

**Planning Committee:** 08 December 2010

**Item Number:** 5

**Application No:** W 09 / 1169

**Registration Date:** 03/11/09

**Town/Parish Council:** Leamington Spa

**Expiry Date:** 29/12/09

**Case Officer:** John Beaumont

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**Land off Queensway, Leamington Spa, CV31 3LZ**

Erection of a new Aldi retail food store (Use Class A1), with associated car parking and landscaping; Erection of business units (Use Classes B1(b) and (c), B2 & B8) and a building for the display and sale of motorcycles (SuiGeneris) with associated car parking and landscaping. FOR Aldi Stores Limited / Deeley Properties Limited

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This application is being presented to Planning Committee due to the issues of planning policy raised by the application and the need for a Section 106 Agreement.

**SUMMARY OF REPRESENTATIONS**

**Warwick Town Council:** No comment

**Leamington Spa Town Council:** No objection - comment:-

- 1) The town council welcomes the proposed and considers this is a good location for a budget store which will serve the local community and improve the amenities of the area.
- 2) The town council wish to see a high quality footpath and cycle path provided connecting the two trading estates of Queensway and Tachbrook Park Drive as well as an appropriate pedestrian crossing at Tachbrook Park Drive.
- 3) The town council expects that the building of the store and the business units will occur simultaneously with the condition that the store cannot open until the whole development is completed.
- 4) The plans for sustainability appear to meet minimum rather than optimum requirements particularly regarding energy saving.

**Public Response:** Two local residents have written to give support to the scheme and two local residents have written to object on grounds of noise disturbance; local congestion may make it difficult to exit onto Queensway; possible increase in traffic danger to local school children using Queensway which has limited crossing points. The Sikh Temple Committee supported the application.

**WCC Archaeology:** No objection.

**WCC (Ecology):** No objection subject to bird protection note.

**Warwickshire Police:** No objection.

**The Warwick Society:** We wish to object to the proposal by Aldi to build a retail store on land near the junction of Queensway and Tachbrook Park Drive.

In the Local Plan the site is designated on the Proposals Map as employment land and should be used for that purpose only. The proposal does not meet the criteria of Local Plan policy UAP3 (which seeks to direct retail development to town centres) at (a) in that there is not a proven retail need for the store when there is a similar store operating on the same trading principle about half a mile away. While the store may be within walking and cycling distance for employees it will be isolated from its customer catchment area and because the store caters for low price bulk purchasing the majority of customers will need to use a car to go shopping there. The store will not genuinely be accessible by public transport, cycling or walking and will not reduce the necessity of travelling by car contrary to Policy UAP3 at (c) and (d). The siting of the store will reduce fairness by denying access to those who have no car.

For these reasons we ask the Council to refuse planning permission for this application. Notwithstanding the above, if planning permission is granted, we would ask that it is with a condition that the store cannot commence trading until the employment units included in the application are ready for occupation.

**Severn Trent:** No objection subject to conditions re details of foul/surface water drainage and not building over public sewers.

**Head of Environmental Health:** No objection. Further details needed on renewable energy scheme. Restriction on delivery hours requested. Conditions re dust irrigation/no burning of waste on site, Japanese knotweed eradication, contamination.

**Green Infrastructure Manager:** In principle I have no objection to the proposal. The only tree of any significance impacted is the small Acer street tree which will be removed to form the bell mouth.

However, the landscaping proposals are not adequate. Car parks represent one of the few parts of the urban environment where large crowned trees can comfortably be planted. The car park should be more densely planted with large growing trees, such that at maturity there is a near closed canopy. To facilitate the healthy development of these trees it will be necessary to design the hard landscaping to accommodate trees. This is likely to require the use of structural soils in very large planting plots, with adequate provision to ensure the water reaches the roots. This may, for example, require the use of systems such as Deep Root Silva Cell or similar.

Landscaping plans should therefore indicate the detail of planting arrangements and the species of trees proposed.

There are some significant changes in levels on site and it is unclear to me how it is proposed to address this. This should be clarified.  
(N.B. These comments related to the application as originally submitted).

**WCC (Highways):** No objection subject to highway conditions.

**Environment Agency:** No objection subject to drainage conditions and contamination remediation conditions.

### **Comments from Steering Group members of Royal Leamington Spa**

**Town Centre Partnership:** This land is designated for employment use, not retail and therefore we would prefer this designation to remain.

Leamington town centre lacks lower end providers, therefore would rather see this development in the town centre. Would encourage Aldi to consider a town centre site.

Concerned that if the adjacent site was also developed on the back of this development that this would signify a further loss of land which has been designated for employment use. This could also pose a significant threat to the town centre.

Concerns were raised about the range of goods on sale on this site, with a preferred option being to limit the range of non-food goods on sale. Aldi own the former Stoneleigh Arms Public House on Clemens Street in Old Town. We strongly support this site being either developed or released and would support Aldi moving forward with the Clemens Street site because as it stands it is detrimental to the surrounding area.

(N.B Members of the WDC Planning Committee, Councillor Janice Dean and Councillor George Illingworth did not take part in these discussions or indicate support for any of the points above).

### **RELEVANT POLICIES**

- DP13 - Renewable Energy Developments (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- SC2 - Protecting Employment Land and Buildings (Warwick District Local Plan 1996 - 2011)
- SC4 - Supporting Cycle and Pedestrian Facilities (Warwick District Local Plan 1996 - 2011)
- DP6 - Access (Warwick District Local Plan 1996 - 2011)
- DP8 - Parking (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- SSP1 - Employment Allocations (Warwick District Local Plan 1996 - 2011)
- UAP3 - Directing New Retail Development (Warwick District Local Plan 1996 - 2011)
- UAP6 - Motor Vehicle Sales (Warwick District Local Plan 1996 - 2011)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- Planning Policy Statement 4 : Planning for Sustainable Economic Growth

At the Public Inquiry into the Warwick District Local Plan 1996-2011, it was proposed by an objector that land at Queensway, including the current application site, be allocated for a mix of uses including retail, offices, affordable/key worker housing, community facilities and hotel and not solely for employment purposes. The inspector in his report dated June 2007 concluded that:

"In summary, I agree with the District Council that it would be premature to accept the Queensway site as a retail destination. In my view, new retail development should not be promoted out-of-centre until all other opportunities in town centre and edge-of-centre locations have been fully explored and either delivered or discounted. I believe that stage has not been reached."

## **PLANNING HISTORY**

This site forms part of a larger area of land formerly occupied by a variety of industrial/commercial buildings, now all demolished, which were the subject of various planning permissions. Applications W94/0601 and W95/0101 relating to proposed redevelopment of the current application site and adjoining land for retail and light industrial development (Classes A1 and B1) including car parking areas and access to Tachbrook Park Drive and Queensway Trading Estate were refused for the following reasons:-

(1) In the opinion of the District Planning Authority the proposed development which would entail a significant development for Class A1 retail use within an employment area would be contrary to the provisions of District Wide Policy EMP7 of the Warwick District Local Plan. Whilst having had regard to the circumstances submitted in support of the submitted application, the District Council does not consider that these warrant over-riding the need to protect the existing stock of employment land.

(2) On the basis of the information submitted in support of the application, the District Planning Authority is not satisfied that the proposed development would be in accordance with either Policy IC13 of the Warwickshire Structure Plan Alteration 1989-2001 or District Wide Policy S2 of the Warwick District Local Plan. In particular the District Planning Authority is not satisfied that the proposal would not adversely affect the vitality and viability of the existing town centres of Leamington and Warwick.

(3) On the basis of the information submitted in support of the application, the District Planning Authority is not satisfied that the proposed means of access to the development would be acceptable and would not result in the creation of highway danger and congestion.

(4) Having regard to the scale of development proposed, the configuration of the application site and restrictions imposed by existing sewers and likely access and servicing arrangements, the District Planning Authority is not satisfied that the site is capable of accommodating the proposed development whilst achieving a satisfactory standard of site layout which pays due and proper regard to existing adjoining development, in particular housing fronting Queensway.

Appeal against that decision was dismissed on the grounds of loss of employment land; the Inspector concluded that in quantitative terms, the loss of 1.75 ha of employment land would have a negligible effect on the ability of the Council to meet the employment needs of the area but in qualitative terms it was considered that the loss of this site and its buildings from employment use would be prejudicial to the Council to provide a range of employment land.

A subsequent application, W/03/1969, was withdrawn for the 'Demolition of existing industrial buildings and development of a mixed use employment, community and retail scheme comprising, three storey office building (5574 sq m gross) with 185 car park spaces in the undercroft, a Class A1 foodstore 4831 sq m gross) with 350 surface car park spaces, creation of on site pedestrian and cycle routes, landscaping and associated works to the highways in the vicinity of the site. The existing College of Acupuncture is to be retained on site without development. There have been no more recent planning applications received.

## **KEY ISSUES**

### **The Site and its Location**

The application site has an area of some 1.76 ha with a frontage of some 120m to Queensway. To the north of Queensway are residential properties looking towards the site (the distance of the front elevation of these houses to the application site boundary varies from some 34m to 40m). To the west of the application site are the retail units of Currys/P C World and Mothercare (accessed off a roundabout on Tachbrook Park Drive), the bowling alley and the new Sikh Temple, whilst to the east are industrial buildings forming part of the Queensway Trading Estate. Immediately to the north-east of the site is an area of cleared and vacant industrial land with its own frontage to Queensway. There is vehicle access to the site both direct off Queensway (where the site has a frontage to that road) with the balance of the site sharing a vehicular access off Queensway serving the Queensway Trading Estate and other nearby properties. The site is currently a cleared former largely employment site and although generally level, there is a clear break of surface to a lower part of the site which has its frontage onto Queensway. A vehicular access from Tachbrook Park Drive leads towards the application site. There are no significant trees within the application site. A footway/cycleway adjoins part of the site fronting onto Queensway.

### **Details of the Development**

This is an amended application. As amended, the scheme has two key elements; a new deep discount retail store and a development of 14 industrial units of varying sizes which include one unit proposed to include the display and sale of motorcycles. Separating these two elements would be a 3m wide footpath/cycleway to link Queensway to Tachbrook Park Drive. In more detail the proposals include the following:-

- The erection of a new Aldi Retail store. This would have a retail frontspace of some 1125sq m with 87 car parking spaces, 4 motorcycle spaces and 8 cycle spaces - (this equates to one car parking space/14 sq m of retail floorspace). Vehicle and pedestrian access to the retail site would be off Queensway with the existing vehicular access being widened to serve the new development. Separate pedestrian access would also be formed off Queensway and from the proposed pedestrian/cycleway linking Queensway and Tachbrook Park Drive. An existing vehicular access at the western corner of the site would be closed. The new retail store would have a 30m elevation to Queensway, a depth of 60m (which would front the proposed car park) and would be 5.5m high. It would be of contemporary 'box' design, having a flat roof and white painted walls, incorporating a canopy onto the Queensway frontage, wrapping round to front the car park, with an anthracite grey fascia. The submitted plans indicate a proposed illuminate 'Aldi' sign on the frontage to Queensway which would require separate advertisement consent. A detailed planting scheme has been submitted to accompany the application; this has been amended during the life of the application.
- The construction of a 3m wide footway/cycleway linking Queensway and Tachbrook Park Drive.

- The erection of a range of industrial units proposed to be for either B1(b) research/development, B1(c) light industry, B2, general industry or B8, warehousing. The application excludes B1(a), offices, which may generate a higher demand for car parking. These would be accessed off Queensway (via the access serving the Queensway Trading Estate) with an "in" only access off Tachbrook Park Drive. These units will be in 3 'blocks', one of which would be a free standing unit some 16m x 25m which is proposed to include the display and sale of motorcycles. The remaining 13 units range from some 144 sq m to 480 sq m of floorspace; the submitted plans do not show any first floor accommodation, albeit the eaves height of some 6.8m would enable the future installation of first floor accommodation. The motor cycle sale display unit would have some 21 car parking spaces (i.e. 1 space/19 sqm; the standard for non-retail is 1 space/20sq m; the remaining units would share some 88 spaces (i.e. 1 space/38 sq m; the standard for B2 is 1 space/50 sq m, B8, 1 space/80 sq m and B1, 1 space/ 40 sq m, together with cycle and motorcycle spaces. The units will have an eaves height of 6.8m, a maximum height of 8.5m and would be constructed of cladding panels with a profiled pitch roof.
- The applicant has submitted a large number of supporting reports, including a design and access statement, a site condition study, a flood risk assessment,, a tree report, a noise assessment, a retail impact assessment, a transport assessment, interim travel plans an employment land study, a renewable energy feasibility report and a sustainability statement. The conclusion of the submitted retail impact assessment was as follows:-

(i) in respect of the proposed retail foodstore, this would be occupied by a deep discount foodstore operator, Aldi Stores Limited, which has particular and distinctive trading characteristics. When considered against relevant retail planning policy, and taking into account the findings of the LPA's recently completed Retail and Leisure Study, the report finds:

- That there is quantitative need for the Aldi foodstore. The quantitative need arises from the introduction of competition for the sole existing deep discount food retailer currently operating in Leamington Spa.
- A proposed retail development is of an appropriate scale for this location.
- There are no available, suitable and viable sequentially preferable sites to accommodate the proposed foodstore.
- The trading impact associated with the store will be very low and not harmful to the vitality and viability of any centre.
- The proposed foodstore, in combination with the proposed employment development, would bring substantial regeneration benefits to this location, on a brown field site which has remained vacant for a substantial period of time.
- In the light of the above, it is concluded that the proposal accords with current retail planning policy at all levels.

(ii) In respect of the proposed employment development, this is consistent with the allocation of the site for employment purposes in the adopted Local Plan. However, despite the marketing of the site for the employment purposes for a number of years, this has not materialised due to the lack of commercial viability for such development at this location. The proposed retail development is intended to kick-start the employment uses by providing a subsidy which will enable employment floorspace to be built and marketed. Once built, the

applicants are convinced that there is likely to be a commercial market for this kind of employment floorspace.

(iii) Turning the loss of employment land due to part of the site being developed for a foodstore, this consideration has been addressed. The conclusions reached are that the proposal is acceptable within the scope of Policy SC2 of the Adopted Local Plan by virtue of satisfying either criterion B or D. Moreover the proposal is consistent with the aims of (draft) PPS4 and would generate real employment opportunities in a relatively short space of time. An appropriate condition is proposed to ensure that the development of the retail foodstore is linked to the construction of employment related floorspace. The implications of the inclusion of an element of motorcycle sales and repair use within the scheme have been considered and this has been found consistent with Policy UAP6 of the Local Plan.

The overall conclusion was that the proposal is appropriate within the scope of relevant planning policy at national, regional and local levels and that planning permission should therefore be granted."

The applicants have also submitted a draft Section 106, Unilateral undertaking, to provide for the construction of the central block of 9 industrial units, and associated infrastructure (of roadways, service ducts lighting and drainage spurs for the construction of adjacent units completed to base course level for roads and footway). It is stated that the contract would be let shortly after works on the construction of the foodstore have commenced with a 6 month build period such that the industrial units would be completed not later than 6 months after the opening of the food store to the public.

[N.B. Discussions on the content of the draft unilateral undertaking have taken place but a final document had not been submitted at the time of agenda preparation].

## **Assessment**

I consider that the key issues for the consideration of this application are as set out below.

### **1. The principle of the erection of a 'deep discounter' retail store on this employment allocation**

The application site forms part of a larger area of some 3.2 ha shown in the Warwick District Local Plan (1996-2011) to be an allocated employment area. The Policy SSP1 states the site is appropriate for business, general industry, storage or distribution development (Class B1, B2 and B8 uses) and the explanation to that Policy states:-

'This site comprises various redundant and under used buildings and offers a major redevelopment opportunity. The site has good communication links with the M40 and is near to major employment and residential areas. The development of the site should take into account the need for landscaping to protect the amenity of the adjoining housing along Queensway.'

Other relevant policies of particular relevance in the Local Plan are Policy UAP3 (which seeks to direct retail development to town centres and states other sites

for retail development will not be permitted other than where specified criteria, including a sequential approach, have been met) and SC2 (which aims to protect existing and committed employment land from other uses, again unless specific tests have been met). Current Government planning policies for all economic development, including new retail development, is contained in PPS4, 'Planning for Sustainable economic growth'.

The applicants case, as summarised in the 'Details of Development' section of this report, is in essence, that this site has remained vacant for some 10 years, despite marketing, and this proposed development will bring it back into beneficial use, meeting the need for a deep discount food retailer, whilst 'kick starting' the construction of industrial buildings on the balance of the site. It is considered by them that the proposed meets the necessary tests in both the Local Plan and PPS4.

The Council's retail consultant, Dr. Norris, was asked to consider the information submitted by the applicants and to assess whether it met the relevant policy requirements. The 'Key Findings and Recommendations' of Dr Norris are attached as an Appendix to this report. This concludes that the applicant has demonstrated compliance with the sequential approach and no clear evidence has been found that the proposal would result in significant adverse impacts; this is based on the applicants proposing that the retail operation would be occupied as a 'deep discounter'.

Dr Norris states it is for the Council to consider (a) the effect on carbon dioxide emissions and climate change over the life of the development (b) the accessibility of the proposal by a choice of means of transport (c) whether the proposal secures a high quality and inclusive design (d) the impact on economic development and physical regeneration of the area (e) impact on local employment.

With regard to (a), 'sustainable development', the applicant has submitted a detailed statement on the method of store construction and subject to a Planning Condition regarding 10% renewable energy generation, I consider the scheme will be acceptable on that ground. With regard to (b), accessibility, the site adjoins the 'Leamington' (formerly 'Shires') Retail Park and there are local bus routes; a footpath/cycleway link to both Queensway and Tachbrook Park is also proposed and again, I consider the scheme is acceptable on those grounds. (NB. This is discussed in more detail in the 'highways' section below). On ground (c), as discussed in the 'design' section below, I consider the design acceptable and on grounds (d) and (e) I note Dr. Norris concluded:-

"We advise the Council that, on balance, it is our view that the proposal will generation positive economic, regeneration and employment benefits for the wider application site, as it is intended to 'kick-start' the development of other employment uses on an allocated site in the adopted local plan".

I consider this proposal will meet the requirements of Local Plan policy UAP3 and whilst the proposed retail development would be contrary to Policy SC2, I am conscious that this site has been largely vacant for over 10 years since the previous major occupier Al Ko Kober relocated to Southam. Despite marketing efforts the site has remained vacant and I conclude, therefore, that taking into account the provisions of the Local Plan and more recent Government policy in PPS4, 'Planning for sustainable economic growth', the retail development for a

'deep discounter' on this allocated employment site would be acceptable, providing that a mechanism, through a planning condition and a legal 'Section 106' agreement, can be put in place to secure the implementation of commercial development as proposed on the balance of the application site. This is discussed in 'Section 106' section of this assessment below. It will also be necessary to impose Planning Conditions to ensure the retail unit will only be occupied by a 'deep discounter' and to restrict the range of goods sold and in particular the non-food sales area. Hence this retail development will secure the delivery of the use of part of this site for employment development as allocated in the Local Plan (Policy SSP1).

2. The principle of B1, B2 and B8 development and a unit including the display and sale of motor cycles on the 'balance' of the site

This site is an allocated employment site and I consider that the principle of the erection of the 13 units, as amended, would be wholly in accordance with existing policies. I note that the applicant has requested that the use of Unit 1 include the display and sale of motorcycles (i.e. its use would be 'sui generis' or outside any of the defined 'use classes'). Policy UAP6 in the Local Plan does indicate motor vehicle sales uses will only be permitted, in areas served by public transport and including a significant area of repair/servicing; Tachbrook Park is identified as an example of an area where a grouping of motor vehicle sales is occurring. Access to Unit 1 would be available off Tachbrook Park Drive and I consider that this element of the scheme would address the requirement of this Policy and subject to a condition to require a mixed 'sui generis' use of repair/servicing display and sale of motorcycles only in Unit 1, I consider the principle of this 'business' part of the scheme to be acceptable.

3. Impact of the proposal on the character/appearance of the locality and the amenity of neighbours

This site was formerly occupied by a range of older industrial buildings, now cleared, and presently has a derelict appearance.

I consider that the new industrial buildings would be acceptable replacements for those that formerly stood on this site and would sit comfortably alongside the existing development in this locality (both fronting onto Tachbrook Park Drive and in the Queensway Trading Estate). Given it would be set a considerable distance back from both Queensway and Tachbrook Park Drive, I consider that these industrial buildings would not adversely affect the amenity of the occupiers of housing to the north of Queensway or the setting of existing buildings, including the new Sikh Temple.

The new retail unit will be of crisp, contemporary design and I consider this will be an acceptable addition to the architecture in this area. Again it is set back from Queensway behind a wide verge with established tree planting and a detailed landscaping scheme has been submitted to provide an attractive setting for the building within the site.

I consider, therefore, that the scheme would achieve an acceptable standard of design and inclusion as identified as criteria (c) by Dr. Norris in the retail policy section above (on the issue of inclusion, the store has level access, links to a footpath/cycleway and includes 6 disabled car parking spaces adjacent to the store entrance with 3 'mother/toddler' spaces fronting the entrance).

4. Impact on the local highway system/car parking

This scheme has been the subject of extensive discussions between the applicants and the County Highway Authority which culminated in the Highway Authority concluding on 21<sup>st</sup> October 2010 that they were satisfied with the proposals, as amended, and raised no objections subject to planning conditions to ensure that the access to the site would be safe, that access off Tachbrook Park Drive would be one way only into the site, that a footpath/ cycleway linking Queensway and Tachbrook Park Drive be constructed and that the applicant prepare Travel Plans. (NB. Given the total number of staff employed in the individual business units is not known, and the number of staff employed in the retail store is likely to be well below the threshold figure of 50, I consider the need for travel plans can be dealt with by planning condition, not a Section 106 Agreement).

With regard to car parking, the number of spaces proposed on the retail site is generally in accordance with the adopted car parking standards as applied solely to the net retail area; given these are maximum figures I consider this is acceptable providing that the area used for retail is restricted by a planning condition to that shown on the submitted plan. With regard to car parking on the business site, the car parking is more difficult to assess given that the applicant wishes to have the option of using the buildings either for B1(b) and (c), B2 or B8 with one unit having a retail element of motorcycle sale and display; each of these uses could have differing car parking implications. The number of spaces proposed meets the potentially most intensive use of a wholly B1(b) or B1(c) use scheme but I consider it more likely that a variety of uses would occupy the site and in these circumstances that the provision proposed by the developer (again recognising that these are maximum standards) would be acceptable. I note the possibility that first floor or mezzanine accommodation could be proposed in the units which could have an impact on car parking which could have an impact on the demand for car parking, but again given the likelihood of the units being occupied by a range of uses and the overall number of car parking spaces included in the layout, I consider the provision to be sufficient to allow this possibility to occur without causing unacceptable congestion on the site.

#### 5. Drainage/land contamination and Environmental Health issues

This scheme has been the subject of extensive consultation with the Environment Agency who on 25<sup>th</sup> October 2010 confirmed that they would have no objection subject to conditions on drainage/contamination. The Environmental Health Officer is similarly satisfied that the scheme is acceptable subject to conditions on the delivery times to the retail unit (NB. given the distance of the proposed industrial units from the nearest residential unit, I do not consider it would be reasonable to seek to control the operation of those units), I recommend conditions should be imposed to control burning of waste/dust suppression and Japanese knotweed. Severn Trent Water have also raised no objection subject to conditions. I therefore, conclude that on grounds of drainage, contamination and environmental health issues, this would be an acceptable development.

#### 6. Renewable development/sustainability

The applicants have submitted a sustainability statement and I consider that subject to an appropriate condition to ensure that neither the retail unit or any individual industrial unit is occupied until such time as a scheme for the generation of 10% of its energy use from a renewable resource has been

installed, the scheme would be acceptable on those grounds and would meet criteria (a) as identified by Dr. Norris in his report identified in the retail policy section above.

#### 7. Section 106 issues

Legislation now states that a planning obligation will only constitute a reason to grant planning permission if it is necessary to make the development acceptable in planning terms, it is directly related to the development and fairly and reasonably related in scale and kind to the development; this is a legal requirement and the implication of this is that a decision will be unlawful if it takes into account as a material consideration something that does not meet these tests.

In this context, as set out in the 'highways' section above, I do not consider in the circumstances of this site that a Section 106 Agreement should relate to the need for a Travel Plan. Equally, whilst noting that in their statement of support for this scheme the applicants referred to a site, the former Stoneleigh Arms in Clemens Street, I do not consider that the future of that site could be properly linked to the current application site fronting Queensway. For information, the applicants solicitors have written to state that they have exchanged an option agreement on that site between Aldi Stores Ltd and Bath Place Community Venture, such that the latter has the legal right to purchase that site (in the event Aldi obtain this permission) at an agreed price for 18 months.

I do consider, however, that a legal agreement to secure the provision of business units and infrastructure if the retail unit is constructed would be appropriate. The applicants solicitors have indicated in a draft 'Unilateral Undertaking' that they would be prepared to construct on a 'speculative' basis (i.e. without agreed pre-lets) 9 units (not including the unit for possible motorcycle sales), together with infrastructure to serve the balance of the business development, within 6 months of the opening of retail store. I consider that this would be a reasonable offer subject to an agreed mechanism being in place to ensure that this took place and that effective remedies were included in the agreement to ensure that if this did not occur, the District Council could take effective action to secure that the works were undertaken. At this time, the details of such an agreement have not been finalised to the satisfaction of the District Councils legal advisors and I therefore recommend that the issue of this permission be subject to the applicants submitting a Unilateral Undertaking to deliver those elements (with appropriate 'remedial' measures) to the satisfaction of the District Councils legal advisors. In the event such an undertaking is not received, this application would be reported back to a future meeting of the Planning Committee.

In conclusion, I consider that this scheme will allow a new 'deep discounters' store to be constructed in a satisfactory location whilst bringing forward a development of business units on an allocated employment site. I am mindful of the Inspector's comment contained in the Policy section of this report, but given the particular details of this application, and the fact that this site has now remained vacant for over 10 years, I consider that this 'mixed' development of 'deep discounters' retail and business development would be in general accordance with both the policies in the Warwick District Local Plan and Government policy in PPS4, Planning for Sustainable Economic Growth. I also note that the retail element will adjoin existing retail units accessed off Tachbrook Park Drive and that a similar 'deep discounters' retail unit was

permitted for Lidl UK on the former Hurrains Garden Centre site off Myton Road. To ensure that the retail scheme, which would be on an employment allocation, does deliver the proposed 'kick-start' of the development of business units on the adjoining land, I consider it would be wholly reasonable and would meet the necessary tests of 'being directly related to the development and fairly related in scale and kind to the development' for this development to be the subject of a Section 106 Agreement which must be satisfactorily concluded before the issue of any planning permission. I have considered all other matters raised in response to this application and consider that nothing has been raised therein which would justify a refusal of planning permission.

## **RECOMMENDATION**

GRANT, subject to the satisfactory conclusion of a Section 106 Agreement to secure the construction of 9 industrial units and associated infrastructure within 6 months of the opening of the Aldi retail store (as set out in the assessment section of this report) and to the conditions listed below.

## **CONDITIONS**

- 1 The development hereby permitted must be begun not later than the expiration of three years from the date of this permission. **REASON :** To comply with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The development hereby permitted shall be carried out strictly in accordance with the details shown on the approved drawing subject to the details contained in the following plans:-

R06A62-2000FS-W001 Rev B - Site Location Plan  
R06A62-2000FS-W002 Rev F - Proposed Site Plan  
R06A62-2000FS-W003 Rev F - Full Site Plan including Commercial Units  
R06A62-2000FS-W004 Rev E - Proposed Drainage Plan  
R06A62-2000FS-W005 Rev F - Proposed Landscaping Plan  
R06A62-2000FS-W200 Rev A - Proposed Floor Plan  
R06A62-2000FS-W201 Rev A - Proposed Elevations  
R06A62-2000FS-W203 - Roof Plan  
R06A62-2000FS-W300 - Proposed Sections: A-A, B-B  
R06A62-2000FS-W301 - Proposed Sections: C-C, D-D  
R06A62-2000FS-W302 - Proposed Sections: E-E  
R06A62-2000FS-W303 Rev B - Proposed Site Sections  
P01 Rev H - Proposed Site Layout Commercial Units  
P02 Rev C - Site Sections and Elevations Proposed Commercial Units  
P03 Rev C - Unit Floor Plans Commercial Units  
20026-02-001 Rev B - Preliminary Drainage Strategy Commercial Units

and specification contained therein, unless first agreed otherwise in writing by the District Planning Authority. **REASON :** For the avoidance of doubt and to secure a satisfactory form of development in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.

- 3 Notwithstanding the details contained in the submitted plans, samples

of all external facing materials to be used for the construction of the development hereby permitted, shall be submitted to and approved by the District Planning Authority before any constructional works are commenced. Development shall be carried out in accordance with the approved details. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy DP1 of the Warwick District Local Plan 1996-2011.

- 4 The landscaping scheme for the Aldi retail store submitted as part of the application hereby permitted shall be completed, in all respects, not later than the first planting season following the completion of the Aldi retail store development hereby permitted. Any trees removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees of similar size and species to those originally required to be planted. **REASON** : To protect and enhance the amenities of the area, and to satisfy the requirements of Policies DP1 and DP3 of the Warwick District Local Plan 1996-2011.
- 5 Full details (including noise levels and location) of any plant likely to cause noise outside any building hereby permitted, including air conditioning, ventilation, refrigeration and compaction systems shall be submitted to and be approved in writing by the District Planning Authority before it is first installed. The installation and subsequent operation of the plant shall be undertaken strictly in accordance with the approved details. **REASON** : To protect the amenity of the locality in accordance with Policy DP9 in the Warwick District Local Plan 1996-2011.
- 6 No external lighting or sound amplification or tannoy system shall be installed on any external wall or roof of any building or within the open land comprised in the application site other than in accordance with details first submitted to and approved in writing by the District Planning Authority. **REASON** : To protect the amenity of the occupiers of nearby properties, and to satisfy the requirements of Policy DP9 of the Warwick District Local Plan 1996-2011.
- 7 No development shall be carried out on the site which is the subject of this permission, until satisfactory details of boundary treatment to that development have been submitted to and approved by the District Planning Authority and the development shall not be carried out otherwise than in full accordance with such approved details. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.
- 8 No development shall be carried out on the site which is the subject of this permission, until details of provision for storage of refuse have been submitted to and approved by the District Planning Authority and the development shall not be carried out otherwise than in full accordance with such approved details. **REASON** : To protect the amenities of occupiers of the site and the character and appearance of the locality, in accordance with Policies DP1 and DP2 of the Warwick District Local Plan 1996-2011.

- 9 No materials, plant or equipment of any description including skips or containers, shall be stacked, stored or deposited on any open area of the site. **REASON** : To ensure that the visual amenities of the area are protected, and to satisfy the requirements of Policy DP1 of the Warwick District Local Plan 1996-2011.
- 10 No unit hereby permitted shall be first occupied unless and until a scheme showing how 10% of the predicted energy requirement for that unit will be produced on site, or in the locality, from renewable energy resources, has been submitted to and approved in writing by the District Planning Authority and all the works within the scheme approved for that unit have been completed; thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturers specifications. **REASON** : To ensure that adequate provision is made for the generation of energy from renewable energy resources in accordance with the provisions of Policy DP13 in the Warwick District Local Plan 1996-2011.
- 11 The car parks and cycle parking facilities hereby approved shall be constructed, surfaced, laid out and be available for use prior to the first occupation of the development to which they relate in accordance with a schedule of allocation of car and cycle parking first submitted to and approved in writing by the District Planning. They shall thereafter be retained available for car and cycle parking at all times. **REASON** : To ensure that adequate parking facilities are available in accordance with the requirements of Policy DP8 of the Warwick District Local Plan 1996-2011.
- 12 Notwithstanding the provisions of the Town and Country (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) the food store premises shall be used as a deep discount retail store only and for no other purpose within Class A1 including the sale of comparison goods. **REASON** : To satisfy the requirements of Policy UAP3 in the Warwick District Local Plan 1996-2011.
- 13 The retail sales area open to the public shall be restricted solely to the area identified as the retail area on the approved Drawing No. R06A62-2000FS-W200A with non-food sales being restricted to a maximum of 15% of the total retail sales area. Furthermore, the retail floor area shall not contain a fresh meat counter, a fresh fish counter, a delicatessen, a hot food counter, a cafe/restaurant, a pharmacy, a post office service, a photocopying service and there should be no lottery sales or the sale of magazines, newspapers, greeting cards or tobacco and related products within the retail area at any time. **REASON** : To satisfy the requirements of Policy UAP3 in the Warwick District Local Plan 1996-2011.
- 14 The business units identified as Units 1 to 10 on the approved Drawing No. R06A62-2000FS-W003F shall be used solely for uses falling within Classes B1(b) or B1(c) or B2 or B8 as defined in the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) with the exception of Unit 1 which can be used as a mixed 'sui generis' use for the repair, servicing, sale and display of motorcycles only. **REASON** : To ensure compliance with

Policies SC2 and UAP6 of the Warwick District Local Plan, 1996-2011.

- 15 Within 6 months of the opening to the public of the retail store, Units 2a, 2b, 3, 4, 5, 6a, 6b, 6c and 6d as identified on the approved Drawing No. R06A62-2000FS-W003F shall be constructed to a shell finish and the associated infrastructure thereto shall be completed to enable their occupation. **REASON** : To ensure compliance with Policies UAP3 and SC2 in the Warwick District Local Plan 1996-2011.
- 16 Deliveries to or from the Aldi retail store hereby approved site shall only take place between the hours of 0700 to 2100 Monday to Saturday and 0900 to 1800 on Sundays and at no other times. **REASON** : To protect the amenity of local residents to comply with the requirements of Policy DP2 in the Warwick District Local Plan 1996-2011.
- 17 A scheme for the eradication of all Japanese Knotweed within the site shall be submitted to and be approved in writing by the District Planning Authority before the development hereby permitted is first commenced. Such scheme shall be implemented strictly as so approved. **REASON** : To ensure that the site is available for this development and to ensure a high standard of development in accordance with the requirements of Policy DP1 of the Warwick District Local Plan 1996-2011.
- 18 There shall be no burning of waste within the site at any time and a scheme to ensure the suppression of dust during the construction of the development hereby permitted shall be submitted to and be approved in writing before the commencement of the development hereby permitted. The development shall be carried out strictly as so approved. **REASON** : To protect the amenity of the locality and to ensure a satisfactory form of development in accordance with Policies DP1 and DP2 in the Warwick District Local Plan 1996-2011.
- 19 The development hereby permitted shall not commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. **REASON** : To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution in accordance with Policies DP1 and DP9 in the Warwick District Local Plan 1996-2011.
- 20 Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the District Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the Local Planning Authority:
  - 1) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors

- potentially unacceptable risks arising from contamination at the site.

2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the District Planning Authority. The scheme shall be implemented strictly as approved.

**REASON :** To ensure the protection of controlled waters and to prevent pollution in accordance with Policy DP9 in the Warwick District Local Plan 1996-2011.

- 21 Prior to development being first commenced a verification report demonstrating completion of the works set out in the approved remediation strategy in accordance with Condition 20 above and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the District Planning Authority. **REASON :** To ensure the works have been carried out in line with the approved strategy in accordance with Policy DP9 in the Warwick District Local Plan 1996-2011.
- 22 If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the District Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the District Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with. **REASON :** To ensure there is a mechanism in place to allow for amendments to the remediation strategy in accordance with the Policy DP9 in the Warwick District Local Plan 1996-2011.
- 23 No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the District Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. **REASON :** To ensure preferential pathways are not

created to mobilise contaminants into the underlying groundwater, in accordance with the Policy DP9 in the Warwick District Local Plan 1996-2011.

- 24 The development hereby permitted shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the District Planning Authority together with a schedule of timing for the construction of the proposed works.

The scheme shall also include;

1) A drainage strategy submitted in accordance with Addendum SLR, ref 408-2748-00003, 20th October 2010 and Proposed Drainage Plan (Dwg No. R06A62 - 2000FS - W0004, Rev E, '0-06-9)

2) A drainage strategy submitted in accordance with M-EC Design Calculations Front Sheet, Project No. 20026, Sheet 1, 19.10.10. Rev A and M-EC Preliminary Drainage Strategy (Dwg No. 20026\_02\_001. Rev B, 16.04.10)

3) Details of how the scheme shall be maintained and managed after completion.

**REASON :** To prevent the increased risk of flooding, to improve and protect water quality, improve habitat and amenity, and ensure future maintenance of these, in accordance with Policy DP09 in the Warwick District Local Plan 1996-2011.

- 25 Prior to first occupation of any part of the development hereby permitted the developer is required to carry out the highway improvement works in accordance with a scheme approved in writing by the District Planning Authority in consultation with the Highway Authority so as to provide for the following:

i) Provision of yellow junction markings at the proposed junction of the access to the retail store with the public highway Queensway.

(ii) Widening of the existing section of footway between the cycleway/pedestrian crossing signals on the public highway Queensway, located to the east and west of the application site, to provide for a 2.5 metre shared facility connecting these two points.

(iii) Improvements of the existing access junction and carriageway/footways to the development site via the public highway Queensway Trading Estate.

(iv) The existing access within the public highway to the western boundary of the site shall be closed with the kerb line, footway and verge have been reinstated, whilst retaining/remodelling the adjacent service access to ensure satisfactory provision for service vehicles associated with the adjacent site is maintained, all to be in accordance with the standard specification of the Highway Authority.

(v) Provision of a shared cycleway/pedestrian link between Queensway and Tachbrook Park Drive. **REASON :** To ensure the provision of satisfactory site access and highway safety in accordance with Policy DP6 of Warwick District Local Plan 1996-2011.

- 26 The retail unit identified as the Aldi Retail Unit on the approved Drawing No. R06A62-2000FS-W003F shall not be first occupied unless and until:-

- (i) An access for vehicles has been provided to the site not less than 6.1 metres or greater than 7.5 metres in width for a distance of 20.0 metres, as measured from the near edge of the public highway carriageway.
- (ii) The gradient of the access for vehicles shall not be steeper than 1 in 15 for a distance of 20.0 metres, as measured from the near edge of the public highway carriageway.
- (iii) The access to the site for vehicles shall not be used until it has been provided with not less than 7.5 metre kerbed radius turnouts on each side.
- (iv) The access to the site shall not be constructed in such a manner as to reduce the effective capacity of any drain within the limits of the public highway.
- (v) The access to the site for vehicles shall not be used unless the bellmouth has been laid out and constructed within the public highway in accordance with the standard specification of the Highway Authority.
- (vi) The development shall not be occupied until visibility splays have been provided to the vehicular access to the site passing through the limits of the site fronting the public highway with an 'x' distance of 4.5 metres and 'y' distances of 90.0 metres to the near edge of the public highway carriageway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriage.
- (vii) The development shall not be occupied unless there is available turning provision within the site so as to enable all associated vehicles, including delivery/service HGVs in accordance with details to be approved in writing by the Local Planning Authority.
- (ix) The applicant shall submit a Travel Statement to promote sustainable transport choices to the site, the measures proposed to be carried out within the plan to be approved by the Planning Authority in writing, in consultation with the County Council as Highway Authority. the measures (and any variations so approved shall continue to be implemented in full at all time. The plan shall:

- a) specify targets for the proportion of employees and visitors travelling to and from the site by foot, cycle, public transport, shared vehicles and other modes of transport which reduce emissions and the use of non-renewal fuels:
- b) set out measures designed to achieve those targets together with timescales and arrangements for their monitoring review and continuous improvement:
- c) identify a senior manager of the business using the site with overall responsibility for the plan and a scheme for involving employees of the business in its implementation and development. **REASON :** To ensure the provision of a satisfactory site access and highway safety in accordance with Policy DP6 of the Warwick District Local Plan 1996-2011.

- 27 No business unit (identified as Units 1-10 inclusive on the approved plan R06A62 - 2000FS - W003F) shall be first occupied unless and until.....

- (i) The existing vehicular access to the site from the public highway Tachbrook Park Drive has been remodelled so as to provide a

carriageway width of 4.0 metres for a distance of 40.0 metres, as measured from the near edge of the public highway carriageway.

(ii) The access to the site from the public highway Tachbrook Park Drive for vehicles shall not be used until it has been provided with not less than 6.0 metre kerbed radius turnouts on each side.

(iii) The access to the site from the public highways Tachbrook Park Drive shall not be used unless the bellmouth has been laid out and constructed within the public highway in accordance with the standard specification of the Highway Authority.

(iv) Barriers erected at the access to the site from the public highway Tachbrook Park Drive for vehicles shall not be hung so as to be within 10.0 metres of the near edge of the public highway carriageway.

(v) Egress from the site onto the public highway Tachbrook Park Drive shall be prohibited by the installation of direction traffic control flow plates within the access.

(vi) The development shall not be occupied until the access/egress for vehicles to the south-western boundary of the site has been provided to the site not less than 6.1 metres or greater than 7.3 metres in width at any point.

(vii) The access/egress to south-western boundary of the site for vehicles shall not be used until it has been provided with not less than 7.5 metre kerbed radius turnouts on each side.

(viii) Gates/barriers erected at the proposed access/egress for all associated vehicles to the south-western boundary of the site shall not be hung so as to open to within 10.0 metres of the near edge of the public highway carriageway.

(ix) The gradient of the accesses for vehicles to the site shall not be steeper than 1 in 15 for a distance of 20.0 metres, as measured from the near edge of the public highway carriageway.

(x) The accesses to the site shall be not constructed/reconstructed in such a manner as to reduce the effective capacity of any drain within the limits of the public highway.

(xi) The construction of the estate roads serving the development including footways/cycleways and verges shall not be other than in accordance with the standard specification of the Highway Authority.

(xii) The development shall not be occupied until space has been provided within the site for parking and loading/unloading of all associated vehicles in accordance with details to be approved in writing by the District Planning Authority.

(xiii) The applicant shall submit a Travel Plan to promote sustainable transport choices to the site, the measures proposed to be carried out within the plan to be approved by the District Planning Authority in writing, in consultation with the Highway Authority. The measures (and any variations) so approved shall continue to be implemented in full at all time. The plan shall:-

a) specify targets for the proportion of employees and visitors travelling to and from the site by foot, cycle, public transport, shared vehicles and other modes of transport which reduce emissions and the use of non-renewable fuels;

b) set out measures designed to achieve those targets together with timescales and arrangements for their monitoring, review and continuous improvement;

c) require the occupier of each business unit to identify a senior

manager of the business using the unit with overall responsibility for the plan and a scheme for involving employees of the business in its implementation and development. **REASON:** To ensure the provision of a satisfactory site access and highway safety in accordance with Policy DP6 of the Warwick District Local Plan 1996-2011.

- 28 A landscaping scheme for the whole of those parts of the site proposed to be developed for business units not to be covered by buildings shall be submitted to and approved by the District Planning Authority before the development hereby permitted is commenced. Such approved scheme shall be completed, in all respects, not later than the first planting season following the completion of the development hereby permitted, and any trees removed, dying, being severely damaged or becoming seriously diseased within five years of planting, shall be replaced by trees of similar size and species to those originally required to be planted. **REASON :** To protect and enhance the amenities of the area, and to satisfy the requirements of Policies DP1 and DP3 of the Warwick District Local Plan 1996-2011.

NB. The applicant is advised that there are public sewers which cross the site and therefore to contact Severn Trent Water to ensure adequate provision is made for essential access for maintenance, repair, renewal and to protect the structural integrity of the public sewerage system.

## **INFORMATIVES**

For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reason(s) for the Council's decision are summarised below:

In the opinion of the District Planning Authority the erection of a deep discount retail unit, together with the proposed development of the associated business units, would not prejudice the viability or vitality of the town centre whilst bringing forward the development of this vacant employment land in an acceptable manner. The proposal is therefore considered to comply with the Policies listed.

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