

Planning Committee

Addendum Report



Application Address	Parrs Quality Confectionery, 26 Alder Road, Poole, BH12 2AQ
Proposal	Erection of a Class E discount foodstore and Class E coffee shop with associated access, car parking and landscaping
Application Number	APP/20/00877/F
Applicant	Aldi Stores Limited
Agent	Planning Potential
Ward and Ward Member(s)	Alderney & Bourne Valley Cllr Toby Johnson Cllr Rachel Maidment Cllr Tony Trent
Report Status	Public Report
Meeting date	20 April 2023
Summary of Recommendation	Refuse for the reasons as set out below
Case Officer	Laura Archer

Addendum to Committee Report relating to Planning Application APP/20/00877/F - Parrs Quality Confectionery, 26 Alder Road, Poole, BH12 2AQ

1. Background

- 1.1 The planning application (APP/20/00877/F) to erect a Class E discount foodstore and Class E coffee shop with associated access, car parking and landscaping at Parrs Quality Confectionery, 26 Alder Road, Poole, BH12 2AQ was considered by Planning Committee on 22nd September 2022.
- 1.2 The officer recommended committee refuse the application for the reasons set out in case officer report (see appendix A).
- 1.3 Planning Committee resolved that planning permission be delegated to the Head of Planning to grant, contrary to the recommendation in the officer report, subject to the Head of Planning preparing a S106 agreement and appropriate conditions.

- 1.4 A formal decision notice granting approval of the application subject to conditions was subsequently issued on 17th November 2022. A copy of the conditions attached to the planning permission are attached as Appendix B.
- 1.5 This addendum sets out the matter which have arisen since the planning permission was issued and has resulted in the application returning to the Planning Committee. The report also considers the matters which are relevant to those issues.

2. Legal Challenge

- 2.1 In December 2022, a Judicial Review claim was issued in the High Court and served on the Council; the first ground of challenge being that *"the Council failed to provide adequate reasons for their decision"* to grant the Permission. The duty to give reasons is said to arise from the fact of *"the previous refusal and the fact that the proposal would amount to a departure from national policy and the development plan"*.
- 2.2 A challenge was also made in respect of the Council's alleged failure to meet the public sector equality duty pursuant to s149 of the Equality Act 2010. Ground 2 stated that *"In determining that the Council would grant planning permission for a development proposal that was contrary to this care home allocation, no consideration was given to the public sector equality duty. Indeed, no consideration was given to how this would inhibit the site coming forward as a care home for the benefit of those with the protected characteristic of age, particularly given which there was an identified need for this. Thus, the PSED specifically required the Council to have regard for this point and put it into the balance. They failed to do so, which was unlawful."*
- 2.3 In certain situations, the law has recognised and accepted that a Planning Committee should clearly identify adequate reasons for a planning decision even in the case of an approval. On the specific circumstances relating to this matter which was a decision by the Planning Committee to overturn an officer recommendation for refusal, it was accepted that the Council had failed to give adequate reasons and a Consent Order quashing the decision was issued by the High Court dated 21st March 2023.
- 2.4 It should be noted that the focus of the justification for the quashing of the order was on the way the reasons given by members for the approval were captured rather than on any particular element of the discussion that took place at the meeting of the committee itself.
- 2.5 As a result of the decision being quashed, the application is being put back to Planning Committee to be re-considered for determination.

3. Relevant Updates

- 3.1 There have been no changes to the application since it was previously considered at committee in September 2022. The submission and plans remain as previously considered.
- 3.2 There have been no additional representations submitted and no additional consultee responses and nor have any consultees revised their position. There have been no policy changes since the application was previously considered at committee. However, it is worth noting that the government has

recently carried out a consultation on updating the NPPF which if adopted would expressly recognise care homes as a form of housing to be captured as part of assessing housing needs.

4. Planning Considerations

4.1 A summary of key issues identified in the report that are relevant to that recommendation is as follows: -

- The proposal site is allocated in PP9 – U5 for mixed provision of a care home and specialist accommodation homes. PP12 supports the allocation by identifying that the Council will meet the need for care home bed spaces by bringing forward sites allocated for care homes.
- There is a clear current identifiable shortfall in the delivery of care homes as against relevant local plan policies and retaining the site is considered important to help meet this identified strategic need. Although the applicant has produced evidence questioning the suitability of the allocated location, the availability of alternative sites and suggesting an oversupply of care home bed spaces, for the reasons identified in the report, it is not considered this provides clear justification for departure from the allocation policy. Indeed, evidence produced in support of the emerging local plan suggests there is no strategic need for further retail convenience space.
- There is equally a clear current identifiable shortfall in the delivery of specialist housing accommodation as against the local plan. Evidence produced to support the emerging BCP local plan clearly supports such a view and the applicant's own evidence appears to accept this conclusion. The proposal is therefore considered contrary to PP9 and PP12.
- If it was considered that there was sufficient evidence to justify a departure from PP9, the proposal would then fall to be considered under PP16 as an isolated employment site. The required marketing evidence to justify a departure from this policy dates back to 2016 and is not considered to meet appropriate requirements. Indeed, the marketing exercise was undertaken at a date prior to the application for a foodstore on this site in 2018 that was refused in part due to it being considered that the evidence provided did not justify a departure from this strategic site allocation.
- Even if it was considered that this site is no longer suitable as an employment site, policy PP16 contains a cascade of uses which would be preferred to a foodstore use and no evidence has been produced to justify why those preferred alternatives should be discounted. The proposal is therefore considered contrary to policy PP16.
- PP22 (4) imposes various tests for proposals outside designated boundaries and allocations including, in relation to larger retail development, the need to satisfy an impact assessment.
- The current location is not part of a designated local centre. However, in retail impact terms, the Council's appointed independent consultant has concluded that the proposal is unacceptable due to its potentially materially harmful impacts on the Wallisdown designated local centre. The proposal is therefore considered contrary to PP22 (4) of the local plan and various associated provisions in the NPPF. In 2019, this

unacceptable retail impact was also considered to justify a reason for refusal for the foodstore proposal on this site that was submitted at that time.

- The proposal could deliver benefits including securing the re-use of a current derelict site where there has been some anti-social behaviour, potentially increasing footfall to shops in this area (although potentially to the detriment of the Wallisdown local centre), delivering some highway improvements to an existing congested highway location and provide employment opportunities both during construction and operation phases. However, most, if not all, of these particular benefits could potentially to some extent also be delivered through the development of the site for its allocated purposes. In any event, it is not considered these benefits would sufficiently outweigh the identified harms.
- To the extent there are other issues material to the application it is considered any adverse impacts attributable to them could be overcome by the use of conditions.

4.2 On the basis that there have been no substantive changes since the application was considered at Planning Committee, the case officer recommendation remains as before. The application is recommended for refusal for the following reasons: -

- i) The proposed development would result in the loss of the site allocation for the provision of a care home and specialist accommodation housing that would contribute towards the delivery of suitable housing to meet the needs of an ageing population and for which there is a clearly identified need and that is of strategic importance in meeting the objectives of the Poole Local Plan in favour of a form and use of development for which there is no objectively assessed need and that is not of strategic importance. The submitted evidence/information fails to sufficiently justify why the strategic site allocation would not be suitable, deliverable and needed over the Plan period to meet the housing needs of the ageing population and therefore why a departure from the development plan should be permitted, the proposal would be contrary to the provisions of Policies PP9 (U5) and PP12 of the Poole Local Plan. Furthermore, even if it was considered there was justification to depart from Policy PP9 and PP12, as an existing isolated employment site it has not been demonstrated that the proposal would satisfy the requirements of PP16 (2).
- ii) The proposed development would result in a significant level of trade diversion from the existing Aldi store that is located within the defined Wallisdown local centre due to the overlapping catchment of the existing and proposed stores that could lead to the closure of the existing store. On the basis of the independent retail advice provided to the Local Planning Authority, and in the absence of sufficient information to the contrary, the applicant has failed to demonstrate that the proposed development would not have a significant adverse impact on the health of, and existing investment within, the Wallisdown local centre. The proposal would undermine Poole's retailing strategy and would be contrary to the provisions of the NPPF (paragraph 90 and 91) and Policy PP22 (4) of the Poole Local Plan.

5. Other Matters

5.1 As noted above, part of the recent legal challenge was in relation to the issue of equalities. As is apparent from the original report to committee, regard was had to the Council's equalities duty; however, as the issue has been specifically raised it is considered that some further information in relation to this would be beneficial.

5.2 Section 149 of the Equality Act 2010 states that:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to— (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).*
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding.*
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.*

5.3 Section 149(7) sets out the protected characteristics including – age – disability – gender reassignment – pregnancy and maternity – race – religion or belief – sex – sexual orientation.

5.4 It is considered that with regard to this application, the duty is engaged as there is evidence that the decision will impact upon those with a protected characteristic; in this case, the older population and those with disabilities. Their characteristics are such that their needs are different from the needs of persons who are not elderly and/or disabled.

- 5.5 An equality impact assessment has been undertaken which concludes that re-developing the site for a discount food store and coffee shop would have both positive and negatives upon those with protected characteristic (older population; those with disabilities; and socio-economic). In the short term it would have more positive impacts than negative whilst longer term, the negative impacts could be more significant and would need to be mitigated through the development of additional sites elsewhere for care home and/or specialist accommodation homes and supporting retail functions and investment within the Wallisdown district centre to maintain vitality and viability.

6 Summary

- 6.1 In view of quashing the decision, the application (APP/20/00877/F) which proposes to erect a Class E discount foodstore and Class E coffee shop now needs to be considered by members afresh and in that respect members are asked to reconsider the original report to committee having regard to the further information set out in this addendum.
- 6.2 Having reconsidered the application in light of the judicial review, the application is recommended for refusal for the reasons set out in 4.2 above.