



## Report of the Chief Planning Officer

### ***SOUTH AND WEST PLANS PANEL***

**Date:** 18<sup>th</sup> October 2018

**Subject: Planning Application 18/00846/FU** - Construction of a mixed use retail-led development comprising retail (use classes A1, A2, A3 and A5), leisure (use class D2), non-residential institutions (use class D1) and book makers (sui generis) with associated access, parking and landscaping. - **Land at the former Site of Benyon House, Ring Road Middleton, Middleton, Leeds, LS10**

**APPLICANT**

Commercial Development  
Projects Ltd

**DATE VALID**

16.2.18

**TARGET DATE**

31.7.18

**Electoral Wards Affected:**

Middleton Park

Yes

Ward Members consulted  
(referred to in report)

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**RECOMMENDATION: Refuse planning permission on the following grounds**

**1) The proposal (in this edge of center location) will result in a significant adverse impact on Middleton Town Centre, therefore harming the viability and vitality of this town centre location. The proposal is therefore contrary to paragraph 89 and 90 of the NPPF and policies SP2 and P8 of the Core Strategy.**

**2) The proposal will result in the loss of a brownfield site within the Main Urban Area that is proposed to be allocated for a mix of housing and general employment uses within the Site Allocations Plan. The loss of this site to retail would risk the need for further Green Belt releases to meet the Council's housing requirement. The proposal is therefore premature, in line with Paragraphs 48-50 of the NPPF, and contrary to policy SP1.**

## 1.0 INTRODUCTION

This application is brought to Plans Panel due to the scale of the development, at the request of local Ward Members who consider the application to be of local significance due to the potential for job creation.

## 2.0 PROPOSAL

2.1 The proposal is for a new major, retail led scheme, of 9 units which vary in size. The scheme would be anchored by two new large A1 stores proposed at present to be Lidi and B&M stores. The proposal comprises of the following

Unit	Floor area (sq M)	Use Class	Current proposed Occupier (if known)
1	1950	A1	Lidi
2	116.13	A1	Costa Coffee
3	139.5	Sui generis	Vets
4	167.23	A1	Greggs
5	92.9	A1	Subway
6	92.9	A5	Domino's Pizza
7	278.71	A1	Jack Fulton
8	130.01	A1	Card factory
9	157.93	A1, or D2 or Bookmakers	unknown
10	557.42	A1 or D2	unknown
11	2322.58	A1	B&M
12	557.4	A1	B&M garden centre

2.2 The range of uses included with the proposal allows for the delivery of a Bookmakers (sui generis use). It is not known if this use will definitely occupy one of the units, or which unit. The applicant is seeking flexibility on the possible provision of such a use. The applicants have stated that they would accept a condition which limited the maximum floorspace of this use to 167.2 sq m, which will ensure only one unit could be occupied by this use.

2.3 Similarly at this point in time it is not known if a D2 Leisure use will occupy one or more of the units. The applicants have suggested that this use is subject to a

condition that requires the D2 use to be a maximum 557.4 sq m of floor space, which is the largest unit other than the two A1 units (Lidi and B&M).

- 2.4 The units are typically 8-9m in height, and are of simple modern design, typical of those found in retail parks. Materials consist of white rendered walls, with a grey base, silver Alucobond cladding panels, or composite cladding panels and with full height powder coated aluminium double glazed shop frontages to all units.
- 2.5 Landscaping is proposed both on and off-site.
- 2.6 It is proposed that access to the new store will be via the existing access off the roundabout. The scheme proposes 283 car parking spaces. Disabled and parent and child parking spaces (25 in total) will be spread throughout the site but in each case close to the entrance of the retail units in question. 11 staff spaces are proposed, as well as 4 motorcycle parking spaces. 9 spaces for Electric Vehicles are also proposed.

### **3.0 SITE AND SURROUNDINGS**

- 3.1 The size comprises of an area of land which is 5.9 acres in size, which broadly is rectangular in shape. The site was previously occupied by Benyon House which was originally constructed as a bus garage but for many years was the former Leeds Industrial Cooperative Society head office warehouse and distribution centre. This building was demolished in 2013 and the site has been vacant since that time.
- 3.2 Traditional post-war, red-brick built suburban dwellings lie to the north and east of the site, situated along Middleton Ring Road and Dolphin Road. This form of housing is relatively spaciouly laid out in regular patterns, with large gardens and grass verges to the highways. The site is elevated from Dolphin Road by around 2-3m, and supported by a brick retaining wall.
- 3.3 To the south-east of the site lies a car garage and directly to the south, a Council run waste and recycling depot, and a new modern Asda Supermarket and Petrol Station. To the west lies a round-about, and beyond this, Middleton Town Centre. To the north lies Middleton Ring Road, with housing beyond.
- 3.4 There are a number of protected trees which lie along the site boundaries, namely along the northern and eastern site boundary. A mature hedgerow which existed along the northern boundary to the site, adjacent to Middleton Ring Road was removed by the applicants in 2016.

### **4.0 RELEVANT PLANNING HISTORY**

- 4.1 This application is a resubmission of a previously refused application 16/06310/FU, which for was a similar scheme, anchored by Lidi and B&M. That application was refused planning consent under delegated powers on 8.9.17, due to the loss of protected trees and the impact on adjacent residents with regard to noise and activity due to the proposed location of a service yard/ delivery area.
- 4.2 Prior to the 2016 application, planning application (ref 09/01727/FU) proposed a single storey (Tesco's supermarket) retail food store of 6,092 sqm gross with 351 car parking spaces.

4.3 An application was then submitted on an adjacent site by Asda Stores Ltd and Officers decided that both applications, which were for foodstores of a similar scale, should be considered together. As a result, the Tesco application was not considered by Plans Panel until 23rd February 2010. At that meeting Members resolved to refuse the application whilst granting approval for the Asda store.

## **5.0 HISTORY OF NEGOTIATIONS**

5.1 In order to address concerns regarding the impact the Application might have on the existing B&M store, the applicants agreed to fund an independent retail study, to ascertain the likelihood of the existing B&M unit within Middleton Town centre being re-let. This was done to allow an assessment on whether the proposal would have a 'significant' adverse impact on the Middleton Town centre, in accordance with paragraphs 89 and 90 of the NPPF. The results of this study are covered in paragraphs 10.11- 10.16 of this report.

5.2 The application has also been amended since submission, to address Officers concerns on design, by introducing design features to break up the mass of some blocks. This has been achieved through the use of materials, design features such as piers and parapets being introduced, and an increase in the use of glazing. Officers also raised concerns to the appearance of the rear elevation of the A1 Unit (Lidi store) which faces onto Middleton Ring Road, due to its mass, design and blandness. This elevation has been amended to include pier details and high level glazing.

## **6.0 PUBLIC/LOCAL RESPONSE**

6.1 The application was publicised by 5 site notices which were posted around the site on 23<sup>rd</sup> March 2018. An advert was also placed in the local press on 30<sup>th</sup> March 2018. All 24 objectors to the previous application (ref 16/06310/FU) were notified of this re-submitted application.

6.2 To date, 9 individual letters of objections have been received to the application including one from the adjacent Asda store. 2 letters of support have been submitted. The points raised in the objections from local residents are highlighted below.

- Application should be refused again.
- Noise survey is out of date and flawed.
- Do not require more retail stores in the locality.
- B&M already exists on the adjacent site.
- Site should be developed for leisure purposes.
- Middleton is saturated by supermarkets.
- Will have an adverse impact on Middleton Town Centre, leaving empty units.
- Will attract anti-social behaviour in late evening hours.
- Middleton require a retail mix, not just budget stores.
- Stores of this type will harm Middleton reputation.
- Development will be occupied by chain stores, not independent local traders.
- Will increase traffic in the area, which is already congested.
- Will increase noise levels in the area.
- Adverse impact on house prices.
- Increase in air pollution.

- Will impact of small local business's which can't compete with big chains stores.
- Uncertainty on who will occupy the development, only 2 retailers are named.
- Would be better as 'green' land or affordable housing.
- Should include restaurants, there is a shortage in Middleton.
- The grounds why the previous Tesco application was refused still stand and are valid.
- The claim the proposal would create 145 new jobs is misleading.
- The proposed stores are uninspiring and will add nothing to the local area.
- Middleton needs entertainment/ eating/ drinking establishments.
- Poor behaviour of applicants to remove trees and hedging from the site.
- No need for another Book-maker/ Betting Shop.
- Will not enhance a sense of community cohesion or spirit
- Plans are unsympathetic to the character of the locality.
- Revisions have not taken on board objectors comments.
- Since arrival of Asda and Aldi, footfall in Middleton Park Circus has declined significantly.
- The Council should not give into threats from B&M they will vacate Middleton unless this development goes ahead

#### 6.3 Asda Stores Limited have objected on the following grounds

- Site is proposed for 'employment' use through the Site Allocation Plan.
- There is no change in circumstances since the previous Tesco's application was refused.
- Will have adverse impact on viability and vitality Middleton Town Centre.
- Closure of B&M will result in 43% of all trade loss from Middleton Town Centre.
- Will impact on other stores due to loss of linked trips from visitors to B&M.
- No evidence to support the claim the site is not viable for employment purposes.

#### 6.4 Leeds Civic Trust have objected on the following grounds.

- A site of this size should include a residential component.
- No reason why a retail development cannot include first floor apartments.
- A mix use scheme would ensure the site is used throughout the day, while helping to meet the need for more housing.
- There is a recent tendency for discount supermarkets of this format, single storey structures with expanses of parking.
- This model is easy and cheap to roll out, and does little to contribute to the vitality of the Towns and town centres.
- This form of development ignores good practise of the first decade of this century when schemes integrated apartments into retail or leisure schemes.
- Development turns it back onto Middleton Ring Road.
- Area would benefit from active frontage on this elevation.

#### 6.5 The points raised in the letters of support are cited below

- Site needs redeveloping.
- Proposal will create jobs.
- Previous application should not have been refused.

## 7.0 CONSULTATION RESPONSES

### Statutory:

- 7.1. Highways:  
No objection. The proposal utilises an existing access and it is considered there is no highway safety or capacity issues. The application is supported by a full TA and on balance a short of 17 parking spaces, against adoptable standards is considered to be acceptable.

**Non-Statutory:**

- 7.2 Local Plans  
Given the increased uncertainty surrounding the re-occupation of the B&M unit in Middleton Centre, as a result of the unfavourable trading conditions for Budget/Discount retailers, it is considered that there is a material change in circumstances from the previously refused application. As with the previous application the decision on whether the proposal will result in a significant adverse impact (thus requiring refusal in accordance with para 89 of the NPPF and P8 of the Core Strategy) rests on the likelihood of the B&M unit being re-occupied, that likelihood has now significantly reduced, thus tipping the balance to the extent that we now consider that the application is likely to have a significant adverse impact.

An additional material change is that the hearing sessions for the Site Allocations Plan Examination in Public have not concluded and closed. As such moderate material weight can be given to the fact that this application would result in the loss of a brownfield site within the Main Urban Area of Leeds which is proposed to be allocated for housing and general employment. This could potentially put increased strain on the Green Belt in order for the Council to meet its housing requirements without the use of this site. As such the proposal is premature and contrary to paragraphs 48-50 of the NPPF.

- 7.3 Contaminated Land  
No objections subject to condition which relate to a duty to report unexpected contamination and the importation of soil.
- 7.4 Coal Authority  
The application site does not fall within the defined high risk area and there is no requirement for the CA to be consulted.
- 7.5 Landscaping  
Raised concerns. The proposal now seeks to retain most of the TPO trees but the proportion of planted areas to build form/ hard surfacing seems low. Have recommended conditions which relate to new planting, landscape maintenance and tree protection.
- 7.6 Travel Wise  
A review fee of £5000 is required and should be secured by a S106 agreement. Electric charging points should be provided within the development and secured by planning condition.
- 7.7 Flood Risk Management  
No objections subject to conditions which relate to a drainage scheme (to include drainage drawings, summary calculations and investigations).
- 7.8 Environmental Health

The proposal has re-sited the service yard away from the residential properties on Dolphin Road, when compared to the previous approval. No objections subject to conditions which prohibit deliveries in the late evening/ night hours.

## **8.0 PLANNING POLICIES**

8.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for Leeds comprises the Adopted Core Strategy (2014), saved policies within the Leeds Unitary Development Plan (Review 2006) Aire Valley Leeds Area Action Plan (2017) and the Natural Resources and Waste Development Plan Document (2013) as well as any made Neighbourhood Plans.

8.2 The site is identified on the Local Plan Policies Map as a Protected Area of Search.

### **8.3 Adopted Core Strategy**

The following Core Strategy policies are considered most relevant:

- SP1 Location of Development
- SP2 Hierarchy of Centre and Spatial Approach to Retailing, Offices, Intensive Leisure and Culture' states:
- P1 Town and Local Centre Designations', designates Leeds' Town and Local Centres.
- P2 Acceptable Uses in and on the Edge of Town Centres'
- P5 Approach to Accommodating New Food Stores across Leeds
- P6 Approach to Accommodating New Comparison Shopping in Town and Local Centres
- P8 Sets out the catchments for undertaking Sequential and Impact Assessments
- T1 Transport management
- T2 Accessibility requirements and new development
- P10 Design
- P12 Landscape
- ID2 Planning obligations and developer contributions

### **8.4 Saved Policies - Leeds UDP (2006)**

The following saved policies within the UDP are considered most relevant to the determination of this application:

- GP1 Land use and the proposals map
- GP5 General planning considerations
- N25 Landscape design and boundary treatment
- T7A Cycle parking guidelines

### **8.5 Submission Draft Site Allocations Plan (SAP) (February 2017)**

Within the Submission Draft Site Allocations Plan, the application site (SAP reference MX2-13) is identified as a 2.48 -hectare site with a capacity for 37 residential units and 1.24ha for employment. It is identified as a Phase 1 site.

### Relevant Supplementary Guidance:

- 8.6 Supplementary Planning Guidance provides a more detailed explanation of how strategic policies of the Unitary Development Plan can be practically implemented. The following SPGs are most relevant and have been included in the Local Development Scheme, with the intention to retain these documents as 'guidance' for local planning purposes:
- Building for Tomorrow Today – Sustainable Design and Construction (2011): Sustainability criteria are set out including a requirement to meet BREEAM standards.
  - Street Design Guide – Supplementary Planning Document
  - Travel Plans – Supplementary Planning Document
  - Public Transport – Developer Contributions
  - Parking – Supplementary Planning Document

### National Planning Policy Framework (NPPF)

- 8.7 The National Planning Policy Framework (2018) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
- 8.8 One of the key principles at the heart of the Framework is a presumption in favour of Sustainable Development. However, the introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.9 With regard to retail development, the NPPF advises at Paragraph 85 that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. Paragraph 86 advises that Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. The issue of the Sequential Test is considered in the report below.
- 8.10 The NPPF sets out in paragraph 89 that when assessing applications for retail and leisure developments outside of town centre, an impact assessment will be required if over 2,500 sqm or a locally set threshold, which in Leeds is set at 1,500 sqm through Policy P8 of the Core Strategy. This should include an assessment of a) the impact on investment in centres, and b) the impact of the proposal on town centre vitality and viability. Paragraph 90 instructs local planning authorities that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.
- 8.11 The NPPF also provides guidance in relation to design and states that the Government attaches great importance to the design of the built environment. Good



design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Paragraph 8 states that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment. Paragraph 124 states good design is a key aspect of sustainable development. Paragraph 130 confirms that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

- 8.12 The NPPF sets out in paragraph 50 that prematurity grounds for refusal will seldom be successful where a Plan has not been submitted for Examination. However, in the case of SAP, we are at a far more advanced stage of preparation, given the hearing sessions have now closed. As such prematurity grounds for refusal can be advanced with some expectation of success. The NPPF then states *“Where planning permission is refused on grounds of prematurity the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process”*. This is in order to satisfy the tests of refusing applications on prematurity grounds as set out in paragraph 49. In the view of officers, the approval of this proposal would result in the loss of a highly sustainable and policy compliant mixed use housing site that adheres to Core Strategy and NPPF objectives of reducing development in the Green Belt.

## **9.0 MAIN ISSUES**

- 9.1 The main issues to consider in the determination of this application include the following:
- Principle of Development
  - Design/ Layout
  - Landscaping
  - Noise Issues/ Impact on Residential Amenity
  - Highways/ Parking
  - Economic Development
  - Community Levy Infrastructure (CIL)
  - Other Issues
- 9.2 The Council must also consider representations received as part of the public consultation exercise.

## **10.0 APPRAISAL**

### Principle of Development

- 10.1 This application proposes to redevelop a previous employment site to a predominantly retail-led use. The site is identified as an allocated site for Mixed Use through the emerging Site Allocations Plan (ref MX2-13). In the past planning permission has been refused for retail development. However, this was in 2009 and prior to the adoption of the Core Strategy. There are two aspects to the principle of this application. The first is whether the loss of employment use is acceptable and the second is whether a new retail development is acceptable.

- 10.2 The issue regarding the loss of employment falls under the planning auspices of Policy EC3. This policy states change of use on sites which were last used or allocated for employment to other economic development uses including town centre uses or to non-employment uses will only be permitted where:
- i) The proposal would not result in the loss of a deliverable employment site necessary to meet the employment needs during the plan period ('employment needs' are identified in Spatial Policy 9), Or
  - ii) Existing buildings and land are considered to be non-viable in terms of market attractiveness, business operations, age, condition and/or compatibility with adjacent uses,
  - iii) The proposal will deliver a mixed use development which continues to provide for a range of local employment opportunities and would not undermine the viability of the remaining employment site'.
- 10.3 Only one criteria of policy EC3 has to be met. Given the proposal will create approximately 140 jobs, it is considered criteria (iii) applies, and this policy is met.
- 10.4 The second issue is whether the site is a suitable location for the level of retail described in the application. The Core Strategy and NPPF both adopt a town centres first approach requiring that retail development should be located within existing town centres. The NPPF states that for A1 retail developments to be considered to be in-centre, they must be located within the Primary Shopping Area of a designated centre. If the proposal is located outside of the Primary Shopping Area but within 300 metres of it, the proposal is adjudged to be Edge of Centre. Sites beyond this 300 metre boundary are considered to be Out of Centre.
- 10.5 The Unitary Development Plan does not define Primary Shopping Areas. However it does define Primary and Secondary Shopping Frontages for Middleton Town Centre. The NPPF defines a Primary Shopping Area as a "*Defined area where retail development is concentrated*". It can therefore be said that the protected shopping frontages define a very similar approximation of a Primary Shopping Area. Whilst the draft Site Allocations Plan has not been adopted, it does define Primary Shopping Areas and is therefore considered a helpful material consideration in determining the status of the site's location.
- 10.6 The draft Site Allocation Plan has material weight as it has now been through the Examination stage, is based on up-to-date survey data and, with regards to Primary Shopping Area designations, has received very little objection. Crucially, the proposed Primary Shopping Area reflects the designated protected shopping frontages within the Unitary Development Plan. Therefore, as the proposal site is within 300m of both the adopted protected Shopping Frontages and the proposed Primary Shopping Area boundary it is considered appropriate in this case to define the site as Edge of Centre. As a result, the proposal is not considered in-centre development and in accordance with policies SP2 and P8 of the Core Strategy and Chapter 7 must pass a Sequential and Impact Assessment before the application is approved.
- 10.7 Policy P8 advises if a sequential and an impact assessment is needed. It is considered that following the guidance of policy P8 both sequential and impact tests are required on this application. Given the scale of the scheme, it has been confirmed that it is has been evidenced that a comparably-sized sequentially preferable site within the parameters listed in P8 cannot be found. The application is therefore considered to have passed the Sequential test of the Core Strategy and NPPF.

10.8 With respect to the Impact Assessment, officers are of the view that the assessment has been partially satisfied. NPPF paragraph 89 sets out two elements to the test: 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).

10.9 In addressing part a) of the assessment the applicant was asked to provide further evidence. This has now been provided and officers are of the view that this satisfies part a), in demonstrating that there will be no adverse impact arising from the proposal on existing, committed and planned public and private investments within centres in the catchment area of the proposal. With regards to part b) officers are of the view that the test has been clearly satisfied with regard to all centres, with the exception of one – Middleton Town Centre. The impacts on Middleton Town Centre are discussed in more detail below.

#### Impact on Middleton Town Centre

10.10 As with the previous applications on the site, the severity of the projected impact upon Middleton Town Centre rests largely on the likelihood of the re-occupation of the existing B&M Bargains unit that will be vacated as a result of the new development. Colleagues in Policy stated in their initial response on the 2nd July 2018:

*“...concerns persist as to the likelihood of the re-occupation of the existing B&M Bargains unit in Middleton Town Centre, which is likely to be rendered vacant by the proposal development. For the previous application the applicants submitted further information on the likely future occupiers of that unit. Whilst this assessment is less than a year old, it includes an occupier (Poundworld) that has since entered administration. This potentially casts some new light on the state of the discount retailer market. The LPA feel that the assessment of the B&M unit therefore requires updating, and are proposing to commission an independent assessment of the likelihood of the re-letting of the existing B&M unit. This aspect of the application is crucial to assessing the retail impact of the scheme.*

*Should the unit remain vacant over the long-term the projected impact upon Middleton Town Centre is predicted to be in the order of 42%. This would constitute a significant adverse impact and would justify the refusal of the scheme. The Council therefore consider that it is crucial that it can put together as accurate a picture as possible on the likelihood of re-occupation of this unit. The Council will not be able to arrive at a view on this application until this evidence forms part of the assessment picture.”*

10.11 Since that time CBRE have been appointed to assess the likelihood of the B&M unit being re-occupied. They conclude that:

*“In conclusion, based on the landlord’s aspirations on a new rent for the subject unit, I believe there would be some demand, albeit relatively limited. I would expect interest at approximately £50,000 per annum in order to attract a national occupier and I would factor in a void period of 18 months with a further incentive package of 18 months on the basis of a 10-year lease with a 5th year tenant break option.”*

10.12 In light of the above, officers consider this casts significant doubt on the re-occupation of the existing B&M unit. It also raises concerns relating to the impact that would be had on the rest of Middleton Town Centre if its main anchor store is vacant for circa 18 months. Clearly, 18 months is a projected estimate and the actual length of

vacancy could be longer or shorter than this, but it is of note that the estimate of 18 months is not disputed by the applicant. Since Officers informed the applicants of the intention to refuse the application on grounds relating to the impact on Middleton Town Centre, B&M have then written to the Leader of Council, Councillor Judith Blake, in a letter dated 19<sup>th</sup> September 2018, stating their intention to vacate the unit at Middleton Town Centre, in any event, once the lease expires in October 2019. There is no certainty this would occur, and this would have no bearing on the outcome on this application. It is considered the demand for the existing B&M unit (if vacated) would be greater without a new retail development being located on the adjacent Benyon House site and the development of the Benyon House site as proposed in this application would reduce the likelihood of the current B&M unit being re-occupied.

- 10.13 The state of the discount retail market is in significant flux. A range of operators have either entered administration, undergone a Company Voluntary Arrangement (CVA) or have the potential to enter into such arrangements in the near future. Combined with the fact that the B&M unit is a large unit that does not lend itself easily to subdivision, this means that there are a very limited number of operators who would be interested in occupying this unit. As part of their study CBRE contacted 16 high street operators, including Boots, Wilkinsons, etc, all of whom stated they would not be interested in the unit. Two potential occupiers are quoted in the CBRE report, and of those, only one is an A1 retailer, the other being a gym operator which would not drive the level of footfall currently seen with the B&M Bargains unit within Middleton Town Centre.
- 10.14 During the consideration of the previous application, the LPA considered that Middleton Town Centre is performing well. Officer's view at that time was that the B&M Bargains Unit was an attractive one, owing to its visible location on the ring road and access to a large surface car park to the front of the store. However, the vitality of the centre currently relies upon the B&M unit to drive footfall and spend. As previously stated, should that unit not be re-occupied the impact upon Middleton Town Centre will be significantly adverse. In our view there is now significant doubt about that re-occupation, and given that the unit generates 42% of the turnover of the centre, the failure to re-occupy the unit with a store of a similar footfall and turnover would have a significant adverse impact on Middleton Town Centre.
- 10.15 In the Officer's Report for the previous application on the site, one of the stated factors weighing in the application's favour was that the boundary for the Town Centre of Middleton is proposed to be expanded to include the Asda superstore. This would have the effect of increasing the overall turnover of the centre, thus reducing the % impact of the proposed development on the centre. However, at that time it was considered likely that the B&M unit in the existing centre would remain occupied and trading, whereas now, for reasons set out above, officers are of the view that this unit is likely to remain vacant potentially over the long-term, thus having a significant adverse impact on Middleton Town Centre. This remains the case whether we draw the boundary to include Asda or not. Whilst the draft SAP is a material consideration, the Impact test in the NPPF can only be applied against the adopted boundary of the town centre, as defined within the UDPR. In any event, whether Asda is including within the boundary or not, it is the view of officers that the proposal will have a significant adverse impact on the existing centre of Middleton by reducing trade, footfall and diminishing consumer choice, thus reducing the vitality and viability of the centre.

- 10.16 Similarly whilst the previous Officer's Report stated that the location of the proposal would have a positive impact on linked trips to the existing centre, this isn't considered to mitigate the impact of the likely long-term closure of the B&M unit.

#### Prematurity

- 10.17 The development of this land for retail uses is contrary to the proposed allocation for this site for housing and general employment as set out within the Site Allocations Plan. The SAP Examination hearings have now concluded and no significant unresolved objections exist regarding the proposal to allocate the proposal site for a mix of housing and general employment uses. In accordance with paragraph 48 of the NPPF officers are of the view that moderate weight can be given to this proposed allocation. Whilst paragraph 49 of the NPPF requires proposals to be either of a substantial scale or of a cumulatively significant impact to justify refusal on prematurity grounds. It is the Council's view that the harm that would be done to the Council's attempt to deliver housing on sustainable brownfield sites, in order to reduce impact on the Green Belt would be dealt a significant blow if such sites could be lost to other uses until the Site Allocations Plan was adopted.

#### Retail Policy Conclusion

- 10.18 Given the increased uncertainty surrounding the re-occupation of the B&M unit in Middleton Centre, as a result of the unfavourable trading conditions for Budget/Discount retailers, it is considered that there is a material change in circumstances from the previous application. As with the previous application the decision on whether the proposal will result in a significant adverse impact (thus requiring refusal in accordance with para 89 of the NPPF and P8 of the Core Strategy) rests on the likelihood of the B&M unit being re-occupied. In our view that likelihood has now significantly reduced, thus tipping the balance to the extent that we now consider that the application is likely to have a significant adverse impact. There are significant concerns about a) the likelihood of the re-occupation, and b) the length of time that re-occupation will take and the impact that would be had on footfall in the centre in the meantime. Therefore in accordance with para 89 of the NPPF and SP2 and P8 of the Core Strategy, it is recommended that the application should be refused on retail impact grounds.
- 10.19 In addition, due to the impact upon the proposed mixed use allocation within the draft Site Allocations Plan (and the weight that can be given to that Plan given its stage of preparation), it is considered that this application is premature and should be refused in accordance with paragraphs 48-50 of the NPPF.

#### Design/ Layout

- 10.20 The proposal is for a modern retail development on a cleared brownfield site. The NPPF confirms at Paragraph 8 that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment. Indeed paragraph 124 of the NPPF states good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 130 states planning permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
- 10.21 The objectives of the NPPF in this regard are reflected in Core Strategy Policy P10, which confirms that new development for buildings and spaces, and alterations to existing, should be based on a thorough contextual analysis and provide good design that is appropriate to its location, scale and function with the expectation that new development delivers high quality design that respects and enhances existing

landscapes and streets and respects the character and quality of surrounding buildings. In addition, Policy P12 seeks to secure high quality landscape design to ensure that the character, quality and biodiversity of Leeds's townscapes and landscapes are conserved and enhanced.

- 10.22 The application site is situated in a highly prominent location on a main thoroughfare, Middleton Ring Road and adjacent to a roundabout, and adjacent to an Asda supermarket, and Middleton Town Centre. As part of the pre-application enquiry, the main concern raised by Officers on the design, was the fact the rear elevation of the proposed Lidi store, was predominately blank, and some 77m in length faced onto the highway, which is the main site frontage, and the scheme was an inward facing development which lacked interaction with the existing surroundings. The requirement to retain trees along the northern boundary of the site, with Middleton Ring Road was considered to be imperative, given the fact they would screen the rear of the A1 Unit (Lidi Store) and are of high public amenity value. However, most of the trees and hedgerow along this boundary were removed prior to the TPO being placed on the site, which has secured the retention of 7 individual trees and 3 groups.
- 10.23 Since the submission of this application, the rear elevation of the Lidi store has been amended, at the request of officers in an attempt to address these concerns. The amendments include high level glazing and pier columns, to reduce the mass of this elevation. This majority of the facing materials to this building are composite cladding panels, with brick only to a very small base plinth, which appear to be 2-3 courses high. The cladding panels (RAL 7016 and 9006) are contrasting grey colours, and have been amended from a white colour, due to Officer Concerns which relate to robustness and longevity.
- 10.24 The appearance of the A1 Unit (Lidl store), which is the company's current standard design and presents full height glazing along the frontage and a small return frontage to the car park, is considered acceptable. The appearance of the Lidl store is typical of other modern Lidl's stores and match's their corporate identity. The mass of the larger buildings is broken up by varying materials, and brick piers. Although it may be considered preferable for the development to have an active frontage onto Middleton Ring Road, this would remove the relationship between the store and car park. It is considered the design of the scheme derived from the requirements of the functional requirements of the occupiers. The applicants have previously rejected suggestions made by Officers with regard to re-orientating the layout of the site or use an increased amount of brick as a facing material.
- 10.25 Amendments have also been made on some other units, including the A1 Unit (proposed B&M store) to increase the detailing on the front elevation and increase the amount of glazing, in order to improve its appearance and reduce the mass. This unit has facing materials of brick to the lower wall sections and brick piers which house render panels.
- 10.26 The design of the other units is too functional, and typical of similar retail schemes, with units having large open floor-plates. The buildings vary in height from approximately 6-8m. The buildings have a similar appearance with plinths, composite cladding and render panels as facing materials, steel roofing's systems and elements of glazing. The smaller units 2-6 have facing materials of brick to the level which is level with the top of the ground floor windows, which does aids their quality and robustness. Units 7-10 have brick piers and a low level brick plinth. The overall design of the complex is considered functional and fairly unremarkable. The site is effectively a standalone site, and there is no distinct architectural character within the locality

that any redevelopment scheme would need to respect. The adjacent Asda store is of a modern design and large mass, having facing materials of composite cladding.

- 10.27 The comments made by Leeds Civic Trust regarding the layout and the fact it is not a real mixed use scheme with no residential component are noted. Although it is preferable to have a retail scheme which of a traditional high-street format, with parades of commercial units and 1<sup>st</sup> and/ or 2<sup>nd</sup> floor flats above, it is not considered the proposal could be refused on such grounds. This format of retail development has been accepted on other sites within Leeds in recent years at the former Denson Marden site, Armley Road, and the former Belgrave Works site, Staningley Road, and is typical of similar schemes within inner-city and suburban locations.
- 10.28 Assuming the principle of development was considered acceptable, it is considered that the amendments to the scheme are, on balance now sufficient to comply with adopted design policies subject to specified conditions.

#### Landscaping

- 10.29 The site is subject to a Tree Preservation Order on 7 individual trees and 3 groups of trees. The TPO was made on the site in 2016, after the LPA became concerned that trees and mature hedgerows around the site perimeters were being removed from the site, to clear the site in anticipation of future development. By the time the TPO was served/took effect, a mature hedgerow which existed along the site frontage to Middleton Ring Road was removed. The trees and shrubs, which exist upon the site are mostly located along the east, north and western boundaries and peripheral areas of the site. The majority of trees on site were part of an amenity landscape around the fringes of the Benyon House building which previously occupied the site. The previous application (16/06340/FU) sought to remove the majority of the protected trees, and the application was refused on these grounds.
- 10.30 The proposal now only seeks to remove one group of the trees (G1) which consists of 4 'Crack Willow' species and two individual protected trees (T13 and T16) which are a Rowan and a Cherry tree. All of these are rated as category 'U', which is defined as '*Trees cannot realistically be retained as living trees in context of current land use for longer than 10 years*'. It is considered the retention of the majority of the TPO trees could provide a good degree of assimilation between the proposed new development and existing surrounding environmental. On balance, it is not considered the proposal could be resisted due to the loss of TPO trees. The majority of the trees are situated round the site edges, with the exception of G1, and its retention would significantly hinder the developable area of the site. The proposal does include replacement planting. Although the landscaping officer has raised concerns regarding the amount of landscaping proposed, and the space around some of the proposed planting for trees, in terms of the capacity for root growth, it is considered the landscaping scheme is acceptable, subject to conditions.
- 10.31 The Landscape Officer has stated that the landscaping scheme does not appear to consider drainage within the site. A drainage solution for the site is not yet finalised and the Flood Risk Management consultation response notes that a pre-commencement condition should be applied requiring details of a surface water drainage scheme, therefore it is considered that this matter would be considered as part of a Discharge of Planning condition application (if the application was considered acceptable in all other respects).
- 10.32 Concerns have also been raised regarding the size of the root zone per tree, of a minimum of 12M<sup>3</sup> per tree. The applicants have confirmed that a soil volume of 19 m

cu is proposed for car park planting. Again, this could be addressed through a planning condition, assuming the principal of the application was considered acceptable.

#### Noise Issues/ Impact on Residential Amenity

- 10.33 One of the two reasons for refusal of the previous 2016 application was due to the adverse impact on nearby residential occupiers (who reside on Dolphin Road), due to the proposed hours of use, and location of a service/ delivery yard. This previous application proposed to locate this service area 19m away from the residential properties situated on Dolphin Road, and use the area for deliveries and loading between the hours of 07:00 and 23:00. The topography of the site meant this service area was approximately level with the first floor of the properties located opposite on Dolphin Road.
- 10.34 This application has sought to overcome this reason for refusal by re-locating the service area away from the north-eastern boundary of the site and Dolphin Road. This service yard (for the units other than Lidi) has been located to the southern boundary of the site, adjacent to the Council run waste and recycling centre. It is not considered this adjacent land use is sensitive in respect of noise, and the residential properties on Dolphin Road nearest the site, are now buffered from the activity which would occur within the central parking area of by Units 11 and 12. There is also a landscaping buffer proposed, beyond the rear of units 11 and 12 and the highway of Dolphin Road, which will provide further mitigation to the residential properties located opposite.
- 10.35 Environmental Health have raised no objections to the application subject to delivery hours being conditioned between the hours of 07:00 - 20:00 Monday to Friday and between the hours of 08:00- 20:00 Saturday, Sunday and Bank Holiday Mondays. The applicant has agreed to this condition. Environmental Health have also stated the proposed D1 use should be restricted to uses within the use class (D1), to include only day nurseries, doctors surgeries and places of worship. Other uses may not be suitable, nor longer hours of opening, and be more intensive in their use of the site.
- 10.36 Asda have objected to the proposal (as summarised in para 6.3) and have submitted their own noise survey in support to their objection. This survey concluded that during night time hours, deliveries would be audible to properties situated opposite the site at 73 Ring Road, and dispute the recorded noise level, 10m from a drop down tail gate from a HGV. Asda state this noise level is 88 dBL (at a 10m distance) and the applicants in their survey state the noise level if 79 dBL. Colleagues in Environmental Health have commented on this, stating that ACP (who are representing Asda) assert the Lmax data has been under reported by 9 dB. However, without an extensive desktop or practical research into HGV unloading it would be difficult to comment on which is the most accurate data. It is considered this concern is overcome by prohibiting deliveries during the night, and this could be controlled by a planning condition should planning permission be granted.
- 10.37 A condition would also be imposed which relates to opening hours between 07:00 – 22:00, on all of the units. The site is not considered to be in a particularly noise sensitive location. The nearest adjacent residential properties lie to the east of the site and as stated above, the rear of units 11 and 12 face towards these properties. The adjacent Asda store is open 24 hours.
- 10.38 Highways



The proposal utilises an existing access from the roundabout at the Ring Road/ St Georges Road/ Sharp Lane roundabout, which previously served Benyon House. Highways have raised no objection to this proposed means of access. The volume of additional traffic the proposal would create, has been a reoccurring theme, within the objections received. The submitted Vehicle Trip Generation numbers at peak times are highlighted below (which just included linked trips) is highlighted below, which has been illustrated through the submitted Transport Assessment is highlighted below.

Peak House	Non-Food Retail Units			Lidi Food Stores			Total		
	Arr	Dep	Tot	Arr	Dep	Tot	Arr	Dep	Tot
Weekday PM peak Hour 16.00-17.00	43	54	97	45	47	92	88	101	189
Saturday peak hour 13.00-14:00	98	95	193	104	112	216	202	207	408

- 10.39 It is widely accepted that new retail developments typically generate very little wholly new traffic; based on research undertaken at comparable developments, the proportion of trips observed as 'new' at comparable new developments. Instead, the majority of trips to retail developments tend to comprise existing journeys on the network, for which shopping is the main trip purpose and for which the proposed development becomes the destination, rather than another, existing site. The site lies in a large established residential area, and it is considered that the proposal will function mainly as a local facilities for existing residents, who live within an accessible catchment of the site. It is also important to note that the previous use of Benyon House would have created traffic along the local highway network. It is also considered the number of linked trips to this development would be high, given its location adjacent to Middleton Town Centre, and the existing Asda Supermarket.
- 10.40 The application is supported by updated accident data analysis and Highway Officers have stated it is considered acceptable and it is unlikely that there are road safety concerns associated with the proposals. A review of the personal injury accidents that have occurred on the local highway network within the vicinity of the site has been undertaken. A total of 11 accidents occurred over the five year study period. The majority of the accidents resulted in injuries of slight severity with the data suggesting that road layout, inadequate or masked signs or poor or defective road surface were not contributory factors in any of the accidents. All accidents recorded were of an isolated nature, with failure to judge the path or speed of another vehicle, failing to look properly or undertaking a poor turn or manoeuvre typically highlighted as likely contributory factors. On this basis, there are no existing safety issues that would be exacerbated by changes in traffic flows associated with the development
- 10.41 The internal layout has been devised with three separate service/ delivery areas, which will avoid conflict with parked vehicles. According to the Parking SPD circa

300 spaces would be required on site, which indicates the proposed parking provision falls short by circa 17 spaces. On balance it is considered the proposed parking is likely to adequately serve the site, and the proposal complies with policy T2.

#### Economic Development

- 10.42 The applicants have stated the A1 unit (Lidi store) will create 40 jobs for local people and the A1 unit ( B&M store) will provide approximately 50 jobs once operational. In total, with the other units, it is anticipated the entire development will create approximately 180 jobs. This in an area that suffers from a higher than average (national and local) unemployment and deprivation. The Index of Multiple Deprivation 2015 shows that the majority of the Middleton Park Ward being within the top 10% most deprived areas in the Country. It is important to note that many of the jobs at B&M would be re-located from the existing Middleton site, and therefore are not all 'new' jobs.

#### Community Infrastructure Levy (CIL) and Section 106

- 10.43 The CIL contribution from this development is £647,739.84., however this is not a material planning consideration and is provided for information only.

#### Other Issues

- 10.44 Some of the points raised in the objections are not material planning consideration and carry no weight in the decision making, of this application. Such matters include the calibre of the A1 operators who could occupy the units, impact on property prices and competition between differing retailers.

### **13.0 CONCLUSION**

- 13.1 It is considered that on balance, this revised application has overcome the previous reasons for refusal which relate to loss of protected trees and the impact on adjacent residents with regard to noise caused by deliveries and loading. However it is now considered that there is a material change in circumstances relating to retail impact, from the previous application. As with the previous application the decision on whether the proposal will result in a significant adverse impact (thus requiring refusal in accordance with para 89 of the NPPF and P8 of the Core Strategy) rests on the likelihood of the existing B&M unit in Middleton town/Town Centre being re-occupied.
- 13.2 Officers now consider that this likelihood has now significantly reduced, thus tipping the balance to the extent that it is now considered that the application is to have a significant adverse impact on Middleton Town Centre. Therefore in accordance with para 89 of the NPPF and P8 of the Core Strategy, it is recommended that the application should be refused on retail impact grounds. It is not considered the benefits of the scheme in terms of economic investment outweighs this harm.