

Application No: 18/6389C

Location: LAND SOUTH EAST OF CREWE ROAD ROUNDABOUT, UNIVERSITY WAY, CREWE

Proposal: Erection of a new foodstore (Use Class A1), access, substation and associated car parking and landscaping. Re-submission of application 18/3123N

Applicant: Mr George Brown, Aldi Stores Limited

Expiry Date: 28-Jun-2019

SUMMARY

The application site is an employment allocation as part of Policy E.1.1 of the Crewe & Nantwich Local Plan (C&NLP). The site has not been marketed for employment uses and the proposed retail development of this site would be contrary to Policy EG 3 of the Cheshire East Local Plan Strategy (CELPS).

The proposal is an out-of-centre retail development. As it is below 2,500sqm, there is no requirement for an impact assessment. It is considered that the proposed development would not have a significant adverse impact upon the vitality and viability of Crewe Town Centre or Haslington local centre. However, the sequential test has not been passed as insufficient information has been provided by the applicant to demonstrate that the existing Grand Junction Retail Park site (which has consent for an extension as part of application 19/0128N) is unsuitable for the proposed development, and accordingly, that the site does not represent a sequentially preferable alternative and the proposed development is contrary to the NPPF and PG 5 of the CELPS.

The highways implications of the development are considered to be acceptable and the proposed development would comply with the Councils parking standards. The proposed development would comply with Policies BE.3 of the C&NLP and C02 of the CELPS.

The amenity implications of the proposed development, including noise, air quality and contaminated land are considered to be acceptable and would comply with BE.1, BE.6 and NE.16 of the C&NLP and SE 12 of the CELPS.

The design of the proposed development is considered to be acceptable and there are no archaeology implications associated with this development. As a result the development complies with Policy SE 1 of the CELPS; and BE.16 of the C&NLP. However the proposed development would result in less than substantial harm upon

a Grade II listed heritage asset (The Vicarage) and upon the character of an adjacent Conservation Area. In this case the principle of the retail use on this employment allocation is not accepted. As a result the public benefits of the proposal does not outweigh the less than substantial harm.

The landscape implications of the proposed development are considered to comply with SE 4 of the CELPS.

The impact in relation to the trees on and adjoining the site is considered to be acceptable and would comply with Policy NE.5 of the C&NLP and Policies SE 3, SE 4 and SE 5 of the CELPS.

The impact upon protected species and habitats is largely acceptable. However as the principle of retail development on the site is not considered to be acceptable, the impact upon Great Crested Newts fails the tests within the Habitat Directive and the development is contrary to Policies NE.9 of the C&NLP and SE 3 of the CELPS

The drainage and flood risk implications of the proposed development are considered to be acceptable and the development complies with Policies CE 13 of the CELPS and NE.20 of the C&NLP.

The development of the site would have some economic benefits and this does attract some weight. However it should be noted that these benefits are likely to be less than those which would be secured if the employment allocation on the site was implemented.

RECOMMENDATION

REFUSE

REASON FOR REFERRAL:

This application is referred to Strategic Planning Board given the history of the site and following a call-in request from Cllr Marren for the following reasons;

'I would like to request the application described above to be reported to Planning Committee. My reasons are as follows :

- a) issues relating to highways, including access/visibility problems,*
- b) the design, scale, character and/or relationship of existing buildings and proposed buildings,*
- c) the effect of the proposal upon the character or amenity of adjoining land and buildings and/or the impact on the surrounding area; and*
- d) there are significant policy or precedent implications.*

In regard to a) The applicant's current site (at Grand Junction Retail Park) has significant highway issues regarding access and egress of the retail park, whereas the application site does not therefore this should be fully considered and debated. This information was confirmed in the local press by the landlord of the retail park after the first application was determined by the Council.

In regard to b) and c) combined, the site is allocated for development and it is imperative that a proposal should be compatible with and not harm the character of the adjoining land and buildings. In this case the proposal is sensitive in its design, scale and relationship with adjoining properties. It is also compatible with the adjoining residential properties which is reflected in the absence of objections to the proposal. This is important for the adjoining residents as a proposal is before the Council which does not harm residential amenity in this otherwise sensitive location. The proposal is also compatible with the surrounding mixed commercial area. These matters are important and should be debated by members of the committee.

In regard to d) the site is allocated employment land and this should be debated properly by the members so that the planning balance is considered fairly. The report on the first application omitted certain pieces of information, specifically, no summary of the petition including number of signatures in support of the application was reported by officers. It would be inappropriate to set a precedent whereby public information submitted to the Council was not shared with members. Considering this application by the committee will avoid setting such a precedent.

The significant concerns or potential significant impact of the development and need for a Planning Committee decision are as follows:

I have significant concerns that Crewe will lose a major retail employer when it vacates its site at Grand Junction Retail Park in March 2020. This application seeks to address that significant concern and overcome the significant impact on the public which would result from the closure of the applicant's existing store without being replaced. Furthermore, procedurally, it has become clear as a result of the recent judicial review that the first application (18/3123N) went awry as a member of the Council understanding that she was being advised not to vote at the Southern Planning Committee meeting of 28 November 18, but is now clear that she could have voted. The vote at the Southern Planning Committee was very close 4-5. In calling in this application 18/6389C, members of the Southern Planning Committee should have an opportunity to make a genuine attempt to resolve the problem that arose regarding the constitution of the committee. There was a clear problem with the procedure at the 28 November Committee meeting. This application ensures that the Order signed in the Court on 26 March 2019 is properly applied; and that the applicant can have the fair hearing it should have had in November. In terms of fairness and consistency, the application should not be delegated, it should be decided by the Southern Planning Committee as was application 18/3123C. The above reasons are significant and a need for a Planning Committee decision is the only procedure that should be followed to consider these significant concerns in a fair and consistent manner.

Finally, the reputation of the Council is at stake. Planning Officers will be viewed by the public as predetermined because they originally refused to register this application on the basis that it was identical to 18/3123N which they recommended against in the committee report and fought tooth and nail against at Southern Planning Committee. As they have argued that this application is identical to 18/3123N it follows that they will conclude the same reasons for turning it down and so to then further argue that the decision should be delegated robs the public of the perception of fair consideration and robs councillors of proper influence. It will look like a conspiracy. It is in the Council's overall interest in having a good reputation for transparency that this application is heard at committee'

PROPOSAL:

This is a full application for the construction of a new foodstore (use class A1) which would have a gross external area of 1,877sqm, a gross internal area of 1,801sqm and a net sales area of 1,315sqm. The store would be operated by Aldi.

The site would be accessed via an existing vehicle access off University Way to the west and would include 132 car parking spaces, 12 bicycle spaces, 4 electric vehicle charging points, a substation, a service area and landscaping.

SITE DESCRIPTION:

The application site is located to the eastern side of University Way and the site is set at an elevated position in relation to that road. To the south of the site, set at a lower level is a tree lined watercourse with an employment development which is currently under construction beyond.

To the north-east the site adjoins the boundary with the Crewe Green Conservation Area which is also located to the north and east of the site. To the east of the site is The Old Vicarage which is a Grade II Listed Building with further Listed Buildings to the heart of the Conservation Area located to the north-east of the site.

The application site is located largely within Flood Zone 1 although the access is located within Flood Zone 2 and the southern boundary along the existing watercourse is located within Flood Zone's 2 and 3.

RELEVANT HISTORY:

18/3123N - Erection of a new foodstore (Use Class A1), access, substation and associated car parking and landscaping – Refused 30th November 2018 for the following reasons set out below. An appeal has now been lodged against this decision and a Public Local Inquiry listed for September.

- 1. The proposed development is located within an area allocated for employment uses as part of Policy E.1.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011. The loss of the site for employment purposes would not maintain an adequate and flexible supply of employment land within this part of the Borough and insufficient reasons have been advanced to justify a departure from this policy. As a result the proposed development would be contrary to Policy E.1.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011, Policy EG3 of the Cheshire East Local Plan Strategy and guidance contained within the NPPF.*
- 2. The Local Planning Authority considers that insufficient information has been provided by the applicant to demonstrate that the Grand Junction Retail Park site is unsuitable for the proposed development, and accordingly, that the application site does not represent a sequentially preferable alternative. The proposed development is contrary to Policy PG 5 of the CELPS and the NPPF.*
- 3. There is a small population of Great Crested Newts present at a pond a short distance from the application site and this proposed development would result in a Medium Level adverse impact on this species as a result of the loss of terrestrial habitat and the risk of*

any newts present on site being killed or injured during the construction process. The proposed development fails two of the tests contained within the Habitats Directive and as a result would also be contrary to Policies NE.9 of the Crewe and Nantwich Replacement Local Plan 2011 and SE 3 of the Cheshire East Local Plan Strategy and guidance contained within the NPPF.

- 4. The proposed development would result in less than substantial harm to the heritage assets which adjoin the site. As the principle of the proposed development on a site allocated for employment uses is not accepted there are not considered to be public benefits which outweigh the harm. The proposed development is contrary to Policy SE 7 of the Cheshire East Local Plan Strategy, BE.7 of the Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within the NPPF.*

The refusal of application 18/3123N was the subject of an application for judicial review on grounds contesting the approach taken to personal/prejudicial interests and predetermination by two members of the Committee. These grounds were resisted by the Council. Aldi withdrew their claim on the morning of the High Court Hearing. There are no outstanding allegations of unlawfulness.

10/3689N - Extension to Time Limit on Approved application P07/1431 Outline Application for Proposed Office Development – Approved 16th December 2010

P07/1431 - Outline Application for Proposed Office Development – Approved 14th December 2010

P04/0489 - Outline Application for B1 Development on Area B, for B2/B8 Development on Plots B C F G H and I on Area C, for Car Showroom/Dealership and Related Activities on Area E1 and Open Space/Landscaping on Areas E2 and E3. Full Application for B2/B8 Development (Including Roads, Parking and Landscaping) on Plots A D and E of Area C – Approved 19th October 2004

7/19179 – Outline application for business development (class B1) and a hotel (class C1) – Approved 10th January 1991

7/16315 - Extension to Crewe Business Park – Approved 7th December 1988

7/13981 - New access road and sewers including new junction with improvement of A534 Crewe Road – Approved 19th March 1987

7/11951 - Development of a high technology site – Approved 2nd August 1985

POLICIES

Cheshire East Local Plan Strategy (CELPS)

MP1 – Presumption in Favour of Sustainable Development

PG1 – Overall Development Strategy

PG2 – Settlement Hierarchy

PG7 – Spatial Distribution of Development

SD1 - Sustainable Development in Cheshire East

SD2 - Sustainable Development Principles

SE 1 - Design

SE 2 - Efficient Use of Land
SE 3 - Biodiversity and Geodiversity
SE 4 – The Landscape
SE 5 – Trees, Hedgerows and Woodland
SE 6 – Green Infrastructure
SE 7 – The Historic Environment
SE 9 – Energy Efficient Development
SE 12 – Pollution, Land Contamination and Land Instability
SE 13 - Flood Risk and Water Management
EG3 - Existing and Allocated Employment Sites
EG5 – Promoting a Town Centre First Approach to Retail and Commerce
IN1 – Infrastructure
IN2 – Developer Contributions

Borough of Crewe and Nantwich Replacement Local Plan 2011

NE.5 (Nature Conservation and Habitats)
NE.9 (Protected Species)
NE.11 (River and Canal Corridors)
NE.17 (Pollution Control)
NE.20 (Flood Prevention)
BE.1 (Amenity)
BE.3 (Access and Parking)
BE.4 (Drainage, Utilities and Resources)
BE.6 (Development on Potentially Contaminated Land)
BE.7 (Conservation Areas)
E.1 (Existing Employment Allocations)
TRAN.3 (Pedestrians)
TRAN.4 (Access for the Disabled)
TRAN.5 (Cycling)

National Policy:

The National Planning Policy Framework establishes a presumption in favour of sustainable development.

Of particular relevance are paragraphs:

11 Presumption in favour of sustainable development.

85-90 Ensuring the Vitality of Town Centres

102-107 Promoting Sustainable Transport

124-132 Requiring good design

Neighbourhood Plans

There are no Neighbourhood Plans covering Crewe or Crewe Green.

CONSULTATIONS:

United Utilities: Conditions suggested.

CEC Environmental Health: Conditions suggested in relation to external lighting, electric vehicle infrastructure, travel plan and contaminated land. Informatives suggested in relation to contaminated land and construction hours).

CEC Spatial Planning: No further comments to add to those made as part of application 18/3123N other than a factual update regarding the recent approval at Grand Junction.

The comments from application 18/3123N are set out below;

The Local Plan Strategy forms part of the Development Plan for Cheshire East alongside policies within the Crewe and Nantwich Local Plan 'saved' for decision making purposes. LPS Policy PG 1 sets the overall development strategy for the borough, which includes a requirement for a minimum of 380 ha of land for business, general industrial and storage and distribution uses over the period 2010 to 2030.

Table A.10 in Appendix A of the LPS shows a planned provision of 386.21 ha employment land over the plan period. The existing employment land supply forms an important component of the overall employment land provision. This supply consists of committed sites, sites under construction and allocated sites from the legacy local plans, such as the Crewe and Nantwich Local Plan.

It is vital that existing employment sites, premises and allocations that are viable for continued employment uses are safeguarded (Paragraph 11.23 of the Local Plan Strategy). The application site forms part an allocation for B1 employment in the Borough of Crewe and Nantwich Local Plan 2011 as E.1.1. Appendix B of the Local Plan Strategy notes that policy E1 (existing employment areas) is a 'saved' policy for the purposes of decision making. Allocation E.1.1 (Crewe Business Park / Crewe Green) states that land is allocated for "B1 and (emphasis added) any uses required by and associated with Manchester Metropolitan University ("MMU"). For the avoidance of doubt, such uses include classroom/teaching facilities, residential accommodation for students, indoor and outdoor sport and recreational facilities".

The applicant notes that MMU have announced their intention to leave the Crewe Campus in 2019. However, as emphasised above, the allocation of site E.1.1 allocates land for B1 uses in addition to uses required by and associated with MMU.

Planning permission has recently been granted for 5 units for B2 and B8 uses (17/0341N) immediately south of the site and construction works have started. Beyond this is Orion Park which is another employment led scheme. As such it is considered that this site forms a viable employment allocation and should be protected, in line with the requirements of policy EG3 of the Local Plan Strategy.

The First Draft Site Allocations and Development Policies document, in policy EMP 2 (Employment Allocations), has reviewed and proposed to maintain the allocated employment site in the First Draft Site Allocations and Development Policies Document. Policy EMP2 is supported by an employment allocations review (2018) document which has reviewed the allocation. It is recognised that the Site Allocations document is in first draft, however, it does provide evidence that the Council has reviewed the suitability of the allocation and is proposing to maintain its allocation in the Site Allocations and Development Policies document.

Policy EG 5 of the LPS (promoting a town centre first approach to retail and commerce) notes how for Crewe, there will be a focus for high quality comparison retail, supported by a range of retail, service, leisure, tourism, office and other town centre type retail uses, including residential. Town Centres are promoted as the primary location for main town centre uses. Proposals for main town centre uses should be located within designated town centres or on other sites allocated for that particular type of development. Where there are no suitable sites available, edge of centre locations must be considered prior to out-of-centre locations. Edge of centre and out of centre proposals will be considered where:-

- *There is no significant adverse impact on the vitality and viability of the surrounding areas: and it is demonstrated that the tests outlined in current government guidance can be satisfied.*

Policy SD2 (Sustainable Development Principles) sets out a number of principles that development will be expected to achieve in the borough.

CEC Regeneration: The site forms part of an allocation for B1 use in the Borough of Crewe and Nantwich Local Plan 2011 as E.1.1. Appendix B of the Local Plan Strategy notes that policy E1 (existing employment areas) is a 'saved' policy for the purposes of decision making.

The site is well located in a very prominent position with direct access off University Way (A5020) and is extremely suitable for B1 use as allocated. Other land adjacent to the site has in recent years been developed for B1/B2/B8 uses both at Orion Park and immediately to the south of the applicant's site where 5 industrial units (B2 & B8 use) are currently being constructed. All developed land immediately to the east of University Way has been developed for B1/B2/B8 uses. The delivery of these sites demonstrates the popularity, viability and suitability of this site for B1/B2/B8 uses.

There is strong current demand for land and units with B1/B2/B8 uses in Crewe both from existing expanding businesses and from inward investors. It is anticipated that demand will also be strong in the future. Crewe is an excellent location for business. This view is reflected in 'All Change for Crewe: High Growth City'. The aspiration of All Change for Crewe includes the need to ensure development of accompanying short to medium term employment sites to compliment the strategic sites at Basford and Leighton in Crewe. Delivery of a new Crewe HS2 Hub Station in 2027 could bring structural change to the business offer in the area and further demand for allocated employment sites such as at University Way, including the applicant's site, is anticipated to be high.

Matthew Pochin, Director of Legat Owen, a leading commercial property firm, stated in May 2018 in relation to the Crewe commercial property market,

"These transactions demonstrate the continuing demand for SME units in Cheshire and more specifically Crewe. "Enquiry levels are strong, which is leading to increased rents and capital values. This is good news in many ways, but it also presents us with significant challenges. The reality is there is a chronic shortage of high quality industrial stock in Crewe and throughout Cheshire. So, now more than ever, we need to engage with developers and planning authorities to encourage land release, react quickly to planning applications and encourage the development of more speculative schemes." In December 2016 in relation to the delivery of units at Orion Park, Legat Owen have commented that "All these lettings are further good news for the town and reflect the strength of rental and freehold pricing, but also exacerbate the problem of good quality stock drying up in the market place."

The applicant's site should be protected for employment use as it is a suitable and required use on that site. It is entirely reasonable to believe that the site could be used for the allocated B1 employment use in the future if sufficiently marketed.

Natural England: No objection. Natural England considers that the proposed development will not have significant adverse impacts on statutory protected sites or landscapes. For advice on protected species refer to the Natural England standard advice.

CEC Head of Strategic Infrastructure: The access has previously been approved for an office development and there was no objection to the previous application for retail on this site.

No objection subject to the imposition of conditions and an informative.

CEC Flood Risk Manager: No objection in principle to the development subject to the imposition of conditions.

CEC Skills and Growth Company (SAGC): No further comments to those made as part of application 18/2123N other than the following update from Legat Owen;

The Apollo Park scheme is now fully let. That is 6 lettings all completed prior to practical completion of the scheme which is over 160,000sqft of space. The occupiers are all SME's (5 of the deals are Crewe based businesses who are expanding and creating new jobs and 1 is an expansion from Sandbach). 2 of the occupiers have freed up units that have now been let.

The comments made as part of application 18/3123N are summarised as follows;

The site is in a successful employment area, close to a range of major business parks that have already attracted major businesses requiring office and light industrial premises. It is also in an ideal attractive location on the Crewe Green roundabout and is close to the new Crewe Green Link Road and the M6 motorway. The site is in a prime location with high demand from occupiers. SAGC would support the view that the site should be protected for employment use.

The 2018 Annual Commercial Property Review, details transactions completed in 2017 and indicates a significant demand for high-end industrial units outstripping supply. In terms of industrial transactions, 35 deals were completed in 2017 comprising a total of 56,455sqm with the majority of deals completed in Crewe, totalling 15. The report includes a headline analysis of the supply of vacant commercial assets and indicates a limited supply of high end industrial units. This view is consistent with the principle industrial agent/consultant for Crewe who has been involved in the key sites and schemes over the last 25 years. They also report that industrial land availability for small to medium enterprise (a company with under 250 employees and less than €50m turnover) is all but none existent in the town as proven by the significant interest we are experiencing at Apollo Park. The agency are therefore of the opinion that the site would be better served as an allocated B1, B2 and B8 development.

SAGC engage with over 500 businesses per annum and have good visibility of businesses expanding and relocating to the area. There is over 500,000sqft of industrial demand for Crewe (taking into account requests specifically for Crewe plus those searching for Crewe plus other areas within a wider Cheshire East search). The figures indicate that there is a strong pipeline for demand.

SAGC has not been contacted regarding the marketing of the site.

Following the deferral a letter has been provided from Legat Owen at the request of the Skills and Growth Company which is summarised as follows;

- The overall availability within Crewe for B1, B2 and B8 uses is extremely limited for Small and Medium Size Enterprises (SME's).
- Occupancy levels are at an all time high and limited to 5 buildings below 50,000sq.ft.
- Crewe Commercial Park does have a surplus of land but this is earmarked for larger developments of above 50,000sq.ft rather than the SME market.
- Orion Park is now full after the speculative development of 11 units. The majority of which were let or sold prior to practical completion.
- Following the success of Orion Park, Apollo Park came to the market and was sold on a competitive basis having gone to best bids. This underpins the strong demand for B1, B2 and B8 employment in Crewe
- The developer at Apollo Park is hoping to complete the development in January 2019 with 6 speculative units varying from 12,000sq.ft to 44,000sq.ft. Three of the units have been pre-let with strong interest in the remaining three. It is hoped that the site will be fully occupied by spring 2019.
- There are few towns of a similar scale to Crewe that boast the level of speculative development and take up of accommodation that has been experienced
- Rental levels are increasing and this is due to the increased demand. This supports the argument for the release of more employment land.
- In terms of B1 the last remaining plot for office development in Crewe is under offer to a developer who is in the final stages of agreeing a new building to a major employer. This would leave no land immediately available in Crewe for B1 offices.
- The focus on the Basford East site is on residential development with the ancillary commercial development being a number of years away from release.
- The last phase of Orion Park (over 100,000sq.ft) was completed in under 2 years and all was let and sold in under 12 months
- Apollo Park is in excess of 160,000sq.ft with 90,000sq.ft already committed to local business
- There should be as much focus on job creation as job retention. The majority of the occupiers that took space in the final phase of Orion Park and those taking space at Apollo Park are expanding companies within Cheshire East. Without the ability to take new space they could have left the Borough.
- Apollo Park will have 100 employees by January 2019 and by the time all units are let it will be employing in the region of 200 employees.

Environment Agency: No objection. Informative suggested.

VIEWS OF THE TOWN COUNCIL:

Crewe Town Council: Crewe Town Council makes the following observations:

- The additional employment which would be created is welcomed, but
- There is concern that approval would set a precedent for retail development on the edge of the town at the expense of the town centre and the environment
- There is a lack of public transport realistically available to shoppers visiting the site. The acceptable distances for commuting and education referred to in the applicant's transport assessment are not appropriate for retail development, and few of the residential areas within

the store's catchment would be directly served by the existing bus routes. As a consequence, the majority of residents without access to a car would be denied access to low cost shopping at this site.

- The positioning of the building at the rear of the site does not positively contribute to the streetscene.

Crewe Green Parish Council: Aldi Stores Ltd showed proper consideration to the pre and subsequent Application process by actively engaging in a public consultation exercise, approaching the immediate neighbours and presenting their project to the Parish Council.

The Parish Council and immediate neighbours raised concerns with respect to potential operational and traffic noise, light nuisance and impact on existing trees and ecology which the development may cause. These issues appear to have been properly addressed by ensuring full compliance with appropriate Conditions.

It is understood that Aldi Stores Ltd continued to meet with the immediate neighbours to agree appropriate mitigation measures to address these concerns.

From a Planning perspective, this is clearly a departure from the allocated use for this site, but on balance the significant employment benefits must be properly considered for this alternative A1 use. Furthermore the scale and design of the proposed building will certainly have less of an impact on the adjacent Conservation Area than the likely alternative allocated development.

Subject to the above issues being properly considered, the Parish Council continues to fully support the Application.

REPRESENTATIONS:

Letters of support have been received from 5 local households which raise the following points;

- The application should be supported as it creates jobs. This is supported by over 600 members of the public, the local ward councillors and the Parish Council
- The development would be an important asset for the east of the Crewe and Haslington
- The relocation of the store will reduce congestion and air quality issues along Hungerford Road.
- 50 jobs are at stake if this application is refused.
- This new store could support large estates being built in the area and elderly people who would not need to travel as far
- The existing Aldi store has outgrown its current location.
- There is a lot of local support for this development
- The development will save a lot of Haslington residents travelling into Crewe
- If this application is refused then people will still use Aldi but will just have to drive further
- Traffic problems when visiting the retail park at peak times
- An out of centre store will ease the impact upon the infrastructure of Crewe
- There is already a butchers supermarket off University Way and this has set a precedent for retail development in the area
- The proposed store would be convenient for residents on this side of Crewe
- Residents have started shopping at Aldi in Congleton and Sandbach due to access issues associated with the existing Grand Junction Store

A letter of general observation has been received which raises the following points;

- The site is earmarked for employment/industrial use
- The site is on the edge of Crewe and this creates a number of transport issues for the residents of Crewe. You will have to be fit and healthy or have a car to access this store.
- Traffic issues – vehicles turning into and out of the junctions along University Way
- Air quality impact – Aldi should undertake a study of the impact of the proposed store
- Concern over rainwater from the car park discharging into Valley Brook. Valley Brook is liable to flood at Macon Fields.
- The location of the site is highly inappropriate and a more central site should be considered given the state of Crewe Town Centre

Letters of objection have been received from 2 local households, 1 local business, Cordwell Property Group and Triton Property which raise the following points;

- Planning permission was refused for an identical application. No attempt has been made to address the previous reasons for refusal.
- There should be consideration of the suitability and availability of the Royal Arcade site as a sequentially preferable site.
- Cordwell and Peveril Securities have been selected by CEC as the preferred partner to deliver the £48 million Royal Arcade proposal in Crewe Town Centre.
- The application scheme proposes a threat to its ability to successfully implement the Royal Arcade development.
- The Royal Arcade scheme could provide a unit of sufficient size, given that it would be possible to amalgamate several of the proposed units to provide one larger store; in any event the current proposals show a unit of over 2,000sqm which would be of a suitable size
- Cordwell Property Group have provided a plan to demonstrate how an Aldi store could be accommodated within the proposed development (with dual frontage, sufficient servicing, close to the reconfigured bus station and car park).
- In terms of car parking there are other instances where discount foodstores are required to use a shared parking facility. Dismissing the Royal Arcade scheme on the lack of a sole use car park does not demonstrate a degree of flexibility as required by the NPPF.
- It is anticipated that the Royal Arcade will be open for trading within a 'reasonable time period'. The applicant does not state that the option of 'holding over' while waiting for a new unit to be delivered has been fully considered.
- The University Way site fails the sequential test and should be refused.
- There is very limited scope for additional retail floorspace in Crewe at present. The University Way site will be competing with the Royal Arcade scheme where occupier interest at a time when market conditions are not robust and market support is limited.
- No reason to remove the Local Plan employment protection for this site
- There are more appropriate locations for the Aldi store
- The store is designed for car drivers and would not be suitable for pedestrians/cyclists
- People would not walk to the bus stops whilst carrying shopping
- Increase in traffic along Hungerford Road. A large proportion of residents in Crewe would have to travel along Hungerford Road in the opposite direction.
- The site is allocated for employment uses. There is a high demand for employment units in Crewe.
- The development is contrary to the Local Plan
- Leighton West has not been considered as a sequentially preferable site
- The application site is subject to an employment allocation under Policy EG3

- The applicant has only presented very limited evidence to demonstrate that the development of employment uses would be unviable.
- No active marketing of the site for employment uses has taken place in recent years. On this basis it cannot be concluded that the site is no longer suitable or viable for employment uses
- The Skills and Growth Company stated as part of the previous application that there is significant demand for employment premises in this part of the Borough. This is evident following the development of Apollo Park.
- The application has not demonstrated that the application site is not suitable or viable for employment uses.
- The proposed development would harm wider business and employment opportunities by reducing the availability of high quality employment land in Crewe
- The site represents prime employment land and the applicant should robustly address the policy tests that the site is no longer suitable or viable for employment use.
- Planning permission has been granted to extend Unit 11 on the Grand Junction Retail Park (currently occupied by Aldi). Aldi was content to remain at the Grand Junction Retail Park in September 2014 when it applied to extend the existing store. As a result there is a suitable and available sequentially preferable site to the University Way site.
- The impact of the extended Unit 11 on the local highways network was not a reason for refusal when the applications to extend the store were approved in 2014 & 2019.
- It is highly questionable as to whether Aldi would leave their existing unit which is performing well and has planning permission for an extension.

Aldi have also submitted a petition which has collected signatures from within store at Crewe, Nantwich and Sandbach. This has approximately 3,189 signatures in support of the application.

APPRAISAL

Principle of Development

The NPPF requires the application of a sequential test for main town centre uses that are not in an existing centre nor in accordance with an up-to-date development plan. The application site is an out-of-centre location.

Policy EG5 of the CELPS states that Town Centre will be promoted as the primary location for main town centre uses. Point 7 of this Policy then states that;

Proposals for main town centre uses should be located within the designated town centres or on other sites allocated for that particular type of development. Where there are no suitable sites available, edge-of-centre locations must be considered prior to out-of centre locations. Edge-of-centre and out-of-centre proposals will be considered where:

- i. there is no significant adverse impact on the vitality and viability of the surrounding town centres; and*
- ii. it is demonstrated that the tests outlined in current government guidance can be satisfied.*
- iii. The sequential approach will not be applied to applications for small scale rural offices or other small scale rural development in line with the government guidance.*

Within the town centre the Cheshire Retail Study 2016 identifies that Crewe Town Centre has a higher number of vacant units than the national average but that the majority of the vacant units

are small to medium in scale. However the report also concludes that the town centre is well represented in terms of the convenience (food, drinks, tobacco, newspapers/magazines, cleaning materials, toiletries) and comparison goods provision (all other goods) but is under-represented in terms of its service provision.

The Cheshire Retail Study then goes on to conclude that the health of Crewe Town Centre has declined in recent years and that it is evident that positive steps have already been taken to attracting new investment in Crewe via the production of the Crewe Town Centre Regeneration Delivery framework for Growth in addition to the Council's acquisition of the Royal Arcade site with the intention of delivering a leisure-led mixed use development.

It should be noted that the council has employed a Retail Planning Consultant White Young Green (WYG) to assess the retail planning implications of this development as part of the previous application 18/3123N. WYG have not been reappointed to comment on this application as the agent has confirmed in writing that this application is '*almost identical*' to the previous application.

Impact Assessment

An impact assessment is not required as the proposed development is below the threshold of 2,500sq.m as set out within the NPPF and referred to in the CELPS. However it should be noted that EG 5 of the CELPS requires that proposals for out-of-centre retail development to demonstrate that they will have no significant adverse impact upon the vitality and viability of the surrounding town centres. This issue is discussed later in the report.

Sequential Test

The previous application was refused by Southern Planning Committee with reason for refusal 2 relating to the failure to satisfy the sequential test. This specifically related to the failure to demonstrate that the Grand Junction Retail Park (GJRP) site is unsuitable for the proposed development.

Since the determination of application 18/3123N it is important to note that approval has been given as part of application 19/0128N to extend the Unit 11 at the Grand Junction Retail Park (the existing Aldi unit). 19/0128N gave full planning permission for a 548sqm (GIA) extension to the store resulting in a total of 1,700sqm floorspace (GIA) with minor works also proposed to the configuration of the customer car park and the service yard to the rear. This approval was very similar to approved application 14/3477N where Aldi were the applicants.

The NPPF paragraph 90 advises that where an application fails to satisfy the sequential test then the application should be refused. This is supported by Policy EG5 of the CELPS.

The sequential test is a key element of the NPPF. In support of this the Planning Practice Guidance states that the sequential test should be proportionate and appropriate for the given proposal and should;

- with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.

- is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- if there are no suitable sequentially preferable locations, the sequential test is passed.

The PPG then confirms that *'compliance with the sequential and impact tests does not guarantee that permission is granted – local planning authorities will have to consider all material considerations in reaching a decision*'. Other material considerations include the employment allocation on this site which is considered elsewhere in the report.

The area of search for a sequentially preferable site has been identified with the Planning and Retail Statement from JLL (the agents for the applicant) and the approach identified was accepted by WYG as part of the previous application. The proposed store will serve a local catchment of up to 25,000 people within a five minute drive of the application site.

JLL assess seven alternative sites within and outside Crewe town centre. These are the Royal Arcade (Crewe Town Centre), Grand Junction Retail Park (edge of centre), Lockitt Street (out of centre), Rail House (out of centre), former Macon House (out of centre), Q110 (out of centre) and Land off University Way (out of centre)

JLL have identified that Aldi trades from modern food stores with gross areas of between 1,800sqm and 2,400sqm. This application site has been determined that it would accommodate a smaller format 1,800sqm store to serve the local catchment (a site of 0.75 hectares developable area is required). The applicant considers that they have applied flexibility to their site search by considering land between 0.5 hectares and 1 hectare and buildings between 1,600sqm and 2,000sqm.

The applicant has applied an appropriate level of flexibility and it is noted that the lease on the current Aldi store at the Grand Junction Retail Park is due to expire in 2020.

The sites were considered as follows;

- Crewe Town Centre – JLL state that the Royal Arcade site is not available as there is no information or certainty that the proposed foodstore development could be delivered within a reasonable timescale. In addition they consider that the site is unsuitable on the basis that it does not offer any units of an appropriate size which are directly connected to a carpark. As part of the previous application WYG agreed that the Royal Arcade site is not currently available, as any preferable sites would need to be available within a similar time period to the closure of the existing store. WYG did not accept the reasoning put forward by JLL that the Royal Arcade site is unsuitable given the early stage of the development process. WYG concluded that *'Notwithstanding the uncertainties as to whether the Royal Arcade scheme could be made suitable to accommodate the proposed foodstore development, the site is not considered to be available'*

In terms of the Royal Arcade site the comments made by JLL and WYG are noted. However it should be noted that the NPPF paragraph 86 states that *'Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre*

sites be considered'. The NPPF does not contain any definition of a 'reasonable period'. On balance the circumstances of the Royal Arcade (the uncertainty relating to its delivery and whether it could accommodate the proposed store) does mean that it is accepted that this site is not available. However as time moves on and the time frame for the development of the Royal Arcade does become clearer this position could change.

- Grand Junction Retail Park (Edge of Centre) – The only vacant unit (formerly Poundworld) is too small (the unit has consent for a mezzanine floorspace which would provide a total floorspace of 833sqm). It is also necessary to consider whether an extension to the existing Aldi store is sequentially preferable. The existing Aldi store (unit 11) has consent for an extension to create a 1,700sqm store as part of application 19/0128N which was approved on 2nd April 2019.

JLL do not consider that the existing Aldi site at GJRP represents a sequentially preferable site as it is not suitable for an extended foodstore for the following reasons;

- Viability – a scheme would be unviable at this location given the rental levels requested would be 27.7% higher than the maximum level that Aldi can justify.
- Car parking – the car park is at capacity based on the existing Aldi's store size. A larger store would result in a greater demand for car park spaces which are not available.
- Location – the store is located in an out of centre location which turns its back on the town centre and discourages linked trips. It is not sequentially preferable.

Aldi have not disputed that the GJRP site is available for development.

Viability

JLL have provided evidence to demonstrate that discussions have taken place with the landlord within the last two years in relation to the provision of a larger Aldi store on the retail park. Although discussions have taken place WYG concluded as part of the last application that the evidence provided is not substantial enough for the GJRP to be dismissed on this point. It should be noted that no viability assessment or financial evidence has been submitted by the applicant.

Car Parking

The question raised by JLL in terms of the suitability of the site to deliver an extended foodstore is whether adequate parking provision is available within the existing retail park to accommodate the uplift in car parking required to serve an enlarged store.

JLL state that the existing store is not suitable as the current site is compromised by limited parking spaces and that the larger store would result in greater demand for car parking which is not available. JLL have attempted to justify this via a Car Parking Survey undertaken on Friday 19th October, in addition they have also provided queueing traffic on 6th April 2019 and 22nd May 2019 (however no survey has been undertaken and 4 photos have been submitted only). It is not considered that this information robustly demonstrates that there are insufficient parking spaces for the following reasons;

- The survey relates to a single day only

- The survey covers just 156 car parking spaces at the retail park (JLL state that there are 791 spaces at the retail park and Savills state that there are 824 spaces).
- Further explanation is required as to why only 156 spaces were surveyed.
- JLL state when analysing the car park survey that a 10% reserve capacity is required to allow customers to find a space without having to queue, but provide no source for this assertion

In this case the GJRP is sustainably located and the CEC Parking Standards state that for retail parks the standard is an 'individual assessment based against use-classes and location'. JLL have not provided sufficient evidence to demonstrate that there is insufficient car parking provision at the GJRP to make the GJRP unsuitable.

It is also noted that there is a current planning permission in place for Unit 11 (which is currently occupied by Aldi). This was approved in April 2019 and as part of this application no objection was raised by the Head of Strategic Infrastructure.

Suitability for a Food Store

In relation to this point it is noted that Aldi have been trading from the GJRP for over a decade and JLL acknowledge that the store is 'significantly overtrading' demonstrating its popularity and successful trading.

It is also noted that there are other food retailers operating at the GJRP (M&S, Home Bargains and Poundstretcher). Whilst it is also noted that there are many examples of Aldi opening and operating stores at retail park locations.

There would be some linked trips between an extended store at the GJRP and Crewe Town Centre which would have some impact upon Crewe Town Centre. The GJRP is closer to Crewe Town Centre than the application site and is more accessible.

- Lockitt Street (Out of Centre) – Is unavailable as retailers are already signed up to accommodate the floorspace proposed and the redevelopment of the site for mixed use (retail units and residential)
- Rail House (Out of Centre) – It is accepted that the office development is not available for redevelopment, as the office space is only available for let. The site is not available or suitable for a foodstore development.
- Q110, Weston Road (Out of Centre) – This industrial/distribution centre is under construction. It has been discounted as it is being constructed for this specific use and its size (over 10,000sqm) would exceed the proposed requirements. It is accepted that the site does not constitute a sequentially superior site.
- Macon Way (Out of Centre) – The site has been discounted on the basis of its irregular shape which cannot deliver a store, sufficient car parking provision, access point and servicing requirements. This site is owned by CEC and is therefore available. It is accepted that the site cannot suitably accommodate the development proposal. WYG previously stated that it is *'evident that JLL have explored a number of options at the site, but none of the options could*

accommodate the required level of car parking (minimum of 100 spaces) to serve the store. In addition, each of the options would have further constraints in terms of access, servicing and site safety. On this basis, we agree with JLL's conclusions that although the Macon Way site is available, it could not suitably accommodate the proposed development and therefore does not provide a sequentially preferable site'. Furthermore the site falls within Policy LPS 1 of the CELPS and the development of the site should include offices or other commercial uses (not retail).

In conclusion in terms of the sequential test insufficient information has been provided by the applicant to demonstrate that the existing GJRP site is unsuitable for the proposed development, and accordingly, that the site does not represent a sequentially preferable alternative. This leads to the same conclusion as the previous application that sufficient evidence has not been provided to demonstrate that the sequential test has been passed'. As a result paragraph 90 of the NPPF makes it clear that where an application fails to satisfy the sequential test it should be refused.

The Impact of the Proposal on the Vitality and Viability of Surrounding Centres

As the proposal relates to the relocation of the existing Grand Junction Store the majority of the trade will be diverted from Grand Junction Retail Park rather than from Crewe Town Centre. The Cheshire Retail Study (2016) demonstrates that the existing store is trading well with a turnover being well in excess of its benchmark turnover. It is accepted that the closure of the Grand Junction Store without the provision of a replacement store would result in a gap in provision for customers located to the east of Crewe.

The existing Aldi store is located at the southern end of the retail park approximately 600m from the primary shopping area. Given the location of the existing store it is considered that linked trips brought by the closure of the existing Aldi store would not have a significant impact upon Crewe town centre. However it should be noted that this proposed development would not result in any linked trips with Crewe Town Centre.

The provision of a larger replacement store will deliver qualitative benefits of a better customer shopping experience. This is due to the existing store overtrading. The proposed foodstore will not have a significant adverse impact on the vitality and viability of Crewe town centre.

There is a concern that the vacated Aldi unit could be occupied by another retailer possibly leaving the town centre. Any future occupier of the existing unit would not be restricted by the planning permission for the retail park (as there is no bulky goods condition) and there could be a cumulative impact on the town centre and other designated shopping centres. In relation to this issue WYG previously stated that *'Unfortunately, there is of course the potential for the proposal to result in a retailer relocating from a town centre unit to the retail park and I can understand why that would be a concern to the Council and other town centre stakeholders, particularly given current vacancy rates and other town centre healthcheck indicators'*.

It has to be acknowledged that this situation could happen at any time should a retailer choose to vacate a premises from the retail park leaving a unit available. Without control over the use of the floorspace or the imposition of a 'no poaching' condition on the retail park, this could continue to take place.

However, in this case, Aldi could vacate the unit regardless of the proposed development, and an alternative retailer could occupy the unit without any further involvement from the Council (perhaps except elevational changes etc). In short, given that the application only relates to the application site and the current site is out of control of the applicant and retailer. There is no method by which the Council can control the current floorspace and restrict it from being occupied by another town centre operator unless a subsequent application was to be submitted on the existing unit for other material works.

In terms of the potential implications to the town centre should a retailer choose to relocate, the impact will be negative but a retailer's relocation would cause a significant adverse impact on the town centre as a whole. In any event, as stated above, this is unfortunately uncontrollable by the Council given that this unfortunate (and far from ideal) circumstance could happen at any point without the Council's involvement. There is no way to force Aldi to stay at the retail park, and no way given the current controls to force a retailer to remain in the town centre.

Consideration of the impact upon smaller retailers

An objection has been received from the Co-op which operates a site on Beswick Drive and there are other small retailers in Crewe and Haslington. Within the NPPF and Policy EG 5 of the CELPS the issue of impact is limited to existing centres and not individual retailers. The only centres within the catchment area of the proposed store are Crewe Town Centre and Haslington Local Centre. The units within Haslington Local Centre act to serve local people who want to 'pop out' to purchase goods rather than make a specific trip to a larger supermarket. This is backed up by the Cheshire Retail Study. The proposed foodstore would not have a significant adverse impact upon the vitality and viability of Haslington Local Centre as residents will continue to make day to day purchases due to the convenience of doing so.

Meat-sale business to the south of the site

This issue is referred to within one of the representations received. Kingswood Poultry is located at Orion Park in Crewe and specialises in the de-boning of fresh poultry products supplying a range of customers from catering to wholesalers. This unit was granted planning permission as part of application 14/1492N which gave approval for 6 industrial units in use classes B1, B2 and B8. It appears that there used to be small scale trade counter with low level of informal public sales operating ancillary to the main warehouse/employment use. No planning permission has been granted for retail use at this site and this provides no justification for this proposed development.

Other Economic Benefits

The applicant has stated that the proposed development will protect the 28 existing jobs and create a further 20 jobs at the new store (elsewhere in the submitted report it states that a total of 50 jobs would be provided). The supporting planning statement states that the development will create a range of jobs of varying skills including managers, graduates and apprenticeship roles. The supporting planning statement also states that Aldi pays above average wages within the retail sector and that additional employment opportunities will be created for local people during the construction phase of the development.

Employment Allocation

Paragraph 80 of the NPPF (July 2018) notes that planning decisions should help create the conditions where businesses can invest, expand or adapt. Significant weight should be placed on the need to support economic growth and productivity.

The site is identified under allocation E.1.1 (Crewe Business Park and Crewe Green) for *'B1 and any uses required by and associated with Manchester Metropolitan University. For the avoidance of doubt, such uses include classroom/teaching facilities, residential accommodation for students, indoor and outdoor sport and recreational facilities'*. The applicant notes that MMU have announced their intention to leave the Crewe Campus in 2019. However, the allocation of site E.1.1 allocates land for B1 uses in addition to uses required by and associated with MMU.

However Policy EG3 (Existing and Allocated Employment Sites) of the CELPS states that existing employment sites will be protected for employment uses unless;

- i. Premises are causing significant nuisance or environmental problems that could not be mitigated; or*
- ii. The site is no longer suitable or viable for employment use; and*
 - a. There is no potential for modernisation or alternate employment uses; and*
 - b. No other occupiers can be found*

And that;

'Subject to regular review, allocated employment sites will be protected for employment use in order to maintain an adequate and flexible supply of employment land to attract new and innovative businesses, to enable existing businesses to grow and to create new and retain existing jobs'

The justification to Policy EG3 states that *'In order to provide a range of employment sites, particularly for inward investment and limit the need for development on greenfield land, it is vital that existing employment sites, premises and allocations that are viable for continued employment use are safeguarded'*.

The footnote to the Policy clarifies that *'To demonstrate that no other occupiers can be found, the site should be marketed at a realistic price reflecting its employment status for a period of not less than 2 years. The council will require evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received'*.

The First Draft Site Allocations and Development Policies document, in policy EMP 2 (Employment Allocations), has reviewed and proposed to maintain the allocated employment site in the First Draft Site Allocations and Development Policies Document. Policy EMP2 is supported by an employment allocations review document (2018).

In this case the proposed retail store would be contrary to the employment allocation on this site under Policy E.1.1 and Policy EG3.

In their supporting statement the applicants agent states that the proposed development will not harm business or employment opportunities and that the proposal will protect the 28 existing jobs

and create a further 20 jobs at the new store. It is then stated that the site is highly unlikely to come forward or be supported for B1 uses for the following reasons;

- The proposal will not harm business or employment opportunities
- The application site will form just 0.47% of the earmarked employment land supply
- The previous B1 permission has expired and a lack of interest in the site for office development confirms that the site is not attractive to the office market
- The Employment Land Review for the CELPS noted that the development as an office park may be unrealistic with the concentration of offices on Electra Way.

The supporting statement then states that B2 and B8 uses are not compatible with the nearby residential properties which back onto the site at Crewe Road and Narrow Lane to the north and east of the site. The submitted report acknowledges the success of the development at Orion Park which it states range from 7.5m to 12m in height and that a large scale development would not be compatible due to the massing of the sheds and the 24/7 operations which are likely.

The report then states that the site lies adjacent to the Crewe Green Conservation Area and the massing of sheds for B2 and B8 uses are likely to be greater than the proposed development and impact upon the setting of the Conservation Area.

The Skills and Growth Company (SAGC) have stated that *'The site is in a successful employment area, close to a range of major business parks that have already attracted major businesses requiring office and light industrial premises. It is also in an ideal attractive location on the Crewe Green roundabout and is close to the new Crewe Green Link Road and the M6 motorway'*.

The 2018 Annual Commercial Property Review details transactions completed in 2017 and identifies a significant demand for high-end industrial units outstripping the supply with 35 deals completed in 2017 comprising a total of 56,445sqm (the majority – 15 of these deals were in Crewe). The report indicates a limited supply of high end industrial units and that industrial land availability for Small and Medium Enterprises is all but non-existent in Crewe as proven by the significant interest experienced at Apollo Park.

The SAGC liaise with over 500 businesses per annum and following discussions with businesses which are intending on expanding and relocating to the area and there is demand for over 30,000sqm of industrial demand in Crewe. This indicates that there is a strong pipeline for demand.

The supporting statement makes reference to office uses only within B1 and no reference is made to research and development of products and processes, light industry appropriate in a residential area which also fall within use class B1. No marketing of this site has been undertaken and the Councils only research information indicates that there is a strong demand for employment land in Crewe.

The applicant's assertions that alternative employment uses would harm residential amenity and the setting of the Conservation Area are not accepted and it is considered that a scheme could be designed and controlled through the use of planning conditions to protect residential amenity and the setting of the Conservation Area. It should also be noted that part of the allocation E.1.1 is currently under construction for alternative employment development to the south of the site and that the development of Apollo Park was also designed in relation to a sensitive heritage asset (it adjoins the Historic Park and Garden at Crewe Hall).

As a result the proposed development is contrary to Policy E.1.1 of the Crewe and Nantwich Replacement Local Plan 2011 and Policy EG3 (Existing and Allocated Employment Sites) of the CELPS.

Information on the take-up of the site to the south of the application site

A supporting letter from Legat Owen at the request of the Skills and Growth Company received as part of application 18/3123N identifies that overall land availability within Crewe for B1, B2 and B8 uses is 'extremely limited' for SME's. Occupancy levels are 'at an all-time high' with limited levels of availability. Legat Owen have confirmed that Orion Park is now full after the speculative development of 11 units and that the majority were sold or let prior to their practical completion (all were let or sold within 12 months).

An email from the Skills and Growth Company following discussions with Legat Owen states that Apollo Park to the south of the site is now fully let and the 6 lettings were all completed prior to the practical completion of the scheme. In relation to Apollo Park the agent for Aldi states that they have visited six units at Apollo Park and three are fully operational, one is being fitted for a business and two have not been let. Clarification has been sought from Legat Owen who have confirmed that *'Four units are legally committed and two are in the final throws of the leases being agreed. We hope to have the last two leases completed by the end of next week at the latest.'*

The comments made by JLL that the site benefitted from a previous planning permission which expires in 2012 are noted. However this coincides with the economic downturn, and no evidence of marketing has been submitted as part of this application as required by the Development Plan.

The information received in relation to Apollo Park and Orion Park demonstrates that there is strong demand for B1, B2 and B8 employment land in Crewe.

It is also worth noting that the site is rolled over as an employment allocation within Policy EMP 2 (Employment Allocations) as site EMP 2.3 of the First Draft Site Allocations and Development Plan Policies Document (FDSADP). The site would form part of EMP 2.3 which identifies 7.85 hectares for B1/B2/B8 uses (given its early stage the FDSADP can only be given limited weight).

Information regarding job generation on the adjacent site to the south of the application site

The letter from Legat Owen received as part of application 18/3123N states that Apollo Park will result in job creation and job retention and around 100 people will be working at the site by January 2019 and when all of the units are let there will be in the region of 200 people employed on the site.

In relation to this issue JLL have stated that they have carried out a questionnaire to 41 businesses along University Way. JLL state that this survey shows that Aldi would provide 1 job per 37.5sqm where it would rank 11th out of the 41 businesses surveyed. Specifically at Orion Park the densities within the JLL survey range from Unit 15 at 1 job per 27.5sqm to Unit 16 at 1 job per 225.7sqm.

JLL have undertaken a further survey at Apollo Park and have stated that the job density at Apollo Park varies from 36.4sq/m per 1 job (unit 3A) to 156.2sq/m per 1 job (unit 4).

From the above in terms of job creation the proposed Aldi store is comparable to the adjacent businesses along University Way.

Highways Implications

A B1 office development of over 6,000sqm, together with over 200 car parking spaces, received planning approval in 2007 and again in 2010. Both approvals have now expired.

The site is located approximately 2km east of the centre of Crewe, 1.5km west of Haslington, and 150m south of Crewe Green roundabout which has recently been extended and includes improved pedestrian crossings. University Way has a 40mph speed limit. There is an existing pedestrian and vehicle access into the site in the form of a ghost island junction.

Sustainable Access

University Way has standard footway on the eastern side and a 3m wide shared footway/cycleway on the western side. The site is approximately 400m from the bus stop on Crewe Road and approximately 450m from the bus stop on Crewe Green Road. These services provide a regular bus service to the wider Crewe and Cheshire East area.

The option of walking, cycling, or using public transport would be available to customers or employees. However it is likely that most visitors would visit the site via private motor vehicle especially when considered to the existing store at GJRP.

Safe and suitable access

The access is already in place and visibility splays of at least 80m in each direction are available and acceptable. The parking provision is to CEC standards including that for disabled parking and for parent/infant parking. The proposed cycle parking provision also accords with CEC requirements.

As part of the Crewe Green roundabout improvements, there will be a new signalised Toucan crossing provided on University Way, replacing the two existing crossings. A pedestrian/cyclist refuge island has also been proposed just north of the access which would provide a safe crossing point within the desire line for pedestrians/cyclists approaching from Beswick Drive direction. The proposed and existing pedestrian and cycling infrastructure from the site to the surrounding area are sufficient.

The existing ghost island junction providing vehicle access into the site is acceptable. In this case 16.5m articulated delivery vehicles would utilise the access. Sufficient turning area will be provided within the site to allow these vehicles to enter and exit in a forward gear.

Network Capacity

The Crewe Green and the Weston Road roundabouts have been modelled using standard traffic modelling software. The Crewe Green roundabout has recently been redeveloped and the traffic

impact on this junction is acceptable. The modelling of the Weston Road/University Way roundabout has underestimated the existing junction capacity constraints and the traffic impact of the development. Nevertheless, the impact of the development will not be severe in accordance with national policy and is therefore accepted.

Highways Conclusion

The access has previously been approved for an office development and is also acceptable for this proposal, as is the wider traffic impact. The Head of Strategic Infrastructure has confirmed that there are no objections to this application subject to the imposition of planning conditions.

Amenity

The nearest dwelling to the proposed store would be Stable House to the east of the site with a separation distance of approximately 50m. Given this separation distance it is considered that the proposed development would have minimal impact upon residential amenity in terms of over-bearing impact, loss of light or loss of privacy.

Noise

The applicant has submitted an acoustic report in support of the application. The impact of the noise from the proposed development on existing residential properties has been assessed in accordance with BS4142:2014 methods for rating and assessing industrial and commercial sound. This is an agreed methodology for assessing noise of this nature.

The report indicates that mitigation measures will not be required. A condition could be attached in relation to a construction management plan to mitigate the impacts during the construction phase of the development.

Within the report there is no specific reference to delivery hours and the applicant's agent has stated that it is intended that deliveries should be unrestricted. The Council's Environmental Health Officer has stated that if noise complaints are received regarding deliveries then these will be investigated under the provisions of the Environmental Protection Act 1990.

Air Quality

Policy SE12 of the Local Plan states that the Council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 181 of the NPPF and the Government's Air Quality Strategy.

Air quality impacts have been considered within the Air Quality Assessment submitted in support of the application. The report considers whether the development will result in increased exposure to airborne pollutants, particularly as a result of additional traffic and changes to traffic flows. The assessment uses ADMS Roads to model NO₂ and PM₁₀ impacts from additional traffic associated with this development and the cumulative impact of committed development within the area.

A number of modelled scenarios have been considered within the assessment. These were:

- Scenario 1: 2016 Verification and Base Year
- Scenario 2: 2021 'Do-minimum'

- Scenario 3: 2021 'Do-something'

The proposed development is considered significant in that it is highly likely to change traffic patterns and congestion in the area.

In the conclusion presented by the report, all of the receptors impacts are considered negligible. However, the consultant also conducted a sensitivity analysis of the impacts, i.e. using the scenario where background levels of nitrogen dioxide do not drop over the coming years as predicted which is considered a worst case scenario. Under this scenario, three of the receptors are predicted to experience a moderate adverse impact. Also there is a need for the Local Planning Authority to consider the cumulative impact of a large number of developments in a particular area. In particular, the impact of transport related emissions on Local Air Quality.

Crewe has three Air Quality Management Areas and as such the cumulative impact of developments in the town is likely to make the situation worse, unless managed.

Whilst the worst case scenario could be a cause for concern, the Environmental Health Officer considers that with appropriate mitigation the impacts of the development could be minimised. The imposition of conditions in relation to electric vehicle infrastructure and a travel plan would mitigate the impact from this development.

Contaminated Land

The geo-environmental report submitted in support of this application identifies that an area of historical development and a former potentially infilled pond were identified on the north west of the site. These areas were investigated during the ground investigation and the results and assessment demonstrated a low potential risk to identified receptors. Gas monitoring has been undertaken at the site, and four rounds of monitoring were done over the course of just over a month. The consultant's assessment identified a Characteristic Situation of 2 for the development, meaning some gas protection measures are required as part of the development. Subject to the imposition of planning conditions the Councils Environmental Health Officer has raised no objection to the development from a contaminated land point of view.

Design

As part of the previous application amendments were made to the materiality on the front and rear elevations to introduce timber cladding rain screen. It is unfortunate that the green roof (suggested by the Councils Urban Design Officer) is not an option. However the changes to materials on the rear elevation and changes to the landscape scheme to the rear (a mix of deciduous and evergreen) would reduce the impact of the proposal in the context of the relationship to the heritage assets. This will be further improved by setting black the close boarded timber fencing behind the landscaping area. It will be important to secure this area of planting as early as possible and at a level of maturity that establishes the landscape screen as effectively and quickly as possible.

There are still concerns over the impact of the proposed boundary treatment but such issues could be controlled through the imposition of planning conditions.

The detailed design would not appear out of character in this location and the detailed design complies with the NPPF and Policy SE1.

Built Heritage

The site adjoins part of the Crewe Green Conservation Area with the north eastern corner of the site abutting the boundary of the Conservation Area. A character appraisal for the Conservation Area was prepared in 2008. It states at 4.30 that *“Outward views from within the Conservation Area are restricted by relatively high hedging close to the roadside edge and overhanging mature trees. In spite of the relatively wide carriageway of Crewe Road, this planting helps to contain this part of the Conservation Area from adjoining open land. This reinforces the impression that whilst Crewe Green lies within a relatively narrow gap between two built-up areas, it still has the sense of being a separate hamlet located within a rural area.”*

The Vicarage (grade II listed) is approximately 30-40 metres from the site boundary but there are intervening buildings and only modest vegetation. Views to The Vicarage are quite open from within the site.

The (Planning (Listed Buildings and Conservation Areas) Act 1990 s66 provides that, in considering whether to grant planning permission for development which affects a Listed Building or its setting, a Local Planning Authority shall have special regard to the desirability of preserving the building or its setting.

To an extent the sense of being a separated hamlet has already been weakened by the expansion of the Crewe Business Park and development on the eastern side of University Way but this site is the employment allocation with the closest relationship with the heritage assets at Crewe Green.

This proposal would bring new development closer to the Conservation Area and would impact upon its setting. It would also bring urban development closer to the listed vicarage and its immediate environs, which is presently characterised by an open rural setting (albeit modestly impinged upon by the development of the Crewe Business Park and the employment units further along University Way). This site has a much more direct relationship with the Listed Building and the Crewe Green Conservation Area. Although substantial landscaping is proposed along the eastern boundary which has the most direct relationship to the assets, it will take considerable time to negate the visual impacts of the development. Therefore in the short to medium term at least the character of the Conservation Area and the Listed Building will be harmed by the proposal due to the impact upon their respective settings. This would represent less than substantial harm (para 193 of the NPPF).

The changes to the materials on the rear elevation of the proposed development and changing the landscaping to the rear to a mix of deciduous and evergreen are, would in principle reduce the impact of the proposal in the context of the relationship to the heritage assets. This will be further improved by setting back the close boarded timber fencing behind the landscaping area. It will be important to secure this area of planting as early as possible and at a level of maturity that establishes the landscape screen as effectively and quickly as possible.

Where there is less than substantial harm to a heritage asset the NPPF paragraph 196 states that *‘Where a development proposal will lead to less than substantial harm to the significance of a*

designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'.

In this case the principle of the retail use on this employment allocation is not accepted. As a result the public benefits of the proposal does not outweigh the less than substantial harm.

Archaeology

As part of the previous application the Councils Archaeologist stated that he does not consider that there is sufficient information to justify a recommendation for further archaeology work.

Landscape

The application site covers an area of approximately 1.86 hectares. The application site is located to the east by University Way; there are a number of commercial units located along the length of University Way. There is existing green infrastructure around the application site, including trees and hedgerows. To the south of the application site is Valley Brook and its associated boundary vegetation.

The proposals, as shown on the submitted Landscape Plan indicate that the existing boundary vegetation will be enhanced and that additional planting will take place between Valley Brook and the store, as well as more ornamental planting at the entrance area and within the site.

The Councils Landscape Architect has raised no objection to this proposed development.

Trees

There is tree cover around the periphery of the site and on adjacent land. The trees are not subject of TPO protection although some off site vegetation to the north east of the site, overhanging the site boundary lies within the Crewe Green Conservation Area. The woodland associated with the Valley Brook Corridor to the south of the site is a priority habitat.

The submission is supported by an Arboricultural Report. The report identifies 5 individual trees, four tree groups and a hedgerow. The report identifies that the development would result in the loss of one Grade C tree group of self set Goat Willow, Cypress and Hawthorn with a backdrop of large Laurel shrubs (located at the north west corner of the site).

The development is considered to be acceptable in terms of its impact upon the trees on and adjoining the site. This is subject to the imposition of planning conditions relating to tree protection measures, the submission of an Arboricultural Method Statement and a management plan for the Valley Brook woodland edge.

The proposed boundary fencing style has been revised for some sections which is welcomed. The 1.5 close boarded fence has been retained to the south of the access to the service area. The Councils Tree Officer is of the view that a more open style fence (perhaps an open mesh metal) would allow views to the Valley Brook woodland edge. This matter could be controlled by the imposition of a planning condition should the application be approved.

Ecology

Statutory Designated Sites

The application site falls into Natural England's SSSI impact risk zones for non-residential developments of over 1ha. In this case Natural England have been consulted and have raised no objection to the proposed development.

Valley Brook Wooded Corridor

The woodland located adjacent to Valley Brook supports a number of indicator species of established woodlands and is considered a Priority Habitat. Habitats of this type are a material consideration for planning.

To avoid a significant loss of biodiversity it must be ensured that the woodland is retained as part of the proposed development.

Great Crested Newts

A small population of Great Crested Newts is present at a pond a short distance from the application site. In the absence of mitigation the proposed development would result in a Medium Level adverse impact on this species as a result of the loss of terrestrial habitat and the risk of any newts present on site being killed or injured during the construction process.

To compensate for the loss of terrestrial habitat the applicant is proposing to enhance the remaining habitats on site and the creation of a new wildlife pond. The risk of amphibians being killed or injured during the construction process would be mitigated through the erection of one way fence which allows animals to leave but not re-enter the footprint of the proposed development. This would be controlled through the imposition of a planning condition.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places

(a) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, and provided that there is

(b) no satisfactory alternative and

(c) no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK has implemented the Directive in the Conservation of Habitats and Species Regulations 2017 (as amended) which contain two layers of protection (i) a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and (ii) a licensing system administered by Natural England and supported by criminal sanctions.

Local Plan Policy NE.9 of the C&NLP states that development will not be permitted which would have an adverse impact upon protected species or their habitats. Policy SE 3 of the CELPS states

that development which is likely to have a significant impact on a site with legally protected species will not be permitted except where the reasons for or the benefits of the development outweigh the impact of the development.

The NPPF advises LPAs to protect and enhance biodiversity: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) or adequately mitigated, or as a last resort, compensated for, planning permission should be refused.

Natural England's standing advice is that, if a (conditioned) development appears to fail the three tests in the Habitats Directive, then LPAs should consider whether Natural England is likely to grant a licence: if unlikely, then the LPA should refuse permission: if likely, then the LPA can conclude that no impediment to planning permission arises under the Directive and Regulations.

In terms of the Habitat Directive tests;

- The proposed development is not in the interests of public health or public safety. The site is allocated for employment uses (as explained above) and on this basis there are no imperative reasons of overriding public interest.
- There is satisfactory alternative and that would involve the redevelopment of the site for employment purposes in accordance with the policies contained within the Development Plan together with the required mitigation.
- The submitted mitigation means that there would be no detriment to the maintenance of the species population at favourable conservation status in their natural range.

As the first two tests have not been met it is considered that the proposed development would be contrary to Policies NE.9 of the C&NLP and Policy SE 3 of the CELPS.

Common Toad

This priority species is also present on site. The formulation of a satisfactory Great Crested Newt mitigation and compensation strategy would also address potential impacts upon this species.

Other Protected Species

Evidence of other protected species activity was recorded around the site but no setts are present. The layout of the proposed development will maintain much of the existing habitat linkages for other protected species but will result in a localised loss of foraging habitat, which may have a minor impact.

In this case it should be noted that the submitted report is slightly out of date. If planning consent is granted an updated survey and any necessary mitigation measures can be controlled through the imposition of a planning condition.

Barn Owl

A Barn Owl survey has been undertaken. No evidence of roosting or nesting Barn Owls was recorded on site. This species is not reasonable likely to be present or affected by the proposed development.

Trees with bat roost potential

A number of trees have been identified as offering potential to support roosting bats. These are identified as Target Notes: TN4, TN5 and TN6 on the submitted Phase One Habitat Plan. The tree at Target Note TN6 is off-site and so would not be affected by the proposed development. Tree TN5 is a large Oak tree which is shown as being retained.

The dead tree at TN4 is not shown for retention on the submitted plans. To avoid any impacts on roosting bats the Councils Ecologist advises that the submitted plans should be amended to clearly show the retention of this tree. This could be controlled by the imposition of a planning condition.

A notable number of bat species was recorded on site during the bat activity surveys but the level of activity was however only moderate. The areas of highest bat activity will be retained as part of the proposed development. However to avoid any adverse impacts on bats resulting from any lighting associated with the development a condition could be attached requiring any additional lighting to be submitted and agreed.

Provided the above condition is attached and the eastern and southern hedgerows and associated vegetation are retained. The proposed development is not likely to have a significant adverse impact on foraging bats.

Hedgehog

Hedgehogs are a priority species and hence a material consideration. There are records of hedgehogs in the broad locality of the proposed development and so this species may occur on the site of the proposed development. Provided the Valley Brook woodland is retained together with a corridor of semi-natural habitat around the boundary of the site the potential impacts of the proposed development on this species are likely to be low. A condition could be imposed to require the provision of brash/wood piles as Hedgehog habitat.

Reptile survey

No evidence of reptiles has been recorded on site and this species group is unlikely to be present or affected by the proposed development.

Loss of Biodiversity

The grassland habitats present on site, whilst not of Local Wildlife Site quality, do support a number of species which are indicative of higher quality habitats. Whilst not a significant constraint on development the loss of these habitats would result in a loss of biodiversity. Local Plan policy SE3 requires all developments to deliver an overall gain for biodiversity. The loss of the grassland habitats could be compensated for through the creation of the pond suggested above.

Habitat Creation and Management Plan

If planning consent is granted a condition is required to ensure that a detailed habitat creation management plan is submitted prior to the commencement of development.

Flood Risk/Drainage

The application site is located largely within Flood Zone 1 (low probability of flooding) although the access is located within Flood Zone 2 (medium probability of flooding) and the southern boundary along the existing watercourse is located within Flood Zone's 2 and 3 (high probability of flooding). The built form of the proposed development (the supermarket, service yard and carpark) would all be located within Flood Zone 1.

In this case the Councils Flood Risk Manager, the Environment Agency and United utilities have all been consulted as part of this application and have raised no objection to the proposed development subject to the imposition on planning conditions. As a result the development is considered to be acceptable in terms of its drainage and flood risk implications.

Energy Efficient Development

Policy SE 9 (Energy Efficient Development) of the CELPS sets out that;

“non-residential development over 1,000 square metres will be expected to secure at least 10 per cent of its predicted energy requirements from decentralised and renewable or low carbon sources, unless the applicant can clearly demonstrate that having regard to the type of development and its design, this is not feasible or viable.”

It is considered reasonable to impose a condition on any planning approval for the submission of energy saving requirements in line with the above.

Other issues

Aldi have referred to the mixed use application at Mill Street/Lockitt Street, Crewe which includes a Lidl store. In this case the site was subject to a mixed use allocation and each application is determined on its own merits.

The call-in request from Cllr Marren refers to the highway issues associated with the existing store at GJRP and are discussed above.

Point's 'b' and 'c' of the call-in request are considered above also. In short the site is allocated for employment uses within the Crewe & Nantwich Local Plan. Clearly any application for employment uses would need to be considered in terms of its design, scale and impact upon the surrounding buildings and the area. It is not reasonable to accept the loss of an employment allocation due to perceived impacts.

Point 'd' of the call-in request refers to the previous application and the reporting of the petition to Members of Southern Planning Committee. The petition was handed to officers immediately before the meeting commenced and there was no opportunity to count the number of signatures before the meeting commenced. The petition was brought to the attention of Members and although it was not initially stated that this was in support of the application, this was clarified before the debate started and Members were aware it was in support of the application when they made their decision on application 18/3123N.

Cllr Marren refers to the loss of the employment if the existing Aldi store was to close. As stated elsewhere in this report JLL acknowledge that the store is 'significantly overtrading' demonstrating its popularity and successful trading. Any decision to close the store is purely a decision taken by Aldi and they have the option of remaining at the current GJRP site which would protect the existing jobs.

Cllr Marren's call-in refers to the application for judicial review to the High Court. As stated in the planning history section of this report the refusal of application 18/3123N was the subject of an application for judicial review to the High Court on grounds contesting the approach taken by two committee members to their declaration of personal/prejudicial interests and predetermination. These grounds were resisted by the Council. Aldi withdrew its claim on the morning of the Hearing. There are no outstanding allegations of unlawfulness.

CONCLUSION

The application site is an employment allocation as part of Policy E.1.1 of the C&NLP. The site has not been marketed for employment uses and the proposed retail development of this site would be contrary to Policy EG 3 of the CELPS.

The proposal is an out-of-centre retail development. There is no requirement for an impact assessment. It is considered that the proposed development would not have a significant adverse impact upon the vitality and viability of Crewe Town Centre or Haslington local centre. However, the sequential test has not been passed as insufficient information has been provided by the applicant to demonstrate that the existing GJRP site (which has consent for an extension as part of application 19/0128N) is unsuitable for the proposed development, and accordingly, that the site does not represent a sequentially preferable alternative and the proposed development is contrary to the NPPF and PG 5 of the CELPS.

The highways implications of the development are considered to be acceptable and the proposed development would comply with the Councils parking standards. The proposed development would comply with Policies BE.3 of the C&NLP and C02 of the CELPS.

The amenity implications of the proposed development, including noise, air quality and contaminated land are considered to be acceptable and would comply with BE.1, BE.6 and NE.16 of the C&NLP and SE 12 of the CELPS.

The design of the proposed development is considered to be acceptable and there are no archaeology implications associated with this development. As a result the development complies with Policy SE 1 of the CELPS; and BE.16 of the C&NLP. However the proposed development would result in less than substantial harm upon the heritage assets. In this case the principle of the retail use on this employment allocation is not accepted. As a result the public benefits of the proposal does not outweigh the less than substantial harm.

The landscape implications of the proposed development are considered to comply with SE 4 of the CELPS.

The impact in relation to the trees on and adjoining the site is considered to be acceptable and would comply with Policy NE.5 of the C&NLP and Policies SE 3, SE 4 and SE 5 of the CELPS.

The impact upon protected species and habitats is largely acceptable. However as the principle of retail development on the site is not considered to be acceptable, the impact upon Great Crested Newts fails the tests within the Habitat Directive and the development is contrary to Policies NE.9 of the C&NLP and SE 3 of the CELPS

The drainage and flood risk implications of the proposed development are considered to be acceptable and the development complies with Policies CE 13 of the CELPS and NE.20 of the C&NLP.

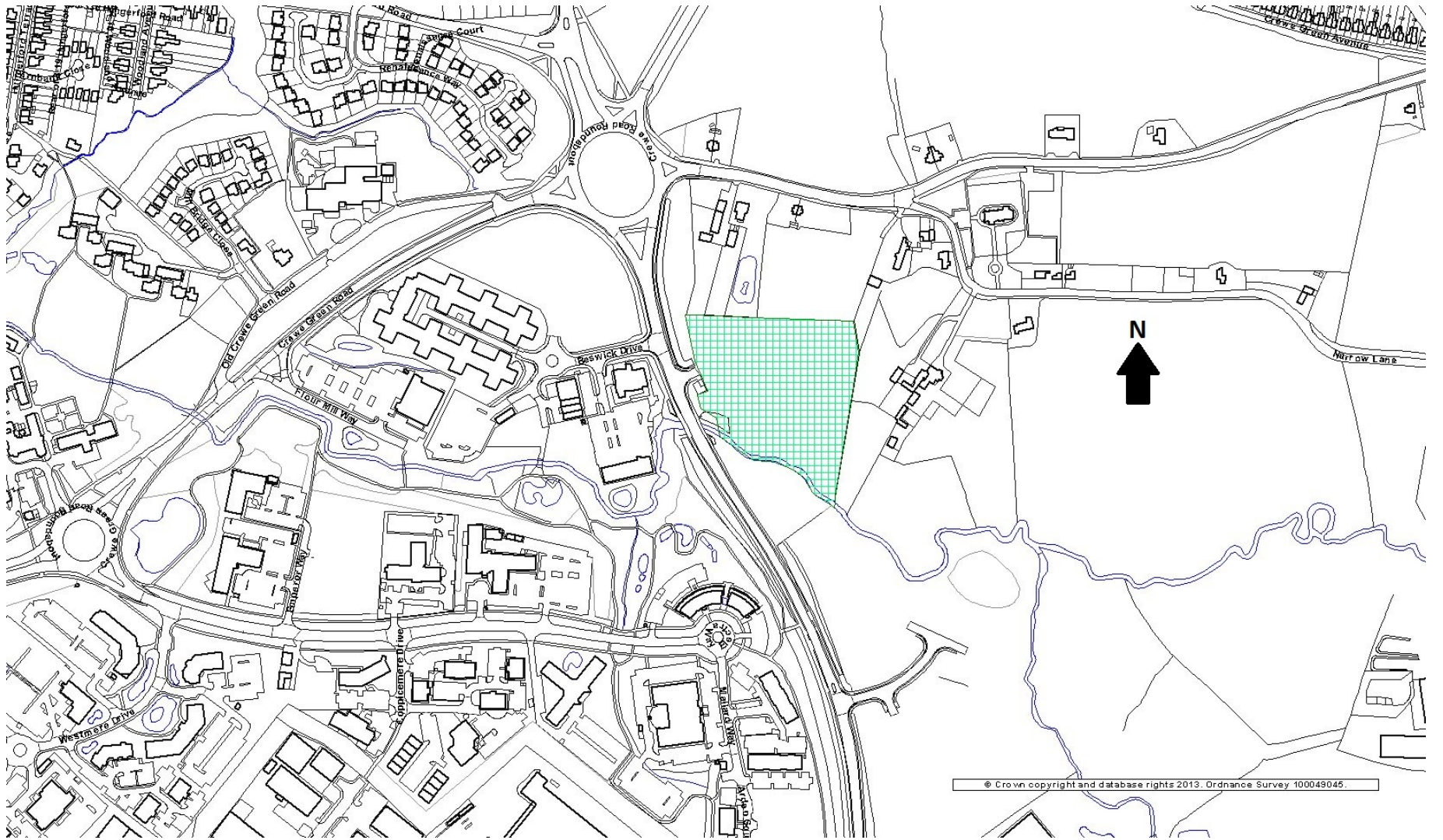
Finally the development of the site would have some economic benefits as identified above and this does attract some weight. However it should be noted that these benefits are likely to be less than those which would be secured if the employment allocation on the site was implemented.

RECOMMENDATION:

REFUSE for the following reasons;

- 1. The proposed development is located within an area allocated for employment uses as part of Policy E.1.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011. The loss of the site for employment purposes would not maintain an adequate and flexible supply of employment land within this part of the Borough and insufficient reasons have been advanced to justify a departure from this policy. As a result the proposed development would be contrary to Policy E.1.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011, Policy EG3 of the Cheshire East Local Plan Strategy and guidance contained within the NPPF.**
- 2. The Local Planning Authority considers that insufficient information has been provided by the applicant to demonstrate that the Grand Junction Retail Park site is unsuitable for the proposed development, and accordingly, that the application site does not represent a sequentially preferable alternative. The proposed development is contrary to Policy PG 5 of the CELPS and the NPPF.**
- 3. There is a small population of Great Crested Newts present at a pond a short distance from the application site and this proposed development would result in a Medium Level adverse impact on this species as a result of the loss of terrestrial habitat and the risk of any newts present on site being killed or injured during the construction process. The proposed development fails two of the tests contained within the Habitats Directive and as a result would also be contrary to Policies NE.9 of the Crewe and Nantwich Replacement Local Plan 2011 and SE 3 of the Cheshire East Local Plan Strategy and guidance contained within the NPPF.**
- 4. The proposed development would result in less than substantial harm to the heritage assets which adjoin the site. As the principle of the proposed development on a site allocated for employment uses is not accepted there are not considered to be public benefits which outweigh the harm. The proposed development is contrary to Policy SE 7 of the Cheshire East Local Plan Strategy, BE.7 of the Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within the NPPF.**

In order to give proper effect to the Board's intent and without changing the substance of its decision, authority is delegated to the Head of Development Management in consultation with the Chair (or in their absence the Vice Chair) to correct any technical slip or omission in the resolution, before issue of the decision notice



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