

Parish:	Downham Market	
Proposal:	Erection of a new Lidl food store (Use Class E) with associated car parking and landscaping	
Location:	Land E of 160 And W of Roundabout Bexwell Road Downham Market Norfolk PE38 9LJ	
Applicant:	Lidl Great Britain Limited	
Case No:	20/01893/FM (Full Application - Major Development)	
Case Officer:	Claire Dorgan	Date for Determination: 15 February 2021

**Reason for Referral to Planning Committee – This planning application was originally approved at the May 2022 Planning Committee. The decision was subsequently challenged through the judicial review process and the decision was quashed. Consequently, the application has been amended and has returned to Committee for determination.**

**Neighbourhood Plan:** No

### Members Update

Members will recall that this application went to Planning Committee on both the 4<sup>th</sup> April 2022 and 9<sup>th</sup> May 2022. The application was approved at the 9<sup>th</sup> May 2022 Planning Committee, subject to a S106 agreement. However, this decision has since been quashed on 27<sup>th</sup> July 2022 by the High Court.

Amendments have been made to the proposal. This include utilising an ‘Eco’ store format, which stands for ‘Economy Store’. This offers a reduced range of goods (due to less net sales area). Additionally, there is a reduction in car parking spaces. The application is returning to Committee for decision.

### Case Summary

Full planning permission is sought for the construction of a Lidl food store with associated car parking and landscaping. **The store would have a gross internal floorspace of 1895 square metres (compared with 2175 square metres previously), and a net sales area of 1251 square metres (originally 1414 square metres was proposed).**

The site comprises of 0.93 hectares of land on the southern side of Bexwell Road and to the south-west of the roundabout junction with the A10. The site is in agricultural use. To the west and north of the site lies residential development and to the south and east agricultural fields.

Access is proposed off Bexwell Road via a new priority junction that links to the eastern side of the site. The scheme would provide **131 car parking spaces (136 car parking spaces were originally proposed)** and space for 22 customer bicycles.

The site lies outside the development boundary for Downham Market and is classed as 'countryside' with respect to Local Plan policies. The western boundary of the site abuts the development boundary of Downham Market.

**Key Issues**

Principle of development;  
Impact upon the Town centre;  
Economic Benefits;  
Form and character; Neighbours living conditions; Access and Highway Safety;  
Air quality and contaminated land;  
Drainage;  
Ecology; Trees;  
Crime and disorder; and  
Any other material considerations.

**Recommendation:**

**APPROVE**

## THE APPLICATION

Full planning permission is sought for the construction of a Lidl food store with associated car parking and landscaping. The proposed store would have a floorspace of **1895** square metres (gross internal area) with a net sales area of **1251** square metres, **of which 1001 square metres (approximately 80% of net floor space) will be for convenience good sales. A figure of 250 square metres (approximately 20% of net floor space) has been identified for comparison goods sales. Externally the store will appear the same as previously proposed, but internally the sales area will be reduced.**

**The applicant has submitted an updated Retail Statement (November 2022), a Town Centre Health Check (October 2022), and revised drawings.**

The site comprises of 0.93 hectares of land on the southern side of Bexwell Road and to the east of Downham Market. It is located to the south-west of the roundabout junction of the A10 and B1512 (Bexwell Road). The site is presently in agricultural use. To the west and north of the site lies residential development and to the south and east agricultural fields.

The building would measure up to 70m in length, 33m in width and between 5m and 7m in height. The building would be of contemporary design and features a single height glazed entrance and shopfront in blue. The windows would have powder coated aluminium frames and the doors powder coated steel. Both window frames and doors would be blue in colour. The majority of the roof incorporates a slope of 3 degree angle made of profiled composite metal in aluminium colour. 592 solar panels would be installed on the roof each has a maximum capacity of 340W and the total size of the proposed system would be 201.6kW. The delivery bay contains a mini dock leveller with steel steps and balustrade painted in grey leading up to the dock.

It would provide **131** car parking spaces (6 DDA compliant spaces, 8 parent and child spaces and 2 dedicated EV charging points). A loading bay is proposed to the eastern side of the site. Eleven Sheffield bicycle stands will be provided to the east of the building which would accommodate 22 bicycles.

Access is proposed off Bexwell Road via a new priority junction that links to the eastern side of the site. Footways would be provided on both sides of the new access. An additional pedestrian access would be provided from the main road linking to the store entrance.

Landscaping buffers are proposed along parts of the site boundaries. The landscape plan shows the existing trees and vegetation to be retained as well as the proposed planting of shrubberies.

A 45cm high timber rail would be installed along the perimeter of the site and a 2m Euroguard fence installed along the footpath that surrounds the store. An acoustic fence is also proposed along the south-west boundary.

The proposal would generate employment for the equivalent of 40 full time employees.

The site lies outside the development boundary for Downham Market and is classed as 'countryside' with respect to Local Plan policies. The western boundary of the site abuts the development boundary of Downham Market.

The site is within flood zone 1.

The application was accompanied by a Design and Access Statement, Travel Plan, Transport Assessment, Statement of Community Involvement, Preliminary Ecological Appraisal, Planning and Retail Statement, Phase 1 Investigation Report, Noise Assessment, Landscape and Visual Appraisal, Flood Risk Assessment, Air Quality Assessment, Covering Letter and Plans.

## **SUPPORTING CASE**

A supporting statement has been requested.

## **PLANNING HISTORY**

20/00074/PREAPP: Possibility of Approval: 02/09/2020 - Pre-application enquiry (Full with consultations and meeting): Construction of foodstore with associated car parking, servicing and landscaping arrangements

## **RESPONSE TO CONSULTATION**

**Town Council (received 7<sup>th</sup> December 2022): SUPPORT Application,**

**In light of the Borough Council's retail report from Alder King and the reduction in store size, DMTC recommends approval of this application, providing that Carstone is a major feature of the building and that there is sufficient screening and landscaping to minimize the impact of sound, light and air pollution to neighbouring properties.**

### **Highways Authority: NO OBJECTION**

The indicative scheme of off site highways improvements and access are acceptable. We maintain that a more suitable access arrangement can be achieved however on balance accept that we can no longer substantiate an objection.

The off site works will be delivered by a Section 278 Agreement and the precise delivery mechanism will be determined as the works are brought forward. The applicant should be aware that there may be additional costs relating to the of-site works which will include a commuted maintenance amount as well as various fees including administration and supervision. The completed works will be subject to a Safety Audit and additional works may be required.

Recommends conditions.

### **NCC LLFA: NO OBJECTION**

**We cannot see any material amendments that would significantly influence the proposed drainage scheme. Our final comments, informatives and conditions detailed in LLFA Response Letter still apply.**

Subject to conditions being attached to any consent.

The FRA and DS is generally compliant with relevant national and local policy, frameworks, guidance and statutory/non-statutory standards. Where limitations may have occurred due to site constraints, these have generally been satisfactorily justified.

### **Environmental Quality: NO OBJECTION**

Recommends a condition.

### **Planning Policy:**

Planning Policy Team are broadly supportive. We understand from our development

management colleagues there is currently an outstanding technical issue regarding the sequential test.

A review of the Local Plan is well underway but has not yet reached the pre-submission consultation stage. Downham Market Town Council and local community are in the process of preparing a Neighbourhood Plan for Downham Market.

The proposed site is located outside of the development boundary, however it is reasonably related to it and in fact is adjacent to it.

#### **Internal Drainage Board: NO OBJECTION**

FRA would appear appropriate and reasonable. The proposed discharge rate would appear reasonable. The site is outside the Stoke Ferry IDB district, however it outfalls into the district, therefore an application for discharge consent should be made to the IDB. The developer should obtain all necessary agreements with riparian owners of the receiving watercourse.

**CSNN:** Make the following comments:

Welcome the additional details and revised scheme regarding the surface water drainage. Unclear if a ditch will remain, be piped or removed. If retained how will it be accessed and maintained.

Welcome that waste will be stored internally and the installation of light shields. Request conditions with respect to lighting and noise – opening and delivery hours.

#### **Latest comments:**

I note that following consultation with the applicant, the LLFA is satisfied with the proposed drainage arrangements for this development. The LLFA are the appropriate body in this application to determine suitability of the drainage proposals and as such the CSNN team have no further objection or comment to make in respect to this matter.

#### **Arboricultural Officer: NO OBJECTION**

Requests landscaping scheme and replacement plant conditions.

#### **Natural England: NO OBJECTION**

**Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes**

#### **Norfolk Fire and Rescue Service: NO OBJECTION**

Providing the proposal meets the necessary requirements of the current Building Regulation 2010 – Approval Document B (V2, 2019).

**Norfolk Constabulary: NO OBJECTION.** Provides guidance of Secured by Design. **No additional comments to make.**

#### **Anglian Water: NO OBJECTION**

**No assets owned by Anglian Water or subject to an adoption agreement within the development site boundary. The foul drainage is in the catchment of Downham Market**

**Water Recycling Centre that will have available capacity. If the developer wishes to connect to our sewerage network they should serve notice under Section 106 of the Water Industry Act 1991. Informatives are requested. The preferred method of surface water disposal would be a SuDs with connection to sewer as the last option.**

**Environment Agency: NO OBJECTION** No issues with the drainage as submitted.

**Cllr Ryves:**

Has there been any discussion with Lidl perhaps funding a local bus service so that the town centre gets additional shoppers, especially on market days and also that the issue of sustainability is addressed as it seems that is incumbent to encourage non car based customers to be able to access a new Lidl? In Swaffham, there is a frequent service to and from Tesco which is of great assistance to those without cars. It is not obvious that a £50,000 payment by the applicant towards public realm improvements is really going to assist footfall in Downham Market. Please provide details of the projected increase in traffic on the A1122 with existing levels, extra traffic created as a result of McDonalds/Starbucks and then extra traffic likely to be generated by Lidl.

A LIDL in Downham will increase price competition and choice and is potentially a good thing. But the site proposed is out of town in an area considered countryside, it will encourage car use and will reduce footfall in the town centre. Officers had considered whether there is an alternative site available which would be supportive of the Town Centre, they found none.

The Council has a statutory duty to protect and maintain the viability of town centres, and LIDL accepts that their development will indeed be damaging so have proposed a somewhat token financial contribution to mitigate impacts from their store on the town centre.

It now seems that the generosity of LIDL is indeed restricted to a pocket money £50,000 and the Town Council has not been able to negotiate a more meaningful sum which would allow for significantly supportive actions. This is somewhat wretched - LIDL's sales in the UK in 2020 were almost £7bn with over 920 stores. For the planning committee which was "minded" to accept the application in what I consider a spineless reaction to populism and a blatant disregard for planning policies this might present a dilemma.

Additionally, there is no traffic impact statement on the consequences of the greatly increased traffic flow on the Bexwell Road ( I estimate that LIDL's will generate around 3,000 vehicle movements a day on top of perhaps 2,000 happy eaters at McDonalds, the majority of whom will be drive thru. I fear gridlock on the Bexwell Road.

Possible outcomes-

(1) Should LIDL be refused I am sure that they would look at other options as there would be no reasons to appeal on planning grounds. Morrisons in their submission warned that if LIDL were to proceed then they would need to reconsider the future of their store. Recently, Morrisons, which in 2019 invested £1.5m in refurbishing this store, has closed stores in Crawley, Shirley, Swindon and Wigan. To my mind a transfer of ownership to LIDL could be the best outcome. Afterall, in October 2021, private equity interests purchased Morrisons so it is no longer the clear custodian of the family values which built it up.

(2) On planning grounds, it is clear that this application should be rejected. If the committee confirms its mindfulness to accept in spite of the miserliness of LIDL, than I believe that restrictions need to be placed on this site, both to prevent its transfer of ownership to a non discount supermarket , LIDL having been the stalking horse to get through planning, and to limit the damage to the town centre. The obvious such restriction will be to limit the number of Discounted lines that the site can offer. This could be reviewed over time to allow existing

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retailers to adapt to the new competitor.

(3) I would be more supportive if the amount offered by LIDL was meaningful and personally would like to see a local bus service underwritten by LIDL linking all parts of Downham to their store and to the town centre, and also to outlying villages to mitigate the increased car use their plans will create. Such a scheme increases consumer choice, supports the town centre as it transitions away from retail and supports those who do not have the vehicles necessary to take advantage of supposed lower prices.

(4) It remains within the remit of the planning committee to defer a decision until a more acceptable mitigation plan is put forward by LIDL's who I think got a bit greedy in their reading of the support implied by the committee who will now have had time to consider what represents acceptable mitigation. This is a discussion I look forward to hearing.

Can you advise me please on the significance of the LIDL application being in the name of LIDL?

To my mind and from looking at the comments from the public and those from Councillors at the April meeting it seems that many are wanting a discount store in Downham Market such that it is highly relevant that the applicant is LIDL, in that if it were say Waitrose or ASDA it would be a less emotionally charged application.

What is the possibility of any decision to approve being capable of challenge by a party considering themselves financially compromised by a successful application where it can be demonstrated that the committee has favoured LIDL as an applicant and is minded to grant an approval over officer recommendations for the principal reason of the identity of the applicant?

Additionally there is clearly a possibility of the applicant selling the land on to another party with planning consent - what can be done to ensure that if approved this site will be available only for a recognised discount retailer?

#### **Cllr Howland:**

The Planning Committee should consider the volume of traffic accessing both McDonalds and Lidl because the Lidl car park is nowhere large enough to accommodate the vehicle movements. I can envisage a gridlock situation and an accident hot spot and don't forget the lorry movements.

On average shoppers take 36 minutes to park and shop and shoppers who want a coffee or burger will leave their cars in the Lidl car park and simply walk across the road taking up space for incoming shoppers. Feel a bigger site with more car parking would be more acceptable.

**REPRESENTATIONS: FOUR HUNDRED AND FOURTY TWO SUPPORT, TWENTY FIVE OBJECTION and FIVE NETURAL.** Comments summarised as follows (new comments in **bold**):

#### **SUPPORT:**

- Will provide much needed jobs to the town and boost the economy.
- Lidl will be a huge asset to the community. Greatly needed for Downham Market.
- Will bring more people into the town from surrounding areas.
- Lidl offer value for money and choice.
- Living outside of the town and currently have no reason to go to Downham as the current stores (Tesco and Morrisons) are worse compared to the store in King's Lynn due to their size and lack of investment in the store due to lack of competition.
- Town is in need of modernisation.

- More convenient – less travelling for ‘discount’ stores being within walking distance.
- Ideal location for this part of the town – parking in the town centre is stretched to capacity at busy times.
- Welcome competition to the existing supermarkets in town.
- Better for the environment so people do not have to travel further for this kind of shop.
- Lidl would offer greater variety of shops and give consumers more choice.
- Will entice other businesses to come to Downham Market.
- Opportunity to revise the bus service in/around town, which would alleviate congestion on Bexwell Road.
- Will provide close amenity within walking distance to new housing developments happening in town.
- Disagree there’s an impact on town and countryside as opposite Starbucks and McDonalds. These were given permission.
- Doesn’t detract from the High Street as it is open after most people finish work whereas the High Street isn’t.
- Needed as fuel, energy and food prices are going up.
- There has to be a place like Lidl offering food choices from a European source as there is a mixed European representation in Downham Market and the villages.
- Retail Assessment by Alder King seems to be based on the Council’s recommendation on refusing the application. The assessment fails to provide independent reference data to back up their conclusions and ignore the wider implications to BCKLWN’s climate strategy.
- Aging population needs local stores.
- Would not impact wildlife, as the land was used for farming.
- Hope that a safe pedestrian crossing will be provided.
- Convenient parking.
- People will still visit town centre for other shops and facilities
- Lidl prepared to pay money into the town centre upkeep is a good thing
- Increase footfall in town as people visiting Lidl from surrounding villages may also visit town centre.
- Councillor’s focus on impact on town centre must stop. A supermarket on the edge of town is much better for people in the surrounding area.
- Seems the hold up is a question of £50k. Would be appalling if development was rejected if Lidl didn’t pay enough to the Council.
- Late councillor’s comments are trying delaying tactics.
- May also help to relieve the parking problem which exists at present in Downham.
- Trying to squeeze more money out of Lidl may well be counterproductive, as it appears nobody seems to know what they would spend the 50K on.
- Will be easy to access store for people.
- Potential for LIDL to support community projects eg, building playgrounds.
- Keeping the town developing and therefore being attractive for further investment, better infrastructure and working age families.
- Giving people choice and supporting their democratic rights of voting for how they want their town to look and feel.
- Catering for a growing population.
- **I thought ours was a free society, to have freedom of choice, and not to have our freedom denied by big business.**
- **Cannot understand why planners are not backing residents by upholding this application and letting it go ahead.**
- **Let residents have their say.**
- **Object to the Tesco Judicial Review to stop the opening of the new Lidl store.**
- **Needed as the town continues to grow.**
- **Support, but would like to see a more inspirational planting scheme. Use carrstone in areas of the build visible from the road. Would like to see Lidl show how they will have in place policies and arrangements that protect disabled people.**



- If McDonalds etc an get permission then so should Lidl.
- Did Tesco challenge Sainsbury's in King's Lynn and how come there are other Lidl stores near big supermarkets.
- Hope the committee will once again grant permission, and if a competing retailer tries to challenge this, that the council will fight it.
- The two supermarkets in town are restricted in size and are not able to easily expand to accommodate larger number of shoppers now seen in the town.
- Parking is a nightmare in town.
- Allow us to shop locally.

#### **OBJECTION:**

- Increase traffic – proposed traffic management plan is poor. There is already planning permission for McDonalds/[Starbucks] on the opposite of the road and amount of traffic at peak times will lead to road incidents.
- Car park serving Lidl runs up the boundary of surrounding neighbours. As the store is open until 11pm, it will impact the standard of living of surrounding properties. Higher exhaust emissions, noise at night and light pollution impact from car park to surrounding neighbours.
- Impact on visual amenity and character – loss of green which does not enhance the Town.
- Site is not suitable.
- Plans suggest further retail development which will result in loss of trade to the centre of town.
- Submission documents do not provide an evaluation of the net jobs effected. Public consultation report submitted is incomplete – applicants have cut off the responses.
- Object to the plan and how it impacts the future of Downham Market as a historic town, the hazards it creates and the negative effects on sustainability (not to having a Lidl in Downham Market)
- Could impact town centre, leading to loss of shops and jobs.
- Location would increase accident risk. The risk needs to be assessed with the addition of other outside units.
- Concern with the ecological disturbance this development will bring. There is currently a large habitat suitable for endangered hedgehogs and development on this site will cause their destruction.
- Use of agricultural land as opposed to brownfield.
- Lidl is not convenient for people in town with no transport.
- As it is in an out of town location, it will not bring more people into the town.
- With McDonalds and Starbucks in that area, it is not a great place to have another business where there will be traffic in and out of the town.
- Downham Market already has supermarkets in the town which brings people in and helps those who do not have access to transport.
- Proposal would be contrary to policies DM2 and DM110 and policy CS11. DM2 as it is located in the open countryside; DM10 for adversely impacting town centre by diverting from stores in the centre; and CS11 as the proposal would be car dependent.
- Fails to comply with paragraph 110 of the NPPF which requires development to give priority to pedestrians and cycle movements, both within the scheme and with neighbouring areas and create places that are safe, secure and attractive – minimising the scope for conflict between pedestrians, cyclists and vehicles. The development gives no priority to cycle movement, mixing them with motor vehicle movements.
- Another supermarket isn't needed
- Large multinational outlets reduce individuality from our lovely town centre.
- Morrisons is vulnerable to the impact of this development.
- Lidl refers to 2008 competition commission report and 2017 health check data.
  - This is out of date information.
- Insufficient information has been given to shopping patterns and how these might change.

- Lidl have extended their product range since 2008 and should not be considered a 'limited assortment discounter'.
- Noise.
- Residential amenity.
- Lidl refer to a case in Leeds which is not relevant given the Downham Market proposal is much further from the town centre.
- There are no other retail outlets out of centre.
- Development is car dependant, contrary to CS11.
- Development would ruin gateway to the town.
- Carrstone cladding and a tiled roof could be insisted with little extra cost.
- Situated on land earmarked for new homes.
- Negative impact on historic market and open countryside.
- 2008 Competition Commission report which the applicant relies on is 14 years out of date. Lidl are increasing their market share and have extended their product range since 2008. No longer seen as a limited assortment discounter.
- Planning and Retail Settlement Statement (Jan 2022) claims that other discount retailers (King's Lynn, Chatteris, Ely) have a higher proportion of linked shopping to other retailers when compared eg. To Tesco/Morrisons. This is misleading because there are no other retail outlets with the exception of fast food provider multinationals.
- Roundabout is an important junction. This could also impact the Marham airbase traffic.
- Alternative sites should be considered due to traffic.
- **The financial contribution would not outweigh the harm to the town centre.**
- **Sequential test was not correctly done.**
- **Not against Lidl's desire to build in Downham Market but I am against the site. Concerned with traffic and this is a greenfield site. Sure there are brownfield sites that can be developed.**
- **It will occupy farming land on a greenfield site.**

#### **NETURAL:**

- It will be good for the town and job opportunities
- More choice for weekly shop.
- Highway:
- Divers will not be able to come from the roundabout at 50mph like they do now.
- Will increase traffic on Bexwell Road and will make the roundabout very congested.
- Would like to see cycle path along Bexwell Road continuing along the Howdale so traffic free cycle route from and to the town centre and adjacent housing estates established.
- Would like NCC to establish 20mph speed limit along Bexwell Road.
- Would like Lidl to provide proper cycle parking areas near the entrance to the store than at the back of the car park.
- Welcome Lidl in Downham but the site is too far away from the town centre to be of benefit to other trades in town.
- Lovely to have a choice
- Do not think the local roads of Downham Market will be suitable to sustain additional traffic.
- Natural beauty of the area is already spoiled by the approval of McDonalds.
- Will impact the town centre; people shop for convenience, out of town people will stay out of town.
- Design of the site may be detrimental to the aesthetics of the entrance to the town. Therefore could any money paid by Lidl be used to improve entrances to the town.

## **LDF CORE STRATEGY POLICIES**

**Policy F1.1** - Downham Market Town Centre Area and Retailing

**CS01** - Spatial Strategy

**CS02** - The Settlement Hierarchy

**CS04** - Downham Market

**CS08** - Sustainable Development

**CS10** - The Economy

**CS11** – Transport

**CS06** - Development in Rural Areas

## **SITE ALLOCATIONS AND DEVELOPMENT MANAGEMENT POLICIES PLAN 2016**

**DM9** - Community Facilities

**DM1** – Presumption in Favour of Sustainable Development

**DM2** – Development Boundaries

**DM10** – Retail Development

**DM15** – Environment, Design and Amenity

**DM17** - Parking Provision in New Development

## **NATIONAL GUIDANCE**

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide 2019

## **PLANNING CONSIDERATIONS**

### **Principle of development**

Although the site borders Downham Market's development to the west, it lies outside the development boundary and is therefore classed as 'countryside' for the purposes of the Local Plan. The site is currently in agricultural use.

Paragraph 81 of the NPPF states that 'significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development'.

Policy CS10 of the Core Strategy 2011 (CS) also supports economic growth and it states that:

'The local economy will be developed sustainably: to facilitate job growth in the local economy, ... Job growth will be achieved through the provision of employment land as well as policies for tourism, leisure, retail and the rural economy;' This policy also refers to rural employment sites and development in the countryside. It explains 'permission may be granted on land which would not otherwise be appropriate for development for an employment generating use which meets a local business need. Any development must satisfy the following criteria:

- It should be appropriate in size and scale to the local area;
- It should be adjacent to the settlement;
- The proposed development and use will not be detrimental to the local environment or local residents.'

Policy CS02 of the CS makes it clear that decisions on new development will be taken based on the settlement hierarchy. Policy CS04 relates to development in Downham Market and explains how 'the role of Downham Market will continue as a main town providing and supporting employment and essential services for the southern part of the borough.'

However, both national and local policies also seek to protect the viability and vitality of town centres by ensuring that careful consideration is given to retail development outside of town centres. Furthermore, the impact of development within the countryside also needs to be considered.

Policy DM2 of the SADMPP explains how areas outside development boundaries will be more restricted and limited to that identified as suitable in rural areas. Policy CS06 of the CS explains how in the countryside, the strategy will be to protect the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, and its natural resources to be enjoyed by all. Development of greenfield sites will be resisted unless essential for agricultural or forestry needs.

The proposal would not comply with Policies DM2 and CS06 as the site is within the countryside. However, the site is adjacent to the settlement boundary of a town in a sustainable location. Furthermore, the applicant has undertaken a sequential test. It focused on suitable sites or vacant units in Downham Market Town Centre and in edge of centre locations within 300m of the Primary Shopping Area/Frontage. They also considered relevant criteria such as site size, access and space for vehicle manoeuvring for instance. Tetra Tech Planning and Alder King reviewed the information on behalf of the Council. They considered that the sequential approach to site selection has been met; there is no site available or suitable to accommodate the development proposed. Consequently, the principle of the development in terms of passing the sequential test is considered acceptable.

Policy CS04 of the CS relates to Downham Market. It explains how the focus in the town centre will be on:

- Maintaining and enhancing a strong local convenience and service offer;
- Accommodating a balanced diversity of uses to strengthen the evening economy;
- Improving the local arts and culture offer;
- Promoting the town's role as a wider visitor centre

Retail impact assessments are required for schemes with a floorspace of greater than 2500 square metres. Although the scheme would have a floorspace below the threshold, a Retail Impact Assessment has been provided to identify whether there would be an adverse impact on the town centre. Under Policy DM10 of the SADMPP and the NPPF, there is no requirement to undertake an impact assessment, albeit that all impacts are material.

### **Town Centre**

Policy DM10 of the Site Allocations and Development Management Policies Plan 2016 (SADMPP) refers to King's Lynn, Downham Market and Hunstanton as major retail centres. New retail uses will be expected to be located in these town centres unless an alternative location is demonstrated to be necessary. If there are no suitable sites in the town centre, an edge of centre location will be expected. It goes on to say 'the Council will strongly resist proposals for out of town retail uses that either individually or cumulatively would undermine the attractiveness and viability of the town centres.'

Section 7 of the NPPF relates to ensuring the vitality of town centres. Paragraph 86 explains how 'planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation'.

NPPF paragraph 87 explains how 'local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered'.

Paragraph 88 of the NPPF states that 'when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored'.

The National Planning Policy Guidance (NPPG) offers guidance on the application of the sequential approach and sets out a checklist of considerations. The Mansfield judgement, confirms the approach to reviewing alternative sites. In summary:

- 'suitable' and 'available' generally mean suitable and available for the 'broad type of development which is proposed in the application by approximate size, type and range of goods'.
- 'flexibility' generally excludes the 'identity and personal or corporate attitudes of an individual retailer' and
- 'available' relates to the site's availability for the type of retail use which permission is sought and not its availability to a particular retailer.

The catchment area is 0-10 minutes drive-time which reflects the store's rural location and that Lidl stores serve a relatively compact catchment area. This is considered appropriate given our knowledge of the area. A focus on Downham Market as the main centre is supported in this defined catchment area, along with any out-of-centre sites well connected to the town centre.

The Planning Statement refers to the search parameters such as a minimum site area of 0.5ha; a site or vacant unit that can accommodate a minimum store size of 1800sq.m GIA; a site capable of offering adjacent surface level car parking; a prominent site with the ability to attract passing trade; accessible via a choice of means of transport; and can accommodate associated HGV's deliveries and manoeuvring; amongst other things.

In consideration of 'availability' and 'reasonable period', it is a matter of planning judgment and is dependent on the case circumstances. The applicant refer to 3 years which is considered a reasonable period. Potential sites have been considered in Downham Market Town Centre; Howdale Park; Downham Market Club, 19 Paradise Road; and Playing fields, Downham Market Sixth Form. The sites considered are deemed

appropriate and it is considered there are no known town centre, edge-of-centre or out-of-centre sites well connected to the town centre that need to be considered.

In terms of the town centre, the applicant highlights there are a number of listed buildings in the centre, limiting the ability to amalgamate units. Regardless, considering the available floorspace in the town centre vacant units together (1770sq m gross in October 2022, Table 1 of Appendix 2 of the Retail Study) would not accommodate the development, even if it was possible to amalgamate them.

Other sites put forward include public open space at Howdale, Downham Market Sixth Form Playing Fields and Downham Market Club at Paradise Road. However, the use of these sites would conflict with the development plan. This includes such as through the loss of open space/community facilities. Additionally, there are issues of sites not being suitable or available.

Consequently, given the evidence presented by the applicant, it is concluded that the sequential approach to site selection has been met; and there is no site available or suitable to accommodate the broad type of development proposed even on a flexible basis and within a reasonable time period. Consequently, the comments raised by the Policy team have now been addressed.

Paragraph 90 (NPPF) explains that ‘when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> 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)’.

Additionally, Paragraph 91 explains that ‘where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused’.

The store would have a gross internal floorspace of 1895 square metres, and therefore is not greater than 2500sq.m, which would automatically trigger the need for an impact assessment under Paragraph 90 of the NPPF and Policy DM10 of the SADMP. Consequently, all impacts are material, and in this instance, it is necessary to consider whether out of centre proposals undermine the attractiveness and viability of town centres.

The applicant has supplied an up-to-date Downham Market Town Centre Health Check. There is a low vacancy rate of 8% of units and 6% floorspace which is below the national average. Downham Market contains a good proportion of local independent retailers and retail and leisure services which were considered key attractors for shoppers and day trippers.

The role of the Morrisons and Tesco supermarkets were also noted by the applicant, with most customers combining main food shopping and other town centre facilities. Linked trips accounted for 35-65% shoppers, which is fairly high. The Retail Statement suggests that the town centre is performing well with regard to vitality and viability. However, it is

noted that the role and function of the existing supermarkets within the town centre and their contribution to its health are important, as there are no existing out of centre stores and due to the identified levels of linked trips.

The applicant highlights that even if it was deemed that there was conflict with the retail impact test (or indeed the sequential approach to site selection) this could be overcome by countervailing factors and that giving appropriate weight to these factors was a matter of planning judgement, which Alder King concurs with.

From the information published for Iceland, Morrisons, and Tesco, existing supermarkets are on average undertrading by 5%. Therefore, there is a lack of evidence to back up the applicant's prediction that the Lidl store would under trade by 12%.

The applicant highlights there is a leakage of trade from the catchment area (£18.26m convenience goods) and it is suggested some of this could be clawed back which seems reasonable. In addition, it is accepted there is likely to be some inflow of trade/pass by trade. The Retail Statement suggests that the impact on the town centre as a whole, which the applicant calculates to be 8.1% and 7.1% on combined convenience and comparison turnover of the town centre at 2027. Regardless, the role of these town centre stores has been identified as important given the linkage to the town centre identified and therefore direct and indirect impacts need to be considered.

The qualitative benefits of a discount foodstore in Downham Market, is that it would offer local choice and competition. It would be conditioned to ensure it is occupied by a deep discounter store. Additionally, some leakage would be able to be clawed back.

The Retail Statement indicates that Downham Market is in good health and vacancy levels are low and therefore it is positioned to cope with an element of impact from the proposal. However, it is again noted that there is evidence of linkages between the existing supermarkets and town centre. It is accepted that there are other attractions and facilities that draw people to the town centre, other than the supermarkets, and tourists have not been included in this assessment.

The latest Market Retail Assessment submitted by Rapleys on behalf of the applicant is dated November 2022. In response the council has employed Alder King planning consultants to scrutinise and assess the information submitted, and has considered the impact upon the town centre. Alder King's conclusion to this latest document is detailed below:

- This advice relates only to the retail tests relating to the sequential approach and impact. It considers the relevant evidence submitted on behalf of the application in the PS and RS dated November 2022. The previous representations on behalf of Morrisons and Tesco to the application proposal have also been considered.
- Under Policy DM10 and the NPPF, there is no requirement to undertake an impact assessment albeit that all impacts are material. It has been demonstrated that the proposed store will not impact on any in-centre investment. Moreover, the new evidence has now demonstrated that the impact arising from the new eco format store is unlikely to give rise to significant adverse levels of impact on Downham Market Town Centre. The impact will fall most heavily on the existing supermarkets and these will give rise to direct and indirect impacts, through lost spin-off trade, on the town centre. However, on balance, this is unlikely to reach significant levels.
- The latter is a finely balanced conclusion. On the balance of the evidence presented, it is concluded that the proposed Lidl store is likely to give rise to a direct impact on the town centre of 8.1% (10.7% on the convenience sector) at 2027 and, when coupled with

the indirect effects, it will not give rise to significant adverse impact on the town centre. This reflects the good health of the centre, the important role of the existing supermarkets in Downham Market, level of linkage and trading performance of existing store.

- **Conditions should be attached to any grant of planning permission as outlined in this report, to ensure the store trades as assessed as a limited assortment discounter.**

Given the sequential test has established that there are no suitable town centre sites to accommodate the proposal, the proposed edge of centre location would be in accordance with the relevant part of Policy DM10 (SADMPP). The impacts are material and, therefore it is necessary to consider whether out-of-centre proposal undermines the attractiveness and viability of the town centre. It has been established that the proposal is likely to give rise to both direct and indirect impacts on the town centre. It is however acknowledged that the town centre is performing well with regard to vitality and viability. Additionally, there is no in town centre investment to impact upon. Overall, the proposal has met the sequential test, but given the direct and indirect impacts identified there would be some conflict with Policy DM10 in terms of undermining the viability of the town centre. This would need to be considered in the planning balance.

The proposal would comply with paragraph 87 of the NPPF as the proposal has passed the sequential test, which resulted in the out-of-centre location being accepted.

In terms of Paragraph 88 of the NPPF, the site is on the edge of the town and is well connected to the town centre and is considered an accessible site. The site would be accessible from the town centre by pedestrians, cycling, bus and car. It would therefore be in compliance with Paragraph 88 of the NPPF.

In relation to Paragraphs 86, 90 and 91 of the NPPF. An impact assessment was provided. The proposal will not impact on any in-centre investment. It has been demonstrated that the impact arising from the new eco format store is unlikely to give rise to significant adverse levels of impact on Downham Market Town Centre. The impact will fall most heavily on the existing supermarkets and these will give rise to direct and indirect impacts, through lost spin-off trade, on the town centre. However, on balance, this is unlikely to reach significant levels. The proposal would therefore comply with these NPPF paragraphs.

### **Economic benefits**

**In term of the economic benefits of the scheme it would offer the equivalent of 40 full time jobs and would also provide construction jobs.**

### **Form and character**

The NPPF, National Design Guide, National Model Design Code and the Local Plan refer to design. This includes reference to layout, form, scale, appearance, landscape, materials and detailing.

Policy CS04 of the CS 'Seeks to respect and enhance the built, historic and natural environment in the town. Maintain the landscape and the quality of open space in Downham Market.' Policy DM15 of the SADMPP explains how 'the scale, height, massing, materials and layout of a development should respond sensitively and sympathetically to the local setting and pattern of adjacent streets including spaces between buildings through high quality design and use of materials.'



As the site is considered countryside then Policy CS06 of the CS protects the countryside for its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, and its natural resources to be enjoyed by all.

Policy CS12 states that development proposals should demonstrate their location, scale, design and materials will protect and enhance the special qualities and distinctiveness of the area.

The site is an open agricultural field with sporadic trees and vegetation by the north-western and south-western boundaries. The surrounding area contains a mix of residential uses and agricultural fields with the A10 to the east. The site borders the built up area of Downham Market to the west.

Consequently, the proposal would clearly alter the current open, rural character of the site through the introduction of a large food store and associated car parking. It would be visible from both Bexwell Road and the nearby A10.

The Council's Landscape Character Assessment includes landscape planning guidelines for H1, which covers the site. It seeks to conserve the mostly rural character of the area; ensure that any new appropriate development responds to historic settlement pattern and is well integrated into the surrounding landscape; conserve and enhance the landscape setting of Downham Market and Bexwell and seek to screen (where possible) harsh urban edges; seek to conserve the largely undisturbed and tranquil nature of the area.

A Landscape and Visual Appraisal (LVA) was submitted as part of the planning application. It states that:

- Very limited local landscape and visual effects would occur with the development. Construction effects would be at most moderate adverse short-term and would be experienced at the scale of the Site and local area.
- Operational landscape effects have been assessed as moderate adverse at the scale of the Site and immediate local area through to negligible in the wider LCT H1 as the changes resulting from the proposed development would be barely perceptible in the wider landscape.
- Operational visual effects have been assessed as a most moderate adverse for seven properties along Bexwell Road to the north of the Site and these predominantly in the winter months following autumn leaf fall.
- No other effects would be greater than slight adverse for occupiers of residential properties and users of the local PRow and highway network within 500m of the Site.
- It is therefore considered that the proposed development will result in only prominent adverse effects within the Site and immediate local landscape and for a small number of properties within the immediate vicinity of the site.

The site is located near to modern residential development to the west and north and A10 further to the east. The site is not in or adjacent to the historic part of Downham Market or heritage assets. Furthermore, planning permission has recently been granted for development on the north side of Bexwell Road, opposite the site; at 157 and 159 Bexwell Road, outline permission was granted for a 72 bedroom care home with associated parking and development (reference 21/01069/OM). The site is also close to where a coffee shop and drive thru and McDonald's restaurant with drive-thru (ref 19/02216/F) was approved by the A10 roundabout junction. The McDonald's and Costa coffee shop have been constructed. The proposal would change the open verdant character of the site **itself**, through the introduction of a large supermarket with car parking. Together with the loss of street trees this would harm the intrinsic character and beauty of the countryside which also provides an attractive entrance to Downham Market. **However, it is recognised that the character of the area has begun to change through the construction of the nearby McDonalds and a coffee shop, and planning approval has**

been granted for larger development such as the care home close to the site. It is acknowledged that Policy CS10 of the CS does support economic development within the countryside.

**The Town Council has requested the use of Carrstone on the building. However, it is considered that the materials proposed would be acceptable in this locality, given the range of materials used along the street.**

The proposal involves the loss of 7 trees and vegetation, however replacement tree planting would be provided. The proposal includes a mixture of ground cover ornamental shrub, wetland wildflower grass and tree planting towards the borders of the site. This would help to soften the proposed car parking and development from Bexwell Road and parts of the A10. The Town Council has asked for landscaping to be provided around the building. Landscaping is not proposed along the rear of the building given the proximity of the building to the site boundary. Although additional landscaping would help the building blend into the landscaping it is noted that there is existing landscaping along the A10 which would soften views of the rear of the building. Therefore, additional landscaping is not being sought. **The landscaping is similar to what was previously proposed. Additionally, the Arboricultural Officer did not object to the original scheme.**

Lighting is proposed to illuminate roads and pedestrian routes, designed to reduce upward light to minimise sky glow. Although there is currently no lighting immediately outside the site, lighting is present at the Bexwell Road/A10 junction and past the site soon after entering Downham Market and given the site's proximity to the built up area of Downham Market it would be acceptable providing it is suitably conditioned.

**The proposal would not be fully consistent with Policies CS04, CS06 of the CS and DM15 of the SADMPP as it would result in some harm to the intrinsic character and beauty of the countryside and entrance into Downham Market. However, it is also noted that the character of Bexwell Road is changing with the construction of a McDonalds and coffee shop near to the A10 roundabout, and with the approval for a large care home on the northern side of Bexwell Road, close to the development. Therefore, the identified harm would need to be weighed up against the benefits of the proposal.**

### **Neighbours living conditions**

The site is bordered to the south-west by 160 Bexwell Road (No.160) which is a one and a half storey property. This neighbouring property is between 1.7m and 5m from the site boundary. At its closest it would be 5m away from a car parking space within the site. This property would be 40m from the retail store and over 69m from the delivery area. Given the position of this neighbour in relation to the store, the proposal would not cause harm with respect to loss of light or be overbearing. No.160 has windows that overlook the application site at ground and roof level. The Landscape Plan indicates a 1.8m high timber acoustic fence would be located along the shared boundary by this neighbour, this would assist with providing both privacy and noise mitigation to the ground floor windows and garden area. Given it would replace existing vegetation and trees and due to its scale and position it would not adversely harm ground floor windows or outlook from the garden. This vegetation would be replaced by an acoustic fence and car parking. New ground cover ornamental shrubs would be located by this fence within the application site. No.160 would have views into the site from their upper floor flank windows. Therefore, there is potential overlooking and perceived overlooking from people within the car park. However, given the distance and height of the window it is not considered to be so significant to warrant refusal of the application. The delivery area is located to the north-east side of the building away from this neighbour.

Opposite the site on the northern side of the street is 2 Landseer Drive. This property is 29m away from the site. Houses 155, 157 and 159 Bexwell Road are set back on their plots and are

at least 48m away from the site boundaries. Given the orientation, layout and distance the proposal would not harm these nearby residents with respect to loss of light, outlook or privacy.

Planning permission has been granted for a care home opposite the site. However, this has not yet been built. However, this is set back in its plot with car parking located at the front. It is not envisaged that the proposal would harm the amenities of the local care home residents given its scale and position.

A noise report was provided. External plant would be installed in a compound to the south-east of the store. The noise report assessed this to have a low impact both day and night time. It also considers deliveries which would have a low impact during daytime and a significant adverse impact during the night time. The unloading operations would be low levels at the closest residential properties. It recommends restricting delivery times and a

1.8m high acoustic barrier is recommended along the west site boundary in response to car park noise, which would result in low noise impact from car movements.

The Travel Plan anticipates there would be one to two dedicated deliveries per average day and up to three deliveries during seasonal peak periods, such as Easter and Christmas. Recycling and waste will be taken away by the same delivery vehicles, reducing the number of vehicles visiting the store per day. Deliveries typically take place during store opening hours but outside usual highway peak hours.

CSNN has considered the information submitted and has requested the site layout and swept path drawings be conditioned. They also request that deliveries be conditioned to: Monday to Saturday (including Bank/Public Holidays, and 10:00-16:00 and Sundays. Furthermore, they request opening hours be conditioned to 07:00-23:00 Monday to Saturday (including Bank/Public Holidays) and 10:00-16:00 on Sundays. They also highlight that measures would need to be in place to control noise disturbance from audible reversing warning alarms from delivery vehicles. White noise alarms are preferred where reversing manoeuvres are required, automatic voice warnings or other alarm types can impact on residential amenity.

Given the proximity of nearby properties a construction management plan is recommended by way of condition.

CSNN have asked that lighting shields be conditioned on the three western lighting comments and the remaining lighting to be provided as per the Lighting Plan. This would avoid the proposal from harming nearby residents with respect to light pollution.

Consequently, the proposal is not found to adversely harm nearby residents living conditions.

### **Access and Highway Safety;**

Policy DM15 of the SADMPP notes development proposals should demonstrate that safe access can be provided and adequate parking facilities are available. Policy DM17 highlights parking provision will be negotiated having regard to the NCC standards. Policy CS11 of the CS also relates to transportation and promotion of sustainable forms of transport and use of contributions for necessary transport improvements.

Paragraph 113 of the NPPF requires development that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

The Travel Plan identifies opportunities for the promotion and delivery of sustainable transport initiatives such as walking, cycling and public transport.

The site would be accessed via a ghost island junction from Bexwell Road. Located approximately 90m west of the A10 roundabout. The Travel Plan has considered the improvements associated with application 19/02216/F which includes the widening of Bexwell Road and pedestrian provision to the bus stop located off the A10 roundabout on the southern side of Bexwell Road.

Bexwell Road has a 30mph speed limit outside the site. Around 500m west of the site it reduces to 20mph and there is a zebra crossing around this location. Bexwell Road is served by public transport and has street lighting, there is a footway along the northern side. A bus stop is around 50m from the site. The application proposes linking the site to the existing footway on the southern side of Bexwell Road and providing a pedestrian refuge near to the site to allow pedestrians crossing. A bus stop is around 50m from the site, however services are infrequent through the day, more frequent services are a further walk from the site (approximately 20 minute walk time away). Downham Market is also served by a train station that runs between King's Lynn and London.

22 cycle parking spaces would be provided on site for customers. Additional secure cycle parking for staff would be provided within the building. National Cycle Route 11 runs through the centre of Downham Market, which provides links through to King's Lynn and Ely. Although there is no cycle route along Bexwell Road, given the speed limit of the road it is a potential option to reach the site.

The applicant would cover the costs of the Travel Plan to allow its operation for a minimum of 5 years. Measures to promote sustainable transport options are covered within the Travel Plan.

A total of **131** car parking spaces would be provided (6 DDA compliant spaces, 8 parent and child spaces and 2 dedicated EV charging points).

The Transport Assessment noted three slight incidents had occurred over a 5 year period but did not consider this to lead to any significant concerns or demonstrate any discernible pattern along the highway network/junctions that could affect the proposed development. It also noted that additional traffic generated by Lidl has a negligible effect on network operation and the level of service currently provided. It concludes no residual impact arising from the proposals that could be considered severe in the context of the NPPF, such that it would lead to planning permission being refused on highways grounds.

NCC Highway Authority find the indicative scheme of off-site highway improvements and access to be acceptable. They do note that a more suitable access arrangement can be achieved but accept that they cannot substantiate an objection. The off-site works would be delivered through a Section 278 Agreement. They request relevant conditions if the scheme is minded for approval.

In response to the Councillor queries relating to projected traffic numbers, details are provided within the Transport Assessment and the Travel Plan submitted by the applicant and the responses from the Local Highway Authority which are available online.

Accordingly, the proposal is considered acceptable on highway safety grounds.

#### **Air quality and contaminated land;**

Environmental Quality considers it is highly unlikely, that the proposal would result in an exceedance of the air quality standards at nearby receptors. However, a Construction Environmental Management Plan is recommended to be conditioned to mitigate residents from construction dust.

The information does not indicate the presence of significant land contamination. However, land

quality request a contaminated land condition given the former use of the adjacent land as Downham Market Airfield.

### **Drainage;**

The site is within Flood Zone 1. The Flood Risk Assessment (FRA) concludes that the site to be at low overall risk of flooding provided that surface water flooding risks are appropriately managed. It recommends finished floor levels are at least 150mm above external ground levels to protect against localised pooling of surface water during heavy prolonged rainfall. It states that the risk of flooding elsewhere should not be increased as a result of the development. The nearest surface watercourse is proposed to discharge surface water flows from the site at an attenuated rate. Permeable paving is proposed for the car parking spaces. The Drainage Strategy indicates the location of proposed surface water and foul water sewers piping and water collection areas such as the rainwater harvesting tank and surface water storage tank at the rear of the site.

The Lead Local Flood Authority (LLFA) does not object, subject to the Flood Risk Assessment, revised drainage area plan drawing (February 2022), and relevant drainage drawings be conditioned. They also request an informative.

The Environment Agency finds the drainage to be acceptable. They provide advice on Sustainable Drainage Systems which can be included as an informative if the application were approved.

According to Anglian Water there is capacity for the foul drainage in the catchment of Downham Market Water Recycling Centre. They recommend informatives with respect to sewerage. They do not object to the proposal.

Additionally, the IDB does not object to the proposal but highlights the need for a discharge consent to be made to the IDB and highlights all necessary agreements with riparian owners of the receiving watercourse are obtained.

CSNN has raised queries about a ditch. Further information is being sought and will be reported in Late Correspondence.

The scheme is therefore considered likely to be acceptable with respect to flooding and drainage.

### **Ecology;**

No impacts on Statutory Designated Sites were recorded within the Preliminary Ecological Appraisal. As the ecological impact is considered restricted to a site level, it concludes no impacts on non-Statutory Designated Sites. Three non-Statutory Designated Sites were located within the search radius with the nearest around 1.2km away.

Natural England has no objection to the proposal and considers that the development would not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

Changes have been made to the Conservation of Habitats and Species Regulations 2017 (as amended) (2017 Regulations). The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (2019 Regulations).

The 2017 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives).

Protected Species (PS) have full protection 2017 Regulations. It's an offence to deliberately capture, injure or kill, or deliberately disturb PS. These requirements are enforced in the 2017 Regulations and any derogation is regulated and overseen by a system of licensing administered by Natural England (NE).

A Preliminary Ecological Appraisal was submitted as part of the application. No protected or notable species were recorded during the survey. There was no evidence of badgers. The site would be suitable for breeding birds within scattered trees and hedgerows along the site boundaries. Therefore, site clearance should be undertaken outside the bird breeding season. No impacts on bat roosts or foraging grounds/commuting lines or flora or invertebrate assemblages are predicted. No evidence of western European hedgehogs was apparent although the site is suitable. Therefore precautionary measures in respect to site clearance is recommended.

In the Preliminary Ecological Appraisal it recorded sub-optimal habitat for amphibians and no impacts are predicted. The site is suitable for reptile species and the report recommends further surveys to ascertain presence/likely absence are taken. However, an email update on 24th March 2022 says the site has recently been revisited and that due to the presence of development near to the site and the A10 providing a barrier to dispersal, it is recommended that the site is stripped under a working method statement to include a finger tip search of the ditch and habitat manipulation of the site. This can be conditioned.

UK Priority Habitats within the site consist of hedgerows forming part of the site boundaries. The applicant's Ecologist however has confirmed the defunct nature and lack of connectivity does not meet the initial criteria for important hedgerows in relation to bats and that no further bat surveys are needed.

The Preliminary Ecological Appraisal and email update (received 24.3.22) should be conditioned to ensure appropriate mitigation measures are incorporated. This also includes planting native species.

### **Trees**

The landscape plan illustrates the planting scheme for the site. There will be some loss of trees and vegetation by the south-western boundary and By Bexwell Road. Three trees would be removed from inside the site and four further trees to accommodate the footpath. However replacement planting of 9 trees is included within the site.

It would involve the loss of some street trees which are of aesthetic value when entering Downham Market.

The Council's Arboricultural Officer has no objections but requests a landscaping scheme and replacement planting conditions.

Given the proposed planting scheme and replacement tree planting (9 trees) proposed, it is considered the planting would assist with softening the edges of the development and would be acceptable.

### **Crime and disorder;**

The Designing Out Crime Officer has not objected but has offered advice to the applicant. They highlight clearly signposting the site including areas not open to the public. Lockable waste containers located in a secure position. Co-ordinating lighting and CCTV systems. To use certified roller shutters if needed. It also recommends an intruder alarm system. This advice can be included within an informative if the application were to be approved.

## **Any other material considerations**

Norfolk Fire and Rescue Service do not object to the proposal. However, they highlight the need to meet necessary Building Regulations such as arrangements for emergency vehicles and the use of sprinklers. It is recommended their advice be included as an informative if the application is approved.

Downham Market Neighbourhood Plan and the emerging Local Plan are yet to be adopted so are given very limited weight at this stage.

If planning permission were to be granted then the development would be liable for a CIL payment. This would amount to approximately £269,973.78. This is a material consideration. Section 70(2) of the Town and Country Planning Act 1990 provides that a LPA must have regard to a local finance consideration as far as it is material.

Separate advertisement consent would be required for signage including on the store.

## **Financial contribution**

**Lidl originally offered a sum of £50,000 for Downham Market Town Centre improvements, when the application was previously heard at Planning Committee. Since then, the scheme has been revised to include a reduction in retail floorspace.**

Therefore, consideration needs to be given to the degree of impact on the town centre. Overall, it has been determined that the impact on the town centre is unlikely to reach significant levels. However, it is noted that there is some conflict with policy DM10 of the SADMPP in terms of undermining the viability of the town centre, given the direct and indirect impacts identified. However, the planning balance will determine whether the development is acceptable with or without a financial contribution. A contribution would only be sought if deemed necessary under the regulation 122 test in the CIL Regulations.

## **Conclusion/Planning balance**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that 'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

The proposal does conflict with policies DM2, and DM15 (SADMPP) and policies CS04 and CS06 of the Core Strategy, as there would be some harm to the intrinsic character and beauty of the countryside and entrance into Downham Market. It would also conflict with Policy DM10 (SADMPP) as it would undermine the viability of Downham Market Town Centre.

Whilst the site is at the entrance into Downham Market, outside of the development boundary and therefore in an area of countryside, it is adjacent to it, and there are new facilities being provided on the opposite side of the road (care home, take-away and restaurant facilities), which are also outside of the development boundary. Accordingly, the character of this part of Bexwell Road is changing and in that respect the visual impact of the proposal would not be out of keeping in this context.

Given the indirect and direct impacts identified, the proposal would impact the viability of Downham Market Town Centre. However, it is also noted that the proposal would be in accordance with Section 7 (Ensuring the vitality of town centres) of the NPPF, in that

the store is unlikely to give rise to significant adverse levels of impact on Downham Market Town Centre.

Overall, based on the conflicts highlighted in this report, the development proposal does not fully accord with the development plan as a whole. This is in terms of the visual impact of the store, and impact on the viability of the town centre. However, there are a number of important material considerations that weigh in favour of the scheme including; that the retail impacts on the town centre are not significant so accord with NPPF policy relating to town centres; the town centre is performing well with regard to vitality and viability; job creation; and a broadening of the retail offer available to the catchment through the introduction of a limited assortment discount retailer; it would incorporate environmental measures; such as solar panels on the roof of the store; the character of the locality has begun to change; there is trade leakage from the proposal's catchment area; there is planned housing growth in Downham Market; the sequential test has illustrated there are no preferable sites that can accommodate the proposed development; and there is no town centre investment that would be adversely harmed by the proposal.

On balance, it is considered that these material considerations, including compliance with Section 7 of the NPPF, would outweigh any conflict with the Local Plan policies. It is consequently, considered unnecessary to require a financial contribution. Therefore, a contribution should not be sought as necessary under the regulation 122 test in the CIL Regulations.

The proposal therefore is acceptable as the conflict with the development has been weighed against the material considerations, and it is considered that the material considerations would outweigh the conflict with the Local Plan.

On this basis, the application is recommended for approval.

#### **RECOMMENDATION:**

#### **APPROVE**

#### **Subject to the following conditions:**

1. Condition: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
1. Reason: To comply with Section 91 of the Town and Country Planning Act, 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004.
2. Condition: **The development hereby permitted shall be carried out in accordance with the following approved plans: 7783L-06, 7783L-25 Rev.C, 7783L-26, 7783L-27, 7783L-28, DWG 00 Rev.2, DWG 01 Rev.2, 1367-001 Rev.B, 20-096-01 Rev.C, SCP/200469/ATRSK05 Rev.B, SCP/200469/SK05 Rev.B, 16-2066-004 Rev.P1.**
2. Reason: For the avoidance of doubt and in the interests of proper planning.
3. Condition: The development shall be built in accordance with the submitted flood risk assessment and drainage strategy (Flood Risk Assessment | Lidl Downham Market | Cora IHT | Ref: Project No: 16-2066, Document No: T001 | Rev: Issue 3 | Dated: 08 March 2022) and the following additional supporting documents/drawings/reports:



- The revised drainage area plan drawing (Drainage Area Plan | Downham Market | Cora IHT | Drawing No: 16-2066-002 | Rev: P2 | Dated: February 2022).
- The exceedance route drawing (Anticipated Exceedance Flow Plan | Downham Market | Cora IHT | Drawing No: 16-2066-003 | Rev: P1 Dated: February 2022).

The schematic drainage layout adopted must be that demonstrated in the final submitted drainage strategy drawing (Drainage Strategy 1 of 2 | Downham Market | Drawing No: 16- 2066-001 | Rev: P3 | Dated: February 2022). The approved scheme will be implemented prior to the first use of the development.

3. Reason: To prevent flooding in accordance with National Planning Policy Framework (NPPF) paragraph 167,169 and 174 by ensuring the satisfactory management of local sources of flooding surface water flow paths, storage and disposal of surface water from the site in a range of rainfall events and ensuring the SuDS proposed operates as designed for the lifetime of the development.
4. Condition: Prior to the first use of the development hereby permitted the vehicular access shall be constructed in accordance with a detailed scheme to be agreed in writing with the Local Planning Authority in accordance with the highways specification (for the first 10 metres into the site) and thereafter retained at the position shown on the approved plan. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway.
4. Reason: To ensure construction of a satisfactory access and to avoid carriage of extraneous material or surface water from or onto the highway in the interests of highway safety.
5. Condition: Any access gates/bollard/chain/other means of obstruction shall be hung to open inwards, set back, and thereafter retained a minimum distance of 15 metres from the near channel edge of the adjacent carriageway. Any sidewalls/fences/hedges adjacent to the access shall be splayed at an angle of 45 degrees from each of the outside gateposts to the front boundary of the site.
5. Reason: In the interests of highway safety enabling vehicles to safely draw off the highway before the gates/obstruction is opened.
6. Condition: The gradient of the vehicular access shall not exceed 1:12 for the first 15 metres into the site as measured from the near channel edge of the adjacent carriageway.
6. Reason: In the interests of the safety of persons using the access and users of the highway.
7. Condition: Prior to the first occupation/use of the development hereby permitted visibility splays measuring 2.4 metres (as measured back from the near edge of the adjacent highway carriageway) x 70 metres shall be provided to each side of the access where it meets the highway. The splay(s) shall thereafter be maintained at all times free from any obstruction exceeding 0.225 metres above the level of the adjacent highway carriageway.
7. Reason: In the interests of highway safety in accordance with the principles of the NPPF.
8. Condition: Prior to the first occupation/use of the development hereby permitted the proposed access/on-site car and cycle parking/servicing/loading/unloading/turning/waiting area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan and retained thereafter available for that specific use.
8. Reason: To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety.

9. **Condition:** The development hereby approved shall be carried out in accordance with the Revised Construction Traffic Management Plan, dated 13<sup>th</sup> June 2022, received 22<sup>nd</sup> June 2022. The Revised Construction Traffic Management Plan shall be implemented throughout the construction period.
- 9 **Reason:** To ensure adequate off-street parking during construction in the interests of highway safety. This needs to be a pre-commencement condition as it deals with the construction period of the development.
10. **Condition:** For the duration of the construction period all traffic associated with (the construction of) the development will comply with the Construction Traffic Management Plan and use only the 'Construction Traffic Access Route' and no other local roads unless approved in writing with the Local Planning Authority.
- 10 **Reason:** In the interests of maintaining highway efficiency and safety.
11. **Condition:** Notwithstanding the details indicated on the submitted drawings no works above slab level shall commence on site unless otherwise agreed in writing until detailed drawings for the off-site highway improvement works (including the provision of a RHTL, pedestrian refuge island, frontage footway, footway links to the adjacent bus stops and DDA bus stop improvements) as indicated (in part) on Drawing No. (s) SCP/200469/SK05 rev B) have been submitted to and approved in writing by the Local Planning Authority.
- 11 **Reason:** To ensure that the highway improvement works are designed to an appropriate standard in the interest of highway safety and to protect the environment of the local highway corridor.
12. **Condition:** Prior to the first use of the development hereby permitted the off-site highway improvement works (including Public Rights of Way works) referred to in Part A of this condition shall be completed to the written satisfaction of the Local Planning Authority.
- 12 **Reason:** To ensure that the highway network is adequate to cater for the development proposed.
13. **Condition:** In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with current best practice, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with current best practice, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
- 13 **Reason:** In the interests of protecting the environment and the future occupants of the development in accordance with the NPPF.
14. **Condition:** The development hereby approved shall be implemented in accordance with the Construction and Environmental Management Statement, dated May 2022, received 21<sup>st</sup> June 2022. The scheme shall be implemented as approved.

- 14 Reason: In the interests of the amenities of the locality in accordance with the NPPF. This needs to be a pre-commencement condition given the dust emissions that could arise during the construction phase.
15. Condition: The lighting hereby approved shall be constructed strictly in accordance with drawing number 'DWG 01 Rev 2.' Lighting shields shall be installed on the three western lighting columns as depicted on this drawing.
- 15 Reason: In the interests of minimising light pollution and to safeguard the amenities of the locality in accordance with the NPPF.
16. Condition: The development hereby approved shall be constructed in accordance with the site layout plan drawing number 7783L-25 Rev.C and the swept path drawing SCP/200469/ATRSK05 Rev.B. Delivery vehicles shall only use the turning route shown on these drawings.
- 16 Reason: To ensure that the amenities of neighbours are safeguarded in accordance with the NPPF.
17. Condition: No deliveries shall be taken at or despatched from the site outside the hours of 07:00-22:00 hours Monday to Saturday (including Bank/Public Holidays) and 10:00-16:00 hours Sundays.
- 17 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
18. Condition: The store opening hours shall only be between the hours of 07:00-22:00 hours Monday to Saturday (including Bank/Public Holidays) and 10:00-16:00 on Sunday, unless otherwise approved in writing by the Local Planning Authority.
- 18 Reason: In order that the Local Planning Authority may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.
19. Condition: All hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawing number **20-096-01 Rev.C**. The works shall be carried out prior to the occupation or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the Local Planning Authority gives written approval to any variation.
- 19 Reason: To ensure that the work is carried out within a reasonable period in accordance with the NPPF.
20. Condition: **The foodstore hereby permitted shall be subject to the following restrictions:**  
i. **The total gross internal floorspace shall not exceed 1,895sq m including any mezzanine floorspace.**  
ii. **The net retail sales area (excluding checkouts, lobbies, customer toilets and walkways behind the checkouts) shall not exceed 1,251sq m including any mezzanine floorspace.**  
iii. **The total net retail sales area for the sale and display of convenience goods shall not exceed 1,001sq m including any mezzanine.**  
iv. **The total net retail sales area for the sale and display of comparison goods shall not exceed 250sq m including any mezzanine.**

v. the development shall only be used as a Class E(a) retail foodstore and shall be restricted to 'limited product line deep discount retailing' and shall be used for no other purpose falling within Class E of the Town and County Planning (Use Classes) (Amendment) Regulations 2020 (or any order revoking or re-enacting or amending that order with or without modification). 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 4,000 individual product lines.

- 20 Reason: For the avoidance of doubt and to ensure that the permitted development does not have a negative impact on the vitality and viability of nearby defined centres in the locality in accordance with the NPPF and Development Plan.
21. Condition: The foodstore hereby permitted shall be used as a single unit, and shall not be subdivided into two or more retail units without express planning permission being granted by the Local Planning Authority.
- 21 Reason: To safeguard the vitality and viability of nearby defined centres.
22. Condition: No concession units shall be provided within the **unit** without express planning permission being granted by the Local Planning Authority.
- 22 Reason: To safeguard the vitality and viability of nearby defined centres.
23. Condition: The development shall be carried out in accordance with mitigation measures within the Preliminary Ecological Appraisal Survey Report (SQ-105) dated 2 October 2020 and within the email from Estrada Ecology dated 24.3.22 which explained that the site be stripped under a working method statement to include a finger tip search of the ditch and habitat manipulation of the site. If any hedges/trees are removed within the breeding bird season (typically March to September inclusive) a pre-works breeding bird survey will be required.
- 23 Reason: To ensure the protection of protected species in accordance with Section 15 of the NPPF and the Conservation of Habitats and Species Regulations 2017.
24. Condition: The development shall be carried out in accordance with the Travel Plan by SCP reference SCP/200469/TP/1 dated October 2020. The approved Travel Plan shall be implemented in accordance with the timetable and targets contained therein and shall continue to be implemented as long as any part of the development is occupied/used subject to approved modifications agreed by the Local Planning Authority as part of the annual review.
- 24 Reason: To encourage sustainable ways to access the store in the interests of sustainability and to comply with the NPPF.
25. Condition: **The acoustic barrier shown on Drawing No 20-096-01 Rev.C shall be carried out in accordance with the following details:**  
- **Jakoustic Reflective acoustic barrier details, Jacksons Fencing, received 21<sup>st</sup> June 2022.**  
- **Cover letter from Rapleys LLP dated 25<sup>th</sup> May 2022, received 21<sup>st</sup> June 2022, confirming: The acoustic barrier should have a minimum mass of 12kg/m<sup>2</sup> and comprise: 20mm thick weather-treated, close-boarded timber fencing with cover strips to seal the gaps between panels and gravel boards to seal the gap at the base.**  
**The acoustic barriers shall be installed and retained thereafter in perpetuity.**
- 25 Reason: In order that the LPA may retain control over the development in the interests of the amenities of the locality in accordance with the NPPF.

26. Condition: The development shall be implemented in accordance with the Assessment of noise from proposed mechanical services, deliveries and car parking Noise Report by Noise Assess Ltd reference 13091.03.v1 dated November 2020.
- 26 Reason: To ensure that the amenities of neighbours are safeguarded in accordance with the NPPF.