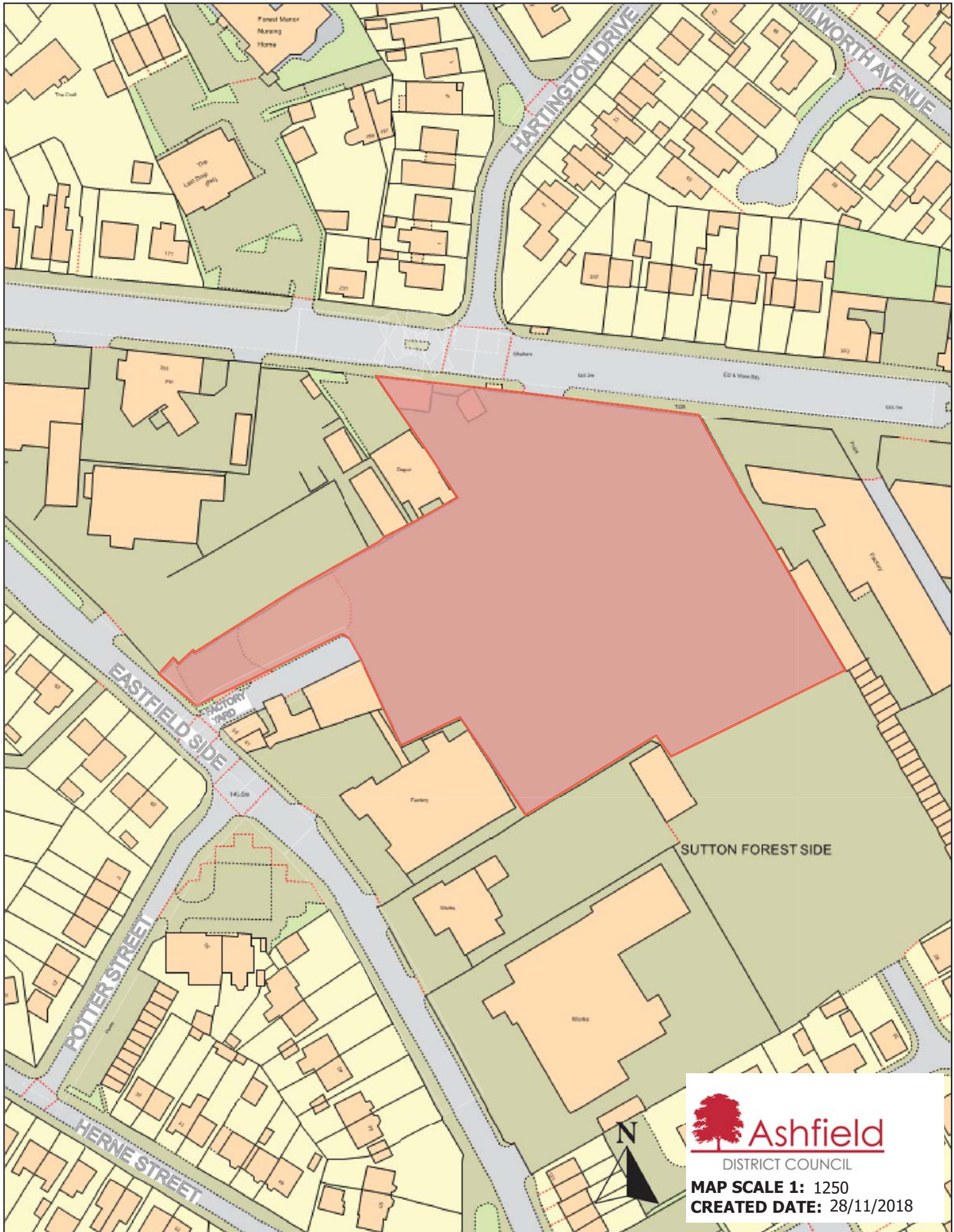


V/2018/0221 Land Off Mansfield Road and Eastfield Side, Sutton In Ashfield



 **Ashfield**
DISTRICT COUNCIL
MAP SCALE 1: 1250
CREATED DATE: 28/11/2018

COMMITTEE DATE 13 December 2018 **WARD** Central and New Cross

APP REF V/2018/0221

APPLICANT Lidl UK GmbH

PROPOSAL Erection of Retail Store with Car Parking and Landscaping

LOCATION Land Off Mansfield Road and Eastfield Side, Sutton in Ashfield Nottinghamshire. NG17 4HR

BACKGROUND PAPERS A; B; C; D; E; F; I; K

WEBLINK <https://www.google.co.uk/maps/@53.1317049,-1.2460504,73m/data=!3m1!1e3>

App Registered 09/04/2018

Expiry Date 23/11/2018

Consideration has been given to the Equalities Act 2010 in processing this application.

This application has been referred to Planning Committee by Councillor L Anderson with concerns over traffic and the impact upon residential amenity and local businesses.

THE SITE & HISTORY

The application site comprises part of the former Courtaulds 'Pretty Polly' Factory site and extends to around 1ha in area. Following closure of this business, an outline application (V/2007/0384) was received to change the use of the site to residential; B1; & B2 uses. This was granted on 4th January 2008, with reserved matters being approved in 2009. This approved scheme has now been built out by Peveril Homes.

A subsequent application V/2012/0297 for the erection of 50 dwellings was granted conditionally 15th November 2013. This application site correlates to the current application site for a retail store.

A small residual area between the initial Peveril Homes site and the current application site has since been approved for a development of 18 dwellings for Peveril Homes, under reference V/2017/0049.

THE APPLICATION

This is an application for Erection of Retail Store with Car Parking and Landscaping. The scheme is essentially a repeat of that considered under reference V/2017/0318 with modifications to design and layout to meet the previous reasons for refusal. The principle changes are:

- A change in the Lidl model building to a non-standard building measuring 59.6m x 34.6m. This is almost 10m shorter than the previous scheme, which measured 69m x 30m.
- The shortening of the building enables the provision of an 8m deep landscaping buffer to be created between the application site and the adjacent Peveril Homes site, to the south. This will supplement the proposed acoustic fencing.
- Changes to the footprint and additional landscaping has however reduced the car parking from 149 spaces in the previous application to 133 spaces for this proposal.

The building footprint is around 2055m², accommodating a sales area of 1309m². The associated car park comprises 118 standard parking bays; 7 disabled bays; 8 parent & child bays and a single motorcycle space.

A scheme of on-site landscaping and boundary treatments has been submitted which includes for the provision of a 3m high close boarded fence along the southern side of the proposed servicing yard, designed to protect the amenity of adjoining residents.

Highway improvements works within Mansfield Road are proposed, as agreed with the Nottinghamshire County Council Highways Authority, to ensure the safe and free flow of traffic along the road and enabling safe access to and egress from the store car park. This would include turning refuges, lane segregation lining and re-location of a bus stop.

ADC Policy

Having regard to Section 38 of the Planning and Compulsory Purchase Act 2004 the main policy considerations are as follows:

Ashfield Local Plan Review 2002 [Saved Policies 2007] (ALPR)

- **EM5** : Protection of Existing Employment sites
- **ST1** : Development
- **ST2** : Main Urban Areas
- **SH5** : Retail development to meet local needs
- **SH8** : Commercial / Retail development.

National Planning Policy Framework 2018 (NPPF)

- **Part 6** : Building a strong, competitive economy

- **Part 7** : Ensuring the vitality of town centres
- **Part 8** : Promoting healthy and safe communities
- **Part 9** : Promoting sustainable transport
- **Part 11** : Making effective use of land
- **Part 12** : Achieving well designed places.

CONSULTATIONS

Site Notices and a Press Notice have been posted, together with significant individual notifications to surrounding residents.

ADC Drainage

No known drainage issues with this site.

ADC Environmental Protection – Air

No objection to the proposals subject to a condition requiring a scheme of dust management to be submitted and approved prior to commencement.

ADC Environmental Protection – Noise

Extensive discussions have been held with the applicant's consultants regarding the Council's initial concerns over the noise impact assessment. Most of the concerns have been resolved, barring the noise assessment for the servicing yard / adjacent dwellings and the intended hours of operation, particularly the 11pm servicing. Since the applicant has now conceded that a restriction of servicing to 7pm will be accepted, the noise assessment is considered acceptable, subject to the stated conditions particularly restricting the servicing hours.

ADC Environmental Protection – Contamination

Under planning reference V/2017/0318, a Phase 1 Desk Study and a Phase 2 Ground Investigation Report was submitted. Based on this, it is now necessary for any future planning permission to be conditioned to require parts 3 and 4 of our full four phase condition to be submitted.

ADC Place & Wellbeing / Landscaping

Public realm improvements are required to Portland Square and Outram Street. Whilst a nominal costing of £600,000 has been quoted for Portland Square, there are no budget costings for Outram Street and no detailed schemes have yet been produced for either project.

The landscaping scheme submitted is reasonable for the site, however, need to query:

- Omission of specimen trees within the car park.
- Maintenance of the grassed zone along the eastern boundary, suggest gravel area or low ground cover would be preferable.
- Boundary treatments details required
- Opportunity to create a more imposing public realm frontage to Mansfield Rd.

ADC Heritage

The application site does not contain or affect the setting of any designated or non-designated heritage assets. Conservation has no further observations to make.

Nottinghamshire County Council - Highways Authority

These proposals have been subject to lengthy consultations with the Highway Authority (HA). The HA has now appraised and considered issues of highway access, capacity and safety, and sustainability and are of the opinion that there are insufficient grounds to contest the application. The HA therefore have no objections, subject to conditions.

Nottinghamshire County Council - Lead Local Flood Authority [LLFA]

The LLFA have no objections to the development, providing a detailed surface water design and management plan are approved by the Council prior to any construction starting on site. The should follow the principals set out within the LLFA response.

Environment Agency

Due to the sites history and potential for contamination the Environment Agency recommend that a planning condition relating to contamination is included in any subsequent grant of permission.

Severn Trent Water Authority

The development shall not be commenced until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority.

OTHER REPRESENTATIONS

Community Responses

58 representations have been received:

44 support the proposal on the grounds that:

- it will improve an eyesore site;
- good for the community;
- cheap produce; provides jobs;
- good access on foot or public transport;
- aid local businesses;
- improve security;
- quality building will uplift the area;
- sell different goods to Outram St therefore no conflict or harm;
- walkable store;
- better than take-aways;
- better amenities in the area;

14 object on the grounds that:

- road too busy already;
- access from drives and road junctions will be a nightmare;
- will worsen already bad situation of traffic build up at A38 junction;
- one store in small town should be enough;
- need bungalows for elderly and affordables,
- no more supermarkets of any sort;
- Sutton Town centre will suffer massively,
- Outram St is already a run down disgrace, this is where money should be spent;
- land is needed for housing;
- conflict with bus stops;
- store rather than houses will downgrade the area

Commercial Responses

Objections have been made to the proposed development on behalf of the Idlewell's Shopping Centre and Asda. Concerns expressed relate to the inadequacy and inaccuracy of the sequential and impact assessments undertaken; failure to recognize the impact on Lidl's existing store which is a town centre location and the potential for this to close; the significant impact upon the town centre and local centre; and the non-compliance with the NPPF and local planning policies.

RELEVANT PLANNING HISTORY

V/2007/0384: Outline application for use of site for residential; B1; & B2 uses - Conditionally Granted 4/1/2008

V/2012/0297: Erection of 50 dwellings - Granted conditionally 15th November 2013

V/2017/0318: Erection of retail store with car parking and landscaping. Refused 8th December 2017.

ASSESSMENT

Having regard to national and local planning policy the main issues are considered to be:

- Whether there would be a sequentially preferable location for the development;
- What impact the development would have the vitality and viability of the town centre and/or local shopping centres;
- Highway Safety;
- Residential amenity;
- Character and Appearance of the area.

Retail Position

Existing development plan policies have to be considered in relation to NPPF paragraph 213, which identifies that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

The application site is not located within the town centre or edge of centre in relation to Sutton in Ashfield town centre as defined by the ALPR. The proposed use is a main town centre use as defined by the NPPF, Appendix 2.

Policy SH1 identifies suitable uses with the town centres as defined on the proposals map with retail development sites being identified in Policy SH2. Policy SH5 on minor shopping centres and single shops identifies that retail development will be permitted to meet local shopping needs where it primarily involves the sale of convenience goods and the net retail floor space is under 500 sq m. This proposal would not meet that requirement.

Policy SH3 was not saved consequently the ALPR is silent on the sequential test. Therefore, the NPPF provisions will apply. The NPPF stresses that town centres are at the heart of the local community (Paragraph 85). The NPPF sets out 2 key tests for applications for town centre uses which are not in the existing town centre, or which are not in accordance with an up to date Local Plan:

1. Sequential Test, and
2. Impact Test.

To place this in context, the protection of high streets and town centres is at the forefront of the current governments agenda. This includes the announcement of a new £675 million Future High Streets Fund, set up to help local areas respond and adapt to changes.

Sequential Test

Paragraph 86 of Part 7 of the 2018 NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. The focus and preference is for town centre sites. The NPPF paragraph 86 identifies that the key sequential test is *“only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered”*. Neither, the NPPF nor the Planning Practice Guidance [PPG] specify what is meant by ‘suitable’ or ‘available’. However, the emphasis under the PPG is that it is for the applicant to demonstrate compliance with the sequential test.

A degree of clarification was however provided by Ouseley J in paragraph 42 of the Aldergate Properties Ltd v Mansfield DC EWHC 2016 judgement, which set out the following:

“A town centre site may be owned by a retailer already, to use itself for retailing, who is not going to make it available to another retailer. It is plainly available for retailing though only to one retailer. That does not mean that another retailer can thus satisfy the sequential test and so go straight to sites outside the town centre. Available cannot mean available to a particular retailer but must mean available for the type of retail use for which permission is sought”.

Two sites have been considered which relate to the previous reasons for refusal, namely northern Bridge Road and Fox Street. Considering Fox Street, the Council concede that, notwithstanding the degree of flexibility demanded by the test in terms of format and scale of the development, the site is too small to accommodate the applicant's requirements.

Regarding Northern Bridge Road however, it is noted that the applicant does not claim the site is unviable, merely unavailable. Lidl has submitted to demonstrate they have made reasonable efforts to acquire the land but that Asda (the vendor) is for commercial reasons, obstructing this. The applicant has also supplied evidence stating they cannot progress this site until and unless a site cost is confirmed.

The Northern Bridge Road site meets the search parameters. The latest correspondence submitted on behalf of Asda, confirms that, in principle, they are willing to dispose of the site. However, no offer has yet been received from Lidl. Lidl's failure to make an offer on this site means the applicant has failed to fully explore the availability of a locationally preferable site. It cannot therefore be reasonably concluded that the site is unavailable.

In light of the above, it can only be concluded that the applicant has failed the sequential test. In this regard NPPF paragraph 90 identifies that, *‘where an application fails to satisfy the sequential test ... it should be refused’.*

Impact Test

The NPPF at paragraph 89 requires that an impact test should be undertaken if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floorspace). This should include assessment of:

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

The impact test should identify that the development does not have a significant adverse impact on the town centre. The proposed Lidl development would sit below the floor space threshold set out within the NPPF.

In terms of the ALPR (2002) Policy SH5 sets out that retail development to meet local shopping needs will be permitted where it primarily involves the sale of convenience goods and net retail floorspace is under 500 square metres.

The proposal is located within walking distance of Outram Street Local Shopping Centre and within close proximity to Sutton Town Centre, which includes a Lidl store. It is of significant concern that the proposal could have an adverse effect on local businesses and the health of the town centre. The applicant has submitted an impact test and below are the Councils observations:

State of Existing Town Centres

The information submitted by the applicant examines the health of two centres within the catchment area; Sutton-in-Ashfield Town Centre and Outram Street Local Centre. The broad picture based on an assessment of vacancy rates, Sutton (8.5%) is performing slightly better than the UK average (11.2%), whilst Outram Street (25.25) is performing significantly worse. Evidence submitted in the Ashfield Retail Study (2016) also indicates that Outram Street Local Shopping Centre is performing poorly.

Trade Draw

The applicant supporting information compares the goods to be sold from the Lidl store, to the range of other stores and centres in the catchment area stating that if the Council were to grant planning permission, they would be doing so for a store selling 80% convenience goods and 20% comparison goods. Whilst acknowledging the range of goods usually sold from a Lidl store, any grant of planning permission to Lidl would not be a personal permission, and Lidl would not be restricted to specific items within the convenience and comparison goods sectors. Further, their retail statement confirms that the 265 sq m net of comparison goods sales are usually not re-stocked, meaning that there is a constant turnover of new items, and the exact nature of the comparison goods sold is unpredictable.

We can agree with the applicant that the 'like-affects-like' principle should guide their trade diversion assessment, but we disagree with the extent to which they seek to define the divide between the proposed Lidl store and the range of existing retailers. For instance, their report states:

- At 6.15 – *“The frozen food and specialist shops will not compete with Lidl on a like-for-like basis because Lidl has a different role and product offer”* - Lidl will and do sell frozen food;
- At 6.19 – *“Owing to the nature of the products and the limited sale opportunity, the sale of these items [comparison goods] will have very little impact on the town centre comparison retailers”* - This is not correct, as Lidl could sell any item of comparison goods on an occasional basis, and it is their specific business model to do so.
- At 6.34 – *“Lidl’s limited non-food offer is unlikely to draw trade from the independent shops within Outram Street”* – This cannot be certain due to the Lidl trading model.

It is also noted that the application offers little in terms of assessment of the impact of comparison goods. Outram Street Local Centre, in particular, could be susceptible to a diversion of comparison goods trade and it is important to model this aspect in order to present an impact figure for the centres as a whole, as well as on a goods basis. Outram Street has established businesses, some with over 50 years’ experience, trading in whitegoods, small appliances, spares, flowers, petfoods, bedding, fishing tackle, prams pushchairs and associated products.

Considering the above, the applicant would have been asked to revise their cumulative convenience goods trade diversion assessment and to produce a cumulative comparison goods trade diversion. However, the agent has confirmed in their email 29th October 2018 that the communication was *“...their final position on all outstanding matters”* and that they, *“.... request again that the application be considered by the Committee in November.”* In the absence of this information therefore, it cannot be concluded that the proposal would not have any significant adverse impacts.

Accordingly, there are concerns the proposal could impact upon recent public investment within the town centre and the Councils aspiration for place making. The NPPF (para 89) requires the retail impact test to take into account any existing, planned and committed public and private sector investment. In terms of existing investment, this includes - over the past five years’ - projects at the Idlewells Centre, Market Square public realm initiatives and shop frontage enhancement schemes - seeking to drive further investment through environmental and physical improvements to boost confidence in and attraction to those retailing zones. There have been substantial improvements made and it is also expected the Council will be actively seeking further funding through the Future High Street Fund.

In view of the above, it must be concluded therefore that neither the sequential test, nor the impact test, has been passed and that the proposals as currently presented are unacceptable on retail policy grounds [NPPF, Paragraph 90] and should be refused.

Highway Safety & Traffic Implications

The Highway Authority has considered the issues of highway access, capacity, safety, and sustainability and are of the opinion that there are insufficient grounds to contest the application. Taking all the information submitted to this application into consideration, the Highway Authority request that the conditions and informatives, as advised, be appended to any grant of permission.

Residential Amenity

The applicant stipulates that the store will be consistent with the road level which necessitates that the floor level of the store is raised by 0.70m above the site level. With the general slope of the land, the southern extent of the store building will be lifted 1.84m above current ground levels, necessitating a considerable retaining wall and acoustic fencing to be erected close to the boundary with the new housing, segregated by an 8m wide landscaping belt.

The nearest residential dwellings are found to the south of the site (PP ref: V/2017/0049). The submitted drawings indicate the new store would sit approximately 2m higher than these properties. Since the submission of the previous application the layout has been altered, moving the building farther away from the dwellings, with the inclusion of a landscaping belt. The dwellings to south are orientated with gable walls facing onto the site, with a separation distance of approx. 10m to the nearest garden area. The overall height of the building at this point, intervening separation distance, boundary treatment and landscaping would mean the development would not appear as unduly oppressive from the neighbouring dwellings or garden areas, nor would there be a significant degree of overshadowing.

The previous application was refused on the basis of the potential for noises, disturbance and pollution due to the proximity of a servicing road. The applicant has submitted a Noise Impact Assessment and Air Quality Assessment. The Councils Environmental Health Team have been in close contact with the applicant and considered these to be acceptable, subject to conditions, particularly the restriction of servicing hours to 7pm to limit the potential for noise disturbances. These conditions, coupled with the changes to the layout, landscaping bund and acoustic fencing are considered sufficient to protect the amenity of neighbouring residents.

Character and Appearance

The previous application was refused for, amongst other things, a potential impact on the visual amenity of the area. The site is the former factory and is currently derelict. The wider street scene contains a variety uses and building styles, with no particularly prevailing design or type. As a result, the contemporary design of the

building, with a long rectangular shape, monopitch roof and modern materials would appear as an acceptable juxtaposition to the surrounding buildings.

The previous application raised concerns surrounding the building coming forward of the building line, however the building line along Mansfield Road features a degree of variety; including buildings to the east sitting flush with the pavement, whereas buildings to the west being set back. The proposed building has been amended from the original application and sits an angle with Mansfield Road. Areas of landscaping are to be formed around the entrance and side of the building, which soften the impact within the street scape. Overall, the proposal would raise no concerns surrounding an adverse impact of the character and appearance of the area.

Other Issues

Section 106 Contributions

The Council has requested that the applicant provides S106 contributions towards Public realm improvements at Portland Square and shop front improvements on Outram Street. Lidl have presently offered £100,000, whereas the improvements to Portland Square will amount to £600,000 and a shop front grant is normally £10,000 at 50% of cost. The figure provided is significantly below what would amount to a meaningful contribution to the two schemes - to offset any impact the proposal would have on these areas.

Planning Balance and Conclusion

As outlined above, it is considered the proposal would not harm the amenities of nearby residents, the character and appearance of the area, or highways safety

In terms of benefits, the applicant has stated the proposal would bring investment into the area and result in the creation of around 40 jobs. Although it is unclear the nature of the roles and whether these would be part or full time. The submitted application form states that 40 full time roles would be provided, however this number seems unusually high. Nonetheless, these new roles would potentially bring economic benefit through increased expenditure within the local economy. Further benefit would be provided through the applicants offer of £100,000 to make improvements to the Town Centre and Outram Street.

The proposal would also redevelop a presently vacant brownfield site thereby enhancing the street scene. Although given the sites history and potential for redevelopment for housing, these environmental improvements could potentially be achieved through alternate means.

In terms of the adverse impacts, the proposal is considered to fail both the sequential and retail impact tests. As a result, there would potentially be a significant adverse impact upon the vitality and viability of Sutton in Ashfield Town Centre and Outram

Street Local Shopping Centre. In accordance with Part 7 of the NPPF decisions should support the role town centres play at the heart of local communities. This proposal would run contrary to that objective.

Overall, it is considered, the proposed benefits and all other considerations do not outweigh the potential harm to the town and local shopping centre. Planning permission should therefore be refused.

RECOMMENDATION: REFUSE

REASONS

- 1. The Council considers that the applicant has failed the sequential test, as they failed to demonstrate there are no other available or suitable sites in a town centre, or edge of centre location. The proposal is also likely to draw trade from Sutton Town Centre and/or The Local Shopping Centre of Outram Street, potentially adversely affecting local business. The proposal is therefore considered to be harmful to the vitality and viability of Sutton Town Centre and Outram Street Local Shopping Centre and would be contrary to Part 7 of the National Planning Policy Framework and Policy SH5 of the Ashfield District Councils Local Plan Review 2002.**