallest District Centres within the hierarchy and has a more limited retail offer compared to other centres. The appropriateness of the scale of the proposal therefore needs to be considered in this context.

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In considering the issue of 'scale' it is necessary to deconstruct it into the component factors that can indicate whether the scale of a proposal is in-keeping with the context. These include the physical scale of the proposed building in terms of overall design and impacts on amenity and the highways implications related to the scale of floorspace proposed and the associated attractiveness as a retail destination. It is fair to say that this proposal would be significantly larger than any of the existing facilities currently within the centre, in terms of physical scale and its attractiveness as a retail destination. It will clearly become the 'anchor' store within the centre.

Operators such as Lidl generally operate in a very efficient manner, with the majority of floorspace being utilised for sales. However, in this case, approximately 685 sqm will be used for non-sales activities. The impact of the large gross floor area can in part be mitigated by the imposition of an appropriate condition limiting the net sales area of the store to 1,265sqm. However, this will only mitigate impacts in terms of potential trip generation and associated traffic impacts. It would not mitigate the visual impacts of the significant built form required to accommodate the gross floorspace.

It is recognised that this area of the city is not particularly well served by existing supermarkets and that a significant amount of expenditure generated in this area, 'leaks' into other areas of the city. It is generally more sustainable to try and ensure that expenditure is retained within the area it is generated, to avoid unsustainable travel patterns and associated congestion. Concerns about the overall scale of the store needs to be weighed against the clear benefits in terms of expenditure retention in the locality and the associated sustainability benefits of the proposal. The proposed store will clearly boost the performance and overall vitality and viability of the centre as a whole, increasing footfall and the free parking will provide opportunities for people to visit other stores and facilities within the centre. It will provide a new focus and anchor to the centre providing a scale of retail provision not currently provided in the immediate locality. It is also an appropriate location to serve some of the new residential development proposed in this area of the city.

The principle of a new shop, meeting local needs and located in a District Centre is strongly supported by both national and local planning policies. It will create a number of new jobs (an estimated 25-40) and will help to serve an area of the city that is not particularly well served in terms of convenience shopping provision. The proposal has the potential to arrest some leakage of expenditure and provide a more sustainable option, in terms of travel for a number of residents.

The applicant has demonstrated that the proposal is capable of meeting the requirements of Policy CP21 relating to the protection of community facilities. Ultimately, there are other public houses in the locality that can provide the same function as the one being lost. Therefore, the function will be replaced elsewhere. I am also satisfied that the land receipts provided by Lidl would facilitate the relocation of the St. Ralph Sherwin Centre.

The other main policy issues relate to detailed aspects of the proposal and these are addressed in the following parts of this element of the report.

As part of the previous report members were informed that the Irwin Mitchell letter raises the issue of 'alternative sites'. In that context Irwin Mitchell submit that...a

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Local Planning Authority does not normally need to take into account alternative sites for a development. However, where there are alleged to be planning benefits associated with a development but also clear objections to it, an Authority may have to consider whether there is a more appropriate site for it (see *Trusthouse Forte Hotels limited v. Secretary of State for the Environment (1986) P&CR 239*). It is submitted on the basis of the above that this is the case where the harm which the development will cause to the setting of the listed building means that alternative sites should have been considered'.

In terms of the consideration of alternative sites, Irwin Mitchell fails to note that the majority of the site of the proposal is within the defined District Centre designation. The NPPF and newly adopted Local Plan are clear that District Centres are (in principle) appropriate locations for retail development and should be prioritised for such development over and above other locations. Where a proposal is considered to be 'in-centre' there is no requirement to carry out a sequential assessment to consider the merits of alternative sites. Moreover, no alternative sites have been put forward by the applicant or agent. The issue of harm and the impact of the proposed development on the setting of the adjacent listed building are also discussed in detail later in this report.

### **7.2. Access, parking and highways issues**

This is a very important issue that has been looked at very carefully throughout the life of this application and the previous application. My colleagues have assessed the impact of the proposal in line with industry standard methodologies and have also assessed the operation of other similar retail shops within Derby and Nottingham. I would refer Members back to the detailed comments of my colleagues included earlier in this report which also embrace the comments from the previous application. Clearly, the issue of traffic generation and the safe operation of the proposed development in highways terms is a very important issue locally, particularly given the relationship of the proposed access to the High Street junction and the Chellaston Academy. The previous application was refused on highway safety grounds and the objectors' maintain strong concerns about this issue.

Improvements to pedestrian access connections into the site (from both the north and south) to the proposed main entrance of the store are included with this application, following the previous refusal, and these improvements are accompanied by the footway and carriageway improvements within the highway that formed part of the previous application. These are all illustrated on the coloured presentation plan. The highway improvements include the provision of a ghost island to serve site access / egress, the provision of an elongated right turn lane serving the High Street junction and the resultant improvements for through traffic that these features will provide at all times of the day. Footway improvements to specifically address the flow / volume of pedestrians across the site access to accommodate the movements of students and visitors to the Chellaston Academy and beyond have also been negotiated and are included on the layout plans.

My colleagues have very carefully considered the impact of this proposal on the local highway network. As per the previous report the concluding comments of colleagues are repeated below:

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In general terms the above proposal is well located being within the Chellaston district centre. This affords the opportunity for linked trips with other shops within the centre. It is also likely that the car park will be used by shoppers visiting the centre. There are however a number of issues to be considered:

- proximity of the site to the High Street traffic signal junction;
- proximity to Chellaston School (Academy);
- uncertainty over the level of traffic generation.

The proximity of the access to the High Street traffic signals means that at certain times visitors will have to enter and leave the site through a queue of traffic blocking backing from the traffic signals. Albeit this manoeuvre currently happens at present.

The proximity to Chellaston School (Academy) means twice a day significant number of school children will walk past the site.

To seek to address the above issues Lidl have agreed to fund a localised widening scheme to form a ghost island adjacent to the proposed access and also to lengthen the right turn lane at the traffic signals for drivers wishing to turn right in to High Street. They are also proposing to widen the footway across the site frontage.

The above report shows that smaller discount foodstores have been surveyed and do attract significantly more traffic than is suggested by the applicant. It is not possible to know what the actual trip attraction will be at this store until the day it opens however if the store attracts the same level of trips that has been recorded at Coleman Street it is likely to result in some congestion in the vicinity of the store.

Clearly, issues such as actual trip generation to the proposed store are still open to debate. However, following lengthy analysis across two applications, consideration of the sustainable 'in-centre' location of the proposal and associated negotiations to secure improvements to the highways component, there are no over-riding objections on highways grounds to the proposed development, in the context of local plan policy (principally Policy CP23) and central government guidance.

### **7.3. Design, layout and residential amenity**

In considering the design of the proposal it is necessary to have regard to and give appropriate weight to the provisions of Policy CP3 (placemaking principles) and CP4 (character and context) in the adopted DCLP.

The proposed building would accommodate a largely rectangular footprint with a forward projecting element on the west side of the front, north facing elevation, to house the delivery bay.

The proposed roof design would include a shallow mono-pitch with a maximum height at the front of the store of approximately 6.55m sloping down to approximately 5.5m at the rear of the building. The proposed elevations would comprise glazed curtain walling for the main entrance which would return around the side elevation facing Swarkestone Road. The proposed north elevation would be dressed with horizontal timber cladding sat on a brick plinth for a section extending some 29m in length. The remainder of the north elevation would be clad in grey horizontal panels

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in white. Upper level grey panelling would be included to provide a continuous band around the building.

These changes to the elevations from the previous refusal are accompanied by the site layout improvements which provide greater pedestrian connectivity through the site which open up the main entrance to pedestrians, cyclists and mobility scooterists.

The proposed site layout includes 99 parking spaces plus 8 parent/toddler spaces. This provides a total of 107 plus 6 spaces for disabled drivers. Parking spaces for mobility scooters are also indicated and 4 Sheffield cycle hoops. The previous application proposed 115 parking spaces including 6 disabled spaces and 6 parent and child spaces. Consequently the current proposal includes 2 less parking spaces.

The proposed layout accommodates mainly peripheral landscaping within the site boundaries and an area of landscaping is included in the main body of the proposed car park to accommodate a pair of retained Oak trees. Boundary treatments for the site comprise of mix of fencing and acoustic barriers on the west and south facing boundaries with an open frontage proposed for the main Swarkestone Road boundary. A brick wall with coping is now proposed for the north facing boundary.

Certainly, in terms of scale and footprint, the proposed store would be substantial when compared to the scale and form of other buildings in the District Centre. Such a difference in scale and footprint is not in itself unacceptable; rather it is the effect on the character and appearance of the immediate area that requires justification. The proposed development could be considered compatible within the confines of the site because the site is situated between domestic scale buildings of varying designs, a large school, near a parade of shops and opposite a recreational space.

Moreover, while the main differences of the appearance of the building and facing materials – contemporary timber cladding and glazed curtain walling – the design of the building is functional and characteristic of modern food stores. Although the development would be fairly dominated by the on-site car parking, the provision of good quality surfacing, boundary treatment and planting would enhance the site and soften the appearance of the car parking area. Improvements to the site layout from the previous proposal would also facilitate ease of movement through the site for pedestrians and other non-car users. Overall, it is considered that the building would integrate into the District Centre context and the wider street scene and it is considered to accord with Policies CP3 and CP4 of the adopted DCLP.

The proposed building would be located some distance from the nearest residential properties along Station Road (the nearest dwelling at No.41 Station Road is over 40m away). The proposed northern end of the proposed car park layout would back onto the rear curtilages of Nos.15 and 17 Station Road, as the public house car park currently does. Given that the north-west corner of the site is already in use as a car park, the proposed re-configured car park would not, in my opinion, be unduly harmful in amenity terms.

The area between the proposed side, west facing, elevation of the building would accommodate some retained vegetation together with an external plant compound. The proposed compound would be surrounded by a 2.6m high acoustic barrier and a section of 2.4m high acoustic barrier is also included on part of the boundary

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adjacent to the proposed delivery bay. A section of 1.8m high acoustic barrier is included on part of the western site boundary and this would adjoin the proposed section of wall on the north boundary.

The neighbouring Chellaston Academy would be affected in terms of the physical presence of the proposed building adjacent to the school site. However, the hardstand games pitches beyond the western boundary and two storey school building beyond the southern boundary would not, in my opinion, be unacceptably harmed in amenity terms.

In view of this, it is considered that there would be no detrimental impact to residents or the school through loss of light, massing, or loss of privacy. Whilst the proposal would introduce a commercial noise source into the area, given the nature of the District Centre and the proximity to the A514, it is considered that the development would not be unduly detrimental in amenity terms. The proposal would reasonably comply with the requirements of saved policy GD5 of the adopted CDLPR in this respect.

Overall, the design improvements to the scheme essentially relate to a reduction in height of the proposed building, revisions to the palette of materials and improvements to the site layout for pedestrians and other non-car users. Some objectors suggest that these revisions fall well short of the mark and do not address the reason for refusal of the previous application. In my opinion and judgement the elevational changes would provide the proposed development with an improved frontage and relationship to Swarkestone Road and the site layout improvements would facilitate greater access and pedestrian priority through the site into the store.

### **7.4 Heritage issues**

In the context of heritage issues and prevailing local and national heritage policy the application includes the same issues as the previous application, in terms of the demolition of the Rose and Crown PH and the associated impact on the setting of the Grade II listed No. 4 Swarkestone Road. In response to the previous application the Irwin Mitchell letter addressed the impact of the proposed development, in the context of heritage considerations and the decision making framework, in some detail.

The proposed development includes the demolition of the Rose and Crown PH. The Rose and Crown PH is not on either the statutory list or local list and does not lie within a conservation area. It is a brick-built pub, with some built elements dating from the late-18th to early-19th century, and possibly earlier. These have been largely obscured by 20th century extensions, although in an appropriate form retaining the basic character of the historic streetscene leading north along Swarkestone Road and forming a group with the Corner Pin Public House.

In accordance with the requirements of paragraph 128 of the National Planning Policy Framework (NPPF) the application is accompanied by a detailed Heritage Appraisal which was produced in December 2017. This analyses both the archaeological context of the site and the survival of historic features, both internally and externally within the Rose and Crown PH.

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The buildings have been substantially altered both internally and externally in the 20th century and it is agreed that the building is not of sufficient historic interest to merit inclusion on the local list. The application is also supported by a Planning Statement which assesses the policy context of the proposal and, in the context of heritage policy; the applicant assesses the impact of the proposal in relation to the adjacent listed building and provides a list of socio-economic benefits associated with the proposal.

Members will be aware that the site is adjacent to the Grade II listed No.4 Swarkestone Road, a small brick built cottage with exposed cruck frame visible in the south gable. Although the frame is thought to date from the 1600's it is a remnant of a now demolished building and embedded within the wall of a latter cottage, probably of 18<sup>th</sup> Century construction. That cottage now forms part of the Corner Pin PH, with the timber frame facing the application site and immediately adjacent to Swarkestone Road. Development on the application site will therefore have some impact on the setting of the listed building.

In considering the application decision makers must engage Sections 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which require the authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses and pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.

Various cases before the courts have upheld the importance that decision makers should attach to this requirement under the Act, even when harm is found to be "less than substantial" (as defined in the NPPF). Harm to the significance of designated heritage assets is a matter to which considerable importance and weight should be given in any planning balance. Causing 'less than substantial harm' is not to be equated with a 'less than substantial' objection to the grant of planning permission.

The proposal must also be considered under the adopted Local Plan – Part 1 (DCLP) policies and those saved Local Plan Review (CDLPR) policies which are still relevant. The Local Plan - Part 1 policy CP20 seeks the protection and enhancement of the city's historic environment, including listed buildings and Conservation Areas. CP20 states that "Development proposals that would detrimentally impact upon the significance of a heritage asset will be resisted." CP20(c) requires development proposals which impact on heritage assets to be of the highest design quality to preserve and enhance their special character and significance through appropriate siting, alignment, use of materials, mass and scale. Saved CDLPR policies E18 and E19 for the preservation and enhancement of Conservation Areas and buildings of historic importance continue to complement the new policy CP20.

Under saved CDLPR policy E19 proposals should not have a detrimental impact on the special architectural and historic interest of listed buildings or their setting.

In term of general design principles, Local Plan – Part 1 policies CP2, CP3 and CP4 are relevant and saved policy GD5 of the adopted CDLPR are also applicable. These are policies which seek a sustainable and high quality form of development, which respects the character and context of its location. There is a general requirement to ensure an appropriate design, form, scale and massing of development which relates

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positively to its surroundings. CP2 in particular seeks to ensure that development is sustainable in terms of its location, design and construction. Saved policy GD5 is intended to protect the overall amenity of occupiers of nearby properties from unacceptable harm.

When considering the impact of a proposed development on the significance of a designated heritage asset (such as a Listed Building, Conservation Area, World Heritage Site) paragraph 132 of the NPPF advises that:

- great weight should be given to the asset's conservation;
- the more important the asset the greater weight should be given;
- the significance of an asset can be harmed through alteration, destruction or development within its setting;
- harm or loss requires clear and convincing justification

Guidance in the NPPF provides that proposed developments involving substantial harm to or loss of designated heritage assets in the case of grade II listed building should be exceptional, in the case of grade II\* and grade I listed buildings should be wholly exceptional and in the case of other designated heritage assets such should only be permitted if either the loss or harm is necessary to achieve substantial public benefit that outweigh the loss or harm caused by the development or if the specific tests set out in paragraph 133 are met.

Where the harm to the designated asset is considered to be less than substantial, as is considered to be the case with this proposal, paragraph 134 of the NPPF provides that the "harm should be weighed against the public benefits of the proposal, including securing its optimum viable use".

Paragraph 135 of the NPPF also requires any impact on the significance of non-designated heritage assets to be taken into account in the planning balance.

As part of the application process my colleague in the Built Environment Team states...

*... The Rose & Crown and The Corner Pin are the sole survivors of the historic street scene on Swarkestone Road, being otherwise surrounded by later C20 development of widely varying character. Demolition of the Rose & Crown would remove the surviving historic neighbours of No 4, which contribute to its setting and the understanding of its former historical context. It is noted however, that the buildings are not necessarily contemporary with No 4 and the original setting of the cruck-framed building, and that demolition would open up views of the cruck frame in more distant approaches from the south along Swarkestone Road. Nevertheless their replacement with a car park and standard modern retail building would be detrimental to the setting of No 4 overall. The listed building currently has a sense of enclosure created by the historical north wall of the Rose & Crown and some boundary trees. Previous concerns with the boundary treatment have been addressed by the introduction of a 1.1m high brick wall on the northern site boundary, which would maintain the existing historic enclosure to the rear of the Corner Pins group and create a better sense of separation between the two sites.*

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*Subject to materials, this would be an enhancement of the immediate setting and curtilage boundary of the listed building.*

*However despite some revisions to the entrance bay in the north-east corner, the current proposal would remain a large-scale utilitarian building, with few concessions to context, and combined with the large expanse of car parking, it is considered that it would not make a positive contribution to the wider setting of the listed building.*

In conclusion, my colleague recommends...

*... The Rose & Crown has evidential value as a historic building, and NPPF paragraph 141 accepts that such loss could be mitigated by recording prior to demolition. However that would not address the harm to the setting of the adjacent listed building and notwithstanding the terms of the 2017 decision, the in-principle conservation objection to the scheme therefore remains.*

*Harm to the setting of a listed building is contrary to Local Plan Review policy E19, the NPPF and S. 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the harm would amount to 'less than substantial' in NPPF terms, so paragraph 134 accepts that it must be weighed against the other public benefits of the development.*

As a result of considering the views of my Built Environment colleague about the impact of the proposed development on the setting of the adjacent listed building, the views of the public expressed during the application process and in the context of the applicant's supporting heritage analysis, I consider that the proposed development would result in 'less than substantial harm' to the setting of the adjacent listed building and therefore the significance of the heritage asset.

In the context of paragraph 134 of the NPPF the public benefits of the proposal that need to be weighed against the harm to the setting of the adjacent listed building, are as follows:

1. The provision of an accessible modern retail food store with on-site parking would increase consumer choice and competition in a highly sustainable location.
2. The proposal would create jobs and employment opportunities.
3. The proposal involves a range of associated off-site highways works, in terms of improved footway and carriageway improvements. These improvements would enhance this part of Swarkestone Road, near to the High Street junction, to the benefit of all users of this part of the public highway and the wider highway network.
4. The proposal would enable the Roman Catholic Church to relocate from the St. Ralph Sherwin Centre to another site in the area. The proposal would, therefore, facilitate a new place of local worship for parishioners and other users of the Church to enjoy.

In my opinion and judgment these constitute substantial socio-economic and cultural public benefits that should be attributed significant weight in the planning balance. These benefits, even when giving the harm to the significance of the Grade II listed building considerable importance and weight, would outweigh the harm of the

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proposed development to the setting of the adjacent listed building. The listed building would also continue to function as a public house, as it has done for many years.

I also weigh in the 'heritage' balance the demolition of the Rose and Crown PH.

In heritage terms, my judgment is that the proposal is strictly contrary to the policy in the local development plan (principally CP20 and E19c), but is, overall, in accordance with national heritage policy in the NPPF.

I am satisfied that, with regard to heritage considerations and the issue of impact / harm, the application has been properly assessed in line with the local planning authority's statutory duty and the framework of local and national planning policy.

In the light of the conclusions in this 'heritage' section of my report, I do not, as a matter of planning judgment, think it is reasonable or necessary to consider 'alternative sites' as a material consideration in this application as suggested in the Irwin Mitchell letter.

### **7.5 Trees and wildlife habitats**

In terms of wildlife and protected species issues, DWT confirmed, as part of its final consultation response for the previous application, that it is satisfied that the supplementary Phase 2 report of May 2017, which includes the dusk and pre-dawn surveys carried out on 2 and 9 May 2017 respectively, addresses the test below:

*Paragraph 99 of Circular 06/2005 states...“it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances”.*

In relation to this application DWT has not provided any comments.

In response to previous concerns about the impact of the proposed development on bio-diversity, the applicant has provided the following comments.

*... Whilst DWT has previously expressed concern about the proposed development resulting in a net loss of biodiversity, Core Strategy Policy CP19 acknowledges that it is not always possible to deliver a net gain, stating that 'all development should ensure the protection, conservation, and where possible, enhancement of biodiversity'.*

*Nevertheless, it has been agreed that the contribution that the site currently makes towards biodiversity objectives is low. In order to maintain and enhance biodiversity value, it is proposed to retain existing trees and plant new species that support biodiversity. It is also proposed to erect artificial bat and bird boxes. Accordingly, the proposal will support habitat suitable to support roosting and foraging bats and nesting and feeding birds. These benefits can be secured by condition.*

I am satisfied that the applicant has provided the necessary survey work to accompany the application. The Phase 2 bat survey remains valid given that it was

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completed less than 12 months ago and, in my opinion, there are no over-riding factors that need to be addressed beyond reasonable safeguarding conditions.

There are a number of the trees and groups of trees within the red line of the application site that are protected by a Tree Preservation Order. Ultimately, Policy CP16 seeks to ensure that any individual or groups of trees that contribute to the amenity of an area are retained and appropriate efforts have been made to retain existing trees where possible and that where loss is proposed, appropriate re-provision is implemented.

In order to contain the extent of building and car parking area, some protected trees are shown for removal. Further tree removal is proposed as part of this scheme to accommodate the extended 3m footway along Swarkestone Road and my colleague has inspected the site with the applicant's arborist to discuss landscaping options.

Further landscaping details may be available before the meeting but, even if not, this detail can be reasonably secured by condition.

While the tree officer raises concern about whether the retained trees can be incorporated into the proposed development, given the existing ground conditions, hard surfaces etc., there is no obvious reason why the trees shown for retention cannot be retained in principle. Tree Protection measures would also be in place to protect canopies and root protection areas. However, if it transpires that not all of the trees can be retained, the applicant could provide appropriate replacement planting by condition.

As with the previous application the proposed site layout plans the retention of trees labelled T9 and T10 (Oaks) within the main body of the proposed car park. However, it has not been possible to retain the Willow tree which is visually prominent, attractive and contributes to the visual amenity of the immediate surroundings. Even though it is located toward the centre of the existing car park, this tree is nevertheless visible from the public realm. Clearly a reasonable judgment is required, as to where to apportion greater weight to either the retention of the protected Willow tree or the wider benefits arising from the creation of a suitably designed layout of a retail store and extent of parking provision. Whilst this element is contrary to Policy CP16 it is considered that the Willow tree ought to be viewed as a *relative* constraint rather than as an *absolute* constraint to the redevelopment of this site and its removal, while noticeable and regrettable, can be justified in this case, in order to facilitate a good number of parking spaces and a logical / satisfactory car park layout. My colleague also considers that it would present ongoing issues with the retention of this particular species.

Elsewhere in the site, along the southern boundary a linear group of 6 Hornbeam trees exist which are protected under a TPO. They are shown for removal to facilitate the retail building in the location proposed. Currently, the site is generally open and so the trees are prominent from Swarkestone Road, as viewed either front on or from a north to south direction. Immediately behind this group of trees are a number of mature trees within the grounds of Chellaston Academy. Because of the number, maturity and density of trees, they would maintain the mature green verdant setting along this part of Swarkestone Road. If the building were to be positioned in front of the Hornbeams the trees would be obscured by the building and adjacent trees on

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the school grounds – this does not seem a sensible approach. Their retention is not viable with the proposed layout and subject to replacement planting the loss of these specific trees could be justified in this instance.

Moreover, a large swathe of trees and vegetation along the southern and western boundary are shown for removal, which is unprotected mixed species (Group G8). It is of limited public amenity value being located toward the rear of the site. The overall loss and retention of the trees is acceptable, given the proposed layout of the site and footprint and position of proposed building.

Overall, my judgment is that with the inclusion of appropriate planning conditions, the proposed development is broadly in accordance with policies CP16 and CP19 of the DCLP.

### **7.6. Other matters**

#### **Section 106**

The application attracts a financial contribution through a Section 106 Agreement. The applicant has been provided the draft Heads of Terms, which include: A highways contribution towards the improvements and maintenance of traffic signals at the High Street / Station Road / Swarkestone Road junction and towards the provision of, or improvements to, public transport, cycling and pedestrian facilities on the A514; a public art contribution towards the provision of a public art scheme in the vicinity of the application site to attract pedestrians and cyclists towards Chellaston District Centre. Local employment (Local Labour Agreement) opportunities shall be secured through a suitably worded condition. Negotiations are still on-going surrounding s106 details and any updates will be reported orally at the meeting.

#### **Flood risk and drainage**

The site is located within flood risk zone 1, which is deemed as having a low probability of river flooding (a less than 1 in 1,000 annual probability). The Land Drainage Officer's comments have been noted, however, it is considered that the provision of surface water suitable drainage measures, including sustainable drainage features, such as permeable surfacing can be reasonably controlled through a suitably worded condition. This will ensure the development complies with saved policy CP2. Negotiations are still on-going surrounding SUDS details and any updates will be reported orally at the meeting.

#### **Overall conclusion**

This planning application should be determined in accordance with the development plan unless material considerations indicate otherwise. I have therefore considered whether the application accords with the development plan taken as a whole.

As stated above, I am satisfied that the application accords with the policies in the development plan with the exception of CP20 and E19c on heritage assets. There will be some harm to the significance of a listed building caused by development in its setting. The policies in the development plan are 'pulling in different directions' and I have to reach an overall judgment. In doing so I bear in mind that any harm to the significance of a designated heritage asset is to be given considerable importance and weight. But I also bear in mind that in this case, that harm to heritage assets is outweighed by other public benefits which are in turn supported by development plan

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policy. Overall, my judgment is that the application is to be regarded as being in accordance with the development plan as a whole.

I have also considered whether 'other material considerations' ought to result in a decision other than in accordance with the development plan. I have noted that the NPPF is one such material consideration. In the context of the heritage issue, the proposal is in accordance with the NPPF because the less than substantial harm to the designated heritage asset is outweighed by public benefits and I conclude that the harm to the heritage asset has been clearly and convincingly justified. I have also weighed in the balance the loss of the Rose and Crown PH.

Paragraph 14 of the NPPF contains a presumption in favour of sustainable development. Proposals which accord with the development plan should be approved without delay. In my view this is not an application in which relevant policies in the development plan are out-of-date.

In summary the revisions to the scheme following the previous refusal of permission are as follows:

- A 3m wide footpath along the frontage to Swarkestone Road to enhance pedestrian safety
- The removal of two existing additional trees subject to TPO that are located on the Swarkestone Road frontage in order to enhance visibility splays and increase pedestrian visibility
- A dedicated, safe pedestrian route through the car park from the north towards the store entrance
- A dedicated, safe pedestrian route towards the store entrance from the south
- A reduction in the scale of the proposed building
- Revised elevational treatment to the building
- Adjustments to the proposed package of improvements to the highway network
- Minor alterations to the proposals to account for the above revisions

In my opinion and judgment these revisions secure appropriate improvements to the scheme which address the overall design and community safety issues that concerned members and which essentially torpedoed the previous application.

Members will be acutely aware that this application has attracted a large number of objections and these are comprehensively summarised in this report.

However, as members have been previously advised by legal counsel, planning is...*not a beauty contest*. Decisions must be made in accordance with the development plan unless material considerations indicate otherwise. In this case the plan is up-to-date and in line with the concept of sustainable development that runs through the NPPF. The proposal accords with the development plan as a whole and, in my opinion and judgment, there are no sound or defensible planning reasons for refusing planning permission.

This application has been very carefully assessed and the material planning considerations have been rehearsed and considered in line with adopted local plan

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policy, saved local plan policy and the guidance in the NPPF. I have taken into account the objections and supporting statements received and drawn matters to the attention of members as I judge necessary. Overall, I recommend that permission be granted subject to conditions and a s106 planning obligation.

### **8. Recommended decision and summary of reasons:**

#### **8.1. Recommendation:**

- A. To authorise** the Director of Strategy Partnerships, Planning and Streetpride to negotiate the terms of a Section 106 Agreement to achieve the objectives set out below and to authorise the Director of Governance to enter into such an agreement.
- B. To authorise** the Director of Strategy Partnerships, Planning and Streetpride to **grant permission** upon conclusion of the above Section 106 Agreement.

#### **8.2. Summary of reasons:**

As set out in the officer's report, it is considered that the proposal is overall in accordance with the development plan as a whole notwithstanding a breach of adopted Policy CP20 and saved Policy E19c. There are no material considerations that indicate a decision other than in accordance with the development plan. Approving the application would result in a satisfactory form of development which would respond appropriately to its context, preserve the character of the street scene and, subject to conditions, would preserve the amenity of neighbouring residents. It would also suitably address the previous reasons for refusal under application code no. DER/12/15/01570. In terms of retail policy it is considered that there are no grounds to resist the application on the basis of impact. The development is also considered to be acceptable in terms of flood risk, and impact on trees. Adverse heritage impacts are clearly and convincingly justified and are outweighed by public benefits. The proposal would be suitably served by public transport and would provide appropriate means of access / egress to and from the site. Parking levels are considered acceptable and the development would not result in severe highways impact / safety issues.

The conditions below are presented in an abbreviated format and, subject to a positive resolution at the meeting, the final draft wording of these conditions will be carried out in consultation with the Chair and Vice Chair before any decision issued.

#### **8.3. Conditions:**

1. Condition relating to approved plans
2. Condition relating to a three year time limit for implementation
3. Condition controlling precise details of external materials
4. Condition requiring submission of a landscaping scheme
5. Standard timescale of the implementation of planting and on-going maintenance
6. Condition requiring the submission of hard surfacing materials
7. Condition requiring the submission of boundary treatment details

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8. Condition requiring the submission of a surface water drainage scheme
9. Condition controlling the location of and external plant/machinery
10. Condition requiring a detailed scheme for external lighting
11. Condition controlling store opening hours
12. Condition controlling the hours for deliveries
13. Condition controlling security measures (CCTV)
14. Condition restricting vegetation clearing during bird breeding season
15. Phase II assessment – remediation strategy and final validation report
16. Condition requiring the parking/servicing areas to be implemented
17. Condition requiring the implementation of cycle parking/cycle parking available for customers
18. Condition requiring an operational travel plan based on the framework travel plan submitted in support of the application
19. Condition limiting the extent of net sales floor area to 1,265 sqm of the net sales area
20. Condition restricting subdivision of the unit
21. Construction management condition
22. Condition requiring precise details and implementation of acoustic fencing
23. Condition requiring details of a Local Labour Agreement

### **8.4. Reasons:**

1. To conform to Section 51 of the Planning and Compulsory Purchase Act 2004
2. Time Limit reason
3. To provide a satisfactory external appearance and in the interests of visual Amenity
4. In the interests of visual amenity
5. In the interests of visual amenity
6. To ensure satisfactory drainage
7. To provide a satisfactory external appearance and in the interests of visual amenity
8. To ensure satisfactory drainage
9. To protect the amenity of nearby residents
10. To protect the amenity of nearby residents and in the interests of highway safety
11. To protect the amenity of nearby residents
12. To protect the amenity of nearby residents

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13. On security / community safety grounds
14. In the interests of wildlife preservation
15. To bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment
16. In the interests of highway safety
17. To promote sustainable transport
18. In the interests of highway safety
19. To promote sustainable transport
20. To minimise the impact of the proposed development on allocated shopping centres within the shopping hierarchy
21. To preserve the amenity of neighbouring properties
22. To preserve the amenity of neighbouring properties
23. To promote local employment opportunities

### **8.5. Informative Notes:**

It is noted that the proposal will involve building works. Given the proximity of Residential properties, it is recommended that contractors limit noisy works to between 07.30 and 18.00 hours Monday to Friday, 07.30 and 13.00 hours on Saturdays and no noisy work on Sundays and Bank Holidays. This is to prevent nuisance to neighbours. The City Council's Environmental Health Team also wish to see a traffic management plan and a dust management plan for the construction process, so as to prevent an issue of vehicle noise and dust nuisance to existing domestic and commercial properties. There should also be no bonfires on site at any time.

### **8.6. S106 requirements where appropriate:**

The application attracts a financial contribution through a Section 106 Agreement. The applicant has been provided the draft Heads of Terms, which include: A highways contribution towards the improvements and maintenance of traffic signals at the High Street / Station Road / Swarkestone Road junction and towards the provision of, or improvements to, public transport, cycling and pedestrian facilities on the A514; a public art contribution towards the provision of a public art scheme in the vicinity of the application site to attract pedestrians and cyclists towards Chellaston District Centre. Local employment (Local Labour Agreement) opportunities shall be secured through a suitably worded condition

### **8.7. Application timescale:**

The statutory (13 week) determination period for the application expires on 7 May. The application is before committee as a result of the level of public reaction to the application and the previous application which was debated at the meeting in July 2017.

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