

Planning Committee Report 19/1709/FUL

1.0 Application information

Number: 19/1709/FUL

Applicant Name: Mr Matthias Daly, Lidl Great Britain Ltd

Proposal: Construction of Class E(a) foodstore (Use Classes Order 2020, previously Class A1) with associated parking, landscaping and access works - (Further Revised Plans).

Site Address: Land at Pinbrook Court
Pinhoe Road/Venny Bridge Road
Exeter

Registration Date: 4 December 2019

Link to App: <https://publicaccess.exeter.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=Q1ZV7NHBMNQ00>

Case Officer: Matthew Diamond

Ward Member(s): Cllr David Harvey, Cllr Trish Oliver, Cllr Duncan Wood

REASON APPLICATION IS GOING TO COMMITTEE:

The Service Improvement Lead – City Development considers the application to be a significant application that should be determined by the Planning Committee in accordance with the Exeter City Council Constitution.

2.0 Summary of recommendation

DELEGATE to GRANT permission subject to conditions as set out in the report.

3.0 Reason for the recommendation: as set out in Section 18 at end

The proposal is considered to be a sustainable development when balancing the Development Plan policies, National Planning Policy Framework 2021 (NPPF) policies, including the presumption in favour of sustainable development in paragraph 11, National Planning Practice Guidance (NPPG), and the constraints and opportunities of the site.

4.0 Table of key planning issues

Issue	Conclusion
The Principle of the Proposed Development	The site is considered to have a nil planning use, therefore the proposed foodstore will not conflict with Policies CP2 or E3, as the site is no longer used for employment purposes. The site is considered to pass the main

Issue	Conclusion
	town centre uses sequential test – the only available and viable alternative site is Moor Exchange, but this site is neither within nor on the edge of a defined centre. The development is below the threshold for an impact assessment, however the impacts on centres are considered low. Therefore, the development accords with Policies CP8 and S1. The development will generate up to 40 permanent jobs and be within walking distance of housing, which are sustainability benefits.
Access and Impact on Local Highways	The Pinhoe Road/Venny Bridge junction will be signalised with the provision of toucan crossings making it safer for all users, particularly pedestrians and cyclists. The Pinhoe Road arms of the junction are predicted to operate approximately 10% over capacity during the PM peak hour in 2024. The Highway Authority and officers do not consider this to be a severe impact, which would point to refusal in line with the NPPF. The new infrastructure will encourage pedestrian/cycle movements to/from the store, supporting the Council's ambition of becoming a net zero carbon City by 2030. The development accords with Policies CP9, T1, T2 and T3, and chapter 9 of the NPPF.
Parking	The car parking accords with the Council's standards in Policy T10/Sustainable Transport SPD. Conditions should be added to bring the provision of cycle parking up to the minimum standards in the SPD and to provide showers, lockers and space to dry clothes for staff to encourage cycling in accordance with the SPD.
Design and Landscape	Following revisions to account for the Place Making Officer's comments, the site layout and design of the building are acceptable and will fit into the

Issue	Conclusion
	<p>character of the area. A detailed landscaping scheme should be secured by condition incorporating tree planting. Subject to this condition, the proposal accords with Policy DG1. A condition for CCTV should be added in line with the Police comments.</p>
Impact on Amenity of Surroundings	<p>Conditions should be added limiting the times for deliveries and waste collection, the noise from plant and securing a 2m wall (or similar boundary treatment) along the east site boundary to protect the amenity of residents from noise generated by the foodstore and its use. Subject to these conditions, the development accords with Policy EN5.</p>
Impact on Trees and Biodiversity	<p>Since the application was submitted, three trees on the site were felled, including a good quality Oak. Replacement trees should be secured in accordance with Policy DG1 and the NPPF, through the detailed landscaping scheme condition. The site was used by common pipistrelle bats and bird nesting before the buildings were demolished. A Biodiversity Enhancement Plan should be conditioned to include an appropriate number of bat and bird boxes, in accordance with Policy LS4 and chapter 15 of the NPPF.</p>
Contaminated Land	<p>The site is contaminated from past industrial use. A complete contamination investigation and remediation strategy should be conditioned, and a further condition added in case unsuspected contamination is found. Subject to these conditions, the development accords with Policy EN2.</p>
Impact on Air Quality	<p>The proposed development will not have a significant effect on air quality, but will include two rapid electric vehicle charging points and cycle</p>

Issue	Conclusion
	parking in accordance with best practice. The development accords with Policy EN3.
Flood Risk and Surface Water Management	The proposal fails the flood risk Sequential Test, contrary to paragraph 162 of the NPPF, however there are considered to be material considerations to allow the development (see section 16.0). The proposed development will be safe and not lead to increased flooding elsewhere. The Environment Agency and Lead Local Flood Authority have no objections, subject to conditions which should be imposed. An Exception Test is not necessary for a foodstore. The development accords with Policies CP12 and EN4, and paragraphs 161c) and 169 of the NPPF.
Sustainable Construction and Energy Conservation	Conditions should be added requiring BREEAM Excellent, connection to the adjacent Decentralised Energy Network (unless demonstrated not to be viable) and a Waste Audit Statement, in accordance with Policies CP15, CP13 and W4 (Devon Waste Plan) respectively.
Development Plan, Material Considerations and Presumption in Favour of Sustainable Development	The proposal is considered to accord with the Development Plan as a whole, subject to the imposition of conditions. The development fails the flood risk Sequential Test, which is a material consideration carrying high weight, however this is considered to be outweighed by the sustainability benefits of the scheme, although a condition should be added restricting the sale of comparison goods to no more than 20% of the net sales area in order to maintain the store as a predominantly convenience goods store encouraging sustainable travel to/from the nearby housing. The 'tilted balance' in the NPPF is not engaged,

Issue	Conclusion
	as the site is in an area at risk of flooding.

5.0 Description of site

The site comprises a vacant plot of land northwest of Pinhoe Road and Venny Bridge, and extends south and east to include the adjoining highway land. The site area including the highway land is 1.12ha. The site area not including the highway land is 0.72ha. The site previously had a number of buildings on it that were used for employment purposes, however these were demolished in November 2019 following the grant of prior notification of proposed demolition application ref. 18/1224/DEM.

The site lies to the north of the Monkerton/Hill Barton Strategic Allocation in the adopted Core Strategy (2012). It is located within the established employment area at Pinhoe referred to in Policy CP2 and shown on Plan 4 of the Exeter Employment Land Review 2009. The site is undesignated on the Exeter Local Plan First Review 1995-2011 Proposals Map (adopted 2005). The site is within a Retained Employment Site designated on the Proposals Map of the Publication Version Development Delivery DPD, however this DPD is not adopted and therefore carries very limited weight.

About 80% of the site to the north is within Flood Zone 2 with part of this area also within Flood Zone 3, as a result of Pin Brook adjacent to the north site boundary. The southwest part of the site is within Flood Zone 1. There are no above ground heritage assets on the site or within the vicinity.

The site is bounded by employment uses to the north/northeast, Venny Bridge and a car rental business to the east, Pinhoe Road to the south with the Mayfield Gardens residential development under construction beyond, and further employment uses to the west. Aldi and Sainsburys supermarkets are in close proximity to the southwest. Chancel Lane lies to the northeast, which crosses the railway line via a narrow bridge.

6.0 Description of development

The proposal is to construct a foodstore (Class E(a)/formerly Class A1) on the site with associated car park, landscaping and access works. The store will be sited to the west of the site with the car park to the east. About half the store will be in Flood Zone 2 and a smaller area to the north will also be in Flood 3, while the remainder to the south will be in Flood Zone 1. The majority of the car park will be in Flood Zone 2 and about half will also be in Flood Zone 3. The store will have a gross internal area of 1,900 sq m, including 1,200 sq m net sales area. The car park will have 104 spaces, including 7 disabled spaces, 8 parent and child spaces, and 2 electric vehicle charging spaces. Vehicle access will remain off Venny Bridge in the same location as before. The Pinhoe Road/Venny Bridge junction will be changed to a signalised junction with toucan crossings added to each road. A new pedestrian/cycle

access will be provided off Pinhoe Road to the west of the main access near the entrance to the building. The application was revised a number of times, including the red line boundary to include highway land, with the latest set of revised plans being submitted in July 2021.

7.0 Supporting information provided by applicant

- RPS Cover Letter 27.11.2019
- Design and Access Statement (October 2019) – SUPERSEDED
- Community Involvement Statement
- Planning & Retail Statement (November 2019)
- Employment Land Appraisal (November 2019)
- Transport Assessment (November 2019) – SUPERSEDED
- Travel Plan (November 2019) – SUPERSEDED
- Noise Impact Assessment (October 2019)
- Tree Survey Constraints Analysis Arboricultural Impact Assessment Rev A (October 2019)
- Tree Constraints Plan (Sept 2019)
- Tree Protection Plan (Sept 2019)
- Ecological Appraisal (Bats & Birds) (May 2019)
- Ecological Verification Report (November 2019)
- Geo-Environmental Investigation Report (April 2019)
- Air Quality Assessment (November 2019)
- Flood Risk Assessment Version 2 (November 2019) – SUPERSEDED
- External Lighting Design Statement (October 2019)
- Utility Search Report (December 2018)

Additional Information Submitted During Application

- Planning & Retail Statement Addendum (January 2020)
- RPS Letter – Response to Objection by ASDA Stores Ltd 19.05.2020
- Pell Frischmann Letter – Response to Objection by ASDA Stores Ltd 14.07.2020
- RPS Cover Letter 10.07.2020
- Design and Access Statement (July 2020)
- Pinhoe Road/Venny Bridge Junction Appraisal (May 2020)
- PV System Report (May 2020)
- Flood Risk Assessment Version 6 (June 2020) – SUPERSEDED
- Air Quality Technical Note (July 2020)
- RPS Letter to Flood and Coastal Management Team 19.08.2020
- RPS Cover Letter 12.01.2021
- Transport Assessment (January 2021)
- Traffic Appraisal and Modelling (January 2021)
- Travel Plan (January 2021)
- Flood Risk Assessment Version 8 (January 2021) – SUPERSEDED

- Blake Morgan Letter – Retail Status of Moor Exchange 21.01.2021
- Pell Frischmann Technical Note – Comparison of Accessibility of Site with Moor Exchange (November 2020)
- RPS Letter – Response to Objection by the Environment Agency 17.03.2021
- Flood Risk Assessment Version 9 (March 2021)
- RPS Letter – Response to the Environment Agency's remaining issues 17.05.2021
- RPS Letter – Structural Survey of Pin Brook Bank Wall and Culvert Headwall 05.05.2021
- CCTV Drainage Survey 14.04.2021
- RPS Cover Letter 09.07.2021
- Transport Assessment Addendum (July 2021)
- Air Quality Technical Note (December 2021)
- RPS Letter – Planning Issues 20.01.2022

8.0 Relevant planning history

93/0068/FUL (Dewhurst Meat Preparation Plant)	Part change of use of building from warehouse to auction room	PER	05.03.1993
95/0764/FUL (Adj Unit 5 Peek House)	Change of use of land from storage (Class B8) to retail (Class A1) for the display of timber buildings	PER for 12 months	19.12.1995
97/1041/FUL (Unit 11)	Single storey rear extension	PER	19.01.1998
02/0166/FUL (Former Eastman (Dewhurst) Building)	Change of use from storage and distribution (Class B8) to offices (Class B1)	PER	21.03.2002
18/1224/DEM	Demolition of Pinbrook Court and Units	PER	10.10.2018

9.0 List of constraints

- Flood Zones 2 and 3 cover parts of the site
- Parts of Venny Bridge and site access susceptible to surface water flooding
- Potential contamination
- AQMA is 220m to southwest of site

10.0 Consultations

Below is a summary of the consultee responses. Where more than one response was received, the latest response has been summarised. All consultee responses, including earlier responses, can be viewed in full on the Council's website.

Environment Agency: No objection subject to pre-commencement conditions for the following:

- Watercourse Maintenance Plan for the open Pin Brook adjoining the site
- Contamination Investigation and Remediation
- Unsuspected Contamination.

NB. A flood risk activity permit (FRAP) may be required from the EA.

Local Highway Authority (Devon County Council): The Highway Authority objected to the previous proposals to upgrade the Pinhoe Road/Venny Bridge junction to an improved priority junction on safety grounds. This issue has been resolved through the current proposal for a signalised junction. The scheme improves pedestrian facilities via toucan crossings on the Pinhoe Road western arm and Venny Bridge arm. The crossings will allow pedestrians to press the buttons and cross the entire carriageway without needing to wait at the central islands for a second green light stage, as recommended by the HA. This improves the safety of the junction and reduces the crossing time for pedestrians/cyclists. It may delay vehicles at the junction. The new highway arrangement will result in four sets of signals within 500m, impacting traffic flow in both directions. However, there is no policy against this and in line with the transport hierarchy and NPPF, more weight should be given to ensuring safe and suitable access is provided for all road users. A stage 1 Road Safety Audit has been undertaken by the applicant, which does not raise any significant safety concerns. The HA is satisfied that safe and suitable access will be provided for all users. The impact of the scheme on the recently constructed E4 Strategic Cycle Route is acceptable.

The access to the site has been reduced from 18m in earlier layouts to 14m, improving access for pedestrians. Due to visibility constraints of vehicles exiting the site, it's accepted that pedestrian priority similar to that delivered at Aldi, Topsham Road cannot be provided at this location. Vehicle tracking shows that vehicles can manoeuvre safely to/from Venny Bridge. The main pedestrian/cycle access will be provided from Pinhoe Road; consequently pedestrians/cyclists travelling to the site from Pinhoe Road, including those from the nearest bus stop (approximately 60m to the west), will not need to go through the car park.

The development will generate 64 two-way movements in the AM peak and 141 two-way movements in the PM peak. The access from Venny Bridge has been assessed to operate within capacity during the weekday peak periods in 2024, therefore the HA has no concerns with the capacity of this junction. The new Pinhoe Road/Venny Bridge signalised junction has been assessed to operate within the limits of junction capacity in the AM peak hour, but it will be operating approximately 10% over capacity along Pinhoe Road in 2024 with the development. The HA explored whether the width of Pinhoe Road could be increased to the west to maintain two lanes of

traffic eastbound to improve traffic flow, but this has not been possible to achieve and (irrespective) the HA does not consider that it is necessary to make the development acceptable in highway terms. Sensitivity tests indicate that Pinhoe Road would operate within capacity if traffic flows reduced by 10%, or approximately at capacity if there was no growth traffic added. Queues may form on Venny Bridge during busy periods, potentially blocking back into the Lidl car park, however the signals will safeguard egress onto the public highway.

The proposed development will have an impact on traffic flows along Pinhoe Road, although the road already suffers from peak hour congestion and delay, therefore it is unlikely to cause a significant change to journey times. This needs to be balanced against the wider enhancements to road safety and pedestrian/cycle access. As safe and suitable access can be provided, the HA does not consider that the impact on vehicular capacity can substantiate a justification for refusal.

The provision of 12 cycle spaces meets the minimum cycle parking standard in the Sustainable Transport SPD. The applicant has also agreed to provide a Co Bikes docking station (8 docks), which should be conditioned.

A travel plan is required for all staff. Construction access arrangements must be carefully managed. The construction plan must outline how disruption to the strategic cycle route will be minimised.

In summary, the HA is satisfied that safe and suitable access will be provided, subject to conditions.

Lead Local Flood Authority (Devon County Council): No in-principle objections, subject to a pre-commencement condition securing a detailed drainage design based upon Flood Risk Assessment Version 9, as well as detailed proposals for the management of surface water and silt runoff during construction, adoption and maintenance proposals, and a plan indicating how exceedance flows will be safely managed.

Waste Planning Authority (Devon County Council): A very small part of the site is within the Waste Consultation Zone for Pinbrook Road Household Waste Recycling Centre. However, this does not represent a constraint to the development. Agree to a pre-commencement condition for a Waste Audit Statement.

RSPB: Questioned whether the proposed mitigation and enhancement in the Ecological Appraisal was adequate, and encouraged a Landscape and Ecological Management plan (LEMP), more appropriate number of bird/bat boxes and additional enhancements such as green wall panels. In response to the latest consultation, suggested an alternative to integral boxes which have a life expectancy of 50 years

and between 12 and 18 could be accommodated on the north or east elevations of the building.

Devon & Somerset Fire & Rescue Service: The revised drawings would (without prejudice) appear to satisfy the criteria we would require for B5 access under Building Regulations and so we have no objection to this development at this time.

Police Designing Out Crime Officer: Fencing/gates should be used to restrict access behind the building to staff only and these areas should be covered by CCTV. The car park access should have lockable barriers or gates to prevent misuse or unauthorised encampments. Road markings should be clearly marked in the car park. The glazed store frontage should be protected by the incorporation of bollards. A condition for CCTV should be added if permission is granted. It is welcomed that the lighting meets BS5489 – Road lighting. The landscaping should not hamper surveillance opportunities or conflict with lighting or CCTV. A surveillance gap should be maintained with plant growth not extending above 1m and tree foliage not reaching below 2m. In the car park areas plant growth should not exceed 500mm.

South West Water: No objection, subject to surface water being discharged to Pin Brook as proposed in the Flood Risk Assessment. A public sewer runs within the site, which will need to be diverted if buildings/structures are within 3m.

Environmental Health: Objected to the original Air Quality Assessment, but removed this objection following the submission of the latest Air Quality Technical Note in December 2021. The submitted noise report shows that building services plant will achieve a rating noise level of 3dB below background levels at night when 5dB would normally be expected, however this is acceptable being within the likely margin of error. The report assumes a 2m noise barrier along the site boundary, which must be secured otherwise the noise assessment will need to be revised. Conditions recommended: CEMP, contaminated land, delivery times, plant noise limits and noise barrier details.

Arboricultural Officer: No arboricultural objections to the original plans. (NB. Original plans retained 12.5m high Oak tree and two smaller Ash trees in northwest corner of site, but these trees have been felled.)

Place Making Officer: Moving back the building by about 4m helps to match the building line and is close to the consented setback of the nearby Aldi rebuild; it seems unlikely that further setback could be negotiated. The frontage planting strip should include tree planting to enhance the building and its setting. The revised material finishes of the elevations are acceptable. (NB. Comments relate to earlier set of plans, but still considered relevant.)

Building Control: No comments regarding Building Regulations on original plans. Did not respond to consultation on revised plans.

Exeter Cycling Campaign: Whilst it can be challenging for the layperson to keep a track of all the changes made here we are encouraged by the improvements that the DCC Transport team have insisted upon to this design, particularly the Venny Road junction improvements. We have no further comments to offer.

Exeter Civic Society: Did not comment on latest set of plans. Previously suggested access improvements and provision of trees along frontage.

11.0 Representations

The application was advertised three times, once for the original submission, once when revised plans were submitted in July 2020 and once when further revised plans were submitted in July 2021. There were 80 contributors in total comprising 71 objections, 7 neutral and 2 in support. There were 9 objections to the latest set of plans, 6 of whom had objected previously. For information, the latest set of plans introduced signals and toucan crossings at the Pinhoe Road/Venny Bridge junction. The majority of objections related to the original plans. The following issues were raised in the objections:

- Supermarkets already close by
- Impact of traffic generation on local highways/junctions that are already busy/congested
- Dangerous for pedestrians/cyclists to cross road – new layout required
- Major supermarket should be built alongside major housing developments, reducing traffic movements
- Good use of land
- Creates additional jobs
- January 2021 traffic modelling does not take into account new development
- Transport assessment highlights junction will be over capacity in 2024
- Access should be from Exhibition Way (subject to third party land purchase)
- Impact on Chancel Lane/bridge – dangerous for pedestrians
- The introduction of traffic lights at the junction will make it worse
- Too much traffic using road already
- Loss of grass verge
- Impact on local businesses in industrial estate – more congestion
- Access should be from Pinhoe Road not Venny Bridge
- Impact on safety of pedestrians/cyclists using Venny Bridge
- A roundabout should be provided
- Increased pollution
- Should go in Honiton Road development
- Potential overspill parking
- Turning onto Pinhoe Road from Venny Bridge is dangerous already

- Loss of Oak tree – no replacement trees, impact on biodiversity
- Loss of employment land – contrary to Policy CP2 (Sainsbury's)
- As a cleared site, opportunity to deliver new economic development (Sainsbury's)
- Lack of evidence sequential test is passed (Sainsbury's)
- Impact on planned investment of local centre to serve Monkerton/Hill Barton (Sainsbury's)
- Development should be restricted via condition to limited product line deep discount retailing (Sainsbury's)
- Fails sequential test – does not consider Moor Exchange site as sequentially preferable, and does not comply with saved Policy S1 and Policy CP8 (Asda)
- Application does not demonstrate loss of employment land is justified contrary to saved Policy E3 and Policy CP2 (Asda)
- Parking accumulation exercise should be undertaken to demonstrate that the level of parking is acceptable (Asda)
- Moor Exchange is available and suitable for the proposal, and should be considered as sequentially preferable in the sequential test despite not being formally designated a centre (CPG and Growen Estates)
- Moor Exchange is preferable to the site in accessibility terms (CPG and Growen Estates)
- Loss of employment land – conflict with Policy CP2 (CPG and Growen Estates)

The issues raised in the neutral responses were:

- Existing junction already a danger to pedestrians and causes pollution – please confirm no more serious impact from proposals
- Not against store, but thought needs to go into transport links
- There must be a suitable traffic management scheme
- Traffic turning into Venny Bridge do so at speed and turning right into Pinhoe Road is almost impossible – a store will increase traffic/danger and how is a delivery lorry supposed to access the site? A roundabout or traffic lights should be provided.
- The access onto Venny Bridge will cause major problems in an area that already experiences difficulties for cars and pedestrians
- Concerned about potential growth of traffic crossing railway bridge – can it be made one way?
- Building not setback from highway (original plans) – conflicts with saved Policy DG1 (Aldi)

The issues raised in the two representations supporting the proposal were:

- Will be great asset to area, but concerned about extra traffic – a roundabout would help to ease traffic

- Will bring jobs during construction and following completion, as well as increase the economic base in the City (Taylor Wimpey)

12.0 Relevant policies

National Planning Policy and Guidance

National Planning Policy Framework (NPPF) (2021) – in particular sections:

- 2. Achieving sustainable development
- 4. Decision-making
- 6. Building a strong, competitive economy
- 7. Ensuring the vitality of town centres
- 8. Promoting healthy and safe communities
- 9. Promoting sustainable transport
- 11. Making effective use of land
- 12. Achieving well-designed places
- 14. Meeting the challenge of climate change, flooding and coastal change
- 15. Conserving and enhancing the natural environment

Planning Practice Guidance (PPG):

- Air Quality
- Climate change
- Community Infrastructure Levy
- Design: process and tools
- Effective use of land
- Flood risk and coastal change
- Healthy and safe communities
- Land affected by contamination
- Light pollution
- Natural environment
- Noise
- Town centres and retail
- Travel Plans, Transport Assessment and Statements
- Use of planning conditions
- Waste
- Water supply, wastewater and water quality

National Design Guide (MHCLG, 2021)

National Model Design Code (MHCLG, 2021)

Manual for Streets (CLG/TfT, 2007)

Cycle Infrastructure Design Local Transport Note 1/20 (DfT, July 2020)

Biodiversity duty: public authority duty to have regard to conserving biodiversity
(Natural England and DEFRA, 13 October 2014)

Development Plan

Core Strategy (Adopted 21 February 2012)

Core Strategy Objectives

CP1 – Spatial Strategy

CP2 – Employment

CP8 – Retail

CP9 – Transport

CP11 – Pollution

CP12 – Flood Risk

CP13 – Decentralised Energy Networks

CP15 – Sustainable Construction

CP16 – Green Infrastructure, Landscape and Biodiversity

CP17 – Design and Local Distinctiveness

Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005)

AP1 – Design and Location of Development

AP2 – Sequential Approach

E3 – Retention of Employment Land or Premises

S1 – Retail Proposals/Sequential Approach

T1 – Hierarchy of Transport Modes

T2 – Accessibility Criteria

T3 – Encouraging Use of Sustainable Modes

T9 – Access to Buildings by People with Disabilities

EN2 – Contaminated Land

EN3 – Air and Water Quality

EN4 – Flood Risk

EN5 – Noise

DG1 – Objectives of Urban Design

DG2 – Energy Conservation

DG3 – Commercial Development

DG7 – Crime Prevention and Safety

Devon Waste Plan 2011 – 2031 (Adopted 11 December 2014) (Devon County Council)

W4 – Waste Prevention

W21 – Making Provision for Waste Management

Other Material Considerations

Development Delivery Development Plan Document (Publication Version, July 2015)

DD1 – Sustainable Development

DD3 – Retention of Employment Land

DD5 – Access to Jobs

DD20 – Accessibility and Sustainable Movement

DD21 – Parking

DD25 – Design Principles

DD26 – Designing out Crime

DD30 – Green Infrastructure

DD31 – Biodiversity

DD33 – Flood Risk

DD34 – Pollution and Contaminated Land

Exeter City Council Supplementary Planning Documents:

Sustainable Transport SPD (March 2013)

Trees and Development SPD (Sept 2009)

Devon County Council Supplementary Planning Documents:

Minerals and Waste – not just County Matters Part 1: Waste Management and Infrastructure SPD (July 2015)

Exeter City Council Annual Infrastructure Funding Statement (31 December 2020)

Net Zero Exeter 2030 Plan (Exeter City Futures, April 2020)

Green Infrastructure Study (April 2009)

Green Infrastructure Strategy – Phase II (December 2009)

13.0 Human rights

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property

The consideration of the application in accordance with Council procedures will ensure that views of all those interested are considered. All comments from interested parties have been considered and reported within this report in summary with full text available via the Council's website.

It is acknowledged that there are certain individual properties where there may be some adverse impact (e.g. noise) and this will need to be mitigated as recommended through imposing conditions to ensure that there is no undue impact on the home and family life for occupiers. However, any interference with the right to a private and family life and home arising from the scheme as result of impact on residential amenity is considered necessary in a democratic society in the interests of the economic well-being of the city and wider area and is proportionate given the overall benefits of the scheme, including transport infrastructure and economic benefits.

Any interference with property rights is in the public interest and in accordance with the Town and Country planning Act 1990 regime for controlling the development of land. This recommendation is based on the consideration of the proposal against adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

14.0 Public sector equalities duty

As set out in the Equalities Act 2010, all public bodies in discharging their functions must have "due regard" to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard in particular to the need to:

- a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have "regard to" and remove OR minimise disadvantage and in considering the

merits of this planning application the planning authority has had due regard to the matters set out in section 149 of the Equality Act 2010.

15.0 Financial issues

The requirements to set out the financial benefits arising from a planning application is set out in s155 of the Housing and Planning Act 2016. This requires that local planning authorities include financial benefits in each report which is:-

- a) made by an officer or agent of the authority for the purposes of a non-delegated determination of an application for planning permission; and
- b) contains a recommendation as to how the authority should determine the application in accordance with section 70(2) of the Town and Country Planning Act 1990.

The information or financial benefits must include a list of local financial considerations or benefits of a development which officers consider are likely to be obtained by the authority if the development is carried out including their value if known and should include whether the officer considers these to be material or not material.

Material considerations

- Transport infrastructure improvements at Pinhoe Road/Venny Bridge junction, including new signals and toucan crossings.
- Up to 40 new jobs plus construction jobs.

Non material considerations

£352,013.00 CIL levy – The adopted CIL charging schedule applies a levy on proposals that create additional new floor space over and above what is already on a site. This proposal is CIL liable being out of city centre retail development. The rate at which CIL is charged for this development is £125.00 per sq metre plus new index linking. Confirmation of the final CIL charge will be provided to the applicant in a CIL liability notice issued prior to the commencement of the development. All liability notices will be adjusted in accordance with the national All-in-Tender Price Index of construction costs published by the Building Cost Information Service (BCIS) of the Royal Institute of Chartered Surveyors for the year when planning permission is granted for the development. Full details of current charges are on the Council's website. The rate per sq m granted for 2022 for this development is £185.27.

The proposal will generate business rates.

16.0 Planning assessment

The key issues are:

1. The Principle of the Proposed Development
2. Access and Impact on Local Highways
3. Parking
4. Design and Landscape
5. Impact on Amenity of Surroundings
6. Impact on Trees and Biodiversity
7. Contaminated Land
8. Impact on Air Quality
9. Flood Risk and Surface Water Management
10. Sustainable Construction and Energy Conservation
11. Development Plan, Material Considerations and Presumption in Favour of Sustainable Development

1. The Principle of the Proposed Development

Employment Land Issues

The site is within one of the established employment areas which must be retained in employment use in accordance with Policy CP2, except where their loss would not cause harm to business or employment opportunities, or where there are unacceptable amenity impacts for local residents. The Glossary of the Core Strategy defines Employment Land as: All land and buildings which are used or designated for purposes within Use Class B1 (Business), Class B2 (General Industrial), and Class B8 (Storage and Distribution), and other uses of employment character or which generate substantial employment or economic benefits and which may include sui generis uses such as car showrooms.

In September 2020, the Town and Country Planning (Use Classes Order) 1987 ('the UCO') was amended, including deleting Class B1 and creating Class E. Class E includes the uses that previously fell into Class B1 and retail (except the sale of hot food). Consequently a change of use from B1 to retail and vice versa is no longer development, and does not need planning permission.

The Cover Letter submitted with application ref. 18/1224/DEM stated, 'Pinbrook Court and units comprise a former builder's yard and offices plus the old Dewhurst abattoir and meat packing facility... Since the 1990s the buildings have been subdivided and let to a number of different tenants as basic storage and offices.' The photos submitted with this application show the site being used for a mix of B1 and B2 uses. They also show a bicycle shop, which occupied one of the units from July 2016 to November 2018, which at the time of its closing was not lawful. Despite application ref. 95/0764/FUL (see 8.0 above), there is no clear evidence that any of the units

were used for B8 or had been used for B8 for a continuous period of 10 years, making this use lawful.

Therefore, the lawful use of the site before it was cleared is considered to be mixed B1/B2. However, since the buildings were demolished and the site cleared it is considered that a new planning unit has been formed, which has a nil planning use. The reason for this is because the use of the site for B uses relied on the former buildings on the site being present. Without these buildings, the former uses on the site and the rights that go with them have been lost. This accords with established planning case law based on *Iddenden v Hampshire CC 1972*.

If the buildings on the site had not been demolished and the mixed B1/B2 use remained, then a change of use to Class E(a) (retail) would not have been development, as B1 is now within the same use class as retail (Class E) and article 3, paragraph 4 of the UCO states that where a site is used for Class E(g) (formerly B1) and Class B2 those classes may be treated as a single class for the purposes of this Order.

However, as the site is considered to have a nil planning use, planning permission is required for the proposed use for Class E(a) (retail) (formerly A1), as well as the physical building works.

Saved Policy E3 states, 'The loss of employment land or premises will not be permitted where it would harm business or employment opportunities in the area.' As the site is considered to have a nil planning use and it is not designated as an Employment Site on the Proposals Map of the Exeter Local Plan First Review (adopted March 2005), this policy is no longer considered relevant.

Policy CP2 requires the established employment areas, including Pinhoe, to be retained in employment use, except where their loss would not cause harm to business or employment opportunities or where there are unacceptable amenity impacts for local residents. Members should focus on the word 'retained' here. As the site is considered to no longer have an employment use, this policy is also considered to no longer be relevant.

Notwithstanding, even if the site continued to benefit from B use rights and these policies applied, it is a material consideration that the proposed supermarket will generate employment opportunities – up to 40 new permanent jobs. According to the Employment Density Guide 3rd Edition (HCA, 2015), foodstores generate more employment than most other Class B uses, with the exception of offices and call centres (NB. the Employment Land Appraisal submitted with the application states that an office development would not be viable in this location). Furthermore, it's questionable whether a B2 or B8 use would be appropriate on the site given the proximity of new housing to the south of Pinhoe Road and the change of character of the road as a result of recent new developments. On the other hand, the foodstore

will be within walking distance of a large number of new dwellings within the strategic allocation area to the south, offering opportunities for sustainable movement choices. These material considerations are considered to outweigh any policy conflicts above should they have applied.

Retail Policy Issues

Retail development is defined as a 'Main town centre use' in the NPPF (2021). As the site is in an out of centre location, a sequential test should be applied in accordance with paragraph 87 of the NPPF (2021), Policy CP8 and saved Policy S1. The idea of the sequential test is to check whether there are any available and viable sites that are either in a centre or on the edge of a centre (well connected to and up to 300m from the primary shopping area) that could accommodate the proposal, allowing for flexibility, within its catchment area. If there are, the application should be refused.

The applicant has carried out a sequential test as part of the submitted Planning & Retail Statement Addendum. Appendix D of the report includes a plan showing the indicative catchment areas of the proposed store and other existing discount food stores in the City, i.e. Lidl and Aldi. The catchment area of the proposed store is shown covering the northeast part of the City. However, officers consider that the store is likely to attract shoppers from a wider area, including the residential areas to the north of the City and the entire Monkerton/Hill Barton strategic allocation area to the south.

The applicant has extended their search to centres beyond their indicative catchment area in any case, including: Pinhoe Local Centre, Beacon Lane Local Centre, Whipton Local Centre, Mount Pleasant Local Centre, Polsloe Bridge Local Centre, Sidwell Street Local Centre and Heavitree District Centre. The applicant has also considered the Bus and Coach Station site, and developments incorporating retail uses granted within the Monkerton/Hill Barton strategic allocation area, including Moor Exchange (ref. 19/1461/OUT). The report concludes that there are no sequentially preferable sites that are available and viable, taking into account the size and format of the proposed foodstore. Officers agree with this assessment and consider that the position hasn't changed since the report was written in January 2020.

In regard to Moor Exchange, the applicant considers this site to be unviable because it is not commercially attractive for various reasons, but states in the report that they would not rule out developing a store in this part of the City in addition to the current application site because in their view they would serve different catchments. As discussed above, the Moor Exchange site is considered to be within the catchment area of the proposed store. Not being commercially attractive is not considered sufficient to pass the sequential test – this site is available and viable to deliver the proposal allowing for flexibility, in accordance with paragraph 11 of the Town centres and retail planning practice guidance. However, the Moor Exchange site is not

designated as a centre in the Development Plan. It cannot therefore be taken into account in this way. Furthermore, whilst paragraph 88 of the NPPF (2021) states that preference should be given to accessible sites which are well connected to the town centre when considering out of centre proposals, it is considered that there is no material difference between the two sites in this regard – both are located adjacent to arterial routes with regular bus services, with bus stops within a 400m walking distance (this is the maximum distance to a bus stop that is typically considered sustainable development).

The applicant has also carried out an impact assessment of the proposed development on the vitality and viability of centres in the City, as well as other out of centre supermarkets. It demonstrates that the majority of trade draw will be from existing out of centre supermarkets, in particular Aldi, Pinhoe and the existing Burnthouse Lane Lidl store, which are not protected by planning. There will only be minor impacts on Pinhoe and Whipton Local Centres, Heavitree District Centre and negligible impact on the City Centre. Whilst these impacts raise no concerns, it is important to note that the application falls below the threshold for requiring an impact assessment in any case, therefore a refusal on these grounds would not be justifiable. The nationally set threshold is 2,500 sq m of gross floorspace, whereas the gross floorspace of the proposed store is 1,997 sq m.

Conclusion on the Principle of the Proposed Development

The proposal is considered to be acceptable in principle. The site is considered to have a nil planning use, therefore the proposed use of the site for Class E (retail) (formerly A1) is not considered to conflict with Policy CP2 or saved Policy E3 (retention of employment land), as the site is no longer in employment use. The proposal is for a main town centre use in an out of centre location, but there are considered to be no sequentially preferable sites that are available and viable to accommodate the proposed foodstore, and as the floorspace of the store is below the threshold for requiring an impact assessment, the impact of the store on centres in the City is not a material consideration for this application. Having said this, the impacts are considered low in any case. The proposal is considered to pass the sequential test and accord with Policy CP8 and saved Policy S1 accordingly. The proposed foodstore will generate employment opportunities (up to 40 jobs) and will be within walking distance of a large number of dwellings within the strategic allocation to the south of the site, encouraging sustainable travel. These are sustainability benefits that weigh in favour of the application.

2. Access and Impact on Local Highways

The proposed access to the site and concerns over the impact of the store on the function and safety of local highways are the main reasons the application has taken so long to process and the issues raised most in objections. Vehicular access will be retained off Venny Bridge in close proximity to the junction with Pinhoe Road.

Following extensive engagement with the Highway Authority, the applicant has proposed a solution which the Highway Authority is now satisfied with. This is making the Pinhoe Road/Venny Bridge junction a signalised junction with toucan crossings across each road with straight over crossings, meaning people can press the buttons and cross the roads in one go without waiting on an island half way. This will certainly make the junction much safer for all users and obviously encourage sustainable movement. It is apparent from the representations that people already consider the junction to be unsafe, with some drivers joining Pinhoe Road at speed from Venny Bridge in order to find a gap in the traffic. The signals will therefore not only improve facilities for pedestrians and cyclists, but provide dedicated time for drivers to exit Venny Bridge and join Pinhoe Road. The dedicated time will also prevent queues forming along Venny Bridge during peak hours when it might be more difficult to join Pinhoe Road. When the supermarket is busy, queues will form within the store's car park, not affecting the public highway.

The negative aspect of this is that by 2024 the junction is forecast to operate at approximately 10% over capacity during the PM peak hour on the Pinhoe Road east and west arms with the proposed highways solution in place. This forecast takes into account frequent use of the toucan crossings.

Paragraph 111 of the NPPF (2021) states that, 'Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.' It's clear that the proposal will improve highway safety at the junction for all users. In regard to the latter, the Highway Authority states that the proposed development will have an impact on traffic flows on Pinhoe Road, however the road already suffers from peak hour congestion and delay, therefore a material change in traffic conditions or a significant change in journey times on the route is unlikely. Therefore, in the context of current conditions, the Highway Authority does not consider the forecast impact on highway capacity and traffic flows to be severe.

It is of course up to the Local Planning Authority to determine the application and come to its own view on whether the impact would be severe or not. However, officers agree with the Highway Authority that a slight delay in journey times for drivers on an already busy road during the PM peak hour would not be a severe impact. This also needs to be balanced against the positive enhancements of providing improved facilities for pedestrians and cyclists, and making the junction safer for all users by making it signalised. It would not fit in with the Council's ambition of becoming a net-zero carbon City by 2030 by prioritising vehicular movement/journey times over the safety and priority of pedestrians and cyclists. Whilst buses will also be affected, saved Policy T1 and paragraph 112 of the NPPF both give greater priority to pedestrian/cycle movements over public transport.

Therefore, the proposal is considered to accord with Policy CP9, saved Policies T1, T2 and T3, and chapter 9 of the NPPF (2021).

3. Parking

The parking standard for food retail set in saved Policy T10 is 1 space per 14 sq m. Following the publication of the NPPF (2012), the Sustainable Transport SPD (2013) changed the parking standards from maximum standards to indicative standards. However, paragraph 108 of the NPPF (2021) allows maximum standards again where there is a clear and compelling justification that they are necessary for managing the local road network, or for optimising density in centres and locations with good public transport. The site is considered appropriate for applying the standards as maximum standards (see discussion under 2 above).

The maximum parking standard for the size of the foodstore is 135 spaces. Therefore, the proposed 104 spaces is acceptable and accords with saved Policy T10.

Saved Policy T10 and the Sustainable Transport SPD require a minimum of 3 bays or 6% of the total (6), whichever is greater, to be disabled spaces. Therefore, the proposed 7 disabled parking spaces is acceptable.

Paragraph 6.5 of the Sustainable Transport SPD states that retail facilities should be future-proofed for electric vehicles. Paragraph 107 of the NPPF (2021) states that policies for local parking standards should take into account the need to ensure an adequate provision of spaces for charging plug-in and other ultra-low emission vehicles. The proposed car park includes two electric vehicle charging spaces, which is considered acceptable in the absence of standards quantifying how many such spaces should be provided for different uses.

The Sustainable Transport SPD sets minimum cycle parking standards. In accordance with the standards, the minimum number of staff cycle spaces required is four and the minimum number of customer spaces required is 10. The plans show six cycle stands in front of the building providing 12 spaces. The Transport Assessment Addendum states that 6 will be for staff and 6 for customers. This does not meet the required standards. Furthermore, it's considered that the spaces should be moved closer to the entrance of the building for convenience and to encourage this mode of sustainable travel. Cycle parking should also be provided for cargo bikes. A condition should be added to address this.

Paragraph 5.3 of the Sustainable Transport SPD states that showers, lockers and space to dry clothes must be provided where more than 20 people are employed. A condition should be added to secure these facilities in the building.

4. Design and Landscape

Following revisions to address the comments of the Place Making Officer, the site layout and design of the building are acceptable. The revisions included changing the primary material of the elevations from white cladding to red brick panels with blue brick plinth and piers, which is considered to fit into the character and local distinctiveness of the area better. In addition, the floor area of the building was reduced slightly and it was repositioned further back on the site, so that it was less far forward of the building line along the street. The main elevation was about 11m forward of the building line previously, but it is now about half this and similar to the recently approved Aldi rebuild (ref. 20/0203/FUL).

The Place Making Officer recommended tree planting in the landscaping area in front of the store, which is proposed only for shrub planting. There certainly appears scope for some tree planting here without screening the store to a great degree. Even one or two trees would make a big difference to the quality of the streetscene and dependent on species will help reduce air pollution. The proposed shrubs grow to up to 40cm, which is small in comparison to the size of the building and adjoining highways infrastructure. Therefore, a condition should be added securing a detailed landscaping scheme, to include at least some tree planting, as well as a Landscape and Ecological Management Plan (LEMP) to ensure appropriate long-term management. This is supported by paragraph 131 of the NPPF (2021) stating that trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change.

5. Impact on Amenity of Surroundings

The Noise Impact Assessment assessed the impact of the proposed plant, which will be relocated to the rear of the building, and the impact of deliveries – unloading and arrival/departure of vehicles. The report is based on the position of the plant and loading bay shown on the original plans. These are approximately 3.5m closer to the northwest site boundary on the revised plans, further away from the sensitive residential uses to the south and east. The report assumes a 2m wall will be built in the path of the nearest noise sensitive receiver (neighbouring residential property on Venny Bridge). It states there will be one or two deliveries a day.

Plant noise is estimated as 3 dB below the existing background noise level at night and 12 dB below the existing background noise level during the day for the most sensitive receiver. 5 dB below background is normally required, but the Environmental Health Officer (EHO) has accepted this as it is within the margin of error. The relevant condition recommended by the EHO should be added.

The noise levels in the report from delivery vehicles and unloading activities are based on measurements taken at other Lidl stores. The report estimates that these will each cause a minor impact at night (4 dB and 5 dB over background

respectively). The report considers this acceptable, suggesting deliveries can take place any time day or night. However, the EHO has recommended a condition limiting the permitted hours for deliveries and waste collection. This is considered appropriate and in accordance with the 'tests' set out at paragraph 56 of the NPPF (2021). A further condition should be added securing the 2m boundary wall (or similar boundary treatment) in accordance with details previously agreed with the Local Planning Authority.

Subject to the conditions above, the proposed development is considered to accord with saved Policy EN5.

6. Impact on Trees and Biodiversity

The Tree Constraints Plan shows an Oak tree in the northwest corner of the site alongside two smaller Ash trees, and a Leyland Cypress hedge adjacent to the east boundary. The Oak and Leyland Cypress are good quality, while the Ash trees are fair. The Arboricultural Impact Assessment states that the Oak is the only notable tree and later states that no trees are planned for removal. However, since the application was submitted the Oak and Ash trees have been felled.

Paragraph 13.11 of the Exeter Local Plan First Review states that new planting allied to the conservation of important existing natural features (including trees) enhances the character and appearance of new development and promotes local distinctiveness. Saved Policy DG1 states development should fully integrate landscape design and ensure that schemes are integrated into the existing landscape of the City, including natural features. This is consistent with paragraph 131 of the NPPF (2021) (see 4 above).

Therefore, it's considered that replacement trees should be provided as part of the soft landscaping works. These will be secured through the condition for a detailed landscaping scheme.

The submitted Ecology Appraisal (Bats & Birds) is based on survey work carried out before the buildings on the site were demolished. This confirmed low levels of common pipistrelle bat activity and some bird nesting. The proposed biodiversity mitigation/enhancement is two bird nest boxes/bricks, two bat boxes on the retained trees, and native and wildlife-attracting landscape planting.

Clearly some of the above can no longer be carried out, as the existing trees have been felled. The RSPB questioned the adequacy of the proposed mitigation/enhancement, encouraged a LEMP, more bird and bat boxes, and additional biodiversity enhancement measures. Officers agree and consider that more effort should be put in to biodiversity enhancement in accordance with saved

Policy LS4, and paragraphs 174 and 180 of the NPPF (2021). A Biodiversity Enhancement Plan should be conditioned accordingly.

7. Contaminated Land

The Geo-Environmental Investigation Report (April 2019) was prepared before the buildings were demolished. It identifies potential contamination from past industrial use, including underground fuel storage tanks, and made ground. The intrusive investigation identified a number of contaminants, including asbestos. The Environment Agency and EHO have recommended a pre-commencement condition for a complete contamination investigation and remediation strategy. The Environment Agency has also recommended the Unsuspected Contaminated Land condition. Subject to these conditions being imposed, the proposed development accords with saved Policy EN2.

8. Impact on Air Quality

An Air Quality Technical Note (December 2021) was submitted to take into account the revised highways solution for the scheme and resulting change in traffic flows. It concludes there will be no significant effects on air quality despite a significant increase in traffic on the short stretch of Venny Bridge between the entrance to the car park and junction with Pinhoe Road. This is because there are no residential properties adjacent to the road along this stretch. Further, the new signals will allow traffic to join Pinhoe Road at regular intervals preventing build up on Venny Bridge. Queues in the car park will not affect the neighbouring residential property, due to the distance between them. Notwithstanding, two rapid electric vehicle charging points and cycle parking will be provided in accordance with best practice.

The EHO has no concerns based on this information. Therefore, the proposed development accords with saved Policy EN3, subject to conditions securing the electric vehicle charging points and cycle parking.

9. Flood Risk and Surface Water Management

About 80% of the site is within Flood Zones 2 and 3. Parts are also susceptible to surface water flooding. As the site is not allocated in the Development Plan, the Local Planning Authority must carry out a Sequential Test, in accordance with Policy CP12 and paragraph 161 of the NPPF (2021). Paragraph 33 of the Flood risk and coastal change planning practice guidance states that the area to apply the Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. Officers consider that the catchment area should be the same as that considered appropriate by officers for the main town centre uses sequential test (see 1 above), i.e. the catchment area for the proposed store shown in Appendix D of the Planning & Retail Statement Addendum plus further residential

areas to the north of the City and the entire Monkerton/Hill Barton strategic allocation area to the south. To provide more certainty, the limits can be defined as the boundaries of Pinhoe and Mincinglake & Whipton Wards combined, plus West Clyst in East Devon.

As discussed under 1 above, contrary to the views of the applicant, the Moor Exchange site is considered available and viable to deliver the proposed foodstore, allowing for flexibility. This site is within the catchment area defined by officers for the flood risk Sequential Test above and is within Flood Zone 1 with no evidence of surface water flooding according to the Council's GIS system. Unlike the main town centre uses sequential test, the NPPF does not state that flexibility on issues such as format and scale should be demonstrated when considering the Sequential Test for flood risk. It uses the phrase "reasonably available" (paragraph 162). The PPG states that a "pragmatic approach on the availability of alternatives should be taken". The Moor Exchange site can only be considered available and viable when flexibility is applied given that planning permission ref. 19/1461/OUT includes a foodstore as part of a larger mixed use development with a shared car park. If flexibility is not applied, this site is not available and viable for the proposed store. In the circumstances of the case, officers consider that the phrase "reasonably available" allows for flexibility to be applied on issues such as format and scale. Therefore, whilst the proposal passes the main town centre uses sequential test – as the Moor Exchange site is not within or on the edge of a defined centre, it fails the flood risk Sequential Test, as Moor Exchange is reasonably available, and has a lower risk of flooding. In this circumstance, paragraph 162 of the NPPF states that development should not be permitted. Policy CP12 does not state this – it states that all development proposals must mitigate against flood risk utilising SUDS where feasible and practical.

The NPPF (2021) is a material consideration that should be given a high degree of weight. However, officers consider that there are other material considerations in support of the proposed development that outweigh the conflict with paragraph 162. The site is a vacant, brownfield site within the built-up area of the City. Therefore, it should be prioritised for development in accordance with Objective 1 of the Core Strategy, saved Policy AP2 and paragraph 120 c) and d) of the NPPF; this should be given high weighting. It is considered that housing or employment development on the site would also fail the flood risk Sequential Test, due to the availability of land in the Strategic Allocation areas, as well as other parts of the City (and arguably East Devon) within Flood Zone 1. There is a risk therefore that the site would remain undeveloped if the application was refused, contrary to the aim of making best use of brownfield land. In addition, the proposal is considered to provide other sustainability benefits, most notably job creation and improvements to the Pinhoe Road/Venny Bridge junction making it safer for all users, which will encourage pedestrian and cycle movement. The site is also within walking distance (800m is typically considered sustainable) of a large number of dwellings either built or under construction. Residents of these dwellings are less likely to walk or cycle to a foodstore on the Moor Exchange site, due to the greater distances involved. These sustainability benefits should also be given high weighting, and combined with the

aim to prioritise brownfield sites are considered to outweigh the conflict with paragraph 162 of the NPPF.

Paragraph 34 of the Flood risk and coastal change planning practice guidance states that ultimately the Local Planning Authority needs to be satisfied in all cases that the proposed development will be safe and not lead to increased flood risk elsewhere. In this respect, both the Environment Agency and Lead Local Flood Authority have withdrawn their previous objections based on the revised information submitted. The Flood Risk Assessment Version 9 states that site levels will be set to ensure that only shallow flooding will occur in the car park up to 150mm for the 1 in 100 year plus 40% climate change event, to reduce potential water ingress into the store. The proposal will include SUDS to manage surface water runoff from the store and car park, comprising attenuation tanks beneath the car park that will discharge to Pin Brook at a controlled runoff rate. This will reduce the risk of flooding on the site, as well as downstream. The amount of hardstanding on the site will be slightly reduced as well, due to the addition of soft landscape areas. The Lead Local Flood Authority has recommended a pre-commencement condition to secure the SUDS and a plan showing how any exceedance flows will be safely managed. The Environment Agency has recommended a pre-commencement condition to secure a watercourse maintenance plan for the open Pin Brook behind the site and its implementation before the store is occupied. This will be another benefit of the scheme. A space will be reserved in the car park for Environment Agency maintenance staff to access the culvert debris screen on a permanent basis.

The proposal is therefore considered to accord with Policy CP12, saved Policy EN4 and paragraphs 161c) and 169 of the NPPF (2021), subject to the imposition of conditions. The proposal fails the flood risk Sequential Test, however this is outweighed by the sustainability benefits of the proposal, including bringing a vacant, brownfield site back into use. An Exception Test is not necessary, as shops are defined as a 'less vulnerable' use (see Table 3 of the Flood risk and coastal change planning practice guidance).

10. Sustainable Construction and Energy Conservation

Policy CP15 requires development proposals to demonstrate how sustainable design and construction methods will be incorporated. The revised Design and Access Statement includes a section on sustainability stating that photovoltaic panels will be provided on the roof of the store (layout and number to be confirmed). A PV report was also provided stating that 48,523 kg of carbon dioxide emissions will be avoided each year. Policy CP15 goes on to require non-domestic development to achieve BREEAM Excellent standards from 2013 and are expected to be zero carbon from 2019.

Whilst paragraph 12 of the Climate change planning practice guidance states local planning authorities are not restricted or limited in setting energy performance

standards above the building regulations for non-housing developments, this appears to have been superseded by paragraph 154b) of the NPPF (2021) stating that any local requirements for the sustainability of buildings should reflect the Government's policy for national technical standards. In January 2021, the Government consulted on the Future Buildings Standard proposed to apply to new non-domestic buildings from 2025 onwards and on an interim uplift to Building Regulations in 2021, i.e. 27% reduction in carbon emissions compared to the existing standard. The Government's response to the consultation was published in December 2021, which stated that the 2021 uplift has been implemented and the new regulations will come into effect on 15 June 2022.

Given the above, it is not considered appropriate to add a condition requiring the building to be zero carbon in accordance with Policy CP15, however it is considered appropriate to add a condition requiring BREEAM Excellent, which covers other sustainability topics than just energy efficiency. This is consistent with the approach the Council has taken to planning applications for other non-domestic development.

Policy CP13 requires new development of at least 1,000 sq m to connect to any existing or proposed Decentralised Energy Network (DEN) in the locality, unless it can be demonstrated that it would not be viable or feasible to do so. The site is adjacent to the DEN covering the Monkerton/Hill Barton Strategic Allocation area, therefore the standard condition requiring construction in accordance with CIBSE Heat Networks Code of Practice should be imposed.

Policy W4 of the Devon Waste Plan requires planning applications for major development to include a waste audit statement. In this case it has been agreed to add a pre-commencement condition requiring this.

11. Development Plan, Material Considerations and Presumption in Favour of Sustainable Development

Subject to the imposition of conditions, the proposal is considered to accord with the Development Plan as a whole. The proposal is considered to fail the flood risk Sequential Test set in the NPPF, which is a material consideration carrying a high degree of weight; however, there are other material considerations considered to outweigh this conflict, as set out under 9 above. It is considered appropriate to add a condition restricting the sale of comparison goods from the store to no more than 20% of the net sales area, in order to maintain the predominant sale of convenience goods. This is the basis on which the application has been considered. Furthermore, one of the material considerations considered to outweigh the failure of the flood risk Sequential Test is the proximity of the site to new and existing housing, encouraging sustainable movement choices when residents undertake their food shopping. If the store was occupied by a comparison goods retailer, these people are more likely to drive to other supermarkets further away. Policy CP12 (Flood Risk) is arguably not fully up-to-date – whilst it reflects national policy regarding the Sequential Test, it is

not explicit that developments failing the Sequential Test should be refused. However, in terms of the presumption in favour of sustainable development set out in paragraph 11 of the NPPF, the 'tilted balance' is not engaged because the site is in an area at risk of flooding. The balancing exercise carried out under 9 above did not take into account the tilted balance accordingly.

17.0 Conclusion

The proposed development is not considered to conflict with the policies of the Development Plan and would be sustainable development. This is largely due to the fact that the site is located within walking/cycling distance of a large number of new and existing dwellings, some of which are still under construction, and the planned improvements to the Pinhoe Road/Venny Bridge junction making it signalised and incorporating toucan crossings. This will make the junction safer for all users despite a predicted impact on traffic flows along Pinhoe Road in the PM peak in 2024, and will prioritise pedestrian and cycle movement over vehicles. This will support the Council's ambition of the City becoming net zero carbon by 2030. In addition, the proposal will bring a vacant, brownfield site back into use and generate up to 40 permanent jobs. The proposal passes the main town centre uses sequential test, but fails the flood risk Sequential Test, however this is considered to be outweighed by the sustainability benefits described above, which are considered to carry significant weight in the overall planning balance. The proposal will include SUDS reducing the risk of flooding on the site and downstream.

18.0 Recommendation

GRANT PERMISSION with the following conditions:

(Details to be provided on the Additional Information Update Sheet before Planning Committee)