

Our Ref: DB/04B808364  
Your Ref: 2019/0366/FUL

26<sup>th</sup> April 2020

Ms H Leamey  
Development Management  
Planning Services  
West Lancashire Borough Council  
52 Derby Street  
Ormskirk  
Lancashire  
L39 2DF

Dear Helen,

Application Ref. 2019/0366/FUL  
Class A1 Foodstore and Flexible Use Unit with Associated Site Works  
Pennylands House, High Street, Skelmersdale, Lancashire, WN8 8LP  
Applicant Response to Representations of Objection

I write on behalf of my client Aldi Stores Limited ('Aldi') in regard to planning application reference 2019/0366/FUL which was submitted to West Lancashire Borough Council ('WLBC') in April 2019 and seeks 'full' planning permission for the "*erection of a Class A1 'discount' foodstore and flexible use unit(s) with associated access, car parking, servicing and hard and soft landscaping*" on the site of Pennylands House, High Street, Skelmersdale.

Following receipt of commercial objections on behalf of St Modwen Developments<sup>1</sup>, Lidl GB Ltd<sup>2</sup>, The Skelmersdale Partnership (Concourse Shopping Centre)<sup>3</sup> and the Co-operative Group ('Co-op')<sup>4</sup> we wish to take this opportunity to offer our views on some of the comments made and provide further clarification on a number of points raised where we feel this is necessary. We note that these are currently the only objections received to this planning application, with its benefits recognised by a considerable number of the local community. Indeed, we have counted some 100 representations of support registered in connection with the application on the Council's website.

The themes covered in each of the four commercial objections are broadly consistent and, accordingly, our response deals with the matters raised under the following policy headings (rather than responding to each representation in turn).

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<sup>1</sup> Letter from Aylward Town Planning dated 12<sup>th</sup> April 2020.

<sup>2</sup> Letter from 'Plan A' dated 16<sup>th</sup> December 2019.

<sup>3</sup> Letter from D2 Planning dated 3<sup>rd</sup> December 2019.

<sup>4</sup> Letter from PBA dated 5<sup>th</sup> December 2019.

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## Sequential Approach

There are considered to be four key matters to respond to in connection with the sequential approach to site selection, based on the objections received, and these can be summarised as follows:

### The Sequential Status of the Pennylands Site (Co-op Objection)

Despite acknowledging that the Pennylands application site is within just 200m of their Co-op foodstore at Sandy Lane local centre in the opening paragraph of their representations, Page 3 of the Co-op response claims that “*the prospect of linked trips between the application proposal and local centre are minimal due to the existing very poor pedestrian linkages between the site and the local centre*”. PBA therefore call into question the application site’s ‘edge-of-centre’ status when applying the sequential approach.

In response, we would simply state that the north-western extremity of the application site is located approximately 175m south of the local centre’s defined boundary and can be accessed directly via Westgate, which is a level, well-maintained, well-lit and safe pedestrian route. Further, there are no significant barriers between the site and centre such as major roads or challenging topography.

Given the site’s close proximity to the centre (which PBA themselves acknowledge) and the ease of pedestrian access, it has to be classified as a well-connected edge-of-centre location in town centre policy terms<sup>5</sup>. There is no other sensible conclusion and we would question what evidence PBA is relying upon in describing pedestrian linkages with Sandy Lane as ‘very poor’.

### Suitability and Availability of Unit 31 of the Concourse Shopping Centre (Co-op Objection)

As part of our submitted Planning and Retail Statement (October 2019), we undertook an appraisal of Unit 31 of the Concourse Shopping Centre, Skelmersdale (see Page 28). This appraisal concluded that whilst the unit was currently ‘available’, for a variety of reasons (including size, mall location, and lack of proximate parking) it was not deemed ‘suitable’ for occupation by Aldi.

In their representations of objection (Page 4), the Co-op’s consultant questions this conclusion and argues that Unit 31 would be suitable for Aldi if they were prepared to adapt their format accordingly (by accepting a unit 25% smaller than that applied for). Whilst we disagree with PBA’s comments and maintain that an appropriate level of flexibility has been allowed for in our sequential assessment, this is now a moot point in any case as the vacant unit has since been occupied by Poundland (Saturday 1<sup>st</sup> February 2020). Accordingly, irrespective of PBA’s views on the suitability of Unit 31, it is no longer ‘available’ to accommodate an Aldi foodstore and must be dismissed on this basis.

### Suitability and Availability of Units 100 – 104 of the Concourse Shopping Centre (The Skelmersdale Partnership Objection)

The objection by D2 Planning on behalf of The Skelmersdale Partnership presents a layout plan showing how the existing Aldi foodstore at Unit 100 Concourse Shopping Centre could hypothetically be extended by knocking through into Units 102 (British Heart Foundation) and 104 (Field Fresh Grocery). They state that these works would result in a unit of 1,786 sq.m (GIA) and 1,313 sq.m (net). They also state that ‘sufficient parking spaces’ are available in the adjoining car parking areas and

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<sup>5</sup> Annex 2 of the NPPF defines an edge-of-centre location as one which is well connected to and up to 300 metres from a Primary Shopping Area (in this case taken as the defined boundary of Sandy Lane Local Centre).

show a lengthily new 'mall link' (a corridor) between the present Aldi entrance in the Concourse Shopping Centre and the multi-storey car park located at the back of the foodstore. Finally, the objection states that the extended store can open to the requisite hours sought as part of Aldi's planning application. Accordingly, The Skelmersdale Partnership's position is that their hypothetical scheme represents a sequentially preferable site and planning permission should therefore be refused for Aldi's pending application.

In response, having interrogated The Skelmersdale Partnership's hypothetical scheme for an expanded Aldi foodstore in the Concourse Shopping Centre we maintain our position that the site is neither 'suitable' nor 'available' for the modern discount foodstore proposed.

Firstly, with regards 'availability', units 102 and 104 are evidently both currently occupied, and The Skelmersdale Partnership's objection is silent on precisely when their hypothetical scheme might be realised. Following research, we have established that British Heart Foundation's current lease runs until the final quarter of 2022 (nearly three years' time) whilst we understand that Field Fresh Grocery also has a notable period to run. Even on the assumption that both units would be available for redevelopment by the end of 2022, a lengthily and complex construction period is then envisaged, given the nature of the existing built structure and the landlord obligation to maintain trading for surrounding retailers (including Aldi themselves).

Based on the above, an optimistic assumption is therefore that the hypothetical scheme presented could take four to five years to translate into an operational foodstore of the size required by Aldi. In contrast, Aldi themselves are seeking to commence the redevelopment of the Pennylands site this calendar year (should planning permission be granted), with a target of opening the foodstore during the first half of 2021. Accordingly, it is quite clear that The Skelmersdale Partnership's hypothetical scheme would not be realised 'within a reasonable period' in the context of the applicant's aspirations, as Paragraph 86 of the NPPF requires.

Indeed, we are aware that the significant and influential 'Rushden Lakes' call-in inquiry decision (Inspectorate Ref. APP/G2815/W/12/2190175) makes it clear that the "available" component of the sequential test does not mean available at a future point in time but "available" with a reasonably short period of time. In fact, the language used in the decision is "immediately available". Even acknowledging that the term "immediately" must allow for a period of land acquisition and construction, it is clearly at odds with the scenario at the Concourse Shopping Centre where a larger unit could not be delivered for a good number of years (and even this assumes a straightforward process).

Turning to the 'suitability' of the extended unit, Aldi maintain that it still suffers from all of the operational constraints that have led to their decision to leave the Concourse Shopping Centre (other than unit size). This includes its inability to provide adjacent surface level car parking, which is crucial for Aldi shoppers who are typically purchasing a full trolley load of often heavy food goods. Whilst the hypothetical scheme seeks to facilitate this via a new corridor link around the foodstore to the existing multi-storey car park, Aldi's position is that this is simply not a realistic or workable solution. It will still involve all customers pushing trolleys some 80m to 100m from the store to their cars and this assumes that they have managed to park in one of closer spaces on the ground floor of the multi-storey car park (it is not clear what shoppers do when parking on upper levels).

This constraint would effectively preclude many elderly customers and those with limited mobility undertaking a 'bulk' food shopping trip at the foodstore, as they would clearly be discouraged by the distances involved. Aldi is of the view that many other prospective customers would also look elsewhere, particularly given surrounding competitors such as Asda (and Lidl in the future) who have

access to immediately adjacent surface level car parks. Aldi would understandably not be prepared to make a significant investment in a new foodstore with this type of permanent limitation and we would speculate that any other 'bulk' food retailer would give the same response. Accordingly, it is quite clear that the hypothetical scheme presented is 'unsuitable' for the scale and form of discount foodstore proposed.

Drawing the above points together, it is clear that the hypothetical scheme put forward by The Skelmersdale Partnership is precisely that. Their objection is silent on the timescales and programme associated with the delivery of an expanded Aldi foodstore and we have highlighted that British Heart Foundation (fundamental to their proposals) has well over 2.5 years left to run on their lease. Factoring in an undoubtedly complex construction process, we estimate that the hypothetical scheme would take four to five years to translate into an operational foodstore. This is well in excess of Aldi's programme, which would see construction completed at Pennylands in the first half of 2021 (i.e. broadly 12 months). Accordingly, the Concourse Shopping Centre scheme is evidently not 'available' within a reasonable timeframe and must be dismissed on this basis.

Furthermore, the operational constraints that have led to Aldi's decision to leave the Concourse Shopping Centre evidently still remain, it is simply unrealistic to expect customers to push heavy shopping trolleys along a lengthily and convoluted route to their cars and this will severely impact on the store's use by the elderly and less mobile. It is quite simply not a 'suitable' arrangement for the scale and form of discount foodstore proposed and not a solution that Aldi would be prepared to invest in.

Accordingly, it has been demonstrated that the hypothetical scheme put forward by The Skelmersdale Partnership does not represent a sequentially preferable alternative to the application proposals as it is neither 'suitable' nor 'available'. Planning permission should not therefore be withheld on the basis of their representations.

#### Suitability and Availability of the Site of the Proposed Lidl Foodstore, Ingram Rd / Northway, Skelmersdale (Lidl Objection and St Modwen Objection)

The sequential assessment set out at Appendix III of our submitted Planning and Retail Statement has demonstrated that the Ingram Rd / Northway site does not represent a sequentially preferable alternative for the Aldi foodstore proposed on the planning application site. This is because the tailored units already granted planning permission for both Lidl and B&M are neither 'suitable' for the specific scale, form and format of development required by Aldi, nor 'available' as Lidl are confirmed as the tenant and the discount foodstore is being realised.

In objecting to the scheme, both Lidl and St Modwen have argued that the site is in fact still 'available' and have referenced the *Aldergate v Mansfield* [2016] EWHC 1670 (Admin) high court decision as caselaw which strongly supports their position on this matter. However, we would urge the Council and their advisors to have regard to the specifics of that case and indeed to the particular context in Skelmersdale. In our view the objectors have mis-applied the findings, which concern commercial attitudes in the application of the sequential test rather than at what point a site is no longer realistically 'available' in the context of its delivery.

To briefly summarise the Mansfield case, in essence a developer led planning application sought to reject a sequentially preferable town centre site on the grounds that their target end user (Aldi) would be too close to an existing Aldi store. It was argued that it would be commercially unrealistic for Aldi to be expected to develop a new store in such close proximity to their existing store. In

rejecting this approach, Justice Ouseley concluded that availability cannot simply mean available to a particular retailer.

In our view, the context in Skelmersdale is very important. In the Mansfield scenario there was no alternative discount foodstore committed or proposed within the town centre, it was simply that the applicant refused to entertain a known in-centre opportunity on the basis of their end user's commercial preferences. Accordingly, in Mansfield the delivery of the proposed discount foodstore in an out-of-centre location would have left the identified town centre site bereft of an end user. The sequential test should have been conducted by the applicant in relation to the identified town centre site and the fact that it wasn't represented a fundamental flaw in their approach.

This is not the scenario in Skelmersdale, our sequential assessment has not sought to dismiss the Ingram Rd / Northway site on the basis of any commercial conflict or preference - a materially different approach to that adopted by the applicant in the Mansfield case. Furthermore, it is not the case that the in-centre site in Skelmersdale is devoid of a future end user with Lidl confirmed as the occupier. The sole issue here is whether a site can still be regarded as 'available' even when contractually there is no opportunity for any other party to develop and construction has commenced - this was patently not the scenario at Mansfield. Accordingly, the judgement cannot be transposed to this particular site in the way that the objectors are seeking to suggest.

Turning to the Ingram Rd / Northway site itself, our position remains that it is no longer 'available' for the development of a discount foodstore as this opportunity is already very much in the process of being realised. The evidence in support of this is considerably stronger than when we prepared our Planning and Retail Statement in October 2019, for example a press release by WLBC and St Modwen confirmed that construction of Phase 1 of the scheme (Lidl and 3&M) commenced on Monday 20<sup>th</sup> January 2020 and is scheduled for completion in the Spring of 2021.

Furthermore, we note that that three variation of condition applications have been made at the site during January and February 2020 (Refs. 2019/1258/CON, 2019/1284/FUL and 2019/1285/FUL). These applications essentially involve minor design and operational amendments to ensure that the site's current planning permissions are specifically tailored to meet Lidl's corporate requirements. Indeed, the supporting letter submitted with the applications confirms that *'Lidl will be the occupier of Block D'*.

With the end user of the scheme's discount foodstore confirmed beyond doubt, the scheme itself under construction, and the completion date announced, in our view the site cannot logically be regarded as 'available' in the context of the sequential test. The whole purpose of the test is to facilitate development on town centre sites in the first instance, but when that development is already in the process of taking place (as in this instance) it cannot be right that it is used to block investment elsewhere.

In this case, Pennyland House represents a well-connected edge-of-centre site and a foodstore there will support the vitality and viability of Sandy Lane Local Centre. Accordingly, such an important investment should not be delayed unnecessarily until the doors of the Lidl foodstore are opened to the public (as their objection appears to require). We use the term 'delayed' because once Lidl's foodstore is trading then even by their logic the sequential test would be passed. Accordingly, as highlighted in our Planning Statement, the weight to be attached to the Ingram Rd / Northway site at this point in time as a sequential alternative continues to be highly questionable, as the investment is already in the process of being realised.

## Impact on Investment

In Lidl's representations of objection they suggest that they committed to invest in the in-centre Ingram Road / Northway scheme on the basis of existing retailer representation and had no knowledge of Aldi's proposals for High Street / Westgate. Whilst it is not our place to dispute this, we will simply state that Aldi were publicising their proposals for High Street in early 2019 through public consultation and other engagement activities and, as such, we find it surprising that Lidl did not have prior knowledge of Aldi's plans to invest elsewhere in Skelmersdale.

Lidl's stated position on 'impact on investment' is essentially that in light of the Aldi proposals they may now be forced to re-appraise their position in relation to the Ingram Road / Northway scheme. In response, we maintain the justification presented in detail at Paragraphs 7.71 to 7.80 of our October 2019 Planning and Retail Statement. This explained that a very important factor in the interpretation of the 'impact on investment' test in this instance is that Aldi is closing as well as opening a store in Skelmersdale – thereby resulting in no uplift in store numbers locally. It cannot therefore be said that Aldi are competing with Lidl for a single investment opportunity within the town centre, as Lidl will effectively be replacing Aldi's existing in-centre provision with a larger, more modern facility. This is a critical point which Lidl appear to ignore in their representations of objection.

A 'significant adverse' impact upon investment is therefore considered highly unlikely as Lidl were already prepared to enter the Skelmersdale market in the face of an existing discount foodstore at the Concourse Centre (i.e. the existing Aldi in Unit 100) and this would effectively still be the scenario even if Aldi close and relocate to an alternative location close to Sandy Lane local centre.

Turning to representations by St Modwen developments, whilst they also raise potential future investment concerns, it is important to emphasise that based on their own planning applications (including the updated 2019 scheme) the vast majority of the floorspace and uses proposed as part of the Ingram Rd / Northway scheme (80%) are not in any way convenience goods focussed. They will therefore not be affected by Aldi's introduction at High Street and indeed we note that the other anchor tenant for Phase 1 of the scheme is B&M Bargains, a retailer which often complements Aldi and cannot be regarded as a direct competitor.

Furthermore, we would highlight (as we have in the preceding section) that St Modwen has confirmed that construction of Phase 1 of the scheme (Lidl and B&M) is now underway (January 2020) and is scheduled for completion in the Spring of 2021. In addition, various planning applications are in the process of being determined that will tailor the detailed design of the scheme and its operation to Lidl's specific requirements. Accordingly, all indications are that the construction of the scheme is proceeding as intended and this is despite the fact that the Aldi application must have been known to St Modwen when they announced their intention to start on site in January 2020.

Drawing the above points together, we would argue that the evidence simply does not support the objector claims that the scheme will result in a 'significant adverse' impact on investment.

Fundamentally, Aldi is closing as well as opening a store in Skelmersdale, resulting in no uplift in their store numbers locally. Lidl will effectively be replacing Aldi's existing in-centre provision with a larger, more modern facility with on-site car parking. We fail to see how this is anything other than positive for their future trading performance in the town centre.

Furthermore, St Modwen's recently articulated concerns do not tally with their activities over the past few months, which have included commencing the development, announcing the target completion date, and submitting several minor planning applications to tailor the detailed design and operation of the scheme to meet Lidl's specific requirements.

## Impact on Trade and Turnover

Turning to objector comments on our retail impact assessment, we would simply state that a highly selective approach has been taken in them referencing a cumulative retail impact figure of -14.4% on Skelmersdale town centre. The reality is (as the Council and objectors will be well aware) alongside the Aldi at Pennylands the other commitment that is cumulatively diverting trade from the town centre in our model is the Ingram Road / Southway town centre expansion scheme (as presented in our RIA Tables 9 and 10(b)). Whilst we have been transparent and have treated the Ingram Road scheme as having an ‘impact’ on town centre facilities in terms of trade diversion, the reality is that any expenditure which this in-centre scheme diverts ultimately contributes to the overall turnover of the town centre. In short, 14.4% of the town centre’s turnover will not be lost to competing, out-of-centre proposals with much of it staying in the centre itself.

Accordingly, the relevant table in examining the true effects of the application proposals, in conjunction with the closure of the town centre’s existing Aldi, and the opening of the Ingram Road scheme is Table 10(b) of our RIA. This table is replicated below for reference:

Zone 3b Destinations	Actual Change in Convenience Turnover (2019 - 2024) (£m)	Actual Change in Convenience Turnover (2019 - 2024) (%)
Asda, Ingram Road, Skelmersdale Town Centre	+£0.21	+0.5%
<i>Aldi, Concourse Centre, Skelmersdale Town Centre</i>	<i>-£9.63m</i>	<i>-100%</i>
Iceland, Concourse Centre, Skelmersdale Town Centre	+£0.13m	+4.2%
Other, Skelmersdale Town Centre	+£0.61m	+6.0%
<i>Ingram / Southway (Lidl), Skelmersdale Town Centre</i>	<i>+£11.4m</i>	<i>+91.4%</i>
<b>Total Skelmersdale Town Centre</b>	<b>+£2.8m</b>	<b>+4.2%</b>
Other, Zone 3b	+£0.37m	+7.1%
<i>Aldi, High Street, Skelmersdale</i>	<i>+£11.6m</i>	<i>+91.6%</i>

The table clearly shows that in assessing the quantitative convenience goods impact upon Skelmersdale as a whole; whilst the town centre will lose Aldi in the Concourse Centre following its closure (see -£9.63m), it will gain Lidl and B&M as part of the Ingram / Southway town centre redevelopment scheme (see +£11.4m) and therefore its overall convenience goods turnover will increase between 2019 and 2024. This confirms that the cumulative trading effects of the Aldi foodstore and commitments on Skelmersdale will not be ‘significant adverse’ and that indeed the town centre still stands to benefit overall, with our impact assessment showing that there will not actually be a net loss for any existing retailer – given anticipated closures (Aldi) and openings (Lidl). Further, it can be seen that overall the town centre’s convenience goods turnover as a whole will increase by 4.2% (or £2.8m).

This is not an unreasonable statistical outcome, as there will be no net gain in discount foodstores in Skelmersdale as a consequence of this application, over and above the position already established by existing provision and committed developments (i.e. Lidl).

In addition to providing clarity on the overall trading impact position on Skelmersdale town centre, we also take this opportunity to respond to some of the specific detailed queries that Lidl’s planning consultant has raised with our RIA for the benefit of the Local Planning Authority:

*1. No trade is re-apportioned to the approved discount foodstore at Ingram Road / Northway.*

In response, trade has not been re-apportioned to this foodstore as it is not currently trading. However, it in turn receives some of this expenditure by diverting it from the foodstores that it has been re-apportioned to as part of the trade allocation stage of the impact assessment (see RIA Table 7).

*2. No trade is re-apportioned to the proposed Aldi store at Westgate / High Street.*

As above, trade has not been re-apportioned to this foodstore as it is not currently trading. However, it in turn receives some of this expenditure by diverting it from the foodstores that it has been re-apportioned to, as part of the trade allocation stage of the impact assessment (see RIA Table 6).

*3. The re-apportionment of trade to town centre stores serves to artificially inflate their pre-impact turnover.*

The Aldi store's current turnover has been re-allocated across the other existing facilities in Skelmersdale on a proportionate basis, based on each facility's current market share from the West Lancashire study area as a whole. This is considered the most appropriate way to re-allocate the store's existing turnover before diversions are modelled to committed and proposed developments.

Whilst this does increase turnovers as Plan A suggest, surely they must acknowledge that more trade is then in-turn diverted from these shops overall as a consequence, with there being no existing Aldi foodstore in the model to divert trade from. The alternative approach would be that the Aldi foodstore remains in the impact model but that 100% of its trade is simply diverted by committed and proposed developments to reflect its closure. This is a far less realistic approach in our view and could result in impacts on other shops being disguised. Accordingly, we would argue that the most transparent approach has been adopted.

*4. The total trade diversion applied (£5.51m) is not equal to the turnover of the proposed development (£12.61m) or other commitments, resulting in an underestimation of impact.*

This is a simple misunderstanding of our impact assessment. Table 9 of the RIA presents the trade diversion of the scheme and commitments from all facilities in all zones (see notes on this table for full details). Table 10(b) – the table referred to – is an extract of Table 9 focussing on Skelmersdale only (Zone 3b) and hence only the scheme's diversion from this zone is referenced in the table (i.e. £5.51m).

### **Employment Land Policy**

In responding to comments on employment land policy we will seek to respond specifically to PBAs comments on behalf of the Co-operative group. The Co-op's questioning of the site's marketing is particularly surprising as they themselves currently own the site (as well as having previously occupied the building) and this is something that we suspect may not have been drawn to the consultant's attention. The Co-op themselves are likely to have records of the fact that from August 2016 until March of 2019 (some 2.5 years) the building was marketed by Mason Owen for business uses and details of their efforts have been submitted as part of the planning application (Mason Owen letter dated 7<sup>th</sup> December 2018).

This includes confirmation that sales boards were in place outside the building, and as an aside we note that Google Street View helpfully confirms that these were visible in Sept 2016, Aug 2018 and April 2019. Their letter also confirms that various occupiers, developers, agents and alike were notified



of the site and it was also promoted across various property websites throughout the marketing period. Furthermore, a marketing brochure was produced and sent as a mailshot to office and industrial occupiers and selected office and industrial developers (again throughout the 2.5 years of the site being marketed). This brochure has been supplied as part of the planning application and one would have to question why such a detailed document was prepared unless the landowner was serious about marketing the site.

Accordingly, it is evident from our submission that in line with Policy GN4 of the Local Plan, the site has been regularly advertised and targeted at an appropriate audience by a well-regarded surveying practice for a period of at least 2.5 years before the submission of this planning application. We consider the marketing evidence supplied as part of the planning application to be entirely reasonable and an adequate demonstration of the genuine efforts that have been made to market the site. However, should the Local Planning Authority require any further evidence in relation to this marketing period then we would be happy to supply this.

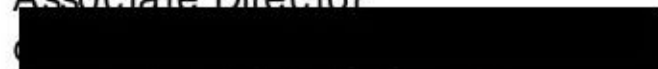
#### Conclusion

I trust that these further representations are of use in coming to your decision on this planning application, please could you let me know as soon as possible if the Council require any further information to support the application or clarification on any of these matters and I shall be pleased to assist further. I look forward to hearing from you.

Yours sincerely



Dan Brown  
Associate Director



For and on behalf of  
GVA Grimley Limited t/a Avison Young