DELEGATED REPORT / CASE OFFICER'S ASSESSMENT

Ref No: ST/0396/22/FUL
Proposal: Erection of single-storey building for mixed restaurant and hot food takeaway incorporating a drive-thru facility and associated reconfiguration of car park and landscaping.
Location: Asda
North Road
Boldon Colliery
NE35 9AR

Site Visit Made: 25/7/22

Relevant policies/SPDs

1 DM1 - Management of Development (A, B, G, K, M)

2 DM3 - Hot Food Uses in Shopping Centres

3 DM6 - Heritage Assets and Archaeology

4 LDF CS ST2 - Sustainable Urban Living

5 SA5 - Retailing Opportunities

6 SPD6 - Parking Standards

7 SPD22 - Hot Food Takeaways and Health

Description of the site and of the proposals

Planning permission is sought relates for the erection of a single storey building, for mixed restaurant and hot food takeaway incorporating a drive-thru facility and associated reconfiguration of car park and landscaping.

The proposed building would be located within a part of the customer car park that serves Asda at Boldon Colliery. It would be just to the north of the access ramp that serves the raised deck of the customer car park and where there is also further car parking beneath that deck; and that can be accessed just to the west of the proposed building and the reconfiguration around it.

Vehicular access to the proposal, for both customers and servicing, would be via the existing roundabout off the B1298 (Henley Way / Hubert Street / Cotswold Lane) and where this roundabout also provides access into the Asda site from the north. There is also car / customer access to the Asda car park from a roundabout off Abingdon Way (B1298), both directly into the Asda car park (beneath the raised deck) or via a route that travels through the adjacent car park for the cinema (and restaurants within the cinema site).

The proposals layout includes a circulatory route around the building for the drive-thru with four car parking spaces in that circulatory route. Four cycle racks are proposed to the south of those four car parking spaces. A layby area to the north of the building / circulatory route is proposed for a delivery lorry / takeaway delivery drivers. There would also be reconfiguration of the Asda car park and landscaping, which includes the re-location of some recycling collection bins. Within the submitted details it stated that Asda and the proposal would share the use of the resulting car park within the Asda site and that there would be a net loss of 39 customer parking spaces. An attached enclosed service yard area would also be provided to the western side of the building.

Alongside the application form and plans, the following has also been submitted:

- Planning and sequential test statement
- Design and access statement
- Transport statement
- Delivery and servicing plan
- Framework travel plan
- Delivery and servicing plan
- Amended drainage strategy report (and to supersede the one originally submitted)
- Commercial kitchen odour risk assessment, and a related drawing
- Additional information - letter regarding the potential occupier [KFC] and opening hours
- Additional information – highways & transport technical note, car parking survey

Publicity / Consultations (summary)

1) Neighbour / x2 site notice responses:

Objections

169 Charles Street, Boldon Colliery
10 Dunelm Grange, Boldon
41a East View, Rejuvenation Clinic Aesthetic Angel, Boldon Colliery
16 Fawley Close, Boldon Colliery
14 Leander Drive, Boldon Colliery
20 Leander Drive, Henley Grange, Boldon Colliery
25 Leander Drive, Boldon Colliery
61 Leander Drive, Henley Grange, Boldon
80 Langdale Way, East Boldon
85 Marshall Wallis Road, South Shields
17 North Road, Boldon Colliery
The Legion Club, North Road, Boldon Colliery
11 Pages Buildings, Boldon Colliery
11 Ripon Square, Jarrow

The objections can be collectively summarised as being in relation to there being no need for another fast-food outlet in Boldon Colliery (given what there is already), additional traffic congestion (and where other food outlets cause congestion), increased parking problems in the area with loss of some car parking in the Asda car park (especially in the run up to Christmas), pollution (litter or fumes from cars idling), it will affect residential amenity and obesity / not support healthy lifestyles.

Support

10 East Boldon Road, Sunderland

2) Other consultee responses

Tyne & Wear Archaeology: Based on the proposed site layout, I do not consider that archaeological works will be required.

Environmental Protection – contaminated land: No objection / no conditions suggested,

Environmental Protection – drainage / LFFA: No objections, conditions suggested having regard to the amended drainage strategy report (and its drainage drawing) and that addressed some earlier

comments regarding climate change allowance in the original drainage strategy report (and its drainage drawing).

Environmental Health – odour: No objection, condition suggested with regards to odour control measures and paragraph 6.4 of the odour assessment refers options the applicant has in terms of appropriate mitigation.

Transport Development Officer (as Highway Authority): No objection, following consideration of the additionally submitted highways & transport technical note - car parking surveys (and where car parking surveys were previously requested to assess capacity related implications of the proposal / loss of parking spaces, rather than rely on TRICS database referred to in the Transport Statement).

Public Health: Objection. The council and its partners have a 20-year vision with one of our top priorities being 'heathier people' and a key measure of success is identified as reducing obesity. The proposal is contrary to material consideration HFT1 (Planning permission will not be granted for A5 Uses in areas where the levels of obesity in Year 6 pupils is over 10%) set out in SPD22. The NPPF para. 92 c was also referenced with an emphasis added to 'access to healthy food'.

Assessment

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permission must be determined in accordance with the adopted development plan, unless material considerations indicate otherwise.

The main issues are considered to be:

- Principle of the development
- Highways
- Contaminated land
- Flood risk / drainage
- Design (including visual and residential amenity)
- Odour (including amenity and residential amenity)
- Residential amenity (other considerations)
- Archaeology

The principle of the development

The application site sits within the overall Asda site and is located within a part of its car park.

Both the application site and overall Asda site sit within the LDF's identified boundary of the Boldon Colliery other main (district) shopping centre.

The proposal is a "main town centre use" having regard to NPPF's Annex 2: Glossary in relation to main town centre uses. Furthermore, the Boldon Colliery other main (district) shopping centre constitutes a "town centre" in the context of the NPPFs Annex 2: Glossary for "town centre" – see below and where emphasis has been added by underlining.

> **Town centre:** Area defined on the local authority's policies map, including the primary shopping area and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area. References to town centres or centres apply to city centres, town centres, district centres and local centres but exclude small parades of shops of purely neighbourhood significance. Unless they are identified as centres in the development plan, existing out-of-centre developments, comprising or including main town centre uses, do not constitute town centres.

Given the above, the proposal is acceptable in principle in this location both in terms of the NPPF and LDF planning policies; and where the retail / hot food related LDF policies SC2, SA5 and DM3 do not expressly prohibit it.

With regards to SPD22 (or SPD6 for that matter), supplementary planning documents (SPDs) add further detail to policies set out in the statutory development plan documents (DPDs). They are used to provide further guidance on specific issues and are a material planning consideration in the determination of planning applications. SPDs are not subject to the same examination and consultation process as a DPD and are not part of the statutory development plan. Therefore, they do not carry as much weight as DPDs in the determination of planning applications.

In the context of SPD22 however, it is important to acknowledge that its para. 2.9 specifically includes that on a site identified as acceptable for A5 Uses* and as would be the case with this proposal given what is set out above; it will be considered against Policy DM3 but will be exempt from the considerations set out in this SPD, with the exception of the amenity issues set out in HFT 3. As such, the obesity / obesogenic considerations SPD22 sets out in HFT1 and HFT2 cannot be taken into consideration in the determination of this planning application. The consultee response from Public Health (who are not a statutory consultee) did not take into account these above limitations in terms of the application SPD23 to this site / proposal.

** Since the publication of SPD23 the government has made changes to the Use Classes Order 1987. In particular, there is no longer a A5 (hot food takeaway) use class, and such uses are now classified as being a sui generis use (i.e. not in any defined use class and in a class of their own). This does not however affect the consideration of this planning application.*

The NPPF paragraphs 92 (c) includes that that planning decisions should [emphasis added] enable and support healthy lifestyles for example through access to healthy food and 93 (b) includes that planning decisions should [emphasis added] take into account local strategies to improve health.

Given that, as already set out above, that the proposal is an acceptable use within a town centre (and where there is already access to healthy food within the town centre), it is not considered that the weighting that could be applied in the planning assessment with regard to healthy lifestyles or local strategies to improve health is to the extent that the proposal must be refused (and where, in particular, neither LDF policy or NPPF policy categorically state that it must be refused).

Highways

The submitted details include that the proposal would result in the net loss of 39 car parking spaces within the Asda car park, reducing total car parking within it from 728 spaces to 689. Notwithstanding that, the existing Blue Badge holder and parent and child spaces in the Asda car park would be unaffected by the proposal.

Asda's car park is private (not public) and is subject to customer parking restrictions. These are currently that there is a maximum 3-hour customer stay and where cameras are used to monitor this (at the entrance / exit points) and where there is various signage at the entrances and across the Asda site about these restrictions (and the customer terms and conditions for using the car park).

The submitted details include that the proposal would share use of the wider Asda car park, given the proposals proposed layout that includes a circulatory route around the building for the drive-thru with four car parking spaces in that circulatory route (two are marked as being large order bays), four cycle racks (that can accommodate eight cycles) are proposed to the south of those four car parking spaces, a layby area to the north of the building / circulatory route is proposed for a delivery lorry / takeaway delivery drivers; and an attached enclosed service yard to the west of the building. There would also be some reconfiguration of the Asda car park and landscaping, which includes the re-location of some recycling

collection bins. This is relevant in terms of the consideration of SPD6 parking standards (which are based on maximum not minimum standards and where that approach is consistent with the NPPF).

The location of the proposal is such that it would be more than 140m into the wider Asda site / its car park circulatory route and relative to the public highway at the Henley Way (B1298) / Hubert Street (B1298) / Cotswold Lane roundabout.

There has been no objection to the proposal from the local highway authority (on highway safety or highway capacity grounds), following their consideration of the submitted details including the additionally submitted car parking surveys that they had requested.

Planning conditions are recommended in relation to the provision and retention of the proposed delivery layby, large order bays, vehicle circulation route (around the single-storey building), cycle parking and bin storage to serve the proposal and another is also suggested in relation to a staff travel plan (recommended due to particular site circumstances in this instance and shared car parking with Asda).

In relation to customer vehicles potentially idling within the site, due to the nature of the proposal and its location, it is noted that the application did not require the submission of an air quality assessment (with regard to vehicle emissions). Furthermore, and in due course, private vehicles will be moving towards being electronic. As such, it is not considered that the proposal will significantly impact upon air quality (with regard to vehicle emissions).

Given the above, the proposal is not considered to give rise to unacceptable highway safety impacts or severe cumulative impacts on the local road network contrary to LDF policy or the NPPF.

In reaching this view it is acknowledged that, for example, in the run up to Christmas that the Asda car will be subject to a higher demand than that would otherwise ordinarily be the case (and as can occur at other retail destinations whether locally, regionally, or nationally). This temporary effect is not however considered to be a sufficient ground to justify refusal of the proposal.

Contaminated land

The proposal is not a sensitive use in the context of the consideration of contaminated land. As such, a phase 1 (contaminated land) desk study was not therefore required as part of the submitted application details. The site would be capped by proposed hard surfacing or the proposed building and it is already capped by hard surfacing.

Given the above and where there has been no objection (or suggestion conditions) from Environmental Protection with regards to contamination land, the proposal is regarded to acceptable (without the need for suggested planning conditions) with regards to this consideration.

Flood risk / drainage

The application site is not at a location that has been identified as being susceptible to flooding – it is in flood zone 1 (low risk) and not within any identified critical drainage area.

An amended drainage strategy has been submitted, to address some initial comments from Environmental Protection about climate change. Environmental Protection have no objection to the amended drainage details.

Northumbrian Water are not required to be consulted on this planning application, as it does not meet their triggers for consultation (and nor are they a statutory consultee for planning purposes either). This does not however abrogate from the fact that the applicant may need to separately agree the drainage details with Northumbrian Water and irrespective of the suggested planning condition that the proposal is carried out in accordance with amended drainage details.

Design (including visual and residential amenity)

The layout and appearance of the proposal, including the single storey building and the palette of materials for it (or the service yard) as set out on the proposed elevations drawing; are considered to be acceptable in terms of their scale, design and in relation to local visual and also residential amenity.

The closest residential properties are located more than 50m to the north and on the opposite side of the Henley Way (B1298) carriageway; and where there are intervening trees, hedgerow and other soft landscaping that run along largely along the line it.

A condition is suggested that the single storey building is carried out in accordance facing materials as shown on 4179-PL-03 (proposed plans and elevations) received 12/05/2022, unless otherwise agreed.

Odour (including amenity and residential amenity)

The submitted details included a Commercial kitchen odour risk assessment, and a related drawing. These include that the proposal would require a high level of odour attenuation to ensure closet (residential) receptors are not harmed and provide details for that mitigation.

Environmental Health have revised these and have no objections to the proposal, subject to a planning condition requires the odour attenuation details to be provide.

A condition is therefore suggested with regards to the provision of the odour extraction details and their operation and maintenance.

Notwithstanding this suggested condition, Environmental Health have their own separate legislative provisions both in relation to the inspecting food premises (and that would include the adequacy and efficiency of the extraction system) or with regards to potentially dealing with odour complaints (if any arose).

Residential amenity (other considerations)

The location and scale/design of the proposed single storey building (or service yard) is such that it is not considered to give rise to any material harm to residential amenity in terms of outlook, privacy, or overshadowing.

The application form included that the proposal would be time limited in terms of opening hours, stating 10am to 11pm. However, is noted that Asda includes some 24/7 open hours (excepting Monday morning and Saturday night, due to limits that apply to their Sunday trading), Tim Hortons opens 6am to midnight (every day), McDonald's opens 24/7 (every day). Given that trading context and where the proposal is in a town centre location, a condition is suggested in relation to open hours but with these restricting the proposal so to not be open between midnight and 8am (every day).

Archaeology

Given the consultation response from Tyne & Wear Archaeology, the proposal does not raise any issues with regards to this consideration.

Other matters

The proposal includes provision of both commercial refuse storage to and also bins for customers. The proposal cannot be recommended for refusal on the basis that customers may inappropriately dispose of waste.

Conclusion

For the reasons set out above (and subject to the suggested conditions), the proposal is considered to be acceptable.

In assessing this application due regard has been had to the requirement of section 149 of the Equality Act 2010.

Recommendation

Grant Permission with Conditions

Conditions

1 The development to which this permission relates must be commenced not later than 3 years from the date of this permission.

As required by Section 91 of the Town and Country Planning Act 1990 and to ensure that the development is carried out within a reasonable time.

2 The development shall be carried out in accordance with the approved plans as detailed below:

4179-PL-04 Rev. E (proposed site plan) received 12/05/2022
4179-PL-06 Rev. B (landscape plan) received 12/05/2022
4179-PL-03 (proposed plans and elevations) received 12/05/2022

Any minor material changes to the approved plans will require a formal planning application under S73 of the Town and Country Planning Act 1990 to vary this condition and substitute alternative plans.

In order to provide a procedure to seek approval of proposed minor material change which is not substantially different from that which has been approved.

3 The development hereby permitted shall be carried out in accordance with the drainage strategy, as set out in Drainage Strategy Report (Rev. 1 by Saldanha Design and Management Ltd.) received 06/12/2022.

To ensure that the discharge of surface / foul water from the development does not increase the risk of flooding in accordance with South Tyneside Local Development Framework Policies ST2 and DM1(K).

4 The single storey building shall be carried out in accordance with the facing materials as shown on 4179-PL-03 (proposed plans and elevations) received 12/05/2022, unless otherwise agreed in writing by the Local Planning Authority pursuant to this condition.

In the interests of visual amenity in accordance with South Tyneside Local Development Framework Policies ST2 and DM1(A).

5 The development hereby permitted shall not be brought into use until the kitchen extraction system has been fully installed, as per the recommendations at paragraph 6.4 of the Commercial Kitchen Odour Risk Assessment (by Miller Goodall Ltd.) and set out on drawing 0000/M100 Rev. B (by Ashworth), both received 12/05/2022. All equipment installed as part of the system shall thereafter be operated and maintained for so long as the development permitted continues.

In the interests of amenity and residential amenity in accordance with South Tyneside Local Development Framework Policies DM1(A & B) and DM3.

6 The development hereby permitted shall not be brought into use until the delivery layby, large order bays, vehicle circulation route (around the single-storey building), cycle parking and bin storage to serve it as shown on 4179-PL-04 Rev. E (proposed site plan) received 12/05/2022 has been provided. The delivery layby, large order bays, vehicle circulation (around the single-storey building), cycle parking and bin storage shall thereafter be retained for their intended purpose.

In the interests of highway safety in accordance with South Tyneside Local Development Framework Policy DM1(G).

7 The development hereby permitted shall not be open to customers, whether they enter the building, use the drive-thru or use delivery services; between the hours of midnight and 08:00 on any day.

In the interests of amenity and residential amenity in accordance with South Tyneside Local Development Framework Policies DM1(A & B) and DM3.

8 The development hereby permitted shall not be brought into use, unless it is implemented and operated in accordance with the details contained in the Framework Travel Plan (by Mode Transport Planning) received 12/05/2022; and where the Local Planning Authority shall be informed in writing of the review reports it references at 7.3.1.

To promote sustainable modes of travel (particularly for employees of the development) in accordance with South Tyneside Local Development Framework Policy ST2.

Informatives

1 In dealing with this application the Council has implemented the requirements of the National Planning Policy Framework to seek to approve applications for sustainable development where possible.

2 The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority

Case officer initials:
Date:

Authorised Signatory:
Date:

«END»