

**Application No:** Y17/1377/SH

**Location of Site:** Kengate Industrial Estate, 142 Dymchurch Road, Hythe, Kent, CT21 6LU

**Development:** Erection of a new 1800sqm retail store with associated construction operations; car parking; servicing; landscaping; and new vehicular access, following removal of the existing buildings comprising of retail, industrial and commercial units of varying sizes.

**Applicant:** ALDI Stores Ltd

**Agent:** Mr Samuel Elliott  
Planning Potential Ltd  
Magdalen House  
148 Tooley Street  
London  
SE1 2TU

**Date Valid:** 25.10.17

**Expiry Date:** 24.01.18

**PEA Date:** 03.08.18

**Date of Committee:** 31.07.18

**Officer Contact:** Louise Daniels

## **SUMMARY**

This report considers whether planning permission should be granted for a new retail store on an allocated employment site in the Shepway District Local Plan Review 2006. The report recommends that planning permission be granted as although a departure from the adopted local plan in principle, the proposed mitigation, in the form of a financial package to assist in the refurbishment of businesses premises within the district is an acceptable alternative to off-set the impact of the loss of employment space. Highway improvements are also proposed together with off-site contributions to ensure the supermarket would not have a negative impact on the highway network. The materials proposed would reference the neighbouring properties and its low height would not be overly dominant in the street scene or have a detrimental impact upon the adjacent Schedule Monument. Neighbouring amenities can be safeguarded to an acceptable level by condition, whilst the proposal has demonstrated it meets sequential test requirements.

<p><b>RECOMMENDATION:</b> That planning permission be granted subject to the completion of a section 106 legal agreement that secures the financial contributions detailed within this report and the conditions outlined at the end of the report and that delegated authority be given to the Development Management Manager to agree the legal agreement, the wording of the conditions any additional conditions which she considers to be necessary.</p>
---

**1.0 THE PROPOSAL**

- 1.1 This application is for the erection of a new 1800sqm retail store with associated construction operations; car parking, servicing, landscaping and new vehicular access following removal of the existing buildings. The submitted Planning Statement states that the intention is to relocate the existing Aldi store within Hythe to a “larger site that can accommodate Aldi’s modern operational and logistical requirements”. The application site is an existing industrial estate, Kengate Industrial Estate, which is occupied by a number of small independent businesses within three buildings comprising of retail, industrial and commercial units of varying sizes.
- 1.2 The building would be low rise with a maximum height of 7.8m with a monopitch roof with Anthracite Grey roof tiles. The pedestrian entrance into the proposed building would be from the elevation facing Longbridge Terrace (north east facing elevation) and would have white render, metallic silver cladding, red brick piers and powder coated aluminium windows. The elevation facing the A259 (south east facing elevation) would have white render, grey cladding and full height glazing. The white render would wrap around from the front elevation to the south west facing elevation, facing the customer car park. There would also be silver cladding and Anthracite grey cladding which would wrap around to the rear of the building, facing the Royal Military Canal (north west elevation). Curtain wall lighting is proposed to the shop frontage.
- 1.3 The existing tree lined frontage to the A259 would be retained with the exception of one tree to make way for the new entrance, although this tree is on highway land and not within the control of the site. A landscape buffer is proposed to the north west boundary of the site. A red brick boundary wall, to match the red brick pillars on the north east elevation, is proposed to the north east boundary of the site and would wrap around to the front of the site breaking for the pedestrian and vehicle entrances. A timber knee rail is proposed to the south west boundary of the site and would wrap around to the front to meet the vehicle entrance.
- 1.4 The scheme would provide 112 customer car parking spaces, 7 of which would be disabled parking bays and 11 parent and child spaces. In addition, 6 customer motor-cycle parking spaces, 2 active electric vehicle car parking bays, 2 mobility scooter parking spaces and 8 cycle spaces are also proposed. An additional 10 car parking and 2 motor-cycle spaces for staff would also be provided on site. Lighting columns will be placed around the perimeter of the car park.
- 1.5 A new access would be provided into the application site from Dymchurch Road, with the entrance proposed to the middle of the site. The highway infrastructure would be amended to widen the road to incorporate a new priority junction into the site with a ghost island right turn lane with running lines and a 3 metre wide right hand turn lane. The grass area would be extended towards Dymchurch Road in places and a new pedestrian crossing with an island would be provided to the south west. As part of the highway improvements required, the existing bus stop would be relocated

and replaced. There is an existing access to businesses (Jewson Ltd to the north of the site and an existing access to David Ian Furniture to the south of the site), these will remain, with slight modifications to the junctions with Dymchurch Road to suit the new road layout proposed.

- 1.6 The application is accompanied by a Factual and Interpretive Report, Design and Access Statement, Transport Assessment, Gas Assessment Report, Planning, Economic and Retail Statement, Statement of Community Involvement, Travel Plan, Arboricultural Assessment and Method Statement, Noise Assessment Report, Flood Risk Assessment and Outline Drainage Strategy, Preliminary Ecological Appraisal, External Lighting Assessment, Bat Emergence Survey and Sustainability Statement. Amendments have been made to the design of the building during the application process to address the concerns of the Design and Landscape Officer.

## **2.0 SITE DESIGNATIONS**

- 2.1 The following apply to the site:

- Inside settlement boundary
- Employment site (allocated under policy E1)
- Adjacent to a Scheduled Monument (SM) - Royal Military Canal
- Major Employment Site within a Priority Centre for Activity
- Flood zones 2 and 3

## **3.0 LOCATION AND DESCRIPTION OF SITE**

- 3.1 The application site is Kengate Industrial Estate which is occupied by a number of small independent businesses within three buildings. The site together with the Pennypot Industrial Estate to the south-west of the application site is defined as an Employment Site in the adopted Shepway District Local Plan Review 2006. The Hythe urban area is supported by four small industrial estates: Range Road, Pennypot, Kengate; and to a much lesser extent the Riverside Industrial Estate at West Hythe.
- 3.2 The site is flanked by residential terraced properties to the north and south of the site. Longbridge Terrace to the north is of facing brickwork with hipped roofs, and Prince Terrace is to the south and is of pebble dash with hipped roofs. To the north of the site is a unit occupied by Jewson Ltd, and to the east of the site is a building occupied by David Ian Furniture. The site is approximately 70m south-east of the Royal Military Canal (RMC) a Scheduled Monument (SM). The area of land to the west, between the application site and the RMC is overgrown, however there are glimpses of the existing buildings through the trees from the public footpath to the south of the canal and bridleway to the north.
- 3.3 The site has been functioning as an employment site for over thirty years and the three buildings are divided into A1, B1 and Sui Generis Use Classes of varying sizes. The existing three buildings on the application site are in a

poor condition and have an industrial appearance. The site has developed over time in a haphazard and piece-meal fashion. At the time this application was submitted, the Kengate Industrial Estate supported approximately 20-25 jobs across 15 or so businesses. During the course of the application, the site has ceased as an active employment site with some businesses able to relocate to alternative premises within the district but with some other businesses closing.

#### **4.0 RELEVANT PLANNING HISTORY**

- 4.1 A lawful development certificate was approved under reference Y15/1040/SH for existing lawful use of Unit 4 at Kengate Industrial Estate for Retail Use (Class A1). A lawful development certificate was also approved under reference Y15/1039/SH for existing lawful use of Units 3, 5, 6 & 16 at Kengate Industrial Estate for Retail Use (Class A1).

#### **5.0 CONSULTATION RESPONSES**

- 5.1 Consultation responses are available in full on the planning file on the Council's website:

<https://searchplanapps.shepway.gov.uk/online-applications/>

Responses are summarised below.

5.2 Hythe Town Council

Object on grounds of issues with access and egress:

- Absence of a report from Kent Highways
- Need for the installation of a set of traffic lights to permit safer and easier access and egress
- No indication as to the siting of the bus stop on the North side of the A259.
- Concerns regarding the safety of the bus stop on the South side of the A259 (opposite the site).

5.3 Highways England

No objection on the basis that the proposed retail development will not lead to any unacceptable impacts on the safety, reliability and/or operational efficiency of the Strategic Road Network.

5.4 KCC Highways and Transportation

No objection subject to planning conditions safeguarding a Construction Management Plan, vehicle parking spaces, vehicle loading/unloading and turning facilities, cycle parking facilities, visibility splays, new access provided before store is opened, deliveries to be accompanied by a suitably qualified banksman, upgrading of Hythe bound bus shelter.

5.5 KCC Archaeology

No objection and no archaeological measures are required. Based on current information contained within the Kent Historic Environment Record it

would appear that there have been very few past archaeological discoveries within the immediate vicinity of the proposed development site. Furthermore, the site itself will likely have been disturbed as a result of past building works, having been initially developed as the Metropole Steam Laundry and more recently with the redevelopment of the site as the Kengate Industrial Estate.

**5.6 Environmental Health**

No objection subject to conditions controlling opening hours, delivery times, noise and lighting.

**5.7 Historic England**

Do not wish to offer any comments.

**5.8 KCC Flood and Water Management**

No objection subject to conditions to ensure a detailed sustainable surface water drainage scheme, a maintenance manual for the sustainable drainage scheme and a Verification Report is submitted.

**5.9 Southern Water**

No objection subject to planning conditions to ensure the appropriate means of surface water disposal are proposed.

**5.10 KCC Ecology**

No objection subject to detailed mitigation/enhancement requirements must be submitted and implemented as a planning condition.

**5.11 Contamination Consultant**

No specific remediation works are required however, an asbestos management plan will need to be in place for the works (as they will involve working in soils containing asbestos) and also any soils imported for the formation of landscaped areas will require validation. Part 3 of the standard contamination condition should be applied also.

**5.12 Arboricultural Manager**

No objection.

**6.0 PUBLICITY**

6.1 Neighbours notified by letter. Expiry date 22.02.18

6.2 Site Notice. Expiry date 18.12.17

6.3 Press Notice. Expiry date 14.12.17

**7.0 REPRESENTATIONS**

7.1 Representation responses are available in full on the planning file on the Council's website:

<https://searchplanapps.shepway.gov.uk/online-applications/>

Responses are summarised below:

7.2 263 letters/emails received in support of the application, a large number of these were received on generic letters with some also raising the following concerns and questions:

- The amount of traffic a new store would generate, traffic is already busy off the A259 and turning right out of the site will be difficult.
- Mini roundabout outside would ease access onto the A259.
- Traffic lights required as access out of Reachfields opposite the site, onto Dymchurch Road will be more difficult.
- If the Aldi car park becomes full, parking along Dymchurch Road for residents will become more difficult.
- Removing the layby outside the site will reduce the amount of parking for nearby residents.
- Negative impact upon the flora and fauna.
- Pedestrians will need to be able to cross the A259 to the bus stop, a pedestrian crossing could help this.
- The new site will not be as accessible for the elderly and less able who are currently able to walk and access the town centre store.
- People will have to travel further.
- Slip lane needed near Sainsburys as the traffic will increase.
- Covered cycle store within the site would be beneficial.
- Will the existing site in Hythe remain empty?
- Loss of Spitfire Café and what will happen to the other small businesses.

7.3 8 letters/emails received objecting to the application on the following grounds:

- Development will increase noise and traffic to the already busy A259 and access into and out of the site will be difficult.
- Highways report makes no comment about any possible problems associated with heavy volumes of traffic accessing or egressing the proposed site from the A259 Dymchurch Road.
- The volume of traffic using the A259 to and from Hythe/Dymchurch is already extensive and frequently congested.
- Delivery times disregard the neighbours and are unfair.
- Noise, disruption and health risk from demolition of the existing site.
- Extra pollution to neighbours from cars in the car park.
- Light pollution to neighbouring properties.
- Business users are unfairly losing their businesses. What provision Aldi have put in place for the small business owners that already exist on site and will they be relocated.
- Building another supermarket is doing away with places that give personal service, progress is important but not at the expense of people's livelihoods.
- Policies E1 and SS4 seek to protect employment allocations and their B-Class uses. The business owners have local need in the community, there is no other site or industrial business units like them in Hythe.
- Reduction in parking for residents who currently park in the layby.

- The boundary wall height opposite the end of No.13 Longbridge Terrace is not specified.
- Detrimental to the High Street, the existing store will become empty and the new store will draw people away.

**7.4 Hythe Civic Society (HCS)**

No objection however has concern regarding:

- The cumulative traffic effects on Dymchurch Road and Scanlons Bridge one way system from completing the Martello Lakes and Aldi.
- The right turn into and out of the site from and onto the A259.
- The impact of the noise from the construction upon the adjacent residential areas. HCS suggests that the times of construction work should not differ from those of the adjacent Jewsons site.

**8.0 RELEVANT POLICY GUIDANCE**

- 8.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1 and the policies can be found in full via the following links:

<http://www.shepway.gov.uk/planning/planning-policy/local-plan>

<https://www.shepway.gov.uk/planning/planning-policy/documents-and-guidance>

<https://www.gov.uk/government/collections/planning-practice-guidance>

- 8.2 The following policies of the Shepway District Local Plan Review 2006 apply: SD1, E1, BE1, BE5, U4, U10, U10a, U15, TR5, TR6, TR11, TR12, TR13, CO11 and CO13

- 8.3 The following policies of the Shepway Local Plan Core Strategy 2013 apply: DSD, SS1, SS4 and CSD7.

- 8.4 The following sections of the National Planning Policy Framework (NPPF) are of particular relevance to this application:

- *Achieving Sustainable Development*
- *Chapter 1 - Building a strong competitive economy*
- *Chapter 2 - Ensuring the Vitality of town centres*
- *Chapter 4 - Promoting sustainable transport*
- *Chapter 7 - Requiring good design*
- *Chapter 8 – Promoting healthy communities*
- *Chapter 10 - Climate change, flooding and coastal change*
- *Chapter 11 - Conserving and enhancing the natural environment:*

- 8.5 The following paragraphs of the National Planning Policy Guidance (NPPG) are of particular relevance to this application:

- *Ensuring the vitality of town centres – March 2014*

## **9.0 APPRAISAL**

### **Relevant Material Planning Considerations**

- 9.1 The key considerations for the proposed development are the impact upon the viability and vitality of the town centre, loss of employment land, highways and parking, neighbouring amenity, design and visual appearance, ecology, Archaeology and impact upon the Schedule Monument and land contamination considerations.

### **Sequential Test and Impact Assessment**

- 9.2 The NPPG states that Local Planning Authorities (LPAs) should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work. Local planning authorities should assess and plan to meet the needs of main town centre uses in full, adopting a 'town centre first' approach and taking account of specific town centre policy. This positive approach should include ensuring the viability and vitality of town centres and the NPPF sets out 2 key tests that should be applied when planning for town centre use, the sequential test and the impact test.
- 9.3 The NPPG states that the sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. The applicant submitted a sequential test in support of the application which demonstrated that there are no alternative sites that are sequentially preferable to the applications site, and are suitable to accommodate the development as proposed.
- 9.4 Policy SS4 of the Shepway District Local Plan Review 2006 states that alongside the sequential approach for town centre uses, regard should be had to their impact on the vitality and viability of the defined town, district or local centre. The NPPG states that the impact test only applies to proposals exceeding 2,500 square metres gross of floorspace, unless a different locally appropriate threshold is set by the LPA. Although the proposed building currently falls below this threshold a proportionate assessment of potential retail impacts of the proposals has been submitted by the applicant to outline the likely anticipated retail impacts of the proposals.
- 9.5 Although the application is for a new retail unit in an out of town centre location, the proposal is for the relocation of an existing retailer in Hythe. It is accepted that the relocation of the Aldi store would transfer trade currently being spent within the town centre to a site outside the town centre, however the existing Aldi store currently attracts 18% of the market share of trade



which is less than half the amount of the Sainsburys store and the Hythe Town Centre would still retain 80% market share of convenience trade. It is therefore not considered that the proposal would result in a significant level of adverse harm to the viability and vitality of the town centre.

### **Loss of employment land**

- 9.6 The Hythe urban area is supported by four small industrial estates: Range Road, Pennypot, Kengate; and to a much lesser extent the Riverside Industrial Estate at West Hythe. These industrial estates support the space requirements of businesses that operate in a highly self-contained local market; whilst firms operating in markets that extend beyond the District are located on the periphery of Hythe at Link Park, with strategic access to the wider sub-regional economy via the M20, as well as within Folkestone and New Romney. Whilst there is 15,000 m<sup>2</sup> of employment floorspace allocated at Nickolls Quarry this is not set to be delivered until the later stages of the emerging Places and Policies Local Plan period.
- 9.7 The prevailing demand for industrial space in the Folkestone & Hythe District comes predominately from local businesses operating within self-contained local markets. Overall, whilst it is clear from the Employment Land Review's (2017) demand and supply equation that Shepway has sufficient employment space coming forward in the development pipeline to meet the forecast requirements (albeit this is heavily reliant on a small number of larger undeveloped land allocations in the District, in particular, the undeveloped industrial allocation at Link Park, under consideration for the Core Strategy Review), it is important for the Council to ensure a good range of industrial sites and premises are provided across the District to better support the requirements of local businesses in the market.
- 9.8 Generally, the supply of industrial space in the Folkestone & Hythe District can be characterised as older stock in need of improvement, with limited availability of modern, higher quality premises. As such, Core Strategy Policy CSD7 Hythe Strategy: lists as Priority (b) to 'upgrade the stock of business accommodation and the environment of employment areas, and regenerating the appearance and sense of security of West Hythe'.
- 9.9 The application site is located on the western side of Hythe and has been functioning as an employment site for over thirty years and consists of three buildings, divided into A1, B1 and Sui Generis Use Classes of varying sizes and developed over time in a haphazard and piece-meal fashion. The Kengate Industrial Estate forms part of the Council's Employment Land Review in both 2011 & 2017 which notes in 2011 that "although the sites [i.e. Pennypot and Kengate] do not perform well against the site assessment criteria as a result, vacancy is low and the site appears to be meeting local needs for its current occupiers for lower cost units". More recently in 2017, "the units are low quality but are generally well occupied which would suggest that these sites are meeting a need for low cost industrial units in Hythe". It recommends that the site "should be retained for employment purposes". At the time of the application being submitted, the application site

was supporting approximately 15 independent business and approximately 25-30 jobs.

- 9.10 Kengate Industrial Estate is an existing employment allocation under Policy E1 of the Shepway District Local Plan Review. It also constitutes a Major Employment Site within a Priority Centre for Activity; and as such is also subject to Policy SS4 of the Core Strategy. In short, both Policies E1 and SS4 seek to protect employment allocations and their B-Class Uses. Given the evidence base, it is the intention of the Council to offer continued protection for such employment sites through Policy E2 of the draft Places and Policies Local Plan.
- 9.11 The completed application from (Section 18) states that the proposed new Aldi supermarket would result in the net loss of 1,510 m<sup>2</sup> of B Class Uses and a further 420 m<sup>2</sup> of Sui Generis. As such, it was the officers' initial view that the application as submitted would be contrary to both Policies E1 and SS4, given there would be a net loss in B Class Uses on site.
- 9.12 The proposal is an example of industrial space in the Folkestone and Hythe District facing ongoing pressure from competing land uses that has contributed to the erosion of some industrial space in the District. As such, and given the broader context as set out above, the ELR (2011) advised the Council to focus on potential interventions in overcoming barriers to delivery and modernisation of key industrial sites, including resisting proposals for alternative uses other than where these are able to assist with delivery of new industrial floorspace.
- 9.13 Therefore, provision was made in Core Strategy Policy SS4 to enable the delivery of commercial regeneration objectives of the some of the District's 'Older Employment Site' (such as Kengate); some mixed use development on employment land may be acceptable where in line with the other principles set out in the Policy, and where proposals could directly deliver a range of small new and/or replacement B Class premises more appropriate to local need; and provide a net gain of suitable local job opportunities. To be policy compliant, the applicant was asked to consider the possibility of a mixed use development consisting of a new superstore alongside some new modern employment units. However, the 0.7 hectare application site is only marginally larger than Aldi's minimum 0.6 hectare requirement to be able to accommodate their core businesses model of a 1,800 m<sup>2</sup> store footprint plus 100+ parking spaces. The applicant has expressed that a reduced size store would not be commercially viable to develop. In addition, Aldi have made it known that regardless of whether the application is successful or not, it will close its existing town centre store as it is no longer able to meet the company's minimum requirements.
- 9.14 The situation has been further complicated by the recent introduction of the Government's Minimum Energy Efficiency Standards (MEES) for commercial/industrial buildings. As from the 1st April 2018 there is a requirement for any properties rented out in the private rented sector to have a minimum energy performance rating of E on an Energy Performance Certificate (EPC). The regulations will come into force for new lets and

renewals of tenancies and for all existing tenancies on 1st April 2020. It will be unlawful to rent a property which breaches the requirement for a minimum E rating. All existing business tenancies on site granted after September 2014 have been unprotected under the Landlord and Tenancy Act. It is therefore argued the site will cease to function as a low value industrial and retail accommodation as the buildings are beyond economic repair and retrofitting such poor assets to comply with the MEES is not commercially viable, meaning the only sensible option for the site is comprehensive redevelopment. In light of issues summarised above the freeholder has already completed serving notice on the tenants whereby vacant possession was required by 31st May 2018, with the intention of clearing the site for redevelopment.

- 9.15 The NPPF (Para 22) actively discourages the long term allocation where there is no reasonable prospect of a site being used for that purpose. In light of this, officers gave consideration as to whether an acceptable solution could be found, as a departure from policy SS4 and E1 whereby the site could be regenerated whilst also upgrading business stock accommodation, albeit in the form of either new off-site provision or a financial contribution.
- 9.16 Given the introduction of the Government's MEES, and the high likelihood that the minimum energy standards recently introduced, will be raised in the future, there is a concern that a significant amount of employment space throughout the district could be at risk of becoming unlettable in the future as existing tenancies come up for renewal. Consequently, the Council need to give thought as to how the potential impacts of the new regulations can be mitigated or minimised. Officers have undertaken costing works on some lower quality industrial units owned by the Council that are not compliant with the required MEES standards to be able to be let. These costings show that approx. £110k would fund the refurbishment of 300m<sup>2</sup> of industrial space. It was considered that seeking development contributions for the refurbishment of industrial premises equivalent to the space lost (1500 m<sup>2</sup>) would not be financially proportionate to the development proposal under consideration. Therefore, followed considerable negotiation with the applicant it is proposed that a £110K contribution should be levied and can be managed as a grant and/or loan that is ideally recyclable so as to be able to refurbish an equivalent space to that lost (1500m<sup>2</sup>) albeit over a longer period of time. Consequently, officers deem it justifiable and reasonable to apply a contingency of 15% and project management fee at 20% (bringing the total contribution in regards to employment initiatives to £147,500 in total) to allow for the administration and management of funds over a small number of projects that will bring about the maximum benefit of improved employment space to offset that to be lost.
- 9.17 At the time the application was submitted, the Kengate Industrial Estate supported approximately 20 -25 jobs across 15 or so businesses. However, during the course of determination it has effectively ceased as an employment site with some businesses able to relocate to alternative premises in the district but with some job losses also. The application is proposing that the new Aldi supermarket will support a total of 50 jobs, a net increase of 20 from their existing town centre store. Added to this there is

the obvious potential for further jobs to be created by the town centre store left vacant, with a lawful ground floor A1 use and opportunities for the first floor to provide for other town centre uses. As a result, the proposed development will continue to support employment and will create a net increase in jobs within the locality.

9.18 It is therefore considered that the proposal is a departure from the adopted development plan as the proposed development is unable meet the criteria set out in Core Strategy Policy E1 and SS4 requiring the delivery of new industrial premises as part of a mixed use development, whereby the redevelopment of an employment site would be acceptable. However, although a departure from the local plan, it is felt that the circumstances of the site and condition of existing buildings, as well as the proposed mitigation, in the form of a financial package to assist in the refurbishment of businesses premises that fall below the MEES, is an acceptable alternative to off-set the impact of the loss of employment space. It will help that the Council maintain a good range of industrial sites and premises, including the availability of older stock, which help meet the need for low cost industrial units within the district.

9.19 Given the above it is concluded that the application represents an acceptable departure from policies E1 and SS4, subject to the mitigation discussed above. It also meets Core Strategy Policy CSD7 Hythe Strategy (Priority (b)) to 'upgrade the stock of business accommodation and the environment of employment areas, and regenerating the appearance and sense of security of West Hythe'.

### **Sustainability**

9.20 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental which are mutually dependent. The proposed retail unit would provide sustainable development as it would be replacing the poorly designed Kengate Industrial Estate with a better designed building that would be more energy efficient, it would redevelop brownfield land, would create new jobs and is positioned on a sustainable transport route with bus stops located adjacent to the site. Ecological enhancement measures would also be integrated into the landscaping scheme and the submitted Sustainability Statement sets out Aldi's sustainable construction methods which would be adhered to.

### **Highways and Parking**

9.21 Policy TR11 of the Shepway District Local Plan Review 2006 sets out the criteria for proposals which involve the formation of a new access or intensification of an existing access. Policy TR5 refers to the provision of cycle storage facilities and TR12 refers to car parking standards.

9.22 The existing bus stop is dilapidated and would be repositioned on the new road layout proposed following removal of the layby. The bus stop would be in a similar location and would incorporate new bus stop infrastructure. The

proposed new access would incorporate a new priority junction into the site with a ghost island (cross hatching) right turn lanes with running lines. The same would be created for a left turn lane into Alexandra Court opposite the site. A pedestrian crossing is also proposed to the south east of the site to cross the A259, this together with all the highway works adjacent to the site would be conditioned to ensure all works were carried out prior to the store being brought into use.

- 9.23 In addition to the highway layout changes proposed adjacent to the site, off-site highway mitigation has also been agreed to the Scanlons Bridge junction. It is acknowledged that this junction already has a capacity issue and the proposed Aldi store would be increasing the impact on this junction without proposed mitigation (albeit the impact of the store itself on the junction capacity would be limited). Therefore, the applicant has agreed to pay for improvements to this junction to include the implementation of double yellow lines, line improvements and signing. A sum of £7955 has been agreed to be paid to cover the works required to improve the Scanlons Bridge junction and the TRO required to carry out the works. It is considered this is a betterment provided by the development, assisting the flow of traffic through the junction.
- 9.24 The works would include increasing the length of the existing double yellow lines by approximately 25 metres towards the Sainsbury's store to prevent obstructive parking and provide a filter lane to keep the gyratory free at the junction of Scanlon's Bridge Road and Military Road. This contribution would be secured through a S.106 agreement.
- 9.25 Following amendments during the process of the application KCC Highways and Transportation now raise no objection subject to conditions safeguarding, parking, turning and visibility splays and as such, the proposal is not considered to impact negatively upon highway safety in accordance with policy TR11.

### **Neighbouring Amenity**

- 9.26 Policy SD1 of the Shepway District Local Plan Review 2006 and the NPPF (paragraph 17) require that consideration should be given to the residential amenities of neighbouring properties.
- 9.27 The opening hours for the retail unit would be conditioned to Monday to Saturday 08:00hrs – 22:00hrs and Sundays and Bank Holidays to 10:00hrs – 16:00hrs. Delivery times would be conditioned to Monday to Saturday 07:00am – 23:00hrs and Sundays 08:00hrs - 20:00hrs. The site is currently occupied by 3 buildings which, prior to May 2018, were occupied by approximately 15 independent businesses, some of which included a MOT garage, a car repairs garage and a tyre garage. These businesses would have had a certain level of noise and disturbance to neighbouring dwellings which was uncontrolled by any planning conditions due to their historic use. Therefore, it is considered that this store would be a betterment to the existing situation as opening times, deliveries, noise levels and lighting could all be controlled and monitored by planning condition to protect neighbouring

amenity. The Council's Environmental Health team have no objection to the proposal and consider that any impacts on residents by reason of noise disturbance can be satisfactorily mitigated against by imposing restrictions on the times of deliveries, opening hours and restricting noise levels from the external plant area.

- 9.28 Restrictions would be applied to the service yard so that all deliveries would be on pallets rather than on cages, trailers would be ridged rather than curtained, no reverse lorry beepers to be used outside the opening hours and a banksman to always be used outside the opening hours when beepers are restricted. Goods would be loaded directly into the store, with no movement of goods outside within the service bay area, and the delivery pod is lower than the car park level, therefore maximising screening effect to the adjacent neighbouring dwellings. The service delivery point is located within the centre of the site away from the immediate neighbouring properties, approximately 40m away from No.1 Princes Terrace. As such, given the separation together with the proposed restrictions the proposal is not considered to have an unacceptable impact upon neighbouring properties.
- 9.29 Curtain wall lighting is proposed to the shop frontage and lighting within the car park which would be controlled by condition to ensure there would be no detrimental impact upon neighbouring amenity.

### **Design and Layout**

- 9.30 During the process of the application, amendments have been made to the materials and layout of the scheme following comments from the Design and Landscape Officer so as to integrate the building within this mostly residential area and for the building to be an appropriate addition adjacent to the SM in which the setting was considered. White render and red brick pillars are now proposed along the frontage and north east elevation to integrate the building within the street scene of Dymchurch Road. The existing buildings on the site are in poor condition and it is considered that replacing with the proposed building would regenerate and visually improve the appearance of the site and the street scene as a result, while being respectful of the largely residential area in which the site is located.
- 9.31 Following the amendments being submitted the design of the scheme are now considered acceptable and in accordance with the NPPF and saved policy BE1 of the Shepway District Local Plan Review 2006 which seeks to maintain and improve the character and vitality of the built environment, promote a high quality of design and ensure that development density is appropriate to its location.

### **Archaeology/Schedule Monument**

- 9.32 The site is adjacent to the RMC, a SM which is identified as having potential to contain remains of archaeological interest.

- 9.33 KCC Archaeology have commented on the proposal and suggest that no archaeological measures are required in this instance. KCC Archaeology consider that based on current information contained within the Kent Historic Environment Record it would appear that there have been very few past archaeological discoveries within the immediate vicinity of the proposed development site. Furthermore they consider that the site itself will likely have been disturbed as a result of past building works, having been initially developed as the Metropole Steam Laundry and more recently with the redevelopment of the site as the Kengate Industrial Estate. In addition, Historic England have raised no objection. The proposed development is therefore considered to be acceptable on archaeology grounds.
- 9.34 The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through development within its setting. The setting of the SM was considered as part of this application. The application site is not on or directly adjoining with the SM designation as there is an area of scrub land between the application site and the SM. As part of this application, additional landscaping is proposed between the SM and the proposed building which would help to soften the appearance of the building on views around the SM. The proposed building is also relatively low in height and together with the additional landscaping proposed, it is not considered that the building would have a detrimental impact upon the setting of the designated heritage asset. In addition Historic England raise no objection to the proposals.

### **Ecology/Trees**

- 9.35 The submitted bat emergence survey report concluded that there were no bat roosts found anywhere within the development, with no roosts recorded within the existing buildings. The precautionary approach detailed in paragraph 5.1 of the report would be conditioned. In addition, the lighting within the site would be conditioned to ensure it complied with the Bat Conservation Trusts 'Bats and Lighting in the UK' guidance to ensure there would not be a detrimental impact upon the tree lined corridor of the Royal Military Canal. In addition, the ecological enhancements proposed will be incorporated into the proposed development by condition. The KCC Ecology officer raises no objection subject to conditions to secure the above.
- 9.36 A tree to the front of the site is proposed to be removed to facilitate the new access into the site, however as landscaping is proposed within the site it is not considered that the removal of this tree would be objectionable. The majority of the trees are around the edges of the site and the development will be outside the root protection zone of these trees. A planting and management scheme would be conditioned for the site.

**Contamination**

- 9.37 The site has been historically used by a laundry complex and is currently in use as various light commercial units, including automotive repairers. The Councils Contamination Consultants consider that no specific remediation works are required however, an asbestos management plan will need to be in place for the works (as they will involve working in soils containing asbestos) and also any soils imported for the formation of landscaped areas will require validation, this will be controlled by condition. A condition would be applied requiring details to be submitted.

**Flooding**

- 9.38 The site is within Flood zones 2 and 3 on the Environment Agency's flood risk map and the development is classed as a 'less vulnerable' use. As the site is within flood zones 2 and 3 a sequential test is required to be carried out to compare the application site with other available sites to establish if there are any with a lower risk of flooding. As mentioned previously within this report, the applicant submitted a sequential test in support of the application which demonstrated that there are no alternative sites that are sequentially preferable to the application site, and which would be suitable to accommodate the development as proposed within flood zone 2 or 1. As the proposed use is considered suitable within flood zone 2 and 3 as a 'less vulnerable' use, the Exception Test is not required to be met. Following comments from KCC Flood and Water Management the Flood Risk Assessment was amended which proposed the floor level of the store would be set at 3.780m AOD, approximately 150mm above the modelled current flood level. It is proposed that the store has an evacuation plan in place in the event of a flood warning being received, and this, and the finished floor level can be controlled by condition. Therefore it is not considered that the proposal would be unacceptable on flood risk grounds.
- 9.39 The existing drainage on site forms a mixture of infiltration drainage/soakaways and drains into the public sewer under Dymchurch Road. KCC Flood and Water Management requested amendments to the scheme which now proposes that the surface water is discharged into the public sewer as the existing drains do but with a reduced outfall rate limited to 50% of the estimated existing brownfield runoff rate. Attenuation storage in the form of buried attenuation tanks would be located underneath the proposed car park. In addition, the redevelopment of the site will result in a slight reduction in impermeable areas, therefore runoff rates would be reduced from the existing situation. Southern Water raises no objection and neither does KCC Flood and Water Management but request conditions requiring the submission of a Sustainable Surface Water Drainage Scheme to ensure there would be no increase to flood risk on or off-site.
- 9.40 The additional controls for surface water drainage proposed by the development are considered an improvement on the existing situation. Further as there would be in excess of 50 car parking spaces, Smart Sponges are proposed to minimise the rise of hydrocarbon contamination of the receiving sewers.



### **CIL Contributions**

- 9.41 The Community Infrastructure Levy (CIL) is a tool for LPAs to help deliver infrastructure to support development in the area. The levy may be payable on development which creates net additional floor space, where the gross internal area of new build is 100 square metres or more. The development is CIL liable and in accordance with the CIL Regulations (2010) however no CIL amount is due as the proposed gross internal floor area of the store is less than the existing internal floor area of the existing buildings.

### **Environmental Impact Assessment Regulations 2017**

- 9.42 In accordance with the EIA Regulations the site falls adjacent to but not within a sensitive area and within Schedule 2 10(a) 'industrial estate development projects'. A 'sensitive area' is defined as a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(e) as stated in The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The application has been screened and it has been concluded that the development is not EIA development and as such an Environmental Statement is not required. A copy of the screening opinion is available on the planning file.

### **Conclusion**

- 9.44 Having regard to all of the sections set out in detail above, it is considered that the proposed development on balance is acceptable as a departure and is recommended for approval.
- 9.45 In terms of the Town Centre impact, although the proposed retail unit would be located outside the town centre, it is not considered that the proposal would result in a significant level of adverse harm to the viability and vitality of the town centre as the existing Aldi store would be relocated from the Town Centre site with the Town Centre still retaining 80% of market share of convenience trade. It is also below the 2500sqm threshold that requires an impact test to be completed by the NPPF.
- 9.46 The proposal is advertised as a departure from the Local Plan as the site is allocated as an employment site and therefore unable to meet the criteria set out in Core Strategy Policy E1 and SS4 requiring the delivery of new industrial premises as part of a mixed use development, whereby the redevelopment of an employment site would be acceptable. However, although a departure from the local plan, it is felt that the circumstances of the site, as well as the proposed mitigation, in the form of a financial package to assist in the refurbishment of businesses premises within the district, is an acceptable alternative to off-set the impact of the loss of employment space. Upgrading other business premises would be in accordance with Core Strategy Policy CSD7 Hythe Strategy (Priority (b)) which seeks to 'upgrade the stock of business accommodation and the environment of employment areas, and regenerating the appearance and sense of security of West Hythe'.

- 9.47 With regard to infrastructure and highways impact, following amendments during the process of the application and agreement to off-site highway mitigation contributions, KCC Highways and Transportation raise no objection subject to conditions safeguarding, parking, turning and visibility splays. As such, the proposal is not considered to impact negatively upon highway safety in accordance with policy TR11 of the Local Plan.
- 9.48 In terms of neighbouring amenity, the Council's Environmental Health team have no objection to the proposal and consider that any impacts on residents by reason of noise disturbance can be satisfactorily mitigated against by imposing restrictions on the times of deliveries, opening hours and restricting noise levels from the external plant area.
- 9.49 Following the amendments being submitted during the course of the application, the design of the scheme is now considered acceptable and in accordance with the NPPF and saved local plan policy BE1 of the Local Plan. The existing buildings on the site are in poor condition and it is considered that replacing with the proposed building would regenerate and visually improve the appearance of the site and the street scene as a result, while being respectful with the material choice in the largely residential area. The setting of the SM was considered and due to the relatively low height of the proposed building, together with the additional landscaping proposed and that the site does not directly adjoin with the SM designation, it is not considered that the building would have a detrimental impact upon the setting and designated heritage asset.

### **Human Rights**

- 9.50 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.
- 9.51 This application is reported to Committee due to being a departure from the Local Plan and due to the objection from Hythe Town Council.

## **10.0 BACKGROUND DOCUMENTS**

- 10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

**RECOMMENDATION** – That planning permission be granted subject to the completion of a section 106 legal agreement that secures the financial contributions detailed within this report and the conditions outlined at the end of the report and that delegated authority be given to the Development Management Manager to agree the legal agreement, the wording of the conditions any additional conditions which she considers to be necessary.

Conditions:

1. 3 year time commencement.
2. Submitted plans.
3. Materials to be submitted.
4. 1:20 details of canopies, window reveals, balustrading, railings etc to be submitted.
5. 1:50 drawings of any trolley storage/external structures in car park to be submitted.
6. Details of secure covered cycle parking to be submitted.
7. EV charging points to be provided.
8. External lighting design and LUX levels including details of light spill to be submitted.
9. Lighting Design Strategy for Biodiversity to be submitted.
10. Bat precautionary approach detailed in submitted Bat Emergence Survey Report shall be carried out prior to commencement of development.
11. Hard and soft landscaping (to include biodiversity enhancement together with more native plant and bat friendly species) to be submitted.
12. Opening and delivery hours.
13. Service yard management plan to be submitted.
14. Service yard conditions (as listed in Environmental Health's comments dated 18/12/17)
15. Plant noise limits.
16. Details of acoustic enclosures for air conditioning unit and condensing units.
17. Details of acoustic fencing/solid gates to service yard to be submitted
18. Permitted Development rights to be removed for further openings.
19. No part of the store hereby permitted shall be used as a café, coffee shop, restaurant, pharmacy or offer dry cleaning services, key cutting services, shoe repair, photographic services, opticians, or post office counter services without the prior written approval of the Local Planning Authority.
20. Construction Management Plan to be submitted.
21. Provision and retention/maintenance of visibility splays, access, bus stop, highway works and pedestrian crossing.
22. Tree protection measures to be submitted and implemented during construction.
23. Details of a trolley lock or similar system to be submitted (to prevent trolleys being taken outside of the car park).
24. No storage or stock outside of the building unless within the designated service yard.
25. Sustainable Surface Water Drainage Scheme shall be submitted.
26. An operation and maintenance manual for the Sustainable Surface Water Drainage Scheme shall be submitted.

27. A Verification Report pertaining to the Sustainable Surface Water Drainage Scheme shall be submitted.
28. Development to be carried out in accordance with Factual and Interpretative Report and standard Land Contamination (Part 3).
29. Asbestos Management Plan to be submitted.
30. Renewable/low carbon technologies to be used.
31. BREEAM rating (very good) to be achieved.
32. No advertisements within the windows of the store unless otherwise agreed.
33. The net retail sales area of the store shall not exceed 1,254sqm.
34. The store shall be used primarily for the sale of convenience goods and at no time shall more than 20% of the net retail sales area be used for the sale of comparison goods.

Y17/1377/SH  
Kengate Industrial Estate  
142 Dymchurch Road  
Hythe

