

Urgent Update Report 16/503863/FULL

Construction of a Class A1 Retail Foodstore and associated servicing, parking, landscaping and access arrangements | Plot 9 Eclipse Park Sittingbourne Road North Maidstone Kent

1. Further Representations

Following publication of the Committee Report, Cllr Harwood has made the following comments:

- 1.1 In relation to TPO No. 32 of 2008 (tree group G1) the loss of twelve trees in the foreground of the AONB and in such close proximity to the M20 will have a locally significant negative impact upon landscape, biodiversity and air quality. I therefore suggest that the proposed new trees should be similarly protected by TPO to ensure continuity. Indeed, the loss of TPO trees without a replacement designation within such a sensitive location would establish an unacceptable precedent and fail to guarantee continuity of tree cover.
- 1.2 The TPO tree group currently supports a far greater biodiversity and biomass than will ever be accumulated by the new far more formal planting, which will be subject to disturbance, light pollution and surrounded by hard-standing. Further, the proximity of the protected tree group to ancient woodland means that this biodiversity interest is amplified. As some compensation for the loss of this resource it is absolutely vital that the cord wood is retained locally to provide cover and habitat for saproxylic organisms. Because of the intensive nature of this application the resultant woodpiles will presumably need to be stacked within the adjacent Highways England verge / landscaping compound. Alternatively, the cord wood could perhaps be moved into the nearby MBC owned nature conservation area in Shaw Close.
- 1.3 The proposed revised landscaping scheme indicates Himalayan Birch (*Betula utilis*) adjacent to the pond on the landscaped island between the car park and the adjacent hotel permission land. This non-native species is an incongruous addition and should be substituted for the native Silver Birch (*Betula pendula*).
- 1.4 As a post-script, do we now have any greater detail on the design and siting of the solar photovoltaic panels? I would certainly wish to see more detail of this element of the scheme before I make any decision on this application.
- 1.5 The applicants have responded as follows:
 - The new trees in the carpark can be subject to a TPO
 - Cord wood / woodpiles will be positioned on the motorway embankment and indeed on the nature conservation area in Shaw Close
 - The substitution of the tree species he has requested

- we are happy to accommodate Cllr Harwoods preferred location for the pv (subject to design check) or accept a condition to cover location farther down the line.
- In addition we inadvertently indicated the birch alongside the pond would be *Betula utilis*. I would confirm this is an error on our part and these trees should be the native *Betula pendula*.

1.6 Officer Comment

Cllr Harwood's comments are not contentious and are covered by the proposed landscaping reserved matter (condition 5) and the renewable energy generation reserved matter (condition 13). The Landscape officer has confirmed that any replacement trees can be subject to a TPO, but it is not possible to impose such control at this stage.

2. Need to consult Secretary of State

- 2.1 The Committee is recommended to approve subject to referral to the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009
- 2.2 Article 9 of this Direction, made under s77 of the Town and Country Planning Act 1990 and Article 10 of the General Development Procedure Order 1995 requires the local planning authority to consult the Secretary of State, if it is minded to refuse planning permission for a type of development to which the Direction applies. The Secretary of State can then decide whether to issue a direction for example, calling it in for his own decision.
- 2.3 One type of development to which the Direction applies is "development outside town centres", defined by Article 5 of the Direction as follows:

"(1) For the purposes of this direction, "development outside town centres" means development which consists of or includes retail, leisure or office use, and which –"

(a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and

(b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and

(c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:

(i) 5,000 square metres or more; or

(ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.

(2) In calculating the area of existing floor space for the purposes of development referred to in paragraph 5(1)(c)(ii) this shall include retail, leisure or office floor space situated within a 1 kilometre radius of any part of the same type of use to be comprised in the proposed development...."

- 2.4 I have assessed the proposed against the above provisions in turn.

- 2.4.1 The proposed Waitrose is considered to be in an out-of-town location.
- 2.4.2 The proposed Waitrose is not considered to be in accordance with the development plan.
- 2.4.3 The Current application proposes 3,901 m2 of retail and ancillary floorspace. While this is under the threshold of 5,000 m2 provided in 5.(1) (c) (i) above, when combined with the nearby Next retail development in Eclipse Park, which was similarly not in accordance with the development plan has 5,748 m2 floorspace. When combined, the total retail floorspace of the two retail developments would be 9849m2. This is well over the 5,000 m2 threshold set in the above regulation.
- 2.5 As a consequence of the above analysis, it is considered that the Town and Country Planning (Consultation) (England) Direction 2009 applies to this proposal and that in order to accord with its provisions, the Secretary of State should be consulted if the Committee agree to grant planning permission.
- 2.6 It is recommended that the recommendation is altered to read as follows:
DELEGATED POWERS be given to the Head of Planning and Development TO GRANT PERMISSION, subject to referral to the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009 and subject to the imposition of the conditions as set out below:

3. Amendments to the report:

- 3.1 In paragraph 5.07 – remove “*suggested conditions on hours of construction*”; Add “*On air quality, given the acceptance by the highways authority that the proposal would not have a detrimental effect upon local traffic conditions, it is considered that there is unlikely to be a detrimental impact upon air quality, and an assessment of impact is not considered to be required.*”
- 3.2 In paragraph 7.37 alter the last sentence to remove the following “*and would be the subject of a planning condition*”.

4. Amendments to conditions:

4.1 Condition 5 Landscaping

- 5 i) (P38) change ‘*where appropriate*’ to ‘*in all cases*’
- 5 j) remove square brackets.
- add l) ‘*tree trench detail*’

4.2 Condition 22 Bus Stops

Add to the end of the first line of condition 22. “*and shall include westbound and east bound bus stops, including passenger waiting areas and realtime information systems, on Bearsted Road, and provision for a bus stop within Eclipse Park.*”

4.3 Additional condition 23:

“Materials proposed to be used for the ‘prow’ feature shall be submitted to and approved in writing by the Local Planning Authority. The resulting development shall be implemented in accordance with those approved details prior to first occupation of the building.

Reason: to ensure a satisfactory external appearance.”

5. THE RECOMMENDATION IS CHANGED TO:

5.1 RECOMMENDATION

SUBJECT TO the prior completion of a legal agreement, in such terms as the Head of Legal Services may advise, to provide the following:

- a financial contribution of £60,000 to assess the opportunities for improving town centre public transport links to the site
- the provision of a Travel Plan, to include costs associated with the monitoring thereof
- securing the mitigation of any adverse impact that may occur on the Mid Kent Shopping Centre in Allington should the existing Waitrose store at the Mid Kent Shopping Centre close.

DELEGATED POWERS be given to the Head of Planning and Development TO GRANT PERMISSION, subject to referral to the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009 and subject to the imposition of the conditions as set out below:

5.2 Include the amendments to conditions in section 3 above.