

3/10/0386/FP - Redevelopment of 2.15 ha brownfield site to include new Asda foodstore (2601 sqm net); 13 dwellings (5 affordable) with 21 car parking spaces; retention and redesign of children's nursery; retention and refurbishment of Kiln and Maltings buildings together with associated access, 283 car parking spaces (including 10 spaces for nursery), servicing and landscaping, associated highways and pedestrian improvements (as amended) at Cintel site, Watton Road, Ware SG12 OAE for Asda Stores Ltd

Date of Receipt: 03.03.2010

Type: Full - Major

Parish: WARE

Ward: WARE – ST MARYS

RECOMMENDATION

(A) That subject to the applicant entering into a legal obligation pursuant to S.106 of The Town and Country Planning Act 1990 to cover the following matters:-

1. The provision of 5 affordable housing units (3 No 2 bed and 2 No 3 bed for rent) within the development in accordance with the East Herts Housing Strategy.
2. The payment of £25,000 to East Herts Council for the consultation and implementation of a residents parking scheme for roads within the vicinity of the site.
3. The payment to East Herts Council of £40,000 to fund a programme of Baldock Street building enhancement (Grants to assist with front façade repairs and enhancement works including roofs).
4. The preparation and implementation of an architectural lighting strategy for Baldock Street (buildings and spaces) up to a maximum cost of £80,000.
5. The payment of £30,000 to East Herts Council as a contribution towards the Tudor Square public realm enhancement works.
6. The payment to Herts County Council to fund new infrastructure and mitigate development impacts in relation to the 13 houses.
 - £23,800 Secondary schools
 - £1,630 Childcare
 - £2,097 Libraries
 - £454 Youth Services.

3/10/0386/FP

7. The payment of £68,738 to East Herts Council to provide and maintain open space including a new toddler/play space within Buryfields.
 8. The payment of £232,000 to Herts County Council to fund sustainable transport provisions for cycling and pedestrian links, bus stop improvements, safer routes to school.
 9. The payment of £80,000 to Herts County Council to fund a study of traffic calming in Fanshawe Crescent and Park Road if required.
 10. The payment of £365,000 to Herts County Council for additional bus services to the site over 5 years.
 11. An agreed management /pricing regime for the car park (including a short stay town centre parking regime with up to 3 hours free for customers spending £10 or more at the store).
 12. The provision and implementation of a Green Travel Plan.
 13. Provision of 15% lifetime homes.
- (B) That the application be referred to the Secretary of State for decision with a recommendation that planning permission be **GRANTED** subject to the following conditions :-
1. Three Year Time Limit (1T12)
 2. Samples of Materials (2E12).”including rainwater goods”
 3. Sample brickwork panel (2E35)
 4. Materials arising from demolition (2E32)
 5. Cycle Parking Facilities (2E29)
 6. No groundworks or development shall take place within the proposed development site until the applicant or their agents, or their successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. 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.

7. 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.

8. New doors and windows, “add ... roof eaves, shopfront and roof lantern lights” (2E34).
9. 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.

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 PPS5.

10. Refuse disposal facilities (2E24)
11. Parking provision and retention (3V23). Amend to “273 car parking spaces shall be retained for customer parking at all times that the store is open and 10 spaces for the use of the nursery”.
12. Finished floor levels are set no lower than 36.76m (AOD).

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

13. Landscape Design (4P12)
 - (a) Means of enclosure,
 - (b) Hard surfacing materials
 - (c) Planting plans
 - (d) Planting mitigation measures
 - (e) Schedules of plants

14. Landscape Implementation (4P13)
15. 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.

16. Retention of landscaping (4P21)
17. Withdrawal of permitted development rights (Part 2 Class A) (2E21)
18. 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.

19. 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 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.

20. Prior to the commencement of the development, details of a phasing programme for the development of the site; methods for accessing the site and provisions for construction traffic access, wheel washing

3/10/0386/FP

facilities; associated parking areas and storage of materials shall be submitted to and as approved in writing by the local planning authority. The development shall thereafter proceed in accordance with the approved details.

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.

21. Construction and hours of working (6N07).
22. Prior to commencement of the development, 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.

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.

23. 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.

24. Existing access closure (3V051)

3/10/0386/FP

25. The following visibility splays shall be provided and permanently maintained within which there shall be no obstruction to visibility between 600mm and 2 m above the carriageway level:

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

26. Prior to the first use of the store the applicant shall submit a Service Yard Management Plan for the approval in writing of the local planning authority. This shall include measures to address noise disturbance and provide that no vehicle deliveries take place between 10pm and 7am. The service yard shall thereafter be managed in accordance with the plan.

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

27. No external loudspeakers (2E253)

28. 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.

29. Prior to the commencement of development, 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 including the further investigation of the area for the proposed housing. 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.

3/10/0386/FP

30. Prior to the first use of the store, details of all external lighting, including hours of use, and measures to mitigate its impact shall be as agreed in writing with the local planning authority. Lighting arrangements shall thereafter be maintained in accordance with the approved details.

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.

31. 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.

32. Piling Works (2E39)

33. Prior to the commencement of works, the applicant shall provide a scheme for liaison meetings to be held directly between the developer and adjoining residents for the period of construction and continuing one year after the opening of the store.

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.

34. 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 as 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.

35. Prior to the commencement of works a reptile survey 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 reptiles which may be roosting at the site and in accordance with Policy ENV16 of the East Herts Local Plan April 2007.

36. Site clearance of buildings, trees and shrub removal shall avoid the breeding seasons of 1st March to 30th August unless otherwise agreed in writing with the local planning authority.

Reason: To avoid unnecessary disturbance to breeding birds in accordance with Policy ENV16 of the adopted East Herts Local Plan April 2007.

37. 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.

38. 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.

39. 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.

40. 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.

3/10/0386/FP

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.

41. 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 as 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 PPG13.

42. 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.

Directives

1. Other legislation (01OL)
2. Highway Works (05FC)
3. Planning Obligations (08P01)
4. Street naming and numbering (19SN)

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies HSG1, HSG3, HSG4, HSG6, SD1, TR1, TR2, TR7, TR8, TR12, BH3, BH6, STC1 and STC6. ENV1, ENV2, ENV3, ENV16, LRC3, LRC11 and IMP1 and national planning guidance in PPS1, PPS4, PPS5 and PPG13. The balance of the considerations having regard to those policies, national planning guidance and the greater suitability and availability of the Cintel site, in comparison to any other potential sites, to meet the retail needs of the town without adverse impacts, is that planning permission should be granted.

1.0 Background

- 1.1 This application was considered at the Development Control Committee meeting of 20th October when members resolved not to refuse the application in relation to the sequential test or on the basis of other planning, deferring the application with a recommendation that the item be approved in principle and referred back to the committee to agree the S106 obligations and planning conditions. Effectively members agreed the proposals in principle.
- 1.2 A copy of the previous committee report is attached at Appendix A and this sets out the necessary factual information regarding the site background, history, consultation responses and considerations of issues.
- 1.3 The Planning Performance Agreement (PPA) has been revised to allow time for the S106 to be agreed and the time for referral of the planning application to the Secretary of State.

2.0 Further representations

- 2.1 Since the last committee some further representations have been received mostly in support of the Asda proposal. One letter objects to the committee decision, 7 individual letters ask for the Asda scheme to be supported and 23 pro forma letters criticise the Waitrose scheme for its timing, being too small, poorly located and bringing fewer jobs to Ware whereas Asda will enable the town to retain its shoppers who are being lost to neighbouring towns notably Hertford. The other points made were previously covered in the October committee report.
- 2.2 Glaxo Smith Kline has written to express continuing concern over the size of the store and the inadequate proposed car parking. They request that the S106 specify the number of parking spaces; stipulate Asda staff not be permitted to park on the site; restrict the size of the retail floorspace (2600 sqm) and be fully consulted on the S106 off site highways works. With reference to the £27,000 for S106 money associated with their own Building 9 Project they would not wish this to be used to mitigate the impacts of the Asda proposals but say it must be associated with the GSL development.
- 2.3 A letter from Firstplan, consultants for Waitrose, has been received raising concerns firstly that the issue of sequentiality was not properly considered and secondly that the wider impact test had to be satisfied in its own right regardless of the judgement on the sequential test and was also not properly debated. They refer to PPS4 practice guidance emphasises that it

is not relevant if a site does not meet an operators requirements. They recommend the whole application should be reassessed properly against the tests of PPS4.

- 2.4 In response to this Waitrose representation, Thomas Eggar LLP, solicitors for Asda, argue the content of the letter bears little resemblance to what actually took place at the committee. It was clear they argue that the sequential test was the only legitimate reason for refusal and once members had legitimately voted for the Cintel site (rather than Asda as an operator) as sequentially preferable, then impact could not by itself be a reason for refusal. This was clearly set out in the officer's report. In order to refuse on impact, PPS4 at Policy EC17 requires "clear evidence that the proposal is likely to lead to significant adverse impacts" and this was not the view of the Council's own specialists.

3.0 S106 Obligations

- 3.1 As part of the Planning Performance Agreement, S106 obligations were negotiated over a period of time with the applicant, notwithstanding the possibility of objections on retail, highways grounds etc, in the event that planning permission may be forthcoming. These relate to the need to mitigate the impact of the development on the highway network including provisions for sustainable transport improvements and parking controls.
- 3.2 S106 obligations are legal tests and must have regard to the tests set out S122 of the Community Infrastructure Levy 2010 and the tests of Circular 05/2005. They must be necessary to make development acceptable, be reasonable and properly related to the development. The Council's own SPD on Planning Obligations, October 2008 provides guidance on S106 obligations that may be sought and adopted Local Plan Policies in particular TRC8, LRC3 and IMP1 provide policy support.
- 3.3 The S106 planning obligations and conditions as set out have been agreed in principle with Asda. The S106 provides a quite comprehensive package including non-costed provisions such as 5 affordable housing units and a Green Travel Plan and other financial contributions of almost £950,000 in total. The most significant element of the financial provisions relate to the need to promote sustainable transport modes for the development in accordance with PPG13 and PPS4 and having regard to highways expressed concerns about site congestion and sustainable transport links. There would be provision of £365,000 to fund additional bus routes to the site for 5 years as part of the scheme and provision of £232,000 to meet pedestrian and cyclist schemes within the vicinity of the site. To address residents concerns and demands about other traffic impacts within the surroundings £80,000 is provided for traffic calming Fanshawe Crescent

3/10/0386/FP

and if required in Park Road. Any funds from the GSK S106 spent in Park Road need to be relevant to the development at their site.

- 3.4 The funding of £25,000 would enable residents parking controls around the site. This would provide the means and the mechanism for further consultation on a scheme with local residents to address potential concerns about related staff parking or even customer parking in roads around the site.
- 3.5 Being in an “out of centre” location the store needs to promote the pedestrian links into the town and ultimately the vitality and viability of the town centre. The S106 provisions include grants to repair the building facades in Baldock Street and the development and implementation of an Architectural Lighting Strategy. The improved lighting and encouragement to owners to invest in buildings in Baldock Street would enable this principal route between the store and the town centre to be more attractive to pedestrians throughout the year ; the lighting will be particularly of benefit in the winter afternoons and evenings. The possible boost to Baldock Street is part of the wider retail planning case for the development at the Cintel site.
- 3.6 A £30,000 contribution is made to the long term funding of a public realm scheme for Tudor Square, an opportunity for improved public space within the Town Centre. This contribution will help to improve the attractiveness, of this key town centre square, promoting the vitality and viability of the town centre and also addresses concerns about the balance of impacts of the new store on the town centre. It is anticipated that Ware Town Council will take the lead in implementing the project.
- 3.7 The planning obligations for contributions towards secondary schools, child care, libraries and youth care have been requested by the County Council having regard to the impacts of the housing development in accordance with the County Council toolkit which is adopted by the Councils own SPD. Similarly there are provisions for off site landscaping and open space provisions where these are absent in the proposed housing and calculated with reference to the guidance in the Council’s SPD Planning Obligations document. These would be used to enhance the open space and facility at the nearby Buryfields recreational area.
- 3.8 The provisions for a managed car park charging system would be to encourage town centre linked trips. PPS4 gives support to achieving parking provision in new retail developments that is consistent with wider town centre parking strategies and does not undermine the use of other town centre car parks to the detriment of the high street. It is considered for the town as a whole a “level playing field” is needed for charging. Given the relative distance of the store from the town centre favourable charging rates

3/10/0386/FP

are needed for linked trips that may be of up to several hours e.g. 3- 5 hours (comparable to existing town centre charging regimes). Quick shopping trips by private car for small purchases can also be discouraged by a minimum charge. A similar approach was agreed at the Sainsbury's store in Hertford.

- 3.9 The provisions for Green Travel Plan and lifetime homes are supported by adopted local plan policies TR4 and HSG6 respectively and have also been agreed with the applicant.

4.0 Planning Conditions

- 4.1 The 42 planning conditions that are set out cover a wide range of matters and have been negotiated and agreed in principle with the applicant. The planning conditions should satisfy the tests of national planning guidance in Circular 11/95 that they are reasonable, necessary, related to the development, relevant to planning and enforceable.
- 4.2 They reflect a number of issues that have been actively discussed with the local residents group, Cintel Residents Committee, to control the impact on neighbour amenity by planning conditions related to traffic, lighting, landscaping and boundary treatment, the hours of opening of the store, delivery vehicles and the overall sales floor area. For instance the applicant has offered a condition for landscaping around the site to be maintained for the lifetime of the store.
- 4.3 A condition is also agreed that secures the implementation of the whole scheme rather than permitting the scheme to be implemented in part. Residents and officers are keen that the development of the Cintel area delivers a comprehensive regeneration of the area including the repair of the Kiln/Maltings, the housing development to the west of the site and nursery improvements. The planning condition is fully accepted by the applicant.
- 4.4 The parking and highways concerns raised again by GSK are mostly covered by the proposed planning conditions. The Green Travel Plan is part of the S106 which will cover staff access to the site. Glaxo would be able to comment on highways proposals as part of public consultation procedures under the Highways Act so do not need to be specifically identified or party to the S106.
- 4.5 Given the necessity for the scheme to connect well with the town centre and promote walking and cycling trips there are highway related planning conditions to secure pavement widening along the route to Baldock Street; provide new road crossings at Park Road and Fanshawe Crescent/Watton Road junction as well as the cyclist/pedestrian route across Buryfields.

3/10/0386/FP

- 4.6 In order to manage the retail impact of the scheme and associated impacts of parking and traffic there is a condition to restrict the overall sales floor to that proposed and also to limit the comparison goods area to 30% of the sales floor area. Asda have given a commitment not to expand the store given the repeated raised concerns that the building design lends itself to this (a point consistently refuted by Asda).
- 4.7 Finally, of note are the conditions agreed for the Service Yard Management Plan, Liaison meetings with local residents, the routing of heavy goods vehicles via the A1170; the limitations to the store sales floorspace and opening hours restricted to 8am to 10pm. The site is within a mostly residential setting and these conditions are important to modify the impacts on residential amenity.

5.0 Conclusion

- 5.1 The proposed Asda development was agreed in principle at the previous committee meeting, but deferred for officers to come back with details of planning conditions and S106 planning obligations related to the store as are now set out in detail with this report recommendation.
- 5.2 The subsequent objections made about the committee decision-making by Waitrose have been considered but are not judged to be of any substance. Indeed your officer's assessment has been supported by the subsequent legal view of solicitors for Asda who feel that the application was properly assessed against the requirements of PPS4.
- 5.3 The committee as it is fully entitled to do so, exercised its judgement on the sequential test, the issue of impact was considered both in the report submissions and discussed at committee. As the officer's report stated (paragraph 7.28) impact was unlikely to be a reason by itself but was only a supporting reason to a refusal on sequential grounds. Once the Cintel site was determined to be sequentially more suitable due to its larger size, as well as its location and the scope for regeneration, there would not have been a credible planning case to refuse it on impact grounds and the committee therefore did not propose this.
- 5.4 The application still requires referral to the Secretary of State due to the provisions of Circular 02/2009 and the relatively large gross floorspace of the proposal in an out of town centre location (exceeding the threshold of 5000 sqm). Subject to this clearance then the planning permission can be granted. This referral period is anticipated to require a further 3 weeks but can be extended depending on the circumstances of the case.

3/10/0386/FP

5.5 The application is therefore recommended to the members of the committee with the S106 planning obligations and planning conditions as set out.