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Town Hall
Trinity Road
Bootle
L20 7AE

Date: 11 December 2024
Our Ref:
Your Ref:

Contact: Ian Barton
Contact Number: 0151 934 2788
e-mail: ian.barton@sefton.gov.uk

Dear Councillor

PLANNING COMMITTEE - WEDNESDAY 11TH DECEMBER, 2024

I refer to the agenda for the above meeting and now enclose the following report which was unavailable when the agenda was published.

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Yours faithfully,

A handwritten signature in black ink, appearing to be "Ian Barton".

Democratic Services

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11 New York Street
Manchester
M2 2AW

T: +44 (0)161 228 1001

avisonyoung.co.uk



Our Ref: 04C400065

Your Ref: DC/2024/01492

10th December 2024

Liz Beard
Planning Services (Development Management)
Sefton Council
Magdalen House
30 Trinity Road
Bootle
L20 3NJ

Dear Liz

Planning Application Ref. DC/2024/01492
Erection of Foodstore (Use Class E) and Associated Site Works
Land at Pendle Drive, Litherland, L21 0JH
Response to Representations of Objection (Tesco Stores Ltd)

Introduction

I write on behalf of my client Aldi Stores Limited ('Aldi') in regard to planning application reference DC/2024/01492 which was validated by Sefton Council ('the Council') on 23rd August 2024. The application seeks full planning permission for the erection of a discount foodstore and associated site works. The scheme is proposed on redundant land at the junction of Pendle Drive and Gorsey Lane (B5422) in the Litherland area of Sefton (hereafter referred to as 'the application site'). The site is approximately 1km east of Netherton local centre (as the crow flies).

Following receipt of a commercial objection on behalf of Tesco Stores Ltd ('Tesco') by Martin Robeson Planning Practice ('MRPP') dated 10th December 2024 we wish to take this opportunity to offer our views on some of the comments made and provide a response where we feel this is necessary. This response should be read in conjunction with the applicant's Planning and Retail Statement ('PRS'), which was prepared on behalf of Aldi by Avison Young in August 2024. It should also be read in conjunction with the independent retail planning appraisal of the scheme which was undertaken by LSH on behalf of Sefton Council in September 2024.

Context to Tesco Objection

We note that the foodstore Tesco claim will be affected by the application proposals is their 6,540sqm superstore on Hawthorne Road, Litherland. This is an 'out-of-centre' foodstore which is three times the size of Aldi's proposal and is located some 2km south-west of the planning application site. Set against this context, it is very difficult to imagine a situation whereby the

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proposed discount foodstore would affect the long-term viability of Tesco's existing, much larger asset in Litherland which, in any case, benefits from no town centre policy protection whatsoever.

Also of relevance is the fact that Tesco has chosen to submit a lengthily objection following publication of the Officer Report and within 24 hours or so of the scheduled planning committee meeting. With this planning application having been in the system since August 2024, there can be no credible justification for Tesco's consultant making detailed representations at this very late stage in the process. The reality is that this is a common tactic which seeks purely to stifle the democratic decision making process by attempting to undermine the contents of the thorough Officer Report ('OR').

Accordingly, Tesco's representations and its timing bears all the hallmarks of a purely commercial objection by a major retailer which evidently has a vested interest in maintaining the status-quo of foodstore provision in the Litherland area in order to safeguard market-share. This context should be emphasised to members at Planning Committee so that they can take an informed view of the weight that should be afforded to the late representations received by Tesco in relation to this planning application. It is noted that no other retailer has objected to this scheme and that no public objections have been received.

Loss of Housing Land

Based on the current decision taking framework that this planning application must be assessed against, it is evident that Sefton has an extremely healthy housing land supply position. The Council's latest (July 2024) Strategic Housing Land Availability Assessment ('SHLAA') reports a very favourable five-year housing land supply for Sefton of 8.7 years (equating to 2,130+ units more than targeted over the coming five years). The planning application proposals would result in a maximum loss of 29 of these units (or 1.4% of the surplus), albeit in reality this number could be even less as the foodstore scheme does not use all of the allocated land and 0.5ha would remain (equating to one third of the allocation).

Notwithstanding this, even on the basis of all 29 units being lost from the very substantial five-year housing land supply surplus, Sefton's planning policy team are entirely justified in concluding that *"the Council have sufficient flexibility in its housing supply that the loss of a site for 29 homes would be marginal"* (our emphasis). This consultee response is reflected appropriately in the OR and the logical conclusion is reached that there would be no conflict with Policy MN1. The planning balance section of the OR is also justified in emphasising that *"there have not been any applications submitted to develop the site for housing and it is not considered the loss of a potential housing site is critical to the Council's housing land supply"* (Paragraph 11.1). There is no evidence running contrary to this conclusion based on the information presently before the Council.

In contrast to the above robust position, MRPP on behalf of Tesco appear to be suggesting that the LPA should ignore the current decision taking framework and instead give substantial weight to consultation materials associated with the Government's July 2024 proposed reforms to the NPPF and other changes to the planning system. It is entirely misleading to suggest that these consultation materials should be afforded any weight and that *"Sefton's reported critical five-year housing supply existing as recently as July 2024 (Sefton SHLAA) no longer exists"*. The reality is that until the Government formally publishes a revised method of calculating housing need and LPAs

are instructed to use this, Sefton are duty bound to follow their current housing supply calculations and to interpret policy entirely on this basis – which is exactly what the OR does.

MRPP are also wrong to suggest that the NPPF requires applications seeking to release housing allocations to be dealt with through the Local Plan review process only, and that where a Local Plan review is not underway planning applications should await that process of re-assessment. This is clearly incorrect, with Paragraph 126 of the NPPF stating that planning policies and decisions need to reflect changes in the demand for land. This paragraph also explains that prior to updating the plan, applications for alternative uses on land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area. In this instance, the scheme will assist in meeting bulk food shopping needs and enhancing consumer choice in the Litherland area on a currently redundant site, and this is recognised at in both AY's PRS and at Paragraph 5.7 of the LSH Retail Planning Appraisal of the scheme.

In conclusion, based on the current decision taking framework that this planning application must be assessed against, the scheme would result in the loss of just 1.4% of Sefton's very considerable five-year housing land supply surplus of over 2,130 units. The OR is therefore entirely robust in concluding that the loss of this site would have negligible implications for the Council's overall housing land supply position and, in any case, (as the OR highlights) there is no evidence to suggest that homes would otherwise be built – with no applications coming forward in the seven or so years following the site's allocation.

Retail Impact

MRPP's concern with the applicant's submitted Retail Impact Assessment ('RIA') is not entirely clear. Put simply, they appear to be stating that the calculated cumulative quantitative impact on Netherton Local Centre of -5.2% needs to be considered in the context of the relative health of the centre (i.e. its 'vitality and viability').

In response, this is precisely what Section 7 of our Planning and Retail Statement has done. At Paragraphs 7.56 to 7.70 a detailed health check assessment is presented which finds that the centre's vacancy rate (at just 6.5%) is well below the national average (14.1%). The centre was found to be well used, with good accessibility and high levels of pedestrian movement throughout. It benefits from a number of national multiples for its size and the precinct is well-managed and under a single ownership. The fact that it provides a number of community buildings, including a health centre, well-being centre, family centre and doctor's surgery means that its offer is not limited to solely retail and commercial premises.

Overall, our conclusion was that Netherton is very much a 'vital and viable' local centre, with a popular, diverse offer, well below-average vacancy rate, and is regularly used by the catchment population. The Retail Planning Appraisal prepared by LSH on behalf of Sefton Council broadly concurred with AY's assessment (see Para 4.51) and confirmed that the level of trade diversion from the centre based on their own sensitivity RIA would not equate to a 'significant adverse' impact (Paragraph 4.52).

In contrast to the above position, MRPP present no contrary evidence in relation to either the 'vitality and viability' of Netherton Local Centre or the trading effects of Aldi's proposal. Their criticism of the applicant's retail impact justification is without merit and the conclusions reached

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in the OR that the scheme does not conflict with Local Plan Policy ED2 in respect of retail impact or the requirements of the NPPF are robust.

Sequential Test

MRPP erroneously suggest that AY's sequential assessment has been inappropriately limited by a five-minute drivetime isochrone and seemingly that no other factors have been considered when defining a catchment area. This is misleading and a review of our submitted PRS conclusively demonstrates that this is not the case.

Paragraph 6.9 explains that it is not uncommon for a five-minute off-peak drive-time distance to be used as the 'starting point' for analysis when it comes to identifying alternative sites for a foodstore of the scale proposed within an urban area. This is because such a distance is generally reflective of a discount foodstore's core sphere of influence in a densely populated area, particularly where there is already a wide-ranging and mature convenience goods offer. However, the paragraph is also clear that other factors might justify the expansion or contraction of this area of search depending on the circumstances.

In this case, the population density within a five-minute drive time (27,692 people) is broadly double the minimum catchment population requirement for a foodstore of the scale and form proposed, based on the target of 15,000 people that such stores (whether Aldi or Lidl) would typically serve. This therefore confirms that a five-minute drive-time is, in this instance, more than sufficient in terms of accounting for the proposed foodstore's future sphere of influence.

Paragraph 6.13 of our report also confirms that the spatial distribution of existing foodstores within the surrounding area (and further-a-field) strongly suggests that a discount foodstore on the planning application site will have a relatively localised catchment area and not one which extends beyond five-minutes. This is in light of the fact that the Asda superstore at Aintree, M&S Foodhall at Aintree Racecourse Retail Park, Aldi and Iceland stores within Netherton, Tesco and Lidl at Litherland, and the Sainsbury's at Crosby district centre are all located in the surrounding area and have overlapping catchment areas. This will inevitably act to limit the sphere of influence of a new entrant into the local convenience retail market such as Aldi.

In light of the evidence we have presented, it is logical to conclude that the proposed foodstore would principally serve needs that arise within a relatively localised catchment area and that this would not extend beyond a five-minute off-peak drive-time. We note that LSH also reached the same conclusion as part of their independent appraisal of our sequential assessment, also citing the fact that Crosby district centre, Waterloo district centre, and Old Roan local centre are all located substantially further away from the application site than Netherton.

Drawing the above together, for the reasons outlined, it is clear that the applicant's area of search for the sequential assessment is based on robust evidence and this has been endorsed by an independent retail consultant acting on the Local Planning Authority's behalf. MRPP have not presented any evidence which justifies a contrary approach and have not identified any further sequential sites which require assessment. Accordingly, it is evident that compliance has been robustly demonstrated with the sequential approach to site selection as identified by Local Policy ED2 and by NPPF Paragraphs 91 and 92.



Transportation Matters

The criticisms made by MRPP in relation to the OR's approach to the assessment of highways matters is flawed in our view and misses a fundamental point. Members are being asked (via the officer recommendation) to grant the Chief Planning Officer delegated authority to finalise negotiations in relation to highways matters, in light of the fact that there is no overriding objection from the Local Highways Authority and that remaining matters can be dealt with through focussed negotiations on specific highway mitigation measures, the agreement of conditions, and the entering into of a legal obligation.

It is not the case that members are being asked to make a final decision on the planning application without all highways matters being resolved and with officers afforded no authority to ensure this. Indeed, presumably if officers were not able to conclude negotiations on necessary mitigation via delegated powers, or they were not satisfied with the outcome of these discussions, then the application would be brought back to Planning Committee on this point (potentially with a different recommendation).

Conclusion

I trust this response is of use in coming to your decision on this planning application. Please could you let me know as soon as possible if you require any further information in relation to any remaining planning matters, or clarification on any of these points and I shall be pleased to assist further. I look forward to hearing from you.

Yours sincerely,

Dan Brown

Director

dan.brown@avisonyoung.com

For and on behalf of Avison Young (UK) Limited

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