

South Somerset District Council

Minutes of a meeting of the **Regulation Committee** held on **Tuesday, 16th December 2008** in the Council Chamber, Council Offices, Brympton Way, Yeovil.

*(10am - 11.47am
and 11.55 - 12.10 pm)*

Present:

Julian Freke (Chairman)

Tim Carroll	Sylvia Seal
Tony Fife	Kim Turner
Michael Lewis	Linda Vjeh
Patrick Palmer	William Wallace

Also Present :

Dave Greene

Officers:

Andrew Collins	Planner
Andy Foyne	Head of Economic Development, Planning and Transport
Paula Goddard	Senior Legal Executive
Jean Marshall	Development Control Team Leader
Angela Oxenbury	Committee Administrator

Prior to the commencement of the meeting the Chairman explained the procedure that would be followed.

14. Minutes (Agenda Item 1)

The minutes of the meeting of the Regulation Committee held on Tuesday, 18th November 2008, copies of which had been previously circulated, were approved as a correct record and signed by the Chairman.

15. Apologies for Absence (Agenda Item 2)

Apologies for absence were received from Councillors Mike Best, Peter Gubbins, Henry Hobhouse and Pat Martin.

16. Declarations of Interest (Agenda Item 3)

Councillor Tony Fife declared that, as Chairman of Area South Committee he had not voted on planning application 08/03529/FUL when it had been considered by that Committee on 5th November.

17. Public Question Time (Agenda Item 4)

There were no questions or comments from members of the public.

18. Demolition of existing industrial unit and the erection of a new Lidl Foodstore with associated parking, servicing and infrastructure improvements at Ashleys of Yeovil, West Hendford, Yeovil, Somerset (Agenda Item 5)

The Planning Officer drew attention to a letter from the applicant which not all members had received and others had not opened.

With the aid of slides the Planning Officer presented plans of the site and proposed access and confirmed that land would be needed from Augusta Westland to provide the roundabout. He described the relationship with the former Seatons site, the floor plans and parking arrangements.

The Planning Officer said the key comments in the report were those relating to Planning Policy on where the proposed unit would be within Yeovil. He stated that although the application referred to the erection of a Lidl store, it could be any A1 store if not restricted by condition to Lidl. This would be the second store for Lidl in Yeovil who also wished to retain the existing store in Lyde Road. He referred to consideration of the application by Area South Committee and the Committee's recommendation to grant permission. However, because of the concerns resulting from the sequential test, the officer's recommendation was one of refusal.

The Head of Economic Development, Planning and Transport referred to the loss of employment land and concerns regarding the sequential test. He reminded members that in April 2007 an application had been refused on the same site because it would result in the loss of employment land. Since then changes of policy in relation to employment land had been set out by the Regional Spatial Strategy and SSDC's Workspace Demand Study. Therefore, he felt there was no reason to move away from the previous decision.

He said the applicant had dismissed one of the possible alternative sites - in Stars Lane North – for various reasons including proximity to Aldi and higher rental charges, which were not planning issues. He commented that a material planning issue was the perceived dead frontage to Middle Street which could be orientated away from the street to provide an attractive frontage. Therefore, in his opinion the sequential test had not been thoroughly undertaken.

The Head of Economic Development, Planning and Transport drew attention to the Yeovil Vision and planning consent for the Quedam and Cattle Market sites. Both were quality and aspirational developments and a result of SSDC initially refusing permission. He felt the focus for retail should be in Yeovil town centre and the development of the application site would not help the Quedam proposals which were currently stalling due to the economic situation.

The Development Control Team Leader reminded members that if they were minded to approve the application, it would be necessary to submit it to the Government Office for the South West (GOSW) to decide whether or not to call it in.

With regard to the need for the applicant to purchase third party land to complete the proposed roundabout, the Development Control Team Leader summarised the comments made by the applicant in a letter to members. The applicant was seeking determination to establish the principles of development but if it was not possible to reach agreement with the third party the development would not proceed. In that case, it would be possible to design an alternative scheme with no requirement for third party land which would require a new application to be submitted and approved.

She also summarised the applicant's comments regarding the sequential test, impact and accessibility.

In response to members' questions, the Head of Economic Development, Planning and Transport and the Development Control Team Leader explained that:

- The Economic Development Team Leader had sought clarification that there was a requirement by the site owner to gain value from the site to continue to operate in Yeovil rather than to profit from the sale of the site.
- The finances of the company were not a material planning issue.
- PPS6 was published in April 2007 and therefore sequential tests and loss of employment land were not considered in relation to the application for a Morrison's store.
- There was no technical reason why a roundabout at the access to the site would not work.
- Advice from GOSW had been sought regarding both Lidl applications in Wincanton and Yeovil. Whilst GOSW had indicated the Wincanton application should not be referred to them they wished to receive the Yeovil application if approved.
- The proposed development was of a similar height and scale to existing properties.
- Land ownership was a separate matter and in planning law if notice had been served on the owner of third party land, an application could be submitted and processed in the usual way.
- If there was a need for an easily accessible out of town heavy discount store it would be on the western side of Yeovil, however this was against Government policy.

Councillor Dave Greene, ward member, informed the Committee that he had spent the early part of his life in the Seaton Road/Westland Road area before the building of Lysander Road. There was a history of easily accessible small retail food stores in the area and the proposal would replace what had previously existed, albeit some years ago. He commented that employment would be retained on the site and he urged members to support the application.

David Stephens spoke on behalf of the Abbey Manor Group who did not object in principle to the scheme but felt it might prejudice safe access to the regeneration area of West Hendford owned by his clients. Mini roundabout access had been negotiated by his clients with Highways and he asked the Committee that if they were minded to approve the application, a condition be attached that any highways solution should be compatible with access into the SEB site. As the third party land was not available to the applicant he felt there was no implementable access solution, therefore he asked the Committee to refuse the application on highways grounds or defer it until ownership had been resolved.

The Senior Legal Executive advised the Committee to consider the evidence before them. She said a Grampian condition could be imposed if there was a reasonable prospect of the condition being met.

The Development Team Leader confirmed that the two parties had discussed the third party land issue and the owners would not allow its inclusion, therefore there was no reasonable prospect of this action being carried out.

James Mitchell, applicant, drew attention to the recommendation of Area South Committee that the application should be approved. With reference to the sequential test and the conclusions regarding Stars Lane North he said the site was neither practical nor suitable for use because:

- It was not the right shape and columns obstructed the floor space.
- There was redundant first floor space not needed by the applicant.
- There was a clear lack of parking and this would be unacceptable for the applicant's business.
- The site was within 200 yards of the Aldi store.
- It was close to the existing Lidl store.

For both planning and practical reasons he said the Stars Lane North site was unacceptable to the company.

He commented that Ashleys would gain high value from the application site to enable them to locate to a more suitable site. He thought that third party agreement might be forthcoming in the future to enable construction of the roundabout. If approved, negotiations would commence or a scheme devised that would not involve third party land. He confirmed that overgrown vegetation would be removed and replanting undertaken so as not to impede visibility. The store was much needed in the western side of Yeovil and a Section 106 obligation would be acceptable to the applicant. He said his company did not buy sites where the occupier could not be relocated to an alternative site and in his view a job was a job whatever its category.

The Head of Economic Development, Planning and Transport stated that points made by the applicant had not been included in the original submission. PPS6 required developers to be flexible but this was not evident in the applicant's submission. He refuted the applicant's comments regarding the Stars Lane North site by stating that:

- The site was not irregular and was bigger than that required by the applicant.
- Parking provision could be resolved at the site if demolition and rebuild was considered.
- The building was not listed and poor frontage to the road could be resolved if demolished.
- Proximity to existing stores was not a planning issue.

He acknowledged that there was a difference of view on one point with the Economic Development Team Leader. He had stated that jobs were secured but it would be better if the retail jobs were not established on employment land.

The Senior Legal Executive reminded the Committee that relocation of a business was not a material planning consideration.

The Development Control Team Leader clarified that although the applicant had discussed the access with Highways, no alternative plans had been submitted. She

confirmed that traffic lights would not need third party land but would require submission of a further application.

Nigel Ashley addressed the Committee on the operation of his company which had occupied the same site for 60 years. The site and the buildings were now tired and inefficient and needed investment to modernise them. The company employed 35 people and were committed to Yeovil. A new site had been purchased and the best possible financial investment was needed in order for the company to succeed.

The Senior Legal Executive reminded the Committee that the Development Plan was the starting point for their deliberations. Economic considerations could be material to the case but should be weighed in the balance with other factors. If approved, she said it must be clear that the sequential test had been properly undertaken.

During the ensuing discussion, members indicated their support for the proposal and commented that:

- There would be no loss of jobs at the site which would remain as employment land, albeit A1 use.
- As a result of the development, an engineering company would be retained in Yeovil.
- Out of town policy was not relevant as two Tesco stores had been developed on estates outside the town centre.
- By its nature a discount store would not be the quality building required in Yeovil town centre.
- Ashleys was a long established well respected company in Yeovil and such businesses should be encouraged to prosper.
- The applicant had made a good case that the former Somerfield building was unsuitable.
- A precedent had been set by planning permission being granted for the Lidl store in Wincanton.
- The highways issues could be resolved by negotiation or a new design.
- The items traded in the store could be restricted by condition.

Following further discussion, it was proposed and seconded that planning permission be granted, subject to referral of the application to GOSW, completion of a Section 106 obligation regarding highways and restriction of the number of products to be sold. Conditions to include finish of the building, floor levels, landscaping, boundary treatment, lighting, a construction environmental management plan, drainage and flood warning, details of opening hours and delivery times during construction and on completion, provision of a temporary car park during construction and the gating of the car park at night.

The Committee adjourned to enable the planning officers to draft the wording of suggested conditions.

On reconvening the meeting the motion was put to the vote and was carried unanimously.

RESOLVED: that planning permission be granted for the following reasons:

Notwithstanding the policy arguments, given the proposed future growth in Yeovil, there appears to be a need to provide new retail floorspace of the size and scale proposed and the proposal will not have an unacceptable impact on the vitality and viability of Yeovil town centre. Furthermore, it is considered that the submitted sequential development assessment is robust and accordingly the policy objection to development on the site is resolved and with it the loss of employment argument is resolved as jobs will be provided onsite. In addition, recognition is made of the type and disposition of other pre-existing food retail outlets in this area and the catchment areas they serve. The proposal would therefore be in compliance with Policy EC6 of the Regional Spatial Strategy, Policies 20 and 21 of the Somerset and Exmoor National Park Joint Structure Plan, Policy MC2 and MC3 of the adopted South Somerset Local Plan, and subject to:

- a) Referral to the Government Office for the South West and provided that this application is not called-in
- b) the prior completion of a legal agreement / Section 106 planning obligation (in a form acceptable to the Council's solicitor(s)) before the decision notice granting planning permission is issued, the said planning obligation to cover the following items/issues:
 - satisfactory highway access arrangements
 - the number of product lines (stock keeping units) available within the foodstore at any one time shall not exceed 2,500 lines, unless otherwise agreed with the Council
 - the proportion of net sales area of the foodstore used for the display of non-food (comparison) goods (excluding household cleaning and cosmetic products) shall not exceed 20% of the total net sales area, unless otherwise agreed with the Council
 - the foodstore will not provide any of the following services:
 - Butchers counter
 - Fresh fish counter
 - Delicatessen / cheese counter
 - Hot food
 - Pharmacy
 - Dry cleaning services
 - Post office services
 - Lottery sales
 - Photographic shop or booth
 - Café / restaurant
- c) The imposition of planning conditions set out below on the grant of planning permission:
 - 1) The development hereby permitted shall be begun within three years of the date of this permission.

Reason: In accordance with the provisions of Section 91 (1) of the Town and Country Planning Act 1990.

- 2) No works shall be undertaken unless specific details of the external finish of the building are submitted to and agreed in writing by the Local Planning Authority and carried out in accordance with the agreed details.

Reason: In the interests of visual amenity in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 3) No works shall be undertaken unless the proposed finished floor levels are submitted to and approved in writing by the Local Planning Authority which shall be no lower than 300mm above ground level.

Reason: In the interests of visual amenity in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 4) (i) Before any part of the permitted development is commenced, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the Local Planning Authority.
(ii) The scheme shall be completely carried out within the first available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority.
(iii) For a period of five years after the completion of the planting scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition to the satisfaction of The Local Planning Authority and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.

Reason: To ensure that the proposed development makes a satisfactory contribution to the preservation and enhancement of the local character and distinctiveness of the area in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 5) Prior to development, site vegetation clearance, demolition of existing structures, heavy machinery entering site or storage of materials, a Tree Survey and Arboricultural Method Statement to include a Tree Protection Plan for trees to be retained and a scheme of tree planting to mitigate for the tree losses, shall be submitted to and agreed in writing with SSDC in accordance with British Standard 5837 : 2005.

The scheme of tree planting subsequently detailed within an Arboricultural Method Statement shall be completed within the first available planting season upon implementation of the Planning Permission. Should any of the trees die, become damaged, diseased or be removed within five years of planting, they shall be replaced with the original specification of tree/s in the same location, again within the first available planting season.

Reason: To make adequate provision for the preservation and planting of trees in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 6) No works shall be undertaken unless details of the boundary treatment are submitted to and agreed in writing by the Local Planning Authority. The boundary treatment shall be carried out in accordance with the agreed details.

Reason: In the interests of visual amenity in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 7) No works shall be undertaken unless details of external lighting are submitted to and agreed in writing. The development shall be constructed in accordance with the agreed details. No external lighting as shall be agreed shall be used outside of store operational hours (6am - 10pm Monday to Friday and 10am - 4pm Sundays and Bank Holidays) without the prior written consent of the local planning authority.

Reason: In the interests of visual and residential amenity in accordance with Policies ST5 and ST6 of the adopted South Somerset Local Plan 2006.

- 8) No development shall begin until details of a scheme for the provision of surface water run-off limitation incorporating sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details and timetable agreed.

Reason: To protect the development from flooding in accordance with Policy EU5 of the adopted South Somerset Local Plan 2006.

- 9) No works shall be undertaken unless, a scheme to deal with the risks associated with the contamination of the site shall be submitted to and approved, in writing, by the local planning authority. That scheme shall include all of the following elements unless specifically excluded, in writing by the Local Planning Authority.

1. A desk study identifying:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site
2. A site investigation scheme, based on (1) to provide information for an assessment of the risk to all receptors that may be affected, including those off site.

3. The results of the site investigation and risk assessment (2) and a method statement based on those results giving full details of the remediation measures required and how they are undertaken.
4. A verification report on completion of the works set out in (3) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Reason: Due to the history of industrial/commercial activity on the site it is possible that further areas of contamination may be revealed during development that were not identified during site investigations in accordance with Policy EP5 of the adopted South Somerset Local Plan 2006.

- 10) No works shall be undertaken unless a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Subsequent development shall be carried out in accordance with the requirements of the approved CEMP.

Reason: In the interests of preventing pollution of the water environment in accordance with Policy EU5 of the adopted South Somerset Local Plan 2006.

- 11) Prior to being discharged into any watercourse, surface water sewer or soakaway system all surface water drainage from impermeable parking areas and hardstandings for vehicles, commercial lorry parks and petrol stations shall be passed through an oil interceptor designed and construction to have a capacity and details compatible with the site being drained.

Reason: To prevent pollution of the water environment in accordance with Policy EU5 of the adopted South Somerset Local Plan 2006.

- 12) The development shall not be occupied until a specific flood warning and evacuation plan is produced for the site. This must be submitted to and agreed in writing by the local planning authority.

Reason: To reduce the impact of flooding on the future occupiers of the proposed development in accordance with Policy EU5 of the adopted South Somerset Local Plan 2006.

- 13) No raw materials, products of any description, scrap or waste materials whatsoever shall be stored in the open on any part of the subject land without the prior written consent of the Local Planning Authority.

Reason: To safeguard the amenities and character of the area in accordance with Policy ST5 and ST6 of the South Somerset Local Plan 2006.

- 14) Opening hours for the store shall be restricted to 8am to 8pm Monday to Saturday and 10am to 4pm on Sundays and Bank Holidays.

Reason: To safeguard the amenities and character of the area in accordance with Policy ST5 and ST6 of the South Somerset Local Plan 2006.

- 15) Deliveries to the store shall only be carried out between the hours of 6am to 10pm Monday to Saturday and 10am to 4pm Sundays and Bank Holidays.

Reason: To avoid highway conflict in accordance with Policy 49 of the Somerset and Exmoor Joint Structure Plan 1991 –2011 and to minimise impact on residential amenity.

- 16) Adequate provision for a temporary car park within the site to accommodate operatives and construction vehicles during the contract period shall be provided so that none park on the public highway.

Reason: In the interests of highway safety in accordance with Policy 49 of the Somerset and Exmoor Joint Structure Plan 1991 – 2011.

- 17) The area allocated for parking, turning and servicing on the submitted plan shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted. Outside of store delivery hours set out in condition 15 above, the entrance to the car park shall be gated in accordance with details which shall be submitted to and approved in writing by the local planning authority prior to the car park being first brought into use.

Reason: In the interests of highway safety in accordance with Policy 49 of the Somerset and Exmoor Joint Structure Plan 1991 – 2011.

Informatives

- 1) Surface water from car parking areas less than 0.5 hectares and roads should discharge to watercourse via deep sealed trapped gullies. For car parks greater than 0.5 hectares in area, oil interceptor facilities are required such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour. With approved “by pass” type of interceptors, flows generated by rainfall in excess of 5mm/hour may be allowed to by-pass the interceptor provided the overflow device is designated so that oily matter is retained. Lorry parks, scrap yards, off loading areas require full oil interceptor facilities and “by-pass” interceptors are not considered suitable. Segregation of roof water should be carried out where possible to minimise the flow of contaminated water to be treated. Detergents, emulsifiers and solvents must not be allowed to drain to the interceptor as these would render it ineffective.

- 2) The development should include water efficient appliances, fittings and systems in order to contribute to reduced water demand in the area. Greywater recycling and rainwater harvesting should be considered.

The submitted scheme should consist of a detailed list and description (including capacities, water consumption rates etc. where applicable) of water saving measures to be employed within the development. Applicants should visit

<http://environment-agency.gov.uk/> Subjects > Water Resources > How We Help To Save Water > Publications > Conserving Water in Buildings, for detailed information on water saving measures. A scheme of water efficiency should be submitted in accordance with the information supplied on the website. The following may be helpful – <http://www.savewatersavemoney.co.uk/>.

- 3) The Environment Agency strongly recommend that the proposed development includes sustainable design and construction measures. In a sustainable building minimal natural resources and renewables are used during construction, and the efficient use of energy is achieved during subsequent use. This reduces greenhouse gas emissions and helps to limit and adapt to climate change. Running costs of the building can also be significantly reduced.
- 4) Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site, including protection of existing drainage systems for riparian owners upstream and downstream.

Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of the work and storage areas and the control and removal of spoil and wastes.

The Environment Agency recommend referring to our Pollution Prevention Guidelines, found at www.environment-agency.gov.uk/Business/444251/444731/ppg/?version/=1&lang=e

- 5) Where works are to be undertaken on or adjoining the publicly maintainable highway a licence under Section 171 of the Highway Act 1980 must be obtained in writing from the Highway Authority. Application forms can be obtained by writing to Roger Tyson of the Transport Development Group, Environment Department, County Hall, Taunton, TA1 4DY or by telephoning him on 01823 356011. Applications should be submitted at least four weeks before works are proposed to commence in order for statutory undertakers to be aware of works concerning their services.

- 6) The fee for a section 171 Licence is £250. This will entitle the developer to have his plans checked and specifications supplied. The works will also be inspected by the Superintendence team and will be signed off upon satisfactory completion. In addition, an Agreement under Section 278 of the Highways Act 1980 will be required to the works to the existing highway.
- 7) Your attention is drawn to the requirements of the Considerate Constructors Scheme. See www.considerateconstructorsscheme.org.uk

(Vote: Unanimous)

19. Date of Next Meeting (Agenda Item 6)

Members noted that the next meeting of the Committee would take place on Tuesday, 20th January 2009 at 10.00am in The Council Chamber, Council Offices, Brympton Way, Yeovil.

.....
Chairman