

**3/14/0209/FO – Variation of condition 19 (retail sales area) of LPA approval ref 3/10/0386/FP to allow up to 36% non–food sales (previously 30%) and variation of condition 43 (approved plans) to amend approved drawing A (00)70\_04A, which relates to the nursery roof at Cintel site, Watton Road, Ware SG12 0AL for ASDA Stores Ltd**

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**Date of Receipt:** 04.02.2014

**Type:** Variation of Condition – Major

**Parish:** WARE

**Ward:** WARE ST MARY'S

**RECOMMENDATION:**

That, subject to the applicants providing a Section 106 Unilateral Agreement to secure the provisions of the Legal Agreement dated 26<sup>th</sup> July 2011 in relation to this amended application, the Director of Neighbourhood Services be authorised to **GRANT** planning permission subject to the following conditions:

1. Samples of the external materials of construction, shall be as permitted by correspondence dated 4<sup>th</sup> April, 1st September and 22nd October 2014 or otherwise as shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the appearance of the development, and in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

2. Prior to the commencement of bricklaying, a sample panel of brickwork shall be provided on the site and shall be formally approved in writing by the Local Planning Authority. The panel shall be retained as a reference for all external brickwork within the development.

Reason: In the interest of achieving a high quality of design and finish for the development in accordance with Policy ENV1 of the East Herts Local Plan Second Review April 2007 and national guidance in the NPPF.

3. Measures to be taken in the design, construction decommissioning and demolition of the development to re-use, recycle and minimise the amount of waste generated; to minimise the pollution potential of unavoidable waste and to utilise secondary aggregates and construction and other materials shall be implemented in accordance with the approved details as approved by Council's letter dated 28th February 2014.

Reason: To accord with Hertfordshire Waste Local Plan policies 7 and

8.

4. Cycle parking facilities shall be provided, in accordance with details to be submitted to and approved in writing by the Local Planning Authority, prior to the opening of the store.

Reason: To encourage the use of cycles as means of transport, in accordance with policies TR13 and TR14 and Appendix II of the East Herts Local Plan Second Review April 2007.

5. The programme of archaeological work shall be carried out in accordance with the written scheme of investigation as approved by letter dated 28th February 2014. This condition will only be considered to be discharged when the planning authority has received and approved an archaeological report and/or publication report of all the required archaeological works.

Reason: To secure the protection of and proper provision for any archaeological remains in accordance with policies BH2 and BH3 of the East Herts Local Plan Second Review April 2007.

6. Prior to the first use of the foodstore, the remaining parts of the approved development i.e. the housing, nursery adaptations and external works shall be substantially completed.

Reason: In order to secure the planning benefits of a comprehensive regeneration of the site in the interests of the appearance of the development, the Conservation Area and the amenity of adjacent residents

7. Prior to the commencement of work detailed drawings of new doors, windows, roof eaves, shopfront and roof lantern lights at a scale of not less than 1:20 shall be submitted to, and approved in writing by the Local Planning Authority and shall be carried out in accordance with the approved plans and specification.

Reason: In the interests of the appearance of the proposed development and in accordance with Policy ENV1 of the East Herts Local Plan Second Review April 2007.

8. Prior to the occupation of the retail store, or within such timetable as may otherwise be agreed in writing, the repairs and refurbishment of the 19th Century Kiln and Maltings, shall be implemented in accordance with a programme of works to be submitted and as approved in writing with the local planning authority.

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Reason: To ensure the repair and enhancement of the historic asset of the maltings/kiln range, in the interests of the Conservation Area and in accordance with the provisions of national planning guidance in the NPPF.

9. Details of facilities to be provided for the storage and removal of refuse from the site shall be provided and maintained in accordance with the approved details as approved in writing by the local planning authority by letter dated 4th April 2014.

Reason: In the interests of amenity, in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

10. Prior to the first occupation of the development hereby permitted, 273 car parking spaces shall be provided and thereafter retained for customer parking at all times that the store is open and 10 spaces for the use of the nursery within the application site as shown on the plans accompanying the application, and in connection with the development hereby permitted.

Reason: To ensure adequate off street parking provision for the development, in the interests of highway safety, in accordance with policy TR7 and Appendix II of the East Herts Local Plan Second Review April 2007.

11. Finished floor levels shall be set no lower than 36.76m (AOD).

Reason: To reduce the risk of flooding to the proposed development and future occupants.

12. No landscaping works shall take place until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include, as appropriate: (a) Means of enclosure (b) Hard surfacing materials (c) Planting plans (d) Planting mitigation measures (e) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate.

Reason: To ensure the provision of amenity afforded by appropriate landscape design, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

13. All hard and soft landscape works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or

other recognised Codes of Good Practice. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of ten years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved, unless the Local Planning Authority gives its written consent to any variation.

Reason: To ensure the provision, establishment and maintenance of a reasonable standard of landscaping in accordance with the approved designs, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

14. A schedule of landscape maintenance shall be submitted to and approved by the Local Planning Authority and shall include details of the arrangements for its implementation thereafter which shall be applied for the lifetime of the proposed foodstore.

Reason: To ensure the provision of amenity afforded by the proper maintenance of existing and/or new landscape features, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

15. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995, the areas shown for landscaping on the plans approved hereby shall be retained and maintained as open landscaping, and shall not be developed enclosed or used in any way that is detrimental to that character.

Reason: To ensure the continuity of amenity value afforded by the approved landscaping, in accordance with policy ENV2 of the East Herts Local Plan Second Review April 2007.

16. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development Order), 1995 the erection or construction of gates, fences, walls or other means of enclosure as described in Schedule 2, Part 2, Class A of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.

Reason: To ensure the Local Planning Authority retains control over any future development as specified in the condition in the interests of amenity and in accordance with policy ENV9 of the East Herts Local

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17. The retail store hereby permitted shall only be open for customers between the hours of 8am to 10pm and for no more than six hours on Sundays and Bank Holidays.

Reason: In the interests of the amenities of nearby residents and in accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

18. The use of the retail store hereby permitted shall be solely for Class A1 planning use with an ancillary A3 customer restaurant. The net retail sales floor area shall not exceed 2601 sqm; no more than 36% of the net sales area shall be used for the sale of comparison goods. Prior to the first use of the store, plans at a scale of not less than 1:200 indicating the layout of the whole store, its comparison and convenience sales areas and associated circulation space shall be provided and as approved in writing by the local planning authority. The store shall thereafter be operated in accordance with the approved sales floor areas unless as may otherwise be approved in writing by the local planning authority.

Reason: Having regards to the assessed retail impact of the store on the town centre; the provisions for car parking and to ensure the scale of the use is appropriate to the site, and in accordance with Policies STC1 and STC6 of the adopted East Herts Local Plan April 2007 and national guidance in the NPPF.

19. The phasing programme for the development of the site; methods for accessing the site and provisions for construction traffic access, wheel washing facilities; associated parking areas and storage of materials shall be in accordance with the approved details by letter dated 1st July 2014.

Reason: To ensure that adequate access for existing users and businesses is maintained at all times and ensure the development proceeds without undue interference to the safe and convenient use of the public highway.

20. In connection with all site demolition, site preparation and construction works no plant or machinery shall be operated on the premises before 0730hrs on Monday to Saturday, nor after 1830hrs on weekdays and 1300hrs on Saturdays, nor at any time on Sundays or bank holidays.

Reason: To safeguard the amenity of residents of nearby properties, in

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accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

21. Detailed drawings of all highway works shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority and completed in accordance with the approved details prior to the first use of the store.

Reason: To ensure that the highway is constructed to the Highway Authority's specification in accordance with policy TR2 of the East Herts Local Plan Second Review April 2007.

22. Prior to the first use of the store, the access roads, parking areas, and highways works including those specified below, shall be completed in accordance with the approved plans, and maintained thereafter unless as otherwise agreed in writing by the local planning authority.

- (a) All access roads, parking /loading areas, pedestrian/cycle links, footpath widening, landscape verges and tree planting, new pedestrian refuge, tactile paving and new toucan crossing as shown on approved plans Proposed Highways Improvements , 0772/62, and Proposed Site Plan – 09.132.A(00)00\_02.
- (b) A pedestrian cycle link of 3m minimum width from the proposed Toucan crossing at Park Road to the store entrance.
- (c) New pedestrian entrance to Buryfields and pedestrian / cycle link through the Buryfield Recreation Ground.

Reason: To ensure the development makes adequate provision for off street parking and maneuvering of vehicles associated with its use and to assist with increasing the linkage of the site to the town centre and its surroundings and in accordance with policies TR1 and STC1 of the East Herts Local Plan Second Review April 2007.

23. Prior to the first occupation of the development hereby permitted, the existing vehicular access shall be permanently closed and the kerbs and (footway/verge) reinstated to the satisfaction of the Local Planning Authority.

Reason: In the interests of highway safety and amenity.

24. The following visibility splays shall be provided and permanently maintained within which there shall be obstruction to visibility between 600mm and 2 m above the carriageway level:

- (a) Service Yard – HGV Position and Visibility Splays Achieved –

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0772/57D May 2010.

(b) Proposed Highway Improvements – 0772/62 – July 2010.

Reason: To ensure adequate visibility for drivers entering and leaving the site and in accordance with policy TR2 of the East Herts Local Plan Second Review April 2007.

25. The Service Yard Management Plan shall be managed in accordance with the plan as approved by letter dated 5th December 2013.

Reason: To protect the amenities of adjoining development and in accordance with Policy ENV24 of the East Herts Local Plan Second Review 2007.

26. No external loudspeaker systems shall be installed without the prior written permission of the Local Planning Authority.

Reason: In the interests of the amenity of residents of nearby properties, and in accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

27. Noise mitigation measures shall be carried out in accordance with the submitted document Cintel Site Noise Assessment ref: JE20009\_120210 noise V Final or as otherwise may be agreed in writing with the local planning authority.

Reason: To protect the amenities of adjoining development and in accordance with Policy ENV24 of the East Herts Local Plan Second Review 2007.

28. Unless otherwise agreed in writing with the local planning authority, reclamation of the site shall be carried out in accordance with the submitted document Geo Environmental Appraisal of a site on Park Road, Contract No 12133/1, and the Revised Remediation Strategy June 2014 agreed on 22<sup>nd</sup> October 2014. On completion of works of reclamation a validation report shall be submitted and as approved in writing by the local planning authority.

Reason: To ensure that adequate protection of human health, the environment and water courses is maintained and in accordance with policies SD5 and ENV20 of the East Herts Local Plan Second Review 2007.

29. Details of all external lighting arrangements shall be maintained in accordance with the approved details as agreed by letter dated 1st July

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Reason: To protect the amenities of adjoining development and in accordance with Policy ENV1 and ENV24 of the East Herts Local Plan Second Review 2007.

30. Prior to the first use of the store the applicant shall provide plans for an agreed route for HGV delivery vehicles to approach and leave the site via the A1170 Wadesmill Road. In the event of compliance problems the applicant shall keep a written daily record of deliveries by vehicles and delivery time and date for such period as the local planning authority may subsequently request.

Reason: In order to mitigate the impacts of deliveries on the environment and in the interests of highway safety.

31. Details of the methods of piling for the construction works shall be carried out in accordance with the agreed details as discharged by letter dated 22nd October 2014.

Reason: In the interests of the amenities of residents of neighbouring properties and in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.

32. Liaison meetings to be held directly between the developer and adjoining residents shall be maintained in accordance with details as agreed by letter dated 28th February 2014.

Reason: In the interests of improved communication to mitigate the disturbance to neighbour amenity during the course of works and by the opening of the store.

33. Details of the stripping of the roof of the maltings building, as indicated on plan no 09.132.A (00) 00\_01, shall be submitted and agreed in writing with the local planning authority. The works shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of protecting bats which may be roosting at the site and in accordance with Policy ENV16 of the East Herts Local Plan April 2007.

34. Works shall be carried out in accordance with the provisions of the reptile survey as approved by letter dated 28th February 2014.

Reason: In the interests of protecting reptiles which may be roosting at



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the site and in accordance with Policy ENV16 of the East Herts Local Plan April 2007.

35. Prior to the commencement of the use of the store, works for the disposal of surface and foul water shall have been provided on site in accordance with details first submitted to and as approved in writing by the local planning authority.

Reason: In the interests of securing the sustainable and satisfactory drainage of the site and reduce the risks of flooding, in accordance with policies ENV18 and ENV19 of the East Herts Local Plan Second Review April 2007.

36. Prior to the commencement of the use of the store, directional signage at the site shall be erected in accordance with details to have been submitted and as approved in writing with the local planning authority.

Reason: To assist with increasing the linkage of the site to the town centre in accordance with the objectives of national planning guidance in PPS4.

37. The development shall be operated incorporating the provisions of the renewable energy systems as detailed within the submitted Energy Statement, and the use of locally sourced supplies (within 10 miles of the site) for the CHP boiler, or by the use of other renewable technologies as otherwise may be agreed in writing with the local planning authority.

Reason: To ensure the energy efficiency of the building and sustainable design within the development in accordance with Policies SD1 and ENV1 of the adopted East Herts Local Plan.

38. Prior to occupation of the store, details of the use of the first floor of the kiln building which, for the sake of clarity shall not be storage purposes, shall be provided and as agreed in writing with the local planning authority. The kiln shall thereafter be used in accordance with the approved details.

Reason: To promote an active use of the building frontage in the interests of the street scene and the appearance and character of this part of the Conservation Area in accordance with Policies ENV1 and BH5 of the adopted East Herts Local Plan.

39. Prior to the first occupation of the store details of a direct pedestrian entrance in the north elevation of the front lobby shall be submitted and

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approved in writing by the local planning authority. The store shall be constructed and maintained in accordance with the approved details. The footpath link through the site and entrance lobby shall remain open and unobstructed for general public use during store opening hours and between the hours of 8am to 10pm on Sundays and Bank Holidays.

Reason: In the interests of improved pedestrian linkage between residential areas to the north of the site and Buryfields Park and the River Lee area to the south, in accordance with Policy ENV1 of the adopted East Herts Local Plan and national guidance in NPPF.

40. Prior to the occupation of the store, details of CCTV systems to be installed in the new car park shall be submitted and as approved in writing by the local planning authority.

Reason: In the interests of public safety and security at the site and in accordance with Policy ENV3 of the adopted East Herts Local Plan.

41. The development hereby approved shall be carried out in accordance with the following approved plans:

A(00)00\_01, A(00)00\_02C, A(00)01\_01A, A(00)02\_01A, A(00)10\_01, A(00)10\_02, A(00)10\_03A, A(00)10\_04A, A(00)10\_05A, A(00)10\_06A, A(00)10\_07A, A(00)30\_01B, A(00)30\_02B, A(00)30\_03B, A(00)30\_04B, A(00)30\_05B, A(00)30\_06B, A(00)40\_01B, A(00)40\_02A, A(00)40\_03A, A(00)50\_01, A(00)50\_02, A(00)50\_03, A(00)50\_04A, A(00)50\_05A, A(00)50\_06, A(00)60\_01D, A(00)60\_02A, A(00)60\_03, A(00)60\_04, A(00)60\_05, A(00)60\_06, A(00)60\_07, A(00)70\_01, A(00)70\_02, A(00)70\_03A, A(00)80\_01A, LS16899/6, D1819 L 200D. 13.127.00\_42A, 1351 Elevations 1, 1351 Elevations 2, 1351 Ground Floor 1, 1351 First Floor 1, 1351 Second Floor 1

Reason: To ensure the development is carried out in accordance with the approved plans, drawings and specifications.

#### Directives:

1. This permission does not convey any consent which may be required under any legislation other than the Town and Country Planning Acts. Any permission required under the Building Regulations or under any other Act, must be obtained from the relevant authority or body eg. Fire Officer, Health and Safety Executive, Environment Agency (Water Interest) etc. Neither does this permission negate or override any

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private covenants which may affect the land.

2. This planning permission is also subject to a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 (as amended).
3. The development will involve the numbering of properties and naming of new streets. The applicant MUST consult the Director of Internal Services. Application for this purpose should be made to the Local Land and Property Gazetteer Custodian, East Herts Council, The Causeway, Bishops Stortford, CM23 2EN. Tel: 01279 655261.
4. In meeting the provisions of Condition 22 the applicant is referred to the Sketch 2 cycleway provisions and the Option 5 of the Fabrik Document dated 11th August 2010 Rev 2 which are considered to outline an acceptable approach to the Buryfields pedestrian link to the site.

### Summary of Reasons for Decision

East Herts Council has considered the applicant's proposal in a positive and proactive manner with regard to the policies of the Development Plan (Minerals Local Plan, Waste Core Strategy and Development Management Policies DPD 2012 and the 'saved' policies of the East Herts Local Plan Second Review April 2007); the National Planning Policy Framework and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2012 (as amended). The balance of the considerations having regard to those policies, the provisions of the approved permission (Ref: 3/10/0386/FP) and the other material considerations relevant in this case is that permission should be granted.

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### **1.0 Background**

- 1.1 The application site is the land at the former Rank Cintel Site in Watton Road, Ware that has permission for a new Asda Foodstore now being implemented. The site is within a location just beyond the edge of the town centre, but within walking distance of it. The permission was subject of a Section 106 legal agreement and a range of planning conditions. The details of these conditions are currently being addressed by submissions and will be circulated to Members as soon as possible prior to the Committee meeting. As an application to vary a planning condition effectively results in a fresh planning permission being granted, it is necessary for the Council to ensure that any conditions imposed on the original permission, that remain relevant, are attached to any variation of permission granted.

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1.2 The application proposes to vary two of the original planning conditions of the permission. These relate to the approved plans condition, specifically to substitute a plan for the adaptation of the adjacent nursery building, and the planning condition which restricted the amount of comparison goods floorspace within the store.

1.3 Condition 7 of the original permission states that:

*Prior to the first use of the foodstore, the remaining parts of the approved development i.e. the housing, nursery adaptations and external works shall be substantially completed.*

Reason: *In order to secure the planning benefits of a comprehensive regeneration of the site in the interests of the appearance of the development, the Conservation Area and the amenity of adjacent residents.*

1.4 The 'Angels at Play' Nursery is located on the Park Road frontage of the site. The application details a revised roof design for the nursery building, due to the technical difficulties of carrying out the original approved design without disrupting the existing nursery school.

1.5 This was originally submitted as a separate application, but has been conjoined with the proposed variation to the retail planning condition 19. During the course of the application, the details of the varied roof design have been negotiated to now secure a scheme which is not significantly different from that originally approved but which can be carried out without disrupting the school significantly.

1.6 Condition 19 of the permission states that:

*The use of the retail store hereby permitted shall be solely for Class A1 planning use with an ancillary A3 customer restaurant. The net retail sales floor area shall not exceed 2601 sqm; no more than 30% of the net sales area shall be used for the sale of comparison goods. Prior to the first use of the store, plans at a scale of not less than 1:200 indicating the layout of the whole store, its comparison and convenience sales areas and associated circulation space shall be provided and as approved in writing by the local planning authority. The store shall thereafter be operated in accordance with the approved sales floor areas unless as may otherwise be approved in writing by the local planning authority.*

Reason: *Having regards to the assessed retail impact of the store on the town centre; the provisions for car parking and to ensure the scale*

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*of the use is appropriate to the site, and in accordance with Policies STC1 and STC6 of the adopted East Herts Local Plan April 2007 and national guidance in PPS4.*

- 1.7 The Retail Impact Assessment at the time of the original application was assessed on this size and type of retail proposal, the advice was that the store would be unlikely to cause serious harm to the vitality and viability of Ware Town Centre.
- 1.8 The applicants now wish to seek a relaxation of the area of the store that can be used for comparison goods shopping. An updated Retail Impact Assessment has been submitted for this. The applicants originally proposed that the comparison goods area should be allowed to increase to 38% from the approved 30%, but in response to Ware Town Council's objection they have reduced the proposal to 36%. The area available for convenience goods (food shopping) would reduce therefore to 64%.
- 1.9 The application is a variation of a major development which requires referral to the Development Management Committee for decision.

### **2.0 Site History**

- 2.1 The only planning history of immediate relevance is the original planning permission granted for the store:-

- *3/10/0386/FP. Redevelopment of 2.15 ha brownfield site to include new Asda foodstore (2601 sqm net), 13 dwellings 5 affordable, retention and redesign of childrens nursery, retention and refurbishment of Kiln and Maltings buildings, together with associated access, 283 car parking spaces, servicing and landscaping, associated highways pedestrian improvements (as amended).*

Granted subject to a Section 106 agreement on 26<sup>th</sup> July 2011.

### **3.0 Consultation Responses**

- 3.1 County Highways advises that the change has no material impact on Highways and Transport matters and has no objection to the change.
- 3.2 The Council's Planning Policy team notes that the store already has a relatively high comparison goods element relative to other stores. It is unclear if the change, which is modest, will impact adversely on the town centre. While additional comparison goods space may help to

reduce leakage of spending to towns elsewhere such as Harlow and Broxbourne, it may mean some trade draw from the town centre.

#### **4.0 Town Council Representations**

4.1 Ware Town Council objected to the impact that the change would have on the town's retailers. No comment was made however to the nursery roof re-design.

#### **5.0 Other Representations**

5.1 The application has been advertised by way of press notice, site notice and neighbour notification letters.

5.2 One letter of objection to the retail condition change is from a local resident objects who considers that this is a ruse to ensure future extension of the store and opening hours and that Asda is seeking to quash competition. Any change would give permission for Asda to seek changes in the future should they feel threatened by competition with later applications to extend the store in keeping with Asda's original plans for the site

5.3 No comments or objections have been received with regards to the proposed changes to the roof design of the nursery, either as submitted or as varied during the course of negotiations.

#### **6.0 Policy**

6.1 The relevant 'saved' Local Plan policies in this application include the following:

SD1	Making Development More Sustainable
SD2	Settlement Hierarchy
ENV1	Design and Environmental Quality

6.2 In addition to the above the National Planning Policy Framework (NPPF), in particular Section 2 "Ensuring the vitality of town centres", and the National Planning Policy Guidance (NPPG) are material considerations in the determination of the application.

#### **7.0 Considerations**

7.1 The main issues to consider in the variation of the planning conditions is firstly, whether the redesign of the nursery roof is acceptable having regard to the original objectives of the site's regeneration and the

appearance of the development on the edge of the Ware Conservation Area, and then secondly to assess whether the changes to the proportion of comparison goods will result in any significant adverse impacts on the vitality or viability of the town centre.

### Roof Redesign

- 7.2 The original planning permission for the Asda store followed a period of public consultation and negotiation which aimed to provide a comprehensive approach to the wider Cintel site when there was concern that a piecemeal approach could occur. This involved an enhanced Nursery building including provision of a new pitched roof, as well as housing to be built to the rear of the site.
- 7.3 Since receiving permission, the applicant has been investigating the practicalities of rebuilding the nursery roof while working around the operation of the nursery. Temporary closure and relocation of the nursery are not practical for several reasons related to cost, lack of alternative premises and continuing OFSTED requirements. The revised proposed design is for a lightweight timber truss system, as opposed to the more extensive frame system required by the approved option. The work would involve a 3 day closure of the nursery and construction over a series of weekends (approximately 14) including working between the hours of 8 am to 6pm on Saturdays and Sundays too, outside the generally permitted hours of working. Implementing the originally approved scheme would, by contrast, require closure of the nursery for 4 weeks which would be very damaging to its business.
- 7.4 The proposed roof redesign is slightly amended from the approval plans, with the omission of a roof lantern, but still effectively provides a new pitched roof on the building and to the same proposed roof pitch. This has followed a long period of negotiation. The variation from the approved scheme is now quite modest and your Officers consider it an acceptable amendment of the planning permission.
- 7.5 It is understood that the residents group has agreed to the extended hours of working at weekend to enable the nursery to remain in place as work proceeds. In view of this there is acceptance that weekend working proceeds for a period of time next year. No objections have been received by third parties to the roof changes during the course of consultations.
- 7.6 The nursery lies on the boundary of the Ware Conservation Area with Park Road. Officers are of the view that the roof changes will still take the opportunity to provide appropriate enhancement of this part of the

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development site and the Conservation Area in accordance with Local Plan Policy BH6 and advice in the NPPF.

#### Retail Variation

- 7.7 With regards to the variation of comparison goods floorspace this proposes a shift to 36% comparison with 64% convenience (the approved split was 30% / 70%). There is no change to the net sales floor area which remains at 2,601 sqm proposed.
- 7.8 Members may recall that part of the justification for out of town centre development was to provide competition and choice within the town. The resulting convenience (food and drink) floor area of the store would be 1,664 sqm (reduced from 1820 sqm) and the comparison goods (non-food) increased to 936 sqm (from the approved 780sqm).
- 7.9 The proportion of comparison (non-food) goods was first proposed to be increased from 30% to 38%, but following the objection from Ware Town Council and discussions with them, the applicant has revised the proposal to 36%.
- 7.10 The change will mean the relative size and benefit of the convenience element of the foodstore will decline. At 1664 sqm it would be smaller than the current Tesco town centre store which has a net (convenience) floorspace of 1879 sqm.
- 7.11 The applicants have submitted an updated Retail Impact Assessment and commentary. In their covering letter they state that the retail market has shifted significantly since the store was first approved with more competition from online sales. Bricks and mortar destinations now have to enable a more attractive and competitive experience.
- 7.12 The applicants argue that the change is negligible and that the store will still be a convenience destination with the majority of its floor area for food shopping. No revised figures of convenience and comparison goods turnover have been provided in the assessment.
- 7.13 The applicant also argues that the NPPF no longer requires an assessment of quantitative need for such retail applications although, given that the tests of 'town centre first' development remain, it is pertinent to consider the benefits of this store in an out of town centre location.
- 7.14 There has been objection made that the change may be a cover for later extension of the store. However, this is not being proposed and



the applicants have emphasised that there is no proposed change to the overall size of the store. Members may recall that, in the original submission, Asda made a commitment in their Community Charter November 2010 not to increase the size of the store from the net sales of 28,000 sq ft.

- 7.15 The physical layout of the site and the store would not change. The appearance of the store will still be predominantly that of a food store. The changes in retailing and development of stores are making larger convenience stores less attractive. The size of the store should, in your Officers' view, still enable it to provide more choice and competition with the existing Tesco foodstore in Ware Town Centre.
- 7.16 The increased comparison goods space is unlikely, in Officers view, to result in any significant adverse impacts on the viability and vitality of the town centre and it will enable some additional retention of trade for the town – trade which is currently leaking to shopping centres elsewhere. Members will recall that the design of the store seeks to improve the site's connections with the town centre and so, overall, the proposed increase in comparison goods sales area is likely to be beneficial to the vitality of the town centre as a whole.
- 7.17 The NPPF (paragraphs 26 and 27) advises that, in assessing planning applications, Authorities should consider the existing, committed and planned public and private investment in existing town centres as well as the impacts on town centre vitality and viability. Applications should be refused where there are significant adverse impacts on these factors.
- 7.18 In this case, the change proposed is relatively modest and will still provide the benefits of increased competition and choice within the town centre, as well as enabling Ware to retain more comparison goods shopping in a location that is reasonably well connected to the existing town centre. Officers therefore see no substantive reason to refuse the application.

## **8.0 Conclusion**

- 8.1 The proposed variation of the comparison goods area is partly a response to changes in the market and whilst the reduction in convenience goods sales area is regrettable, Officers remain of the view that the new store will still be a valuable alternative food destination for the town without leading to conditions which would threaten the viability and vitality of the town centre.

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- 8.2 The increase in comparison goods space could result in higher retention of some trade for the town, and in a location reasonably connected with its town centre. It seems therefore unlikely to result in significant adverse impacts on the vitality and viability of the town centre which is the key test of the National Planning Policy Framework.
- 8.3 The variation of the approved plans for the Nursery Roof is a modest change which is brought about by the need to enable minimal disruption to the existing Nursery operation at the site. It does not compromise the benefit of the approved scheme and is considered quite acceptable.
- 8.4 Accordingly, Officers recommend that planning permission is granted subject to conditions, and a Section 106 agreement to ensure that the terms of the original agreement will relate equally to this revised permission.