

Retail advice in relation to application
BE/126/19/PL- Convenience Foodstore Oldlands Farm Bognor Regis

DRAFT

1.0 Background

- 1.1 DPDS are instructed to provide advice on the retail planning aspects of this application. The LPA are specifically seeking additional guidance in relation to;
- The methodology adopted in relation to the sequential assessment and the interpretation of relevant case law supplied by the applicant;
 - The sequential assessment of the identified sites;
 - The conclusions drawn in relation to the retail impact assessment and identified trade draw.
- 1.2 The application (BE/126/19/PL) is a full application for a 1410 sq m discount convenience retail foodstore (Use Class A1), parking, landscaping and other associated works. The application is supported by a Planning, Retail and Economic Benefits Statement by Rapleys (the PREBS) dated November 2019 and this is the document we have been asked to examine with respect to retail planning policy. The floorspace quoted in the description of development is the net sales floorspace. The gross floorspace (GIA) would be 2159 sq m and the gross external a little over 2200 sq m.
- 1.3 It is indicated that the occupier would be Lidl stores and that Lidl would vacate its current unit on the Bognor Regis Retail Park. This is reported to have a floorspace of 929 sq m. Section 6 of the PREBS is devoted to the Lidl business model. However, the application would permit open class A1 use unless restricted by condition, and a “named user” condition is unlikely to be appropriate, so limited weight should be given to this section. What conditions might be appropriate if there are no objections of principle, will be considered at the end of this report.
- 1.4 The site is part of a large commercial development area off the A29 London Road on the edge of Bognor Regis. It is not allocated for retail development, but outline planning permission was granted which would permit some retail development. We understand that this development has been started and the permission remains live. The conditions were amended in 2018 to allow 1325 sq m (net sales) of discount convenience retail floorspace. The current application is for full planning permission because it is proposed to re-site the building. It is understood that the Council accepts that there is planning permission for a foodstore on the site.
- 1.5 The Council has recently granted a planning permission for commercial development on the nearby Salt Box Field site. This includes a foodstore with 1,785 sq m (GIA) A1 of floorspace with a net sales area of 1,315 sq m and 470 sq m back of house. It was indicated that the intended occupier would be Aldi, the other main food discounter.

- 1.6 There are a number of retail outlets in the area along London Road. These include the B & M and Screw Fix, Bognor Regis Retail Park (including the existing Lidl), the Arun Retail Park (including an M&S Foodhall), and the main Tesco and Sainsbury stores for the Bognor Regis area. The only large foodstore in the town centre is Morrisons. There are a number of smaller centres around, the most significant being Barnham, Felpham and North Bersted.
- 1.7 The Arun District Plan is the main planning policy document. Policy RET DM1 section 3 applies to out of centre retail development proposals and requires the impact tests of the NPPF to be met and for applicants to demonstrate there are no suitable sites available in or on the edge of the town centres. The threshold for impact assessments is set at 1000 sq m in relation to the town centres (Bognor Regis and Littlehampton), the larger Service Centres (Rustington and Arundel) and the Six Villages and 200 sq m for the village and suburban centres. The Plan is in accordance with the NPPF and the main retail planning considerations arising from the application are the sequential and impact tests.

2.0 The Sequential Test

- 2.1 The Council needs to demonstrate a proper understanding of the sequential test in considering the submissions, but this can be done briefly. The analysis of case law and appeal decisions can too often become a detailed analysis of situations which do not arise when actual sites come to be considered. I will comment further on the case law should the need arise. The legal ground can be covered by two principle cases in relation to this application, both quoted by the applicant; the “Dundee Judgment” by the Supreme Court in 2012 and the Mansfield Judgment in the High Court in 2016.
- 2.2 “Dundee” established, first and foremost, that suitability referred to the suitability of the site for the proposed development and did not require alternative ways of meeting some concept of the public need to be assessed. It also went on the note that the test required flexibility from both the developer and the local planning authority. The amount of flexibility that can be expected is a matter of planning judgement which lies, in the first instance, with the local planning authority.
- 2.3 “Mansfield” established that “suitable” and “available” meant suitable and available for the broad type of development which is proposed by approximate size, type and range of goods. The generally excludes the identity and personal or corporate requirements of individual retailers. The applicant claims in the PREBS (para 8.16) that the broad type of development is for a “limited assortment discount foodstore”. I do not agree. First the concept has rapidly become outdated as Aldi and Lidl have expanded their ranges to compete head on with main “weekly shop” food retailers. Secondly the application is simply for a retail use and would not restrict the occupation to a limited assortment discount food retailer unless such a condition is imposed. What is proposed is a medium sized foodstore and sites should be assessed on that basis.
- 2.4 I have not commented on the North Lincolnshire High Court case, quoted by the applicant in the PREBS para 8.9, because that was clearly highly case dependent.

Disaggregation, or the subdivision of proposals, has been considered to fall foul of the Dundee principle that sites should be suitable for the development applied for, most notably in the Rushden Lakes decision referred to by the applicant. A more recent appeal decision (Tollgate Village) has concluded that it can be relevant depending on the circumstances of the case. Disaggregation is not an issue in this case because what is proposed is a single retail unit of about 2,200 sq m. There needs to be a degree of flexibility regarding size, but it would be unreasonable to expect a single food retailer to operate from a number of different outlets in the area.

- 2.5 The “availability” of alternative sites is often debated. Before the 2012 NPPF, the guidance required sites to be available “within a reasonable period of time” but this qualification was dropped in the NPPF. This led to an interpretation which meant that sites had to be “available now” and this was encouraged by the Rushden Lakes decision. It has since been found (for example in the Cribbs Causeway decision by the Secretary of State) that the period for availability can be quite extended in the case of large and complex retail proposals and the phrase has been re-introduced in the 2019 NPPF. In this case, I consider that sites should be available in the next 2-3 years and that any longer period would be unlikely to be accepted at appeal.
- 2.6 In summary I consider the test parameters to be for a medium sized foodstore with convenient parking. The site area for the application is a little over 1 ha but sties smaller than this should not be ruled out. Lidl stores have been accommodated on sites of 0.6 ha in some circumstances.
- 2.7 Policy RET DM1 directs retail development to town centre and then edge of town centre sites. The only town centre that that is relevant is Bognor Regis – Littlehampton lies outside of the catchment area and sites there would not be suitable. In practice there are only two sites that need to be considered – The Regis Centre and Hothampton Car Park. Both have been considered for regeneration for many years and they were both subject of a development agreement with St Modwen and detailed proposals in application BR/156/16. The sites have planning permission for a number of leisure and commercial uses. The Council did conclude in relation to the Section 73 application (and the Salt Box Field application) that the sites were not available. Events have moved on since then with the appeal decision granting planning permission, but the implications of this are not clear. The Council’s advisor on the Salt Box Field application concluded the sites were too small but had the much larger development in mind. In my view they would be large enough for a medium sized foodstore, but this would not match the aspirations or make the best of the sites’ opportunities. It could also be difficult to defend the availability of either site in sequential test terms and I would conclude they should not be considered available. The position is clearly complex, and the Council will have a better understanding of the position with regards to the development both as landowner and planning authority.
- 2.8 I therefore conclude that the sequential test is passed.

Retail Impact

- 3.1 There are two limbs to the impact test – the impact on planned and committed investment and the impact on town centre vitality and viability.
- 3.2 Taking the impact on town centre investment first, there are two sites where investment is planned, the Regis Centre and Hothampton Car Park sites. As described above, these have been linked by investment proposals by St Modwen as a development partner of the Council. The exact position with regards to the investment is not known at present but working on the basis that the investment qualifies under the government guidance on planned and committed investment, there is little risk that the Lidl foodstore would represent a threat to that investment. The investment proposals for these sites do not include a foodstore and only limited other retail development. While there was concern in the past, this resulted from the number of hot food outlets originally proposed in the overall Oldlands farm development. These could have attracted tenants needed to support the viability of the St Modwen development. These are not relevant to the current application, which is solely for a foodstore.
- 3.3 Before considering the quantitative analysis there are a few points to consider regarding how the test should be approached. The first is the intention of Lidl to move from a smaller unit nearby. Notwithstanding that intention, any permission, in my view, should not be limited to Lidl as an occupier. There is an argument which runs that since the impact assessment assumes the relocation of the Lidl store, a condition limiting the occupation to Lidl would be justified. However, such conditions are discouraged, and I will return to the point having considered the impact on Bognor Regis town centre.
- 3.4 Second, the proposal is only about 100 sq m larger in net sales terms than the permitted foodstore on the site. The applicant claims this as fall-back position. The weight to be given to fall back positions depends on how likely they are to be taken up. However, the applicant has submitted a retail impact assessment for the whole store, and this is what I have been asked to assess. I will consider the weight that should be given to the fall-back position if necessary once the likely impact is better understood.
- 3.5 Finally on preliminary points, since the condition was altered to allow a foodstore, there have been changes, most notably the decision to allow a foodstore on the Salt Box Field site so the Council's earlier approval of the Section 73 application does not necessarily point in the same direction now.
- 3.6 **Catchment Area** The assessment is based on a 10-minute drive catchment area. This is reasonable and includes most of Bognor Regis but excludes Aldwick, Barnham, most of Yapton and Littlehampton. The plan of the catchment area cuts off the eastern edge of the catchment and it is not clear how far into Chichester it extends. The Salt Box impact assessment used the Arun Retail Study zones (based on local authority wards) but broadly covered the Bognor Regis area including Aldwick.

- 3.7 **Population and Expenditure** (PREBS App 5 Table 1) population of the catchment area is given as 62,841 in 2018 increasing to 66452 in 2024. It is from a recognised and widely used source (Experian). It is lower than the Salt Box RIA figures of about 79,000 in 2018. The difference is largely accounted for by the larger catchment for the Salt Box RIA which includes Aldwick and a larger area in the Westergate / Walberton area. Both population forecasts indicate a growth of about 6% over a period of 6 years. This is broadly in line the figures in the Arun Retail Study.
- 3.8 The expenditure per head figures in the PREBS App 5 tables 2a and 2b) and forecast growth are also from Experian and can be relied on. Tables 3a and 3b show the total estimated expenditure in the catchment area and are simply the product of Tables 1 and 2. The population and expenditure data should be relied upon.
- 3.9 **The Turnover of the Proposed Store** The turnover figure tested is £13.8m convenience goods turnover and £3.5m comparison goods giving a total of £17.3m. Rapleys have assessed the turnover of the proposed store on the proposed floorspace multiplied by the sales density (i.e. turnover/sq m) of the existing store, calculated from the household survey carried out for the Salt Box proposal, with a 20% reduction to allow for greater circulation space. The turnover for the assessment is therefore about £13.8m. This is still a little above the benchmark level (of £13.6m based on company average turnover per sq m). The estimated turnover of the existing store is broadly compatible with the estimate from the Salt Box retail impact assessment. The impact assessment in this respect is, therefore, robust.
- 3.10 This is borne out by the market share analysis in Tables 5 a and b which indicate the proposed store would have a market share of about 10% in the catchment area. The combined market share of the food discounter Aldi and Lidl in the UK is only about 14%, although it has been increasing rapidly in recent years.
- 3.11 **Trade Draw and Trade Diversion** – Rapleys have used their judgement to assign the turnover to individual stores. My preference is for a more structured approach based on survey evidence of trade draw, which allows an objective base assessment which can then be interpreted. The problem with a judgemental approach is that it is only one of many judgemental assessments that could be made and there is little supporting evidence to favour one over any other assessment - provided it is within reason.
- 3.12 The main trade diversions to the Lidl assumed by Rapleys are shown in the table below.

Store	Turnover	Trade Diversion to Lidl	% of proposal turnover
Lidl BR Retail Park	£11.51m	£11.51m	83.27%
Tesco Shripney Rd	£63.05m	£0.56m	4.08%
Sainsbury Shripney Rd	£43.09m	£0.21m	1.52%
B R Town Centre	£29.71m	£0.08m	0.55%
Elsewhere		£0.88m	10.58%

Total		£13.82m	100%
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- 3.13 I agree that most of the trade will divert from the existing Lidl store on the nearby retail park and Rapleys have assumed that all the turnover in the existing Lidl would transfer. The remainder (leaving aside the matter of the Aldi for a minute), would divert from the large Tesco and Sainsbury stores also nearby. The main foodstore in the town centre is Morrisons and this is likely to suffer little trade loss given that a Lidl store is trading at the moment in much the same location. While the exact figures might be questioned, the broad picture must be correct, most of the turnover of the new store would be derived from the existing Lidl (which is to close) and much of the rest will be from the nearby out-of-centre stores. The conclusion on the impact on the town centre is sensitive to the judgements made in this case. Even if the proportion drawn from the town centre was trebled, it would still indicate an impact of under 1%. Only if it was assumed that about £1.4m of the proposal's turnover was drawn from the town centre would this require further examination.
- 3.14 Turning to the cumulative impact with the Aldi at Salt Box Field, Rapleys allows for the trade diversion of some £3.5m from the proposed Lidl to Aldi, representing about 25% of the Lidl's turnover and leaving it with a turnover of about £10m. On this basis it goes on to identify a cumulative impact of about 4% on the town centre, most of which it attributes to the Aldi. The 4% is the impact on the convenience goods sector alone and, taking account of the comparison goods turnover. The impact on the town centre as a whole would be significantly less.
- 3.15 Rapleys have assumed that the proposed Lidl is built first and the Aldi trades at its company average level, but that will not necessarily be so. The reality is that both will be trading alongside each other. The two food discounters will split the market for discount food sales between them and both are likely to underperform. It seems likely that the allowance of 25% that Rapleys have made for intra-proposal impact is an underestimate. If this is so then the impact on the town centre would be lower than forecast. The Council should give much more weight to the combined impact of the two discount foodstores than the impact of the Lidl on its own.
- 3.16 Overall I conclude that although I have reservations about the methodology, it is clear from the location and size of the main foodstores in Bognor Regis that the combined impact of the two proposals would not have a significant adverse impact on the vitality and viability of the town centre.
- 3.17 Given the low level of potential impact there is no need to consider the applicants health assessment of the town centre in any detail. I have been familiar with the town centre over many years and while its vitality and viability should not be taken for granted given existing trends in the retail sector, it has remained surprisingly resilient and there can be no doubt that it would be able to withstand any likely impact on its convenience retail sector as a result of these two proposals.

- 3.18 This is also true of smaller centres of North Bersted, Barnham and Felpham which are already trading alongside major foodstore competition and a Lidl in the Shripney Road location.

4.0 Recommendations

- 4.1 I therefore conclude that the proposed foodstore is very unlikely to have an adverse impact on the vitality and viability of the town centre or any other centre, either on its own or in combination with other permitted development. It is unlikely to adversely affect the investment planned in the town centre. The applicant has demonstrated compliance with the sequential test. There is therefore no reason to refuse the application on retail planning grounds.
- 4.2 The assessment is based on the assumption that the occupier would be a discount food retailer and I recommend a condition to restrict sales predominantly to food. This would best be achieved by limiting the amount of net sales floorspace to 1410 sq m of which no more than 282 sq m should be for the sale of comparison goods (as shown in PREBS App 5 Table 4b).
- 4.3 I do not think there is any need to limit the development to food discount retailers, for instance by limiting the number of items that could be sold. This was common practice when the turnover of the discounters was substantially lower than mainstream food retailers, but as is clear from the figures in the impact assessment, this is no longer the case.
- 4.4 The impact assessment is based on the transfer of the total trade of the existing store to the new one and I have commented on this already. However, if the occupant were not Lidl but another food retailer, or the current Lidl store was re-occupied by another food retailer, the pattern of trade diversion would still be heavily concentrated on the out of centre stores and it is clear that the overall impact on the town centre would still not be significantly adverse. In these circumstances I do not believe a named user condition could be justified.

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