



Committee and date

South Planning Committee

7 February 2017

## Development Management Report

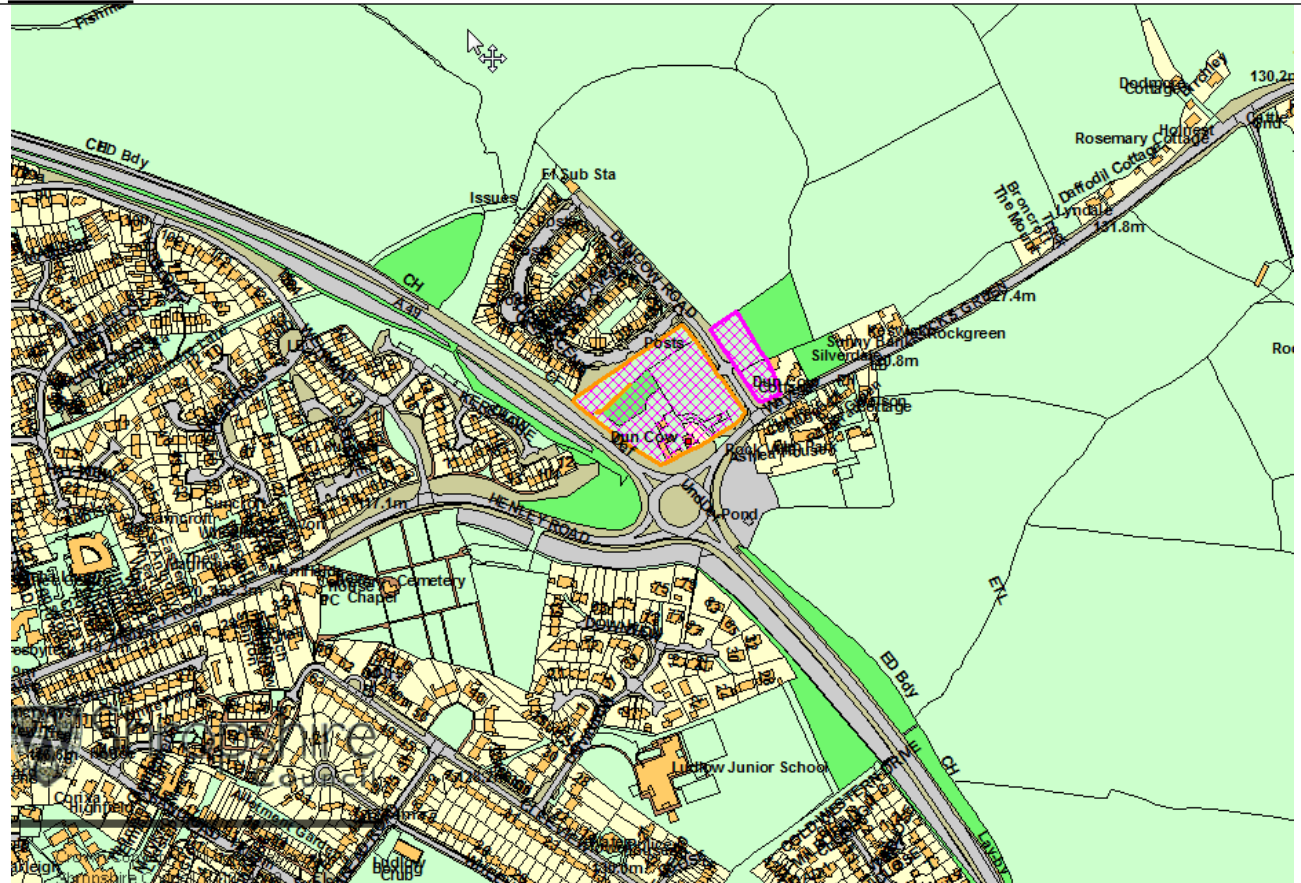
Responsible Officer: Tim Rogers

email: [tim.rogers@shropshire.gov.uk](mailto:tim.rogers@shropshire.gov.uk) Tel: 01743 258773 Fax: 01743 252619

### Summary of Application

<b><u>Application Number:</u></b> 14/05573/OUT	<b><u>Parish:</u></b> Ludford
<b><u>Proposal:</u></b> Outline application for the erection of a new foodstore (Use Class A1), associated petrol filling station, and associated car parking to include access	
<b><u>Site Address:</u></b> Dun Cow Farm Rocks Green Ludlow Shropshire SY8 2DS	
<b><u>Applicant:</u></b>	
<b><u>Case Officer:</u></b> Karen Townend	<b><u>email:</u></b> <a href="mailto:planningdmne@shropshire.gov.uk">planningdmne@shropshire.gov.uk</a>

**Grid Ref:** 352276 - 275636



**Recommendation:- That the Area Planning Manager be given delegated authority to GRANT planning permission subject to the conditions set out in appendix 1 of this report and subject to consultation with the Secretary of State.**

## REPORT

### 1.0 PURPOSE OF REPORT

- 1.1 This application was previously considered by the South Planning Committee at its meeting on the 11<sup>th</sup> October 2016. Members at that meeting were minded to refuse the application, the minutes of the meeting record the reason for refusal as: *“The site is outside the Site Allocations and Management of Development (SAMDev) boundary and the proposal will have a significant impact and will not help to maintain and enhance the vitality and viability of Ludlow Town Centre. Accordingly, the proposal will be contrary to SAMDev S10, paragraph 27 of the National Planning Policy Framework and Core Strategy Policy CS15. The development will be contrary to CS6 which requires that proposals likely to generate significant levels of traffic to be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced; and any development should contribute to the health and wellbeing of communities, including safeguarding residential and local amenity; and Insufficient information has been submitted relating to the traffic consequences of the scheme given other planned development in the area, including the housing site allocation LUD017.”*
- 1.2 This report seeks to provide members with further information on the application as received from the applicant following the October meeting; the comments received as a result of a consultation on this additional information and advice of the risks associated with refusing the application for the above reasons. The original report presented to members in October 2016 is attached to this report for information.
- 1.3 The risk of refusing any planning application is that the applicant appeals the decision. This is a risk in that a Planning Inspector deciding an appeal may overturn the Councils decision and allow the proposal. There are costs associated with defending an appeal against refusal but there are also risks of the Council being required to pay the appellants costs of an appeal. Costs can be awarded if the Council is considered to have behaved unreasonably, in not allowing the application or in its conduct in defending an appeal, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The purpose of the of the costs regime is stated to include encouraging local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case. All involved in the appeal process should behave in a reasonable way including presentation of full and detailed evidence to support their case.
- 1.4 This report is before members on the basis that the above reason for refusal was considered by officers, at the October committee meeting, to not be defensible if

challenged at appeal. The report below seeks to advise members on the defensibility of the different parts of the above reason for refusal.

## **2.0 ADDITIONAL INFORMATION RECEIVED**

- 2.1 Following the October committee meeting the applicant has submitted revised plans reducing the size of the store and repositioning it on the application site, a revised assessment of the impact on the vitality and viability of the town centre and also additional information regarding traffic movements to take into account the allocated housing site on the A4117.
- 2.2 The agent has confirmed that they have not signed with an end operator but have been having discussions with several retailers who have all confirmed that a store of approximately 1,951sqm would be suitable and still large enough to claw back expenditure currently leaked from Ludlow to other towns. In terms of layout the revised plans show the store backing onto the A49 with the service yard between the store and the road.
- 2.3 The agent has also sought to clarify that the retail impact, which was originally between 10.5% and 11% but now reduced to between 9% and 9.6%, would be, in the most an impact on Tesco. The assessment previously carried out showed that the impact on the smaller retailers in the town centre would have been around 1.4% to 1.8% in the original submission and now around 1.2% to 1.6%.
- 2.4 An addendum to the transport report has been provided which seeks to test the predicted highway conditions in 2026 with the proposed food store and the dwellings on the allocated SAMDev site. The report concludes that the roundabout at the A49 and A4117 junction would continue to operate well within capacity following both developments.
- 2.5 Furthermore, in addition to the changes proposed to the layout the applicant has offered to restrict delivery hours outside of school drop-off and pick-up times, employ a school crossing person on site and provide acceleration lanes to mitigate speeding on the A4117.

## **3.0 RECONSULTATION COMMENTS**

### **3.1 Consultee Comments**

- 3.1.1 **Ludford Parish Council** – In response to the latest amendments to this planning application Ludford Parish Council makes the following comments.

Ludford Parish Council continues to oppose the development of a foodstore and petrol station at Rocks Green.

Ludford Parish Council supports the claims of Ludlow Town Council that the proposed food store would have a negative impact on Ludlow Town Centre.

Ludford Parish Council recognises that there is support from some members of the public for the proposed supermarket at Rocks Green, however Ludford Parish Council is of the view that this is not the majority decision and continues to oppose the proposed development. The latest amendment made by the developers has not changed this position.

There are local concerns affecting residents and visitors to Rocks Green Estate that have not been addressed by the latest revision. These concerns include:

Pedestrians going to and from Rocks Green Estate (including accompanied and unaccompanied children) will be required to cross both the access to the service yard of the supermarket, and also the access to the supermarket car park itself. The proposed employment of a school crossing attendant at school hours does not fully address this issue since it is not within the power of the applicant to ensure that the businesses which subsequently occupy the site honour this arrangement in perpetuity.

At the junction of Dun Cow Road and the A4117, the impact of an increase of traffic using Dun Cow Road would cause a number of problems for residents of Rocks Green. The revised application does not improve on these impacts. It does not include a proposal to improve the ability of pedestrians crossing over the A4117 as outlined in Ludford Parish Council's previous letter of objection.

The assertion made by the applicants in the Planning Committee meeting of 11 October 2016 that the increase in traffic using Dun Cow Road would not coincide with either school transit times or peak traffic hours is also contested by Ludford Parish Council because this statement ignores the likely overlap of these hours with peak traffic visiting the proposed filling station. The revised application does not change the layout of access to the filling station which it is proposed shares use of Dun Cow Road with the residents of Rocks Green Estate.

Ludford Parish Council continues to oppose the Shropshire Council SAMDev plan that supports commercial development to the south side of the Sheet Island. Ludford Parish Council would very strongly oppose development at both Rocks Green and at the site to the south of the Sheet island.

- 3.1.2 **Ludlow Town Council** – Ludlow Town Council acknowledges that the application is in Ludford Parish, and the statutory consultee response is the responsibility of Ludford Parish Council, however the detrimental impact of the proposed out of town supermarket on Ludlow would be devastating and it is therefore important that Ludlow Town Council makes a representation.

Members object to the revised submission from the 22nd December 2016 because it will still have a detrimental impact on Ludlow, and specifically:

- The reconfigured footprint of the store is now over 300sq.m larger than on the previous plans. Existing supermarkets are under trading. There is no proven need for such a large out of town supermarket.

The development threatens to undermine the strong tourism based economy of the historic market town of Ludlow. The population of Ludlow has a finite amount of money to spend at the supermarket and an unnecessarily large out of town supermarket poses a significant threat to existing successful retail environment in the town centre including a market that trades six days a week in the summer and seven days a week in December, and has been trading in the town for over 900 years.

There is evidence of a significant amount of linked shopping currently undertaken by town centre supermarket shoppers, which helps to keep the town centre shops open. If this stops, and the town centre shops close, it will devastate the visual amenity of the town and undermine the tourism economy. This argument is further supported and developed in previous comments re-iterated below.

- As well as being too large for the town, the proposed development remains speculative with no supermarket provider identified therefore the proposed development does nothing to address the acknowledged need for diversification of the shopping experience in Ludlow.
- The re-orientation of the building is significantly detrimental to the visual amenity because the blank rear elevation and gable end greet visitors when approaching Ludlow from the A49, which is one of the major route ways into the town.
- The reconfigured service yard has reduced the landscaping in this area undermining the visual amenity and noise reduction qualities provided by landscaping. The shape of the area suggests that large delivery vehicles will have to reverse and the noise of warning signals will have a detrimental impact on the residential area adjacent to the site.

Members acknowledged the need for an additional petrol station to serve the town, but there should be no assumption that the Dun Cow at Rocks Green would be the most appropriate site.

Members also reiterated previous comments that are still relevant to the application which are detailed in section 4.1.2 of the previous report appended to this report.

3.1.3 **Hope Bagot Parish Council** – Hope Bagot Parish Meeting continues to object to the proposed development at Dun Cow Farm. Our grounds for objection reflect those of other contributors in that we feel that this is a speculative development for an unwanted supermarket which would deprive the independent retailers of Ludlow of vital custom and squeeze the life out of one of the last remaining beautiful and dynamic town centres in England.

3.1.4 **Policy Officer** – Members at the South Planning Committee in October were 'minded to refuse' this proposal. The concerns of the committee included the level of impact of the proposal on the town centre, particularly with regard to the impact on small shops.

The Applicant has subsequently amended the Plans for the store to reflect the concerns expressed by the committee. Principally these changes have led to a reduction in the size of the store and an amended layout. These additional policy comments relate to the store's impact on the town centre, taking into account the comments made by Members and the proposed reduction in the store's floorspace.

For a scheme to be refused on retail impact grounds, a significantly adverse

impact on the town centre needs to be demonstrated in accordance with NPPF Paragraph 26. The onus is on the applicant to provide sufficient information in their Retail Impact Assessment (RIA) in order to firstly arrive at a conclusion on the level of impact on the town centre (expressed as a percentage), and secondly to conclude on the significance of that impact. It is accepted the applicant has produced a RIA in accordance with national guidance (PPS4 Good Practice Guidance) and best practice. To this end it is considered the conclusions of the RIA offer a robust position.

It is acknowledged the assessment of 'significance' is not an exact science and will depend on the individual circumstances of a local centre. However, a judgement does need to be made, and to this end there are relevant factors which should be taken into account. Of particular relevance is the 'health' of the town centre. Generally, the stronger the 'health' of the centre the greater the resilience to any impact. To this end the applicant has also provided a town centre health check as part of the RIA (Appendix 10 to their original RIA). This 'health check' provides information on a number of indicators: diversity of uses; vacancy rate; local retailer demand; pedestrian flows; accessibility and environmental quality. The RIA concludes Ludlow is performing well and is vital and viable. This conclusion largely corresponds with a similar exercise carried out on behalf of the Council in 2007 as part of the South Shropshire Retail Study.

#### Original Plans

The original plans for the proposal consisted of a gross floorspace of 3,525m<sup>2</sup> resulting in a net sales area of 2,322m<sup>2</sup>. The retail impact methodology used by the applicant, and agreed with the Policy Officer, resulted in an impact of around 11% on the town centre.

This took into account the impact on the following:

- Direct impact on shops within the Primary Shopping Area resulting from trade diversion;
- Direct impact on Tesco at Station Road as a result of trade diversion;
- Indirect impact of the loss of linked trips from Tesco to the town centre resulting from trade diversion.

For clarity, in assessing the original plans it was the policy view that the level of impact resulting from the proposal was not significantly adverse. This position was supported by Peter Brett Associates acting in their capacity as an independent retail consultant.

#### Amended Plans

The applicant has amended the size and layout of the proposed store in light of the Committee's comments. The proposed store now has a gross floorspace of 2,787sqm, resulting in a net sales area of 1,951sqm. This equates to a reduction in net sales area of 371sqm (16%).

The applicant has then reassessed the level of impact resulting from this reduction in floorspace using the same methodology as previous. This results in an impact of around 9.6%.

It is evident the proposed reduction in floorspace has resulted in a reduction in expected store turnover, which in turn results in a lesser impact on the town centre. The applicant's further assessment continues to show that the majority of the impact is on the Tesco on Station Road (7.4% which includes the indirect impact resulting from the loss of linked trips) with relatively less impact on Ludlow's smaller shops (between 1.2 and 1.6%), with 0.4-0.6% on Budgens.

#### Conclusion

It is acknowledged there will be an impact on Ludlow Town Centre resulting from this proposal. The council are required to assess this level of impact for its significance. Having assessed the appellant's updated information as well as revisiting the applicant's town centre health check, it continues to be the Policy view that this level of impact (9.6%) is unlikely to result in a significantly adverse impact on Ludlow's town centre. This conclusion has taken into account the relative health of Ludlow town centre, as well as the overtrading of the current Tesco store at Station Road.

- 3.1.5 **Highways** – Shropshire Council as Highway Authority have now had an opportunity to review the additional information submitted by the Applicants Highways Consultants, dated 22<sup>nd</sup> December 2016, and confirm that we continue to raise no objection to the granting of consent. It is considered that the applicant has demonstrated that the A4117/A49 Roundabout will operate within its theoretical capacity, taking into account the additional vehicle movements associated with allocated site LUD017.

Despite the above, it is acknowledged that no further analysis has been provided with regard to the likely impact on the A4117/Dun Cow Road junction. However, the proposed development is a reduction on the previous application considered by Committee, and no Highway objection was previously raised. In addition, It is considered that on the submission of a planning application for allocated site LUD017, consideration will need to be given to the most suitable form of junction and the interaction with the proposed food store access if permission is granted.

- 3.1.6 **Environment Agency** – The amended site plan which shows above ground tank locations is positive and would enable us to withdraw our objection. The only thing we would advise is that if the above ground tank compound is appropriately bunded (see comments below), this is not clear from the site plan.

Recommends conditions relating to the petrol filling station, tanks, drainage and surfacing.

## 3.2 **Public Comments**

- 3.2.1 49 letters of objection have been received following the October committee meeting. The letters raise the following concerns:

- Site is not allocated for development
- Outside development boundary, outside Principle Centre and outside Primary Shopping Area
- Development is on greenfield site
- Amended scheme does not change impact on town centre

- Public experience is that Tesco is not overtrading
- Will also impact on Craven Arms, Leominster and Cleobury
- Reduction from 10% impact to 8% is not significant
- Closure of Budgens questions overtrading and need for an additional store
- Business rates due to go up as well
- Will alter the shopping patterns of residents
- Impact on employment
- Impact on tourism
- Speculative development
- Other retailers in town centre sell childrens clothing
- Development is cramped on the site
- Amended scheme is larger but claiming to be smaller
- Developer probably over-sized the store to be able to reduce it
- Insufficient landscaping
- Unsuitable development in countryside
- Alternative sites available in the town centre
- Locals don't want this store
- No need for another supermarket
- Trade draw from Tesco calculated up would mean Tesco has an unreasonable and unbelievable income from this store
- Survey work undertaken too small and from unsuitable locations
- Rocks Green needs a small convenience store not something of this size
- Town centre already affected by car parking charges, developer should provide 200 parking spaces in the town centre available for free parking
- Highways and traffic safety issues
- Does not provide for pedestrian crossing of the A49 & A4117
- Development of this site is not sustainable
- Noise impact on neighbouring residents

3.2.2 4 letters have also been received in of support of the scheme commenting as follows:

- Low income families need a larger store
- Shops in the town centre are for tourists not local people

3.2.3 Two petitions in support of the proposal have also been submitted by the agent with a total of 57 signatures.

3.2.4 Love Ludlow have provided further comment following the publication of the amended scheme and information questioning the size changes in the amendments and raising concerns that the additional information does not take into account linked trips or changes in on-line shopping, that it will impact on residents, affect highway safety, drainage and character of the area

3.2.5 Ludlow Civic Society have also written a further objection raising concerns about the lack of an end user and the impact on the town centre.

#### **4.0 THE MAIN ISSUES**

- Location and sustainability of site



- Impact on amenities of neighbouring properties
- Retail impact on town centre
- Highways impact of development and allocated housing site

## **5.0 OFFICER APPRAISAL**

### **5.1 Location and sustainability of site**

- 5.1.1 Location and policy: The drafted reason for refusal noted in section 1 above starts with the fact that the site is outside the SAMDev development boundary. Members raised this as a concern at the October meeting and officers have accepted that the site is outside the development boundary for Ludlow as shown in the recently adopted SAMDev.
- 5.1.2 A sites position outside a development boundary is not in itself sufficient grounds to refuse a development. Firstly the adopted Council policies, specifically CS5 and MD7a, do allow for some forms of development outside settlement boundaries; and secondly the non-compliance with development boundaries is only part of the overall planning balance. Officers acknowledge that the site being outside the development boundary should in principle be given significant weight in the balance weighed against the development proposed.
- 5.1.3 However, on the other side of the planning balance is the planning history of the site. As noted in the October committee report there is existing development on the site and as such the land can be considered as a brownfield site (previously developed land) not a greenfield site as claimed by some objectors. The redevelopment of brownfield land is promoted by paragraph 111 of the NPPF and the National Planning Practice Guidance. Both documents advise that Local Authorities should encourage the effective use of previously development land provided that it is not of high environmental value. The brownfield nature of the site is a material consideration which should be weighed in favour of the development.
- 5.1.4 Furthermore, the houses to the north of the application site have been built under a 2006 planning consent which indicated the current application site as land for a hotel, but did not include it as part of the application. Prior to that the farm house and outbuildings had planning permission for conversion to a hotel and restaurant. These previous consents are also material considerations in the determination of the current application. It is accepted that there is no extant consent on the site, it is a matter that the principle of redeveloping the site has previously been accepted by the Council and this can be given some weight in the consideration.
- 5.1.5 It is also officer's opinion that an application for an out of centre retail proposal by its very nature could be justified outside the development boundary. There is general support for additional retail floor space to be provided, especially in the Principal Centres such as Ludlow and if there are no sequentially preferable sites in the town centre or edge of centre which could accommodate additional floor space then a site may be required outside the allocated development boundary.
- 5.1.6 As noted above the location of the site outside the boundary is not an immediate reason to refuse. It is a matter of weighing up the benefits and harm. This matter is reconsidered later in the report.

- 5.1.7 Sustainability of location: Members also raised concerns about the location of the site in terms of its compliance with CS6 in regard to location providing opportunities for walking, cycling and use of public transport and contributing to the health and wellbeing of communities and safeguarding residential and local amenity. CS6 seeks to ensure sustainable design and development principles are met with all applications. The issue of amenity is considered in the following section of this report.
- 5.1.8 With regard to location in terms of promoting walking, cycling, public transport and reducing car based travel the site is on the edge of Ludlow. It is clearly walkable from the Rocks Green Estate and will also be within walking distance of the LUD017 housing development once completed. The developer of the food store could also be required to help contribute towards the provision of a means of crossing over the A49 to encourage walking and cycling from other parts of the town. However, members should also note that there is already a signal controlled pedestrian crossing across both the A4117 and A49, contrary to the comments from local residents.
- 5.1.9 Furthermore, there are two other key points to consider. Firstly care needs to be taken over the wording of CS6. The policy states *“To create sustainable places, development will be designed to a high quality using sustainable design principles, to achieve an inclusive and accessible environment which respects and enhances local distinctiveness and which mitigates and adapts to climate change. This will be achieved by:”* (amongst other matters) *“Requiring proposals likely to generate significant levels of traffic to be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced;”*
- 5.1.10 The scheme will generate traffic, the issue is whether this is significant levels of traffic. The Highway Officer’s comments on the application noted the potential traffic impact and also accepted that the development would result in significant levels of traffic. However, the Highway Officer also accepted that the site was within walking/ cycling distance of part of Ludlow, including parts on the opposite side of the A49. A large proportion of this traffic will already be on the highway network, either shopping in the existing food stores in the town centre or using the road network to access food stores in other towns.
- 5.1.11 The policy requires sites to be located where opportunities can be maximised not necessarily where there is already the ability to access the site by sustainable means. The future housing development at LUD017 and the associated provision of access over the A49 would help to increase opportunities for means of travel other than the private car and if the developer of this site were to also contribute towards the access over the A49 this would add to those opportunities.
- 5.1.12 The second point to consider is that the proposed food store is intended to provide for weekly or main food shopping trips and these are less likely to be done by sustainable means such as walking or cycling. This is a material consideration and a factor that should be taken into account. The Council should be seeking to maximise opportunities for walking, cycling and use of public transport however,

food store operators would not develop sites that are not accessible by car.

5.1.13 Overall it is officers opinion that the proposed development would generate significant levels of traffic but that there are currently opportunities for walking and cycling and these will be developed further with the construction of the housing allocation site and the associated crossing of the A49. Therefore it is considered that the proposal accords with policy CS6.

## 5.2 **Impact on amenities of neighbouring properties**

- 5.2.1 The proposed reason for refusal noted members' concerns about the potential impact on the amenities of residents. The agent has since submitted a revised layout plan which they consider will reduce the impact on the amenities of the residents of Rocks Green Crescent. However, members should not place any weight on the amended plan, or the originally submitted plan. The application to be determined is for outline planning permission with only the vehicle access submitted in detail for approval at this time. The layout of the site, the position of the food store and associated service area would need to be submitted for approval at a later date as a separate application.
- 5.2.2 Officers raised concerns about the layout as submitted with the original application and the October report notes that officers did not consider that the layout shown on the indicative plan was suitable. The revised plan does not do much to alter these concerns, the orientation of the site continues to provide a harsh high barrier to the properties on Rocks Green Crescent and the loss of the majority of the landscaping on the A49 and A4117. Notwithstanding these concerns, officers remain of the opinion that a different layout could be achieved which moves the store and service yard further from the existing dwellings and also retains the existing landscaping along the A49.
- 5.2.3 However, as noted the layout of the proposal is not for consideration at this time. As such negotiations have not been entered into, the layout and the direct impact on the amenities of the residents from the position of the store, service yard and car parking could not be justified as a reason for refusal. In summary, matters which are not before the Council for determination at this time should not be used to support a refusal.
- 5.2.4 Members concerns may not have been in relation to direct impact of loss of light or privacy but more to do with the ability of residents to walk from the Rocks Green estate to the A4117/ A49 safely, the increase in traffic on Dun Cow Road and the associated noise on the site.
- 5.2.5 Noise from the site could be reduced by placing the store and service yard along the A4117 with the car parking between the store and Rocks Green estate and with a substantial landscaped buffer between the car park and the houses (with or without acoustic fencing). A footpath with un-manned pedestrian crossings could be provided across the site to provide access to the residents and the agent could be asked to contribute towards the cost of a crossing over the A49, which the future housing allocation is also required to contribute towards. There will be additional traffic using Dun Cow Road and the junction with the A4117 and thereafter the junction of the A4117 with the A49. However, the predicted traffic

levels would not be to an extent that would warrant refusal that could be defended. The traffic on Dun Cow Road will increase and this will alter the ability of the residents of Rocks Green to use the road but the Council Highway Officer's advice is that the increase in traffic would not be severe and as such would not meet the test within the NPPF for a defensible highways impact refusal.

### 5.3 **Retail impact on town centre**

- 5.3.1 The applicant's retail statement submitted with the planning application concluded a retail impact without including the impact on the Tesco store of 1.8% and with Tesco included in the assessment this impact goes up to 10%. The agent did not consider that the total impact on the town centre would result in a significant impact on vitality or viability.
- 5.3.2 However, members at the October meeting raised concerns about the impact and were of a view that the impact would be significant and would not enhance the vitality and viability of Ludlow town centre.
- 5.3.3 Officers have previously accepted that the "without Tesco" figure is unrealistically low but that the "with Tesco" figure is more reasonable. The Council Policy Officer has also previously advised that the development proposed would be likely to have a greater impact on loss of linked trips than was initially assumed by the applicant. The Policy Officer previously concluded that the total impact on the town centre, with lost linked trips added, is likely to be between 10.98% and 11.37%. It is the Policy Officer's view that this conclusion has been arrived at following a suitably detailed assessment of impact on the town centre; a view which is supported by Peter Brett Associates, an independent retail consultancy, whose advice was sought prior to the October committee meeting to review the retail statement submitted by the applicant.
- 5.3.4 Members are reminded that forecasting impact is not an exact science but that a reasoned and evidence judgement should be made based on the established methodology set out by national guidance. The Policy Officer's comments on the revised scheme are useful here in that the comments confirm that the onus is on the applicant to provide sufficient information in their Retail Impact Assessment (RIA) in order to firstly arrive at a conclusion on the level of impact on the town centre (expressed as a percentage), and secondly to conclude on the significance of that impact. Without alternative detailed assessment and evidence there would not be any justification to suggest a higher impact than that concluded by the Council Policy Officer.
- 5.3.5 The minutes of the meeting do not suggest that members were seeking to argue that the impact was worse than the agent and Policy Officer suggested but that the impact of around 11% was significant.
- 5.3.6 In the October report officers accepted that 11% is more than a minor impact, but did not consider that 11% would result in a significant impact and as such would not justify refusing the current application on the basis of the impact on the vitality and viability of Ludlow town centre. Peter Brett Associates commented that the estimated trade impacts of over 10% are clearly not insignificant. However, they also accept that Ludlow is a healthy town centre that performs well on a number of

key indicators of vitality and viability and that within this context the anticipated level of trade impact may not lead to significant adverse impacts under the terms of paragraph 26 of the NPPF or merit refusal of planning permission in accordance with paragraph 27 of the NPPF.

- 5.3.7 As noted above, in response to this concern the agent has reduced the size of the store and also reduced the size of the sales area. Proportionally the size of the sales area to store ratio is increased, however the sales area has reduced and it is the agent's opinion that this also reduces the overall impact. A revised impact table has also been submitted to the Council and both the amended plan and revised table have been publically consulted on. The objections noted in section 3 above have all been received following the publication of this additional information.
- 5.3.8 Concerns have been raised that the size of the store has increased not reduced. The footprint of the building has increased, however the proposal original included a partial second floor for storage and this is no longer part of the proposal. As such the footprint is physically bigger but the agent has confirmed that the internal gross floor area and sales areas have been reduced. As such both the agent and the objectors are correct, but these are matters of design, scale and layout which would be considered under an application for approval of reserved matters, should the current outline application be granted and are not for consideration at this time (see section 5.2 above). The gross floor area and sales areas, and the level of comparison goods, could be restricted by condition and a new condition 4 has been included into the conditions listed at appendix 1 of this report. The footprint of the store could be reduced by reinstating the first floor area, without increasing either gross floor area or sales area.
- 5.3.9 As such, although the footprint has increased, the sales area has reduced and therefore the agent has submitted a revised retail impact table. The new table suggests a revised impact of between 9% and 9.6% on the whole of the town centre and an impact of between 1.2% and 1.6% without Tesco. Since the publication of that table Councillor Boddington raised queries with the agent and a newly revised table has been submitted. This table amends the impact on the town centre, without Tesco, to 2.3% to 3.1% (but does not alter the impact with Tesco).
- 5.3.10 Paragraphs 26 and 27 of the NPPF are relevant here. These two paragraphs state:
- 26. When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:*
- *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
  - *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact*

*will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.*

*27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.*

- 5.3.11 A retail impact assessment was submitted with the application and the latest updated impact table is an addendum to the original assessment. The assessment has considered the impact on existing, committed and planned investment in the town centre and has considered the impact of the proposal on town centre vitality and viability at the correct time period to comply with the requirements of paragraph 26. The assessment considered that the proposal would increase consumer choice in Ludlow and also clawback some of the trade which is currently lost from the town by adding another retail operator to the existing provision. The resultant impact percentage acknowledges that there will be some impact on town centre trade and therefore viability and vitality.
- 5.3.12 Paragraph 27 of the NPPF advises that the impact needs to be significantly adverse to justify refusal of a planning application. The decision to be made is therefore whether an impact of between 9% and 9.6% is a significant impact on one or more of the factors referred to in paragraph 26. Members need to acknowledge in their consideration of impact that the majority of this impact will be on the existing Tesco store.
- 5.3.13 Furthermore, the significance of the impact should also take into account the health of a town centre, which is a material consideration in such applications. As advised by the Policy Officer, the stronger the 'health' of the centre the greater the resilience to any impact. The 'health check' submitted by the agent provides information on a number of indicators: diversity of uses; vacancy rate; local retailer demand; pedestrian flows; accessibility and environmental quality. The Retail Impact Assessment concludes Ludlow is performing well and is vital and viable. This conclusion largely corresponds with a similar exercise carried out on behalf of the Council in 2007 as part of the South Shropshire Retail Study.
- 5.3.14 Officers remain of the view that the revised impact would be more than minor and not insignificant, as noted by Peter Brett Associates, but accept that there would be an impact on the town centre. However, officers also remain of the opinion that, taking into account the health of the town centre and the positive benefits that would be gained, from trade clawback and increased consumer choice, that the revised level of impact is unlikely to result in a significantly adverse impact on the vitality and viability of the town centre.
- 5.3.15 However, officers do accept that this is an opinion and that members are entitled to reach a different opinion based on the information and facts in front of them. Members should be wary of attempting to suggest that the impact would be greater than that shown by the agent without further evidence in accordance with paragraph 26 of the NPPF. However, member's opinion on the significance of the shown impact against one or more of the factors to be considered in paragraph 26 may be different to officers. If members remain of a view that the impact, even as

revised down to 9.6%, would result in significant adverse impact on the vitality and viability of Ludlow town centre as a whole then your officers would advise that this could possibly be justified as a reason for refusal against paragraphs 26 and 27 of the NPPF, Core Strategy policy CS15 and SAMDev policy MD10b.

#### 5.4 **Highways impact of development and allocated housing site**

- 5.4.1 Paragraph 32 of the NPPF advises that developments that generate significant amounts of traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced.
- 5.4.2 The drafted reason for refusal noted in the minutes of the October committee meeting record the highways concerns, in addition to the sustainability argument discussed previously, as:  
*“Insufficient information has been submitted relating to the traffic consequences of the scheme given other planned development in the area, including the housing site allocation LUD017.”*  
The minutes of the meeting note that members expressed concern with regard to the increased traffic, the detrimental impact this would have on Rocks Green and that the transport assessment submitted with the application for the food store should have taken into account LUD017. The issue of impact on Rocks Green is considered above, this section provides additional information and advice in relation to the impact of the food store and LUD017.
- 5.4.3 As noted in section 2 above the agent has provided an addendum to the transport assessment to seek to overcome this part of the reason for refusal recommended by members. The housing site LUD017 is allocated in the SAMDev for development of approximately 200 dwellings. The transport assessment addendum assesses the scheme for a development of 215 houses and assumes that all the traffic would pass through the roundabout to provide a robust assessment of potential traffic impact. Standard methodology and traffic levels have been used to predict the amount of traffic that the housing development would generate and these industry standards are used across England, with the exception of London where traffic is clearly different.
- 5.4.4 The addendum advises that, based on the predicted traffic flows for the food store and the allocated housing site, there would be queues of up to 2 cars for a delay of between 4.66 and 6.72 seconds on weekdays and less on Saturdays. This would not be considered to be unacceptable traffic impact and the junction would continue to operate well within capacity.
- 5.4.5 The Council Highway Officer’s comments on the updated information are provided at 3.1.5 above and confirms that they have no objection and that they have confirmed that the A4117/A49 roundabout will operate within its theoretical capacity, taking into account the additional vehicle movements associated with the proposed development and the allocated site LUD017.

5.4.6 As such there is no evidence or justification to support a refusal on the grounds drafted at the October meeting and officers would strongly advise members against pursuing this part of the reason for refusal.

## 5.5 **Planning balance**

5.5.1 As noted in section 5.1 of this report the site is outside the development boundary for Ludlow. This in itself is not a reason to refuse planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 states that all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. The non-compliance with the adopted development plan is a matter which should be given significant weight against the proposal in the planning balance. Officers consider that members may also be of the opinion that the impact on the vitality and viability of Ludlow town centre is also on the negative side of the balance.

5.5.2 On the positive side, to be given weight in favour of supporting the application, should be the brownfield nature of the site, the previous acceptance of redeveloping the site and the economic benefits that will be gained by retaining more expenditure in the area and the provision of new jobs.

5.5.3 The environmental impact in terms of visual appearance and impact on residential amenities is not at this time known. The connectivity to residential areas by means other than the private car is considered by officers to be neutral as the site could be better connected but does provide some opportunities for walking, cycling and reducing the need for car based travel.

## 6.0 **CONCLUSION**

6.1 For the reasons given in this report officers retain their strong advice given at the October committee meeting that the draft reason for refusal detailed in section 1 above would not be defensible if challenged at appeal and furthermore that pursuing the draft reason for refusal may put the Council at risk of an award of costs.

6.2 The location of the site outside the SAMDev development boundary is acknowledged but is considered to be balanced by the brownfield nature of the site; the connectivity of the site and its ability to maximise opportunities to reduce car based and increase other means of travel is also considered to be neutral given the existing pedestrian crossing points, the allocated housing site LUD017 and that many of the traffic movements associated with this form of development would already be on the highway network.

6.3 The impact on the amenities of the residents of properties around the site cannot be fully considered at this time but officers consider that an appropriate scheme could be designed that would not result in unacceptable levels of harm. As such there is no evidence before members that could justify a defensible refusal on the basis of impact on amenities and pursuing this part of the reason for refusal could be considered to be unreasonable and would not stand up to scrutiny. The traffic movements from the site, in combination with the traffic from LUD017, are accepted to be significant but will not result in severe highway safety implications or result in junctions on the highway reaching capacity. As such the Council



would be at risk of an award of costs if the reason for refusal included impact on highways when the evidence before members is that the evidence shows acceptable levels of impact.

- 6.4 Finally, as noted above, officers also remain of the opinion that the impact on the vitality and viability of Ludlow town centre would not be significantly adverse. However, members could, on this issue reach a different conclusion as officers acknowledge that the impact is not minor and the significance of an impact is a subjective matter. Therefore if members are minded to continue to refuse the application, as amended, officers would advise that the reason for refusal focuses solely on the significance of the impact on the vitality and viability of Ludlow Town Centre.
- 6.5 As noted at the start of this report, there is a risk that a refusal could be appealed. Such an appeal could not be defended by any of the officers recommending approval of the application as their professional view would be supportive of the scheme. As such it is likely that external professional advice would be required to defend the appeal which itself have a cost implication. Furthermore a refusal on the significance of the impact may also not stand up to scrutiny if challenged and could also put the Council at risk of a costs award. This is a decision which members will need to make based on the evidence and facts in front of them.

## **7.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **7.1 Risk Management**

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.

The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### **7.2 Human Rights**

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

### 7.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

## 8.0 **FINANCIAL IMPLICATIONS**

8.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

## 9.0 **Background**

### Relevant Planning Policies

National Planning Policy Framework

CS1 - Strategic Approach

CS3 - The Market Towns and Other Key Centres

CS4 - Community Hubs and Community Clusters

CS5 - Countryside and Greenbelt

CS6 - Sustainable Design and Development Principles

CS7 - Communications and Transport

CS8 - Facilities, Services and Infrastructure Provision

CS9 - Infrastructure Contributions

CS13 - Economic Development, Enterprise and Employment

Economic Development, Enterprise and Employment

CS15 - Town and Rural Centres

CS17 - Environmental Networks

CS18 - Sustainable Water Management

MD1 - Scale and Distribution of Development

MD2 - Sustainable Design

MD7B - General Management of Development in the Countryside

MD10A - Managing Town Centre Development

MD10B - Impact Assessments for Town and Rural Centres

MD12 - Natural Environment

Settlement: S10 - Ludlow

### Relevant Planning History:

14/04052/SCR EIA Screening Request for Proposed superstore and Petrol Filling Station EA NOT REQUIRED 5th November 2014  
 SS/1/03/14950/F Conversion of agricultural buildings to hotel and restaurant; formation of vehicular and pedestrian access; installation of a septic tank APPROVED 29th April 2004  
 SS/1/01/12418/F Renewal of Planning Permission 1/06874/P dated 25th July, 1996 for change of use of barns to steakhouse/restaurant and car parking for 40 cars APPROVED 27th November 2001  
 SS/1/6874/P/ Use of barns as steak house/restaurant and car parking for 40 cars APPROVED 25th July 1996  
 SS/1/1019/P/ Conversion of barns to a steak house restaurant with car parking for 40 cars. APPROVED 27th June 1991  
 SS/1979/574/P/ Formation of an agricultural vehicular access APPROVED 23rd October 1979

Appeals

SS/1/2521/P/ Change of use from disused farm building to retail sales. ALLOWED 15th March 1993

**10.0 Additional Information**

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr Vivienne Parry
Appendices APPENDIX 1 – Conditions APPENDIX 2 – committee report

## **APPENDIX 1 - CONDITIONS**

### **STANDARD CONDITION(S)**

1. Approval of the details of the design and external appearance of the development, layout, scale, and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

Reason: The application is an outline application under the provisions of Article 4 of the Development Management Procedure Order 2015 and no particulars have been submitted with respect to the matters reserved in this permission.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

3. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.

Reason: This condition is required to be imposed by Section 92 of the Town and Country Planning Act, 1990.

4. The gross floor area of the food store hereby approved shall not exceed 2,787 square metres. The net sales floor area shall not exceed 1,951 square metres and no more than 25% of the net sales floor area of the store shall be used for the sales of comparison goods (as defined in condition 20).

Reason: To ensure the store does not have a greater impact on the vitality and viability of Ludlow town centre than the scheme as amended.

5. The following information shall be submitted to the local planning authority concurrently with the first submission of reserved matters:

- The means of enclosure of the site
- The levels of the site before and after development
- The foul and surface water drainage of the site in accordance with the standing advice from the Council Drainage Consultant

Reason: To ensure the development is of an appropriate standard.

6. All development, demolition or site clearance procedures on the site to which this consent applies shall be undertaken in line with the Protected Species Survey Focussing on Bats by Shropshire Wildlife Consultancy dated July 2014.

Reason: To ensure the protection of bats, which are European Protected Species

7. Construction and demolition work, including the arrival of deliveries and unloading of deliveries related to the construction work, shall only be carried out between the following hours: Monday to Friday 07:30-18:00, Saturday 08:00-13:00. No work shall be permitted on Sundays or Bank Holidays without written consent from the Local Planning Authority.

Reason: to protect nearby residential amenity and the health and wellbeing of residents living in close proximity to the development.

8. The fuel tanks associated with the hereby approved petrol filling station should be located above ground. Their position and means of preventing fuel spillages and incidents shall be submitted for approval along with the reserved matters application.

Reason: To overcome the objection raised by the Environment Agency.

### **CONDITION(S) THAT REQUIRE APPROVAL BEFORE THE DEVELOPMENT COMMENCES**

9. prior to the commencement of any work a construction traffic management plan shall be submitted to and agreed in writing by the Local Planning Authority, in consultation with the Highway Authority for the A49 Trunk Road. The plan shall give details of hours of operation, delivery times, access routes and procedures to reduce the spread of deleterious material on the strategic road network. The construction traffic management plan shall be implemented as approved and reviewed by the appointed main contractor throughout the construction period. If changes to the CMP are deemed necessary at any point throughout the construction period, these changes will be approved in writing by the local planning authority, in consultation with the highways authority for the A49 Trunk Road

Reason: To ensure the continued safe operation of the strategic road network during construction activities, in accordance with paragraph 49 of DfT Circular 02/2013.

10. No development shall take place until details of the design and construction of any new roads, footways, accesses together with details of the disposal of highway surface water have been submitted to, and approved by the Local Planning Authority. The agreed details shall be fully implemented before the use hereby approved is commenced.

Reason: To ensure a satisfactory access to the site.

11. Prior to the commencement of the development full engineering details of the proposed junction improvements to the junction of the A4117 and Dun Cow Road shall be submitted to and approved in writing by the Local Planning Authority. The works shall be fully implemented in accordance with the approved details before operation of proposed development.

Reason: To ensure a satisfactory means of access to the highway.

12. Prior to the commencement of the development full engineering details of the proposed foot/cycleway linkages between Ludlow and the development site, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be fully implemented in accordance with the approved details before the development is first occupied.

Reason: To ensure a satisfactory alternative means of pedestrian and cycle access to the development.

13. No development approved by this permission shall commence until the applicant, or their agent or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI). The written scheme shall be approved in writing by the Planning Authority prior to the commencement of works and the work thereafter carried out in accordance with the requirements of the WSI.

Reason: The site holds archaeological interest.

14. No development approved by this permission shall commence until a photographic survey, as defined in English Heritage's guidance 'Understanding Historic Buildings: A Guide to Good Recording Practice') of the interior/ exterior of the buildings has been submitted to and approved in writing by the Local Planning Authority.

Reason: This information is required before development commences to record the historic fabric of the building prior to development.

15. Prior to the commencement of development details of the location and design of a minimum of three bat boxes or bat bricks suitable for nursery or summer roosting for small crevice dwelling bat species shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the dwelling/ building.

Reason: To ensure the provision of roosting opportunities for bats, which are European Protected Species

### **CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT**

16. A detailed lighting plan and schedule shall be submitted to and agreed in writing by the Local Planning Authority, in consultation with the Highway Authority for the A49 Trunk Road, prior to the commissioning or alteration of any external artificial light source. This shall give details of lamp positions, directions, and intensity across the site and the surrounding highway network. The detailed lighting plan and schedule shall be implemented as approved.

Reason: To prevent stray light from the site affecting the ongoing safe operation of strategic road network, in accordance with paragraph 49 of DfT Circular 02/2013.

17. A detailed drainage scheme shall be submitted to and agreed in writing by the Local Planning Authority, in consultation with the Highway Authority for the A49 Trunk Road, prior to the commencement of any works that would alter the existing drainage of the site or surrounding land. The detailed drainage scheme shall be implemented as approved.

Reason: To ensure the site does not drain onto the strategic road network and that the proposed method of drainage does not affect the interests of Highways England, in accordance with paragraph 50 of DfT Circular 02/2013.

18. Prior to the first opening of the food store a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved travel plan shall be implemented within one month of the first occupation of the development.

Reason: In order to minimise the use of the private car and promote the use of sustainable modes of transport in accordance with guidance in Planning Policy Guidance Note 13.

19. Prior to any petrol sales or deliveries to either the petrol station or food store service yard taking place on site specification of acoustic fencing shall be submitted to the local planning authority for approval in writing. The fencing around the service yard must demonstrate a proposed 15dB reduction for nearby residents. The fencing associated with the petrol filling station shall demonstrate a proposed 5dB reduction of noise at nearby residential premises.

Reason: to protect the health and wellbeing of nearby residents.

### **CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT**

20. No more than 25% of the net sales floor area of the store shall be used for the sales of comparison goods. Comparison goods are defined within the COICOP categories for the following goods:

- Clothing materials & garments
- Shoes & other footwear
- Materials for maintenance & repair of dwellings
- Furniture & furnishings
- Carpets & other floor coverings
- Household textiles
- Major household appliances, whether electric or not
- Small electric household appliances
- Tools & miscellaneous accessories
- Glassware, tableware & household utensils
- Medical goods & other pharmaceutical products
- Therapeutic appliances & equipment
- Bicycles
- Recording media
- Games, toys & hobbies
- Sport & camping equipment
- Musical instruments
- Gardens, plants & flowers,
- Pets & related products
- Books & stationery
- Audio-visual, photographic and information processing equipment,
- Appliances for personal care, jewellery, watches & clocks
- Other personal effects.

Reason: To maintain planning control over the type of goods sold from the store and hence the viability of Ludlow town centre.

21. Notwithstanding the provisions of the 1987 Town and Country Planning (Use Classes) Order or succeeding orders, the food store hereby approved shall not include the following dedicated ancillary retail facilities:

- A post office
- A dry cleaners
- A travel agents
- An optician
- A pharmacy

Reason: To maintain planning control over the type of goods and services available in the store and to safeguard the vitality and viability of Ludlow town centre.

**APPENDIX 2 – COMMITTEE REPORT – 11<sup>TH</sup> OCTOBER 2016****1.0 THE PROPOSAL**

- 1.1 The application is for outline planning permission for the erection of a food store, petrol filling station and associated car parking and landscaping. Access is the only detail which has been submitted for approval at this time with the layout, scale, appearance and landscaping are reserved for later approval.
- 1.2 The supporting information includes a Planning and Retail Statement, Design and Access Statement, landscape report, sustainability assessment, contaminated land surveys, archaeology report, ecology surveys, flood risk assessment, noise survey, tree survey, transport assessment and travel plan. An amended retail statement was also submitted during the consideration of the application following consultation comments from the Council Policy Officer.
- 1.3 Prior to consent being granted the Council is required to notify the Secretary of State under The Town and Country Planning (Consultation) (England) Direction 2009 as the application consists of the provision of out of centre retail where, cumulatively, with other consented developments, will provide new floor space of more than 5,000 square metres. As such any recommendation for approval would be subject to this notification and, subject to the application not being called in, conditions as detailed within the report.
- 1.4 It is the opinion of Shropshire Council as Local Planning Authority that the proposal is not an EIA development under any part of either Schedule 1 or Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2015 and as such do not require an Environmental Statement to be submitted. The application does meet the criteria of Part 10(b) of Schedule 2 of the 2015 Regulations being an urban development project however taking into account the advice in the National Planning Practice Guidance (available online) the application is not considered to require an Environmental Statement as the proposed development is not significant in relation to the surrounding uses and would not have a significant impact or result in significant effects on the environment by virtue of its nature size or location.

**2.0 SITE LOCATION/DESCRIPTION**

- 2.1 The site lies to the north of Ludlow on the junction of the A49 and A4117 with access off the A4117 via a new mini roundabout on Dun Cow Road. It is a 1.488 hectare site with 0.15 of that being for the petrol filling station. It is currently occupied by a farm house and outbuildings which are redundant following the construction of the Rocks Green housing estate to the north of the application site.
- 2.2 A tall Leylandii hedge runs along the west and south boundaries of the site whereas the northern boundary, with the adjacent houses, is a post and wire fence. There is also housing to the west on the opposite side of the A49 with open fields to the east on the opposite side of Dun Cow Road.
- 2.3 The majority of Ludlow lies to the west of the A49 with the town centre lying on the opposite side of the railway line from the A49. However the existing Rocks Green



housing estate and Ludlow Rural Enterprise employment site sit on the east side of the A49 and the allocated housing site shown in the recently adopted SAMDev is to the east of the A49 on the opposite side of the A4117 from the application site. As such although Ludlow has historically been on the inside of the A49 the future growth plan for the town is to the east of the road.

### **3.0 REASON FOR COMMITTEE DETERMINATION OF APPLICATION**

3.1 The Parish Council response is contrary to the recommendation from the case officer and the local member has advised that they consider the issues raised are both material planning considerations and should be debated at committee.

In discussion with the chair and vice chair of the planning committee it was concluded that the application should be a committee determination for the reasons given above.

As such the scheme of delegation has been followed and a committee decision is required.

### **4.0 COMMUNITY REPRESENTATIONS**

#### **4.1 Consultee Comments**

4.1.1 **Ludford Parish Council** – At a meeting of Ludford Parish Council on Thursday 29th January it was unanimously resolved that Ludford Parish Council would **oppose** the application for a supermarket and petrol station at Dun Cow Farm.

#### SAMDev

Ludford PC has been involved with the development of Shropshire Council SAM-Dev plan since its inception. Ludford Parish Council (LPC), supported by Ludlow Town Council, has consistently advocated that any further development in Ludford Parish should be concentrated and confined to the area to the south of Rocks Green and to the north of the Sheet, to the east of the A49. The application site is located outside the area defined for the SAM-Dev plan. Ludford Parish Council opposes the application on the grounds that the site is not included in the SAM Dev plan.

#### Ludlow Town Council

Ludlow Town Council (LTC) have opposed the application and expressed their view on the detrimental effect of this proposed out of town development on Ludlow town centre. Ludlow Town Council has formally informed LPC of the reasons for their decision and LPC respects the arguments outlined by LTC. Ludford Parish Council supports the case made by LTC without attempting to replicate the arguments put forward by LTC which have already been forwarded to Shropshire Council.

#### Love Ludlow

The Love Ludlow group also oppose the application and made a short presentation to LPC and explained that it was their view that the scale of the supermarket is far too large not only for the surrounding population but also for the Dun Cow site. Their representative explained that the employment figures mentioned by the developer should be balanced against the 170 full time jobs within Ludlow town's food sector which support some 300 employees at suppliers

within the local area. (The Love Ludlow group comprises of members that represent the following organisations; Ludlow Chamber of Commerce, Ludlow Town Council, Ludlow Civic Society, Ludlow Town Centre Residents Association, South Shropshire Green Party, Ludlow Constituency Conservative Association, Ludlow Labour, Ludlow Conservation Committee, Ludlow 21, Ludlow Food Festival and the Campaign to Protect Rural England.)

#### Access issues at The Dun Cow site.

Immediately adjacent and north of the proposed site is the recently developed Rocks Green housing development. This comprises some 92 dwellings mainly designed as family homes. The access to both the supermarket and the petrol station will share the access road that was built for this housing development. At busy times there is likely to be both congestion and a conflict between the domestic and commercial users of this area. Consequently there are likely to be very real health and safety issues with regard to children and young people who live at Rocks Green.

The A4117 site access is only a short distance from the A49 traffic island and the increased traffic flows will impact adversely upon the pedestrian route to the bus stop and into Ludlow. Deliveries by HGV's to the site add to the traffic problems in this limited area.

#### Identified concerns for local residents.

The report from the Public Protection team and others highlighted several concerns for local residents, including:

The degree of sound protection required would be provided by raised banks with 3 or 4 metre fences on top, depending on either day or 24 hour deliveries.

Flood lighting of the site presumably for 24 hours either for deliveries or security.

Noise pollution from deliveries, HGV warning systems, rubbish collections and constant car movements.

Additional air pollution caused by idling traffic in queues, waiting for car parking spaces and diesel fuelled delivery vehicles.

All of the above would cause continual distress to residents especially those with young children.

There would be a considerable and unacceptable visual degradation to the residential setting and the setting of the surrounding countryside.

#### Survey Results

A number of surveys have been undertaken using different techniques, including surveys on behalf of the developers, instigated by the local MP and a third by a Shropshire Councillor. All of them have produced different and perhaps conflicting outcomes. All of them registered both strong opposition and support for the proposal. As these were informal surveys the results are not conclusive. It is assumed that the final ratio and numbers of those in favour and those opposing the application will be made known to the Planning Committee and taken into account in the decision.

Within the Rocks Green community there seemed to be a majority in favour, as it would appear to be a real convenience for them; there is also a more widespread recognition of the need for an additional petrol station to serve the town. A more

modest retail development within the Rocks Green area would perhaps be more suitable. However, any development would need to take account of the site restrictions, the health and safety of the residents and their quality of life. If the site were to be developed it is assumed that the SAM-Dev site to the south of the Sheet roundabout would be excluded from SAM-Dev.

#### Conclusions

LPC opposes very strongly any proposal by Shropshire Council to include land for commercial development outside the Sheet Road and Rocks Green area in order to prevent urban sprawl within a rural situation. There are considerable concerns regarding the possible opening up of a green field location area beyond the A49. There is already a well-established petrol station and convenience store close to this site. This is situated further north and on the west side on the A49 at the Sheet Road junction. At this point the A49 is a relatively straight and fast route, interrupted by the Rocks Green roundabout which would inevitably become significantly busier with this development.

- 4.1.2 **Ludlow Town Council** – Members objected to the amended plans because their previous objections listed below had not been resolved and the new position of the fuel tanks effectively reduces the staff parking spaces from 27 to 11 when parking spaces on the site are already relatively low.

Ludlow Town Council's Representational Committee resolved to **object** to application 14/05573/OUT at their meeting on Wednesday 14<sup>th</sup> January 2015.

Members acknowledge that the application is in Ludford parish, and the statutory consultee response is the responsibility of Ludford Parish Council, however the detrimental impact of the proposed out of town supermarket would be significant and therefore members felt their role as community representatives for Ludlow town centre is important.

#### Community Representations

At the time of writing this letter there were fifty-three public comments of which forty-seven are in opposition to the proposal. These figures give a clear indication of the high level of local concern and opposition to the proposal.

Ludlow Town Centre Residents Association and local organisation Love Ludlow have both made representations to the Committee to urge opposition to the proposal.

#### Detrimental to Existing Street Scene & Residents' & Visitor Amenity

Ludlow currently has an enviable range of local independent shops including three butchers, two delis, three bakers and many unique retailers selling clothes, giftware, domestic goods, confectionary, flowers, snacks, meals & drinks. These shops trade along side small town centre chain store outlets amongst the beautiful architecture and ambience of the town and all are subject to the same restriction imposed by the medieval street layout.

The status quo of Ludlow, as it currently exists, is a workable balance that enables the town to develop and make plans to ensure Ludlow continues to thrive,

however, an out of town supermarket would distort the status quo and devastate the town centre.

#### Local Knowledge

Members noted that the developer identified the existing Aldi store as 'out of town', but, in reality, Aldi is on the opposite side of the same street (Station Drive) as Tesco and a pedestrian crossing permits shoppers to safely walk ten metres from one store to the other, so both supermarkets are effectively in the town centre. In planning terms, the defined area of the town centre may be correctly represented; however, the information is misleading without local knowledge.

#### Outside SAMDev Boundary

The proposed supermarket, petrol station and parking is an 'out of town' development and outside the SAMDev boundary. There is concern that this would set a precedent for unplanned and unwanted retail development on the outskirts of Ludlow. Members resolved to object to the proposal for all the reasons stated in this letter, but one of the primary concerns is the devastating effect that similar out of town developments have had on nearby towns such as Leominster and Kidderminster. Shropshire's SAMDev submission is currently being assessed by central government, and has passed some significant stages, which now means it carries some weight within the local planning framework.

#### Infrastructure in the wrong place

An 'out of town' supermarket and petrol station offering the same number of parking spaces as the town centre will have a detrimental impact on the town centre. The location and self contained facilities of the proposed 'out of town' supermarket would not facilitate linked shopping trips to the town centre because it is on the wrong side of a busy roundabout on the A49 bypass with no pedestrian crossing on the road leading to the supermarket. The proposed supermarket is not on the local bus route.

#### Linked Trips

On the other hand, the proximity of existing supermarkets Tesco, Aldi & Co-op to the town centre enables linked shopping trips into the town centre shops and cafes. Linked shopping is important to the town centre shops & businesses because they rely on impulse buying, which requires footfall in the town centre.

#### Sufficient Provision Already Exists

There is no need for an out of town supermarket in Ludford. Current provision of supermarkets is more than sufficient clearly evidenced by the fact that one of the existing supermarkets is under trading and up for sale.

#### 4.1.3 **Environment Agency – Object** to the proposed development, as submitted, and request additional information as detailed below.

The proposed development includes a petrol filling station (PFS) of which there is limited information submitted at this time. Whilst we note that this application is outline we seek confirmation on the PFS element of the proposals and, specifically, the location of the associated tanks to ensure no detrimental impacts on controlled waters.

Groundwater: As confirmed in the submitted Preliminary Assessment (Ref: TB/JF/SR/07322/PCAR, Dated July 2014) the site is located upon Raglan Mudstone and the underlying strata are classified as Minor (Secondary) Aquifer.

Groundwater Protection: Policy and Practice (GP3), 2013: National guidance on the storage of potential pollutants is set out in our GP3 available at: <http://www.environment-agency.gov.uk/research/library/publications/144346.aspx>  
Policy D2 – underground storage: We will object to underground storage on principal and secondary aquifers unless there is evidence of overriding reasons why:

- (a) the activity cannot take place on unproductive strata, and
- (b) the storage must be underground (for example public safety), in which case we expect the risks to be appropriately mitigated.

The application should confirm that there are no other reasonably available sites on unproductive strata.

A feasibility study should confirm that there is a need for the tanks to be below ground; and that above ground options are not possible. We acknowledge there is a balance to be struck between environmental harm and proximity to sensitive uses, public safety, hazard zones including consideration of comments by your Petroleum Officer.

Providing this is confirmed, and the tanks are required to be underground, we would require the tanks be set above the water table in line with Policy D3.  
Policy D3 – Sub Water Table Storage: We will object to storage of hazardous substances below the water table in principal or secondary aquifers.

We would recommend that a groundwater assessment be provided to confirm the depth to the water table. This may demonstrate that the tanks will be sited an appropriate distance above any possible groundwater levels. Alternatively, if there is likely to be sub water table storage of pollutants, it may be necessary for the application to be revised or refused. In the absence of a water table assessment we have concerns and would object to the proposed development as submitted at this time.

Pollution control: Where pollutants are stored underground we would expect operators to adopt appropriate engineering standards. For petrol stations, systems should meet the specifications within the 'Blue Book' (APEA, 2011) as a minimum requirement with monitoring systems.

Core Strategy Policy CS18: The above approach is supported by Policy CS18 of your adopted Core Strategy which states that proposals will ensure that new development enhances and protects water quality, including Shropshire Groundwater Resources.

*NOTE – revised indicative plans have been submitted which show the fuel tanks located above ground. The EA have been reconsulted but have not commented.*

#### 4.1.4 **Policy Officer** – No objection.

##### Sequential Site Assessment

In line with the requirements of Core Strategy Policy CS15 and NPPF Paragraph 24, the applicant has carried out a suitably detailed sequential site assessment. In total 7 sites are assessed, and for each the applicant concludes the site is either not available or suitable, or both. Based on this information it is considered the applicant's assessment of these sites is reasonable. On this basis it is considered the proposal passes the sequential test.

##### Impact Assessment

The applicant's original Planning and Retail Statement contained an Impact Assessment. Impact assessments should be in line with Paragraph 26 of the NPPF and SAMDev Policy MD10b.

Following a review of its contents the Council considered the methodology behind the applicant's assessment was flawed as it did not include the proposal's impact on the Tesco store at Station Drive within its overall conclusions. It also failed to incorporate forecast impact from the loss of 'linked trips' within its overall conclusions, despite addressing this issue within their evidence. On this basis the Council requested further information from the applicant before a proper consideration of impact could be made.

Further to the Council's request, the applicant has provided additional information regarding the potential impact of their proposed scheme on the Town Centre. This additional information looks at:

- 1) the direct impact of the proposed store on the existing Tesco Store on Station Road; and
- 2) the indirect consequences of this impact on the number of linked trips to the town centre.

It is considered both these issues should be factored into the overall impact forecasts.

In providing this information it is noted the applicant devotes an entire chapter of their retail addendum to explain why they continue to feel that assessing impact on the Tesco store is not necessary and in doing so they point to a case in Maghull.

The Council does not accept the applicant's argument and it is considered fully justified in requiring this additional information in order to properly assess the level of impact on the town centre. Equally, the example of Maghull is considered to be misplaced and of no particular relevance given the obvious differences between the two proposals.

Seemingly the key area of disagreement between the Council and the applicant is the degree to which Tesco helps support the vitality and viability of Ludlow Town Centre despite being situated outside the Primary Shopping Area, but within the defined Town Centre. Indeed, it is rather surprising the applicant continues to argue this point given their own conclusions on the importance of linked trips from their original statement, which indicated 54% of shoppers using Tesco always or

sometimes link their trips with the town centre (data from the Household Survey).

However, notwithstanding this area of disagreement, the Council nevertheless appreciates the applicant's latest information, and confirm that this is now sufficient to provide a conclusion on the issue with a much higher degree of confidence.

#### Direct Impact

The applicant's original Statement provides a breakdown of the estimated turnover of the proposed store based upon 85% of its trade originating from the Study Area. Whilst it is more usual to apply a 90% market share from the study area, it is not considered in this instance this difference will lead to a significantly different outcome.

Paragraph 8.31 of the applicant's original Statement confirms that based on 85% the projected turnover of the store will be £21.97m, of which £17.48m would be from convenience goods and £4.50m from comparison (non-food) goods. Table 9 goes on to confirm the proposal's floorspace is proposed to be split 75% for convenience goods and 25% for comparison goods.

It is acknowledged that there have been objections raised regarding this aspect of the applicant's Impact Assessment, suggesting that the actual impact will be higher. It should be remembered that whilst forecasting impact is not an exact science, it does demand a reasoned judgement to be made. It is considered the applicant has assessed the forecasted trade diversion levels using a 'like for like' approach supported by national planning guidance. It rightly indicates the highest impact will be on the Tesco and Aldi stores. On this basis, it is considered the level of direct impact proposed is based upon a sound methodology.

Table 1 of the applicant's Addendum predicts the level of trade diversion from Tesco to be £6.29m. This corresponds with the applicant's earlier assessment and is accepted as reasonable. Taking into account the level of impact of Tesco, the applicant then factors this into the wider impact on the town centre in Table 2 of their Addendum. This results in a 10.2% impact.

The level of impact when taking into account the impact on Tesco is clearly much higher than the applicant's original forecast of a 2.3% impact.

#### Indirect Impact from loss of linked trips

The applicant then provides an assessment of the impact on linked trips. It is apparent that the applicant considers that the results of the household survey regarding linked trips overstate the frequency of linked trips, and instead they point to the on-line survey results which indicate fewer trips made. In reality it is reasonable to suggest the actual figure lays somewhere between these two survey conclusions, although it is considered that given the sample size, the household survey provides a more robust assessment.

The applicant then goes on to work through a methodology in attempting to quantify firstly the amount of linked trips that would be lost as a result of their proposal, and secondly the impact this would have on amount of consumer spend

on the town centre. This assumption is based upon 35% of shoppers to the Tesco store carrying out linked trips, which is considered reasonable.

Paragraph 6.4 of the applicant's Addendum considers that only 25% of those customers who currently link their trips between Tesco and the Town Centre would not carry out a similar linked trip between the proposed Rocks Green store and the Town Centre. It is not considered this is a realistic assumption. It is considered far more reasonable and robust to assume that between 50% and 75% of linked trips would be lost, given the much greater distance of the proposed Rocks Green store and the Town Centre. Unlike the Tesco store, shoppers cannot physically see the town centre from where they would be at Rocks Green, and it is acknowledged to do so would mean carrying out another car trip.

It is therefore considered that whilst the basic methodology used to assess the impact of the loss of linked trips is sound, the assumptions made on the percentages who would not carry out a linked trip should be amended upwards in order to provide a more robust assessment.

If we assumed that 50% of those who currently link their trips no longer (rather than 25%) the number of linked trips lost to the town centre would be 39,337 ((224,788 x 35%) x 50%)

At the higher end of the range, if we assumed 75% of those who currently link their trips no longer would, the number of lost linked trips to the town centre would be 59,006 (224,788 x 35%) x 75%)

When applying these figures to the proposed average spend of £10 (which is considered reasonable) the level of trade diversion increases to: 50% lost trips = £0.39m (0.78% diversion rate) 75% lost trips = £0.59m (1.17% diversion rate)

In applying these figures to the overall level of impact the applicant (0.39% using a 25% assumption) reaches a 'Total Impact' 2.7%. It is not considered this conclusion is sound because: - The level of lost linked trips is considered to be more than 25% of those who currently link their trip; and  
- The conclusion on linked trip impact should be added to the direct level of impact on the town centre, including the Tesco store on Station Drive.

So, using the level of direct impact including Tesco (10.2% as set out in the applicant's Table 2) and adding the Council's higher linked trips diversion rates (between 0.78 and 1.17%), it is considered that the level of impact on the town centre is between 10.98% and 11.37%

#### Significance of impact

When taking into account the agreed trade diversion levels on the town centre Tesco store, and applying a higher level of indirect trade diversion as a result of lost linked trips, it is considered the level of impact on the town centre is around 11%.

NPPF Paragraph 27 indicates that 'impact' needs to be significantly adverse for it to lead to a refusal on these grounds. In taking into account the level of



significance it is appropriate to look at the current health of the town centre, as well as other factors such as the level of overtrading in town centre stores.

The applicants have looked at these issues as part of their original submissions and their recent addendum. It is agreed that Ludlow currently benefits from a relatively healthy town centre emphasised by the low vacancy rate. It is also considered that Ludlow's historic character provides an attractive environment for shoppers and visitors, and that the proposal will not impact on this.

There is no doubt that the proposed store will divert trade from the town centre, primarily from the Tesco store and from associated linked trips. However, it should also be acknowledged that the current Tesco store is overtrading significantly against its benchmark figure. The reduction in trade to Tesco is not therefore forecast to reduce its trade to a position below its benchmark, and there is little risk of this store closing as a result.

Whilst it is considered an impact of around 11% is more than minor, having considered the health of Ludlow town centre and the current overtrading at the Tesco store, it is considered this level of impact on Ludlow town centre is less than significant.

#### Other relevant considerations

The location of the proposed store is located in an out-of-centre location beyond the A49 by-pass and it is therefore considered highly likely the majority of shoppers to the store will need to use their cars. The applicant argues that the majority of 'linked trips' to the town centre will continue in any case (the Council consider this number will be less than the applicant predicts). Assuming that a percentage of shoppers will continue to link their trips with the town centre, they will need to do so by car, which is clearly a less sustainable form of 'link trip'.

4.2 However, it should also be acknowledged that the direction of growth proposed for Ludlow in the SAMDev Plan up to 2026 is primarily to the east of the A49 by-pass, including a housing allocation of 200 dwellings to Land south of Rocks Green. It is considered the proposed store is well located against this future direction of growth, and may well have a positive impact on bringing these housing allocations forward earlier in the plan period. These factors should weigh in favour of it in the overall consideration of planning balance.

If approved, it is considered necessary to apply a condition restricting the overall comparison floorspace of the store to no more than 25% in line with their Impact Assessment. This is in order to protect the vitality of the town centre.

- 4.1.5 **Economic Development** – The Business and Enterprise Service supports the application which will result in the creation of 210 jobs and investment of £3m. The applicant has also indicated a willingness to include a condition on the employment of local people and to engage with Job Centre Plus to ensure local people are matched to available positions where appropriate.

The existing Tesco and Aldi stores are both significantly overtrading. In addition there is leakage of shopping expenditure out of the area. The development of a new supermarket would claw this trade back from the existing supermarkets and

outside the study area providing a wider range and choice of convenience and comparison goods within Ludlow.

Although there is no named operator the size of the store and the split of convenience and comparison goods (75:25) indicates that it will not be a discount operator who tend to have smaller stores and a higher ratio of convenience to comparison goods (90:10). The impact assessment indicates that the convenience goods and comparison turnover trade diversion on the town centre stores will be 6.2% and 10% respectively. Given that there is potential for larger stores to offer a wider range of goods and that two of the existing operators operate at the lower end of the market, (Aldi and Co-op) there is potential for a large store to offer a wider range particularly premium goods both convenience and comparison goods which could compete directly with the small independent operators. Clarification is required to demonstrate that the impact on the town centre will not be significant to warrant refusal.

- 4.1.6 **Conservation** – The proposal affects undesignated heritage assets that are neither listed or in a conservation area. In considering the proposal due regard to the following local and national policies and guidance has been taken, when applicable including policies CS6 ‘Sustainable Design and Development Principles’ and CS17 ‘Environmental Networks’ of the Shropshire Core Strategy and saved policy E6 of the South Shropshire Local Plan, as well as with national policies and guidance, National Planning Policy Framework (NPPF) published March 2012. Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

Previous comments were made by Rachael Parry on 30<sup>th</sup> January 2015. The main point made was the contribution of the buildings to the traditional rural character and visual appearance of the area. The historic context of the site has been somewhat compromised with the construction of the of A49 Ludlow bypass to the west, the housing site to the north as well as further development to the east which somewhat encloses this site away from the rural hinterland beyond.

In light of Rachael Parry’s comments, it is noted that the applicant in response to those comments have submitted a report from Donald Insall report ‘The Criteria for local listing and assessment of Dun Cow Farmstead’ which covers a ‘Statement of Significance’ of the overall farmstead. It is considered that this report satisfies paragraph 128 of the NPPF and is proportionate given that the buildings are undesignated heritage assets.

Whilst the overall character of the site is typical edge of settlement, semi-rural, the context of the Rocks Green hamlet (which is evident by the existing residential properties to the south) should be acknowledged, and that large-scale development could be harmful to that context.

With regards to the overall design of the layout of the site, concern is also shared with regards to the loss of green aspect of the site, where the proposed layout would bring about an urban character to this site, especially with the proposed car park abutting the existing highway with little or no natural buffering, thus creating a very hard urban environment. Also the site would bring about visual clutter of cars,

where the building would be better situated towards the south-west corner of the site this affording a more robust frontage. Overall, the existing trees and vegetation should be retained to afford appropriate screening of the proposed development. The applicants are advised to engage with the Historic Environment team with regards to further design proposals as part of leading up to the Reserved Matters stage.

Despite the Donald Insall report stating that Dun Cow Farmstead has low to medium significance, the buildings should be recorded prior to demolition, subject to further advice from an archaeologist. Despite modern interventions that are detailed within the report, there is always potential for underlying historic fabric which may be of significance.

The proposal may be acceptable subject to the suggested design amendments given above and a condition requiring building recording.

- 4.1.7 **Archaeology** – The proposed development site directly affects one known heritage asset recorded on the Historic Environment Record as part of the Farmsteads Characterisation Survey which is Dun Cow Farm (HER PRN 24196) identified from the digital version of the c.1900 OS large scale mapping and also recorded on the earlier tithe map. Additional HER records of a Medieval trackway and ridge and furrow earthworks are located in the surrounding area.

In view of the above and in accordance with NPPF Section 128 it was recommended at the pre-application enquiry stage (PREAPP/13/00347) that a Heritage Assessment of the application site should be provided as part of any subsequent planning application.

A heritage assessment of the proposal site has been submitted with the planning application and identified sites of Prehistoric, Medieval and Post-medieval date within 1km of the application site. Within the application site itself, cartographic evidence identified a number of tracks dating from 1778, a building in the southeast corner recorded only in 1886, and two wells recorded in 1903. Dun Cow Farm was first recorded in 1835, and based on cartographic evidence it was concluded that structures preceding the existing Dun Cow farmstead were unlikely to be found on this site. A site visit identified no above ground evidence of structures or earthworks or any obvious potential for buried archaeological remains, although the report acknowledges that it is not possible to fully assess the potential for buried archaeological remains on the site. The report does however indicate that the application site has been subject to some past ground disturbance, including possible 19th century drainage in the field north of Dun Cow Farm, hard standing in the south of the application site, and recent landscaping following the construction of the modern housing estate to the north.

The report concludes that the proposed development is deemed to have low archaeological potential. However, given the size of the development, it is likely that any unknown archaeological remains, together with the features recorded from cartographic evidence, will be destroyed during construction works on the site; the resulting impact on the heritage resource was considered minor adverse. It was therefore recommended that a programme of archaeological work should

be undertaken in order to negate or lessen the impact on the unknown archaeological resource.

Please note, the Conservation Officer for South Shropshire will comment on the impact of the proposed development on the built heritage. The recommendations made below therefore only relate to the archaeological interest of the proposed development site.

Recommendation:

The conclusions of the Heritage Assessment could not rule out the potential for below ground archaeological remains within the development boundary.

In view of the above, and in relation to Paragraph 141 of the NPPF, it is recommended that a programme of archaeological work be made a condition of any planning permission for the proposed development.

4.1.8 **Highways** – Shropshire Council as Highway Authority raises **no objection** to the proposed outline development.

Principally this development proposal has the greatest effect on the traffic movement along the strategic highway (A49) and Highway England are best placed to comment on the Transport Assessment in respect to the adjacent roundabout junction.

It should be noted that whilst at the time of the original submission, there were no committed development's within the vicinity of the site. However, Shropshire Council now have now adopted the SAMDev Plan 2006-2026. Within the SAMDev Plan land has been allocated for 200 dwellings with direct access off Sheet Road, opposite the proposed development site, (reference LUD017). This development is likely to come forward within the current plan period (2026), but may not come forward within the next three years. In the event a planning application is submitted for any of the allocated site, then a Transport Assessment will need to be submitted and take into account the movements associated with the proposed supermarket, if permission is granted.

Despite the above, it is recommended that the applicant provides further comment to the likely impact of the allocated site, and that this matter is formally raised with Highways England to establish if they continue to raise no objection.

Notwithstanding the above, this proposed supermarket will significantly increase traffic on the County Road (A4117). Currently there is capacity on the A4117 to accommodate this development and served by the proposed priority junction (A4117/Dun Cow Road), However, this increase in development traffic could adversely impact the capacity of this arm of roundabout junction, particularly if there are knock on effects to the other arms of the roundabout.

Furthermore, this development will create a local draw from the existing residential developments within Ludlow. Some of which are relatively close to the development, which could potentially generate greater sustainable movement (i.e. walking and cycling). Currently, the A49 is seen as a barrier to this type of

movement and although there is an existing pelican crossing on the southern arm, this provision may not be seen as enough to encourage more sustainable travel, and/or be used more frequently particularly at peak times, which could have an adverse effect on the free flow of traffic on the A49. It is considered that this development should consider and deliver further pedestrian and cycle provisions to encourage sustainable travel between the existing residential areas and the site, in accordance with national transport policy (PPG13). However improving conditions at the roundabout junction on A49, and especially additional and/or safer crossing of the trunk road, could affect the capacity of the junction, increasing delays and driver frustration. It may also require the Transport Assessment to be revisited. Alternatively, would there be a possibility of considering a footbridge over the A49?

In addition, this development should also develop an appropriate Travel Plan to consider and encourage sustainable travel principally for its staff and services, but to some lesser extent its customers, in accordance with PPG13 and associated best practice/guidance.

Access to the foodstore is being sought from an unadopted (private) road serving a relatively new housing development. Consent will need to be granted by the private landowner, for the proposed access changes and linkages to the new development site.

#### Access

Proposed vehicular access to the development is via the existing junction of the A4117 with Dun Cow Road. It should be noted however that Dun Cow Road is currently unadopted by Shropshire Council as Highway Authority, and not currently subject to a Section 38 Agreement under the Highways Act 1980. Shropshire Council have been working with the currently land owner of the land, Shropshire Housing Group, with a view to adopting Dun Cow Road as public highway. At this time, any proposed alternations to the carriageway should be undertaken with the permission of the land owner, but constructed to an adoptable standard.

#### Impact on surrounding Highway Network

The submitted Transport Assessment indicate that the capacity of the junction of Dun Cow Road and A4117 will be close to capacity therefore localised improvements are proposed to improve capacity for right turning vehicles. It is considered that based on the information submitted the surrounding highway network is adequate to accommodate both the access to the store petrol station and the residential development to the west of the proposed site.

However, it is recommended that Highways England are consulted to establish if they consider the proposed development to have an impact on the A49.

#### Reserved matters application

The planning application under consideration is outline; with all matters reserved except for access. In the event planning permission is granted and a reserved matters application is submitted consideration should be given to ensuring that any improvements to Dun Cow Road to provide access to the proposed food store

and petrol filling station are constructed to adoptable standard. Details of the proposed improvements to the Dun Cow Road Junction and mini roundabout should be submitted for approval prior to commencement of development.

- 4.1.9 **Highways England – No objection.** Highways England previously reviewed a Transport Assessment dated September 2014. Further to this, we requested that the applicant provide further details relating to future year impact at the A49 junction, confirmation of committed development and inclusion of the existing pedestrian crossing facilities within the junction model. This was satisfactorily dealt with through a Transport Assessment Addendum, which was received by Highways England on 11 March 2016.

We have been able to conclude that, based on the details presented as part of the Transport Assessment and subsequent Addendum, the junction of the A49 and Rocks Green will continue to operate within capacity when the development is included in the assessments. As such we are content that the development traffic can be accommodated on our network without mitigation works being required. We do retain concerns relating to the physical interface between the development and land maintained by Highways England in respect of drainage, fencing and lighting matters and the impact of construction traffic on the strategic road network.

As this is an outline application, it is considered that these details can be dealt with by way of conditions and has therefore recommended conditions.

- 4.1.10 **Ecology – No objection** subject to conditions and informatives. Has read the application and supporting documents, including the Ecology Phase 1 Habitat Survey and Bat Survey by LaDellWood dated October 2014 and the Protected Species Survey Focussing on Bats by Shropshire Wildlife Consultancy dated July 2014.

#### Bats

Shropshire Wildlife Consultancy provided the following additional information by email on the 6/7/15 in relation to the bat droppings found in the stable block of the larger barn:

1. The bat droppings found within the barn were scattered within and were not in excess of approximately 20 faeces;
2. The droppings did not appear to be particularly fresh but were probably no more than a few years (2) old;
3. The droppings from their size and shape were most likely to come from pipistrelle species probably common pipistrelle.

Three emergence surveys were carried out in July 2014, which recorded no definite but an unconfirmed common pipistrelle bat emergence from 'the barn'.

Shropshire Wildlife Consultancy state that "there is no apparent need for a European Protected Species Licence". They however propose Risk Avoidance Measures including supervision of the roof removal of the buildings (excluding the garage and the tin roofed north-western building) by a licenced Ecological Clerk of Works between October and late March. The report also includes some options

for bat mitigation but does not specify this. Due to the loss of potential bat roosting areas I would expect bat boxes to be erected in locations away from artificial lighting.

Conditions are recommended to require development, demolition or site clearance to be undertaken in line with the Protected Species Survey Focussing on Bats by Shropshire Wildlife Consultancy dated July 2014 and the provision of bat boxes and bricks.

#### Landscaping

As noted in my previous memo dated 4<sup>th</sup> March 2015 the landscaping scheme for the proposal should include provision for replacement reptile habitat and hibernacula, preferable in the orchard area. For this site to respect the Environmental Network I recommend that the landscaping scheme is designed to re-create priority habitats as far as possible, such as locally native woodland and shrubs, on a larger scale than currently proposed and a condition is recommended.

- 4.1.11 **Trees** – Whilst in principle the Tree service see no specific arboricultural objection to some form of development at this site, for the following reasons we consider that the indicative layout and proposed landscape do not represent the best possible sustainable design:

At present the site is well integrated into the landscape with mature trees along the A49 and the B4117 serving as an effective screen to the site from views in, and as a filter to the site and neighbouring development off Duncow Road for light, noise, and air pollution from this busy junction. The surrounding area to the west is heavily developed but effectively screened by woodland with a core area that makes the screening robust and effective. This new development proposes to remove the existing effective tree cover and significantly change the nature and character of the area (see the consultee comments by the Council's Conservation Officer).

As a historic market Town Ludlow and the surrounding area benefit heavily from tourism, it is therefore of the utmost importance that the sustainability and tourism aspirations set out in the Shropshire Core Strategy deliver effective long-term integration of any development at key gateways to market towns representing the very highest of standards of design so that development is appropriate and integrates with the exiting landscape and preserves, conserves or enhances the natural and built environment.

The scale of the development has resulted in the parking arrangements being pushed to the very boundaries of the site leaving the proposed boundary landscape features as narrow strips. The landscaping section of the design and access statement supported by the indicative Landscape Concept (ref: 1085\_LC-04) offers at best a generic proposal and contains insufficient detail to give the Tree Service confidence that it will be successful, or that it will sustainably integrate the site into the landscape. The following points are of key concern:

- The boundary feature will have no real depth, and whilst if successfully

established it might help break up the skyline of this very prominent development it will in no way provide the benefits and depth of screening afforded by the existing tree cover.

- The proposed planting along the sites boundary with the A49 offers native species hedgerow planted with clusters of 4 to 5 *Quercus robur*. Firstly, it is pointless to plant oak in clusters their condition and form would be affected by competition leading to poor specimens and the likelihood of premature removals. Secondly, the proposal shows parking bays hard up against the planting scheme, whilst it might be possible using root directors and root cells to establish trees under parking bays the proximity of what will potentially be large trees to parking bays is likely to result in a range of problems that will impact on the sustainable retention of the trees.

- The long-term success of 18-20cm girth *Tilia cordata* in the car park is questionable, especially in such compact arrangements. As with the oak planting on the A49 boundary the use of root directors and root cells is only of value if the tree is compatible for the long-term with the situation it is put in. There are far too many examples of un-successful carpark planting, typically 20% of trees die within five years with a steady degradation of the remaining stock soon after; the applicant has not offered anything other than an indication that root cells will be used as an indication of planned planting. The tree service would need to see that the applicant had assessed the site against the recommendations set out in BS 8545:2014 (Trees from nursery to independence in the landscape) and specified appropriate space, ground preparation, planting measures and after care that reflects best practice and a viable chance of success.

#### Conclusion and recommendations

In order to maximise the commercial potential of the site the buildings and parking have taken priority over landscape, a less adventurous proposal would be better able to provide a sustainable integrated development at this key gateway to Ludlow.

The applicant has an opportunity at this site to provide an example of the very best in landscape design but so far have offered a generic landscape plan with no supporting documents specifications or indication of how ongoing management will ensure the continued good health of the trees for the life of the development and beyond. It is our recommendation that due to the high profile of this site, that any final approved application would need to include comprehensive evidence based landscape proposals that reflect the very best of arboricultural and landscape practice, and should address the following points.

A reduction in the scale of the development would release space for meaningful landscape mitigation.

Ensure that all tree planting is in a situation where it will thrive without the need for artificial aid once established, less trees within the site but planting in open spaces will be more likely to thrive than trees in a capped tarmac car-park. Tree planning in open space without metal grills does not require the aftercare that all too frequently is absent at commercial premises once the five year replacement



conditions have expired.

Boundary trees need a minimum of at least three meters of buffer (open green space) between them and the nearest kerb edge so that future changes to the site do not impact upon their retention. This would also remove the need for grills. We also recommend that the A49 boundary be planted with a staggered double row of trees to give greater resilience and depth to the screen, and that heavy standard common lime be considered for its faster growth and greater versatility.

We recommend that the boundary elements of any landscape proposal should be established as part of the first phase of site activities and then appropriately protected as the remainder of the development is established this will allow a season for the trees and shrubs to establish before the site is occupied.

All tree procurement, planting and after-care should reflect good practice as set out in BS 8545:2014 (Trees from nursery to independence in the landscape).

Recommended conditions:

Recommends conditions relating to tree protection, details of new planting and replanting within 5 years, details of other landscaping and implementation timetable.

- 4.1.12 **Drainage – No objection.** Drainage details, plans and calculations could be conditioned and submitted for approval at the reserved matters stage.
- 4.1.13 **Public Protection** – Having considered the information provided would like to point out that a detailed plan of the petrol site layout should be submitted at reserved matters stage to ensure that a petroleum certification will be likely to be granted should planning approval be granted.

With regards to noise the noise report submitted with this application project number PB1010 dated 18th September 2014 shows that noise mitigation is required. It states that an acoustic barrier at least 3m height is required around the deliveries yard which will reduce noise by 15dB. Plans specifically marking this should be submitted showing clearly exactly where it will be located which can then be conditioned as part of the approved plans submitted with this application. Has noted that even with this mitigation there will be noise above WHO and BS 8233 guidelines at two properties at night. Therefore propose that a condition should be placed stating no night time deliveries on site (between 23:00 and 07:00). Alternatively the acoustic fence could be built to a height of at least 4m which is likely to ensure that noise levels are controlled allowing deliveries to occur at night. The height of the fence should be stated on any plans being submitted.

An acoustic fence is also stated for areas around the petrol filling station. Again this should be detailed on any plans supplied including the height and stating 5dB reduction in noise at nearby residential properties.

Is of the opinion that unless the applicant provided a specification of the fencing to be used that this element of the development should be conditioned as follows:

*Specification of acoustic fencing shall be submitted to the local planning authority for approval in writing prior to petrol sales and deliveries to the service yard taking place on site. The fencing around the service yard must demonstrate a proposed 15dB reduction for nearby residents. The fencing associated with the petrol filling station shall demonstrate a proposed 5dB reduction of noise at nearby residential premises.*

*Reason: to protect the health and wellbeing of nearby residents.*

## 4.2 **Public Comments**

4.2.1 211 letters of objection have been received raising the following concerns:

- Inaccuracies in the various reports
- No proven need for another supermarket, there is sufficient variety of retail stores, all of which have extensive spare capacity
- Development of the site will result in the loss of open countryside and views
- Jobs will be lost in the town centre as a result of the development
- Impact on the high street will adversely affect restaurants, B&B's and general tourist trade
- Will set a precedent for out of town development contrary to the SAMDev
- Will not contribute to the building and strengthening of local community, purely a speculative project
- Only a small number of people are in favour of this application
- Increase in traffic and pedestrians will create road safety issues for the neighbouring estate
- Increase in traffic and delivery traffic will cause considerable noise pollution
- Would encourage the use of cars as it would not be within walking distance of local residents, resulting in the increase of air pollution and traffic congestion in and around the town centre
- Will have a detrimental impact on Town Centre businesses causing the destruction of the economic viability of the town
- Will draw trade and tourism from the town centre
- Free parking will attract shoppers away from the town
- Will impact on existing Tesco store
- Will result in empty stores in the town centre which will make the town centre unattractive
- The site is unsuitable for this type of development as it predominantly a residential area, and would be better suited to alternative sites
- Concerns over the potential environmental impact of the petrol station being located close to dwellings
- Proposed petrol station is too close to the existing one
- Loss of light to neighbouring dwellings from proposed boundary treatment
- Loss of privacy for the locals of Rocks Green
- Will impact on the character of appearance of the housing development
- The supermarket will further isolate population outside town walls, therefore they will no longer benefit from the cultural, political and diverse opportunities the town offers
- Increase of risk to pedestrians safety, as they are required to cross both the access to the service yard of the supermarket and also the access to the supermarket itself

- Loss of trees would result in the loss of habitat for birds, owls and bats
- The site is too small for the proposal
- The site is too close to the River Corve – there is a potential contamination risk

4.2.2 There have been 18 letters of support received, which are summarised below:

- Another petrol station is needed in terms of terms and competition on price and as more residential development is planned
- New jobs are welcomed to encourage the younger generation to stay local
- A new supermarket would offer local residents a choice
- The site has good access off the main road
- A “higher end” supermarket would attract people from outside of the immediate area – possibly contribution to more tourist income being generated
- Parking at the current supermarkets is very poor
- The current supermarkets are failing as residents already travel out of the area to shop therefore a new supermarket will not have that much of an impact on the current shops
- A new, larger supermarket would potentially have better disabled access than the shops on the high street

4.2.3 **Philip Dunne, MP for Ludlow**, has written formally objecting to the development as follows:

I am concerned that this proposed development, if approved, would fundamentally alter the balance of retail offer for food, and potentially non-food, in and around Ludlow, having a profoundly adverse effect on existing retail activities within the town. I do not believe the applicant has demonstrated the need for such a significant expansion of the food retail offer on the edge of Ludlow.

Ludlow is a tertiary retail catchment which is already well served with three multiple food supermarkets in town offering a competitive mix of price points (Tesco, Co-op, Aldi); three convenience stores located in the town centre (Spar, One Stop in Tower Street, One Stop in Gravel Hill), two serving residential/business areas, Premier (at Livesey Road and Parys Road and one on Ludlow Business Park); and one at the edge of town (Co-op). A separate application has also been made for another potential convenience store with petrol forecourt at Bromfield Road.

In addition, Ludlow is now well known as a destination for its quality food reputation, with a much wider variety of independent food shops than in other towns of its size (circa 10,000 adult residents). These include three butchers, three bakers, two green grocers, two organic food specialists, one fishmonger, one cheese shop, four delicatessens, two wine shops, one chocolatier, in addition to one of the largest farm shops in the Midlands one mile to the north and a very active produce market in the town centre several days a week.

When the prospect of this application became apparent, I undertook a survey of local residents in all three Shropshire Council wards in Ludlow to gauge public reaction to an edge of town supermarket. I received 1,243 responses over a few weeks.

These figures show firstly the clear opposition of the majority of Ludlow residents that development of an out-of-town supermarket would adversely affect the existing traders in Ludlow, and secondly opposition to such development east of the A49.

Ludlow's market town status and pattern of mainly independent shops, with growing presence from multiples, brings considerable economic benefit to the town. Analysis of the economic impact of this application on existing providers of food is superficial, (and non-existent on non-food), relying in large part on unsubstantiated 'estimates', with minimal supporting footfall data from fieldwork which to be representative should have been undertaken in a variety of locations at varying times during a number of trading weeks.

Given Ludlow already has three supermarkets, two of which are not experiencing increasing year-on-year sales growth (as acknowledged privately to me), in my opinion the addition of a fourth and larger supermarket on the edge of town, with better parking provision than is available in town, would have a severely adverse impact on existing retail businesses. By diverting footfall to the edge of town, away from established food retail providers in the town, this would also have a marked impact on non-food retailers in the town.

I urge you to reject this application and make the right choice for Ludlow and its residents.

- 4.2.4 **Ludlow Chamber of Commerce** have submitted an objection to the development noting that Ludlow current offers something different in the artisan shops which the proposal would be direct competition for and set a precedent for further out of town development. The town thrives on local business, character and charm.

They accept the need for another petrol station but do not consider that this requires a substantial supermarket with it.

- 4.2.5 A representative of **Ludlow Town Centre Residents Association** has written in objection to the proposal advising that they have received a "storm of protest" from the majority of their members.

Their objections are based on lack of need, location of the petrol station being on the same side of the town as the existing one, the precedent for further development on the east of the A49 and the impact on the town centre.

- 4.2.6 "**Love Ludlow**", a organisation made up of a number of organisations in Ludlow, have objected to the application questioning the need for development; commenting that the proposal is overdevelopment; that there is no over trading in the town (one supermarket is currently for sale and clearly under performing); that the assessment does not include consideration of internet shopping; there is no end user and trade diversion figures are too low.

The objection details the concerns about the retail impact assessment not taking into account on-line shopping and the ascendancy of the supermarket; is based

on limited survey material; that it makes assumptions and predictions and is based on estimates in many parts; that it does not take into account residents work patterns; and that the parking provision (200 spaces) does not reflect the vehicle movements of 348 per hour.

Comments are also made relating to the design and landscape raising concern about the lack of information on the existing landscaping, the proximity of the site to the adjacent housing, the removal of the existing tree buffer and associated impact on wildlife; and the view of the development from the adjacent development, highway and public footpath. The conclusion of the objection is that the scale of the development has not provided sufficient space within the site to mitigate the impact of the development.

- 4.2.7 **CPRE South Shropshire** have also objected on the grounds of the potential impact on the town centre for similar reasons to those quoted by the Chamber and Love Ludlow.

The Campaign to Protect Rural England sees these small market towns as being essential to the life of rural areas. Ludlow's setting on the River Teme surrounded by the Clee Hills, Whitcliffe and Mortimers Forest is a jewel in the Marches. It should not be allowed to sprawl into yet another town where development is allowed outside the town at the expense of the vitality and viability of the town centre.

- 4.2.8 A detailed objection has been received on behalf of **Mid-Counties Co-Operative Stores** commenting that the development is contrary to the Core Strategy policies, does not satisfactorily address the sequential test (in that the Upper Galdeford/ Station Drive car park site has been discounted as too small but does not detail the scale of the development proposed or consider that not all car parking would have to be provided on site) and relies too heavily on the 2007 retail study.

Concern is also raised about the following issues:

- the results of the surveys undertaken have not been submitted and that this details may alter the weight which can be given to the survey results;
- the sales details may not include VAT and therefore may affect the impact assessment;
- the study area is much larger than the catchment area of the town;
- turnover is overestimated, for both the proposed and existing stores;
- trade diversion is underestimated for both comparison and convenience goods;
- the existing Tesco should be considered as in the centre, not out of centre;
- the Tenbury Wells consent has not been considered correctly;
- a high level of job displacement should be expected;

The objection concludes that the impact assessment is fundamentally flawed, the sequential assessment does not provide sufficient detail and therefore that the proposal does not comply with policy.

- 4.2.9 An objection has been received on behalf of **Spar** raising concerns about the sequential test and impact test, the levels of employment, groundwater

contamination, heritage impact and accessibility.

The objection raises concerns about the reliance on the 2007 South Shropshire Retail Study, that the application does not consider other, more accessible, out of centre sites and that the retail assessment makes assumptions and uses variables and further information should be required.

With regard to accessibility the objection raises concerns about the access to the site on foot and suggests that a 4km round trip is not realistic or acceptable and that the bus services suggested by the applicant do not cover Sundays and evenings.

## **5.0 THE MAIN ISSUES**

- Policy & principle of development
- Sequential site assessment
- Impact assessment
- Layout of site, scale and design of food store
- Impact on neighbours amenities
- Access, car parking and accessibility to town centre
- Impact on historic environment
- Landscaping and ecology
- Flooding, drainage and contamination
- Other matters

## **6.0 OFFICER APPRAISAL**

### **6.1 Policy & principle of development**

6.1.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, all planning applications must be determined in accordance with the adopted development plan unless material considerations indicate otherwise. Since the adoption of the Councils Core Strategy the National Planning Policy Framework (NPPF) has been published and is a material consideration that needs to be given weight in the determination of planning applications. The NPPF advises that proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. The NPPF constitutes guidance for local planning authorities as a material consideration to be given significant weight in determining applications.

6.1.2 The Shropshire Core Strategy was adopted in February 2011. Policies CS1 (Strategic Approach) and CS3 (The Market Towns and Other Key Centres) aim to encourage the continued sustainable growth of Ludlow as one of the main market towns in Shropshire. Ludlow is noted in CS3 as providing a focus for development, whilst respecting its historic character. It is also detailed as an important tourist destination which has achieved international renown as a centre for quality local food and drink. The overarching policy of CS3 advises that development in the market towns will be to maintain and enhance their role in providing facilities and services to the rural hinterlands, and providing a foci for economic development and regeneration. Balanced housing and employment development, of an appropriate scale and design will take place within the towns'

development boundaries.

- 6.1.3 With regard to retail uses policy CS15 (Town and Rural Centres) encourages the provision of appropriate convenience and comparison retail, office and other town centre uses preferably within the identified town centres as a ‘town centres first’ approach, however it does acknowledge the NPPF sequential and impact tests where no town centre sites are available. Within CS15 the market towns will act as principal centres to serve local needs and the wider needs of the spatial zone. Appropriate convenience and comparison retail, office and other town centre uses will be permitted to support these roles.
- 6.1.4 The SAMDev for Ludlow, policy S10, follows from the principles set in the Core Strategy policy CS3. The policy acknowledges that Ludlow is the largest market town in southern Shropshire and as such the town is a focus for development and growth. Paragraph 4 deals specifically with the town centre and aims to ensure that new main town centre uses will be focussed within the defined town centre area and primary shopping area identified on the policies map.
- 6.1.5 Also of relevance are policies MD10a – Managing Town Centre Development and MD10b – Town and Rural Centre Impact Assessments of the SAMDev. Policy MD10a defines Ludlow as a category ‘B’ town, a settlement with a town centre and a primary shopping area. In category ‘B’ towns there is a presumption in favour of retail proposals in ground floor premises in the primary shopping area, additional main town centre uses in the primary shopping area and within the wider town centre. Policy MD10b sets local thresholds for impact assessments depending on the town. Developments located outside of the defined town centre of Ludlow, and which have a gross floor space of over 300sqm, will require an impact assessment to be undertaken and submitted with the application. Policy MD10b also advises that developments which have a significant impact on town centres, or where the impact assessment is insufficient, will not be permitted. The policies within the Core Strategy and the SAMDev are considered to be consistent with the requirements of the NPPF as detailed in the following paragraphs.
- 6.1.6 At a national level the NPPF, section 2, sets out the national policy for determining planning applications for retail and other town centre uses. It seeks to be positive and promote competitive town centres but does acknowledge that policies will be required to consider main town centre uses which cannot be accommodated in or adjacent to town centres. Paragraph 24 requires local planning authorities to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. This test is the “town centre first” approach where out of town sites should only be considered where there are no sites within or on the edge of centres and preference should be given to accessible out of town sites that are well connected to the town centre.
- 6.1.7 Paragraph 26 of the NPPF also requires out of centre retail applications not in accordance with the development plan to assess their impact on the town centre in order to show the impact of the proposal on existing, committed and planned public and private investment and on the vitality and viability of the town centre. Where an impact is judged to be significantly adverse, or if there are

sequentially preferable sites available, the proposal should be refused. . Where no significant adverse impacts have been identified, and where the application also satisfies the requirements of the sequential test, a decision should be taken by balancing the positive and negative impacts of the proposal and other material considerations, and also the likely cumulative effect of recent permissions. These two issues of sequential and impact assessments are highly important in determining this application.

- 6.1.8 The Town Council, local MP and local interest groups and objectors have questioned the need for a new supermarket or petrol filling station on the edge of Ludlow commenting that there are existing supermarkets and independent retailers providing for the shopping needs of the area. The agent has commented in their planning statement that they consider that there is a need for a new store in Ludlow. The key point to note on this matter is that although the need for additional retail uses is inherent in the assessment of impact on a town centre there is no longer a requirement for the need for additional retail floor space to be justified in either national or local policy. As such, providing the application complies with the impact test there is no requirement to evidence need. PPS4, the national retail policy prior to the NPPF, removed the requirement for applicants to satisfy a test of “need” in justifying proposals for town centre uses and as such whether there is a need for the retail units proposed (including the food store) is given less weight but can still inform the conclusions reached in terms of the impact test.
- 6.1.9 The key issues are firstly, determining whether there are any sequentially preferable sites available and suitable, or likely to become so within a reasonable period of time; and secondly whether the proposed retail development would result in a significant adverse impact on the existing town centre. These are the two tests within the NPPF, policy CS15 and policy MD10b. The NPPF states that applications should only be refused where they fail the sequential test or are likely to have a significant impact on existing centres.
- 6.1.10 In order to consider these issues the application has been submitted with Planning Statement which includes a Retail Statement. An addendum to this statement was also submitted following concerns raised by Officers, local residents and other retailers. The addendum was considered necessary to ensure that the impact on the existing Tesco store in Ludlow was properly considered. The details of this statement, its conclusions and the advice resulting from this statement are considered in the following sections of the report.
- 6.1.11 Also a material consideration is the history of the site. It should be noted that there is existing development on the site and as such the land can be considered as a brownfield site (previously developed land). The redevelopment of brownfield land is promoted by paragraph 111 of the NPPF and the National Planning Practice Guidance. Both documents advise that Local Authorities should encourage the effective use of previously development land provided that it is not of high environmental value. The brownfield nature of the site is a material consideration which should be weighed in favour of the development. It does not over rule the need for a site to be sustainable but it is a matter that should be considered as positive in the overall planning balance.



- 6.1.12 Furthermore, the houses to the north of the application site have been built under a 2006 planning consent which included the current application site as land for a hotel. Prior to that the farm house and outbuildings had planning permission for conversion to a hotel and restaurant. These previous consents are also material considerations in the determination of the current application as this evidences support for redevelopment of the site and also for further building on this side of the A49.
- 6.1.13 As noted above the SAMDev also allocates land to the south of the A4117, also east of the A49, for housing development which will expand the town further over the main road.
- 6.1.14 It is accepted, as noted by the Town Council and Parish Council, that the site is outside the development boundary allocated in the SAMDev, however the site has a planning history, is considered to be previously developed land and furthermore the application is for an out of centre retail proposal which by its very nature could be justified outside the development boundary. Policy CS5 supports economic development outside the boundary and the consideration of retail applications is primarily against CS15, MD10a and MD10b and the NPPF in terms of the sequential and impact tests. The Council have not allocated any sites outside of Shrewsbury for retail uses but that does not mean that no further retail uses will be allowed outside of Shrewsbury or outside settlement boundaries.
- 6.2 Sequential site assessment**
- 6.2.1 Severn sites were considered in the sequential site assessment. None are within the town centre as there are no sites of sufficient size to accommodate a food store available in the town centre.
- 6.2.2 Upper Galdeford/ Station Drive is currently a town centre car park adjacent to the library and behind existing retail units on Corve Street. It is 0.8 hectares in size but has a restrictive covenant requiring its use to provide 50 parking spaces for the nearby Co-op store. As such the agent does not consider that the site is available. Furthermore, it is too small and would result in loss of town centre car parking. Corve Street/ Station Drive is 1.7 hectares of land adjacent to the railway line, residential and commercial areas and close to the Tesco store. The land is currently part in use by Aldi and part as employment land and therefore is also not available for development of a food store. Gravel Hill/ Lower Galdeford is also 1.7 hectares but has recently been developed by commercial operations and therefore is not available.
- 6.2.3 Weeping Cross Lane is considered by the agent to be an out of centre site which has been partially developed for residential use with less than 1 hectare remaining. The land is allocated for employment use and therefore the agent considers it is not suitable due to its size and allocation. McConnells land is the largest parcel of land considered at 3.1 hectares but is also considered to be out of centre for retail planning purposes. As with the Weeping Cross Lane site the land is allocated for employment use and is in use for warehouse, manufacturing and storage. It is adjacent to residential uses, the Ludlow conservation area and a SSSI. As such the site is highly sensitive but is also not considered to be

available without impacting the availability of employment land in the town.

- 6.2.4 Castle Street Garage site was vacant at the time of the sequential assessment. It is 0.31 hectares, previously used as a petrol filling station, opposite Tesco and adjacent to residential uses. The agent accepts that the site is available but does not consider that it is suitable due to its size. The Castle Street Car Park is a 0.38 hectare site adjacent to the existing shopping area which the agent considers is not suitable as it is too small and would also result in loss of town centre car parking.
- 6.2.5 The conclusion of the submitted sequential assessment is that there are no sites located in or adjacent to the town centre that are available or suitable for the development of a food store for Ludlow.
- 6.2.6 As detailed in section 4.1.4 above the Council Planning Policy Officer with retail experience and specialism has advised that the submitted sequential assessment, considering the 7 sites noted, is reasonable and shows sufficient evidence that there are no sequentially preferable sites.
- 6.2.7 No evidence has been provided by any other interested parties of any sequentially preferable sites and as such there is no evidence before the Council that the application does not meet the requirements of the sequential test in national and local policy.

### 6.3 **Impact assessment**

- 6.3.1 The applicant's retail statement advises that the proposed store is intended to cater for the weekly/ main shop which they accept is usually undertaken by car as bulky shopping trips would be difficult on the bus, bike or on foot. The applicant has undertaken a household survey and also used existing evidence to establish current shopping patterns and understand the potential impact of the store. The evidence provided shows that the town currently retains 72% of the convenience expenditure from the area, 26% is spent outside the area and the remainder is spent on the internet. The household survey shows that the majority of people do their main food shop at Tesco or Aldi and top up shopping in the town centre stores along with specialist purchases and comparison shopping.
- 6.3.2 It is the agent's opinion that the results of the survey work undertaken is that there is currently a high level of expenditure leakage from the town but that there is also good evidence of linked trips between the existing stores and the town centre shops. The town centre also functions as a leisure, service and employment venue. It is an attractive venue for tourism with a diverse range of goods and services, specialist and independent food retailers working with the town's food reputation.
- 6.3.3 Ludlow has a defined Primary Shopping Area (PSA) and a larger defined Town Centre. The applicant expressed an opinion that Tesco (and Aldi) are outside of the existing town centre because they fall outside the defined Primary Shopping Area, and therefore the assessment of Impact on these stores is not relevant. However, Council officers do not agree with this view and note that Tesco is in the identified town centre in the recently adopted SAMDev. It is accepted that it is not

in the PSA, however the town centre expands beyond the PSA and does include the Tesco store.

- 6.3.4 The view of the Policy Officer is that a suitable impact assessment must include the direct impact of the proposal on the Tesco store at Station Road, as well as the indirect impact from the loss of 'linked trips' to the area resulting from the loss of footfall between the Tesco store and town centre. This view is supported by Paragraph 26 of the NPPF which states that Impact Assessment should include an assessment of "the impact of the proposal on town centre vitality and viability". The direct impact on Tesco is considered particularly important to the vitality of Ludlow's town centre given the obvious 'like-for-like' nature of Tesco and the proposed store. It is also considered that because of this 'like-for-like' impact, the impact on Tesco store is clearly going to be much greater than the impact on Ludlow's smaller shops situated in the town centre. This is important to acknowledge in the overall assessment of direct impact; the level of impact is not going to be spread evenly across all shops in the town centre. However, it is considered that Tesco acts as an anchor store for the town centre, and that any loss of trade to this store will have some indirect impact from the inevitable loss of linked trips.
- 6.3.5 The Policy Officer's view on these matters is outlined in detail in the policy comments section of this report, and his views have been endorsed by Peter Brett Associates. It is accepted that Aldi is outside the defined town centre, and therefore should not form part of the applicant's Impact Assessment. In response to these views, the Council requested additional information to assess the direct impact on the Tesco store at Station Road, and for this to be included within applicant's overall assessment of impact. It was also requested that the applicant quantify the level of indirect impact resulting from the loss of linked trips and for this to be included within the overall assessment of impact. The applicant's retail addendum subsequently provided this information and allowed the Council to make an informed judgement on the significance of the level of impact.
- 6.3.6 The initial retail statement submitted with the application, which did not include the proposal's impact on the Tesco store or the loss of linked trips, suggested that the proposed store would compete with Tesco and Aldi and also clawback leaked expenditure but that it would not compete with town centre specialist food shops. The trade diversion from the town centre was calculated to be £0.7m and the trade diversion from Tesco and Aldi would be £11.88m. However, the agent suggests that both Tesco and Aldi are currently over trading and would continue to trade with limited impact on viability if the proposed store was built. The existing trade of both stores will reduce but not to an extent where either store would cease trading.
- 6.3.7 The amended retail statement was submitted during the consideration of the application which still sought to argue that Tesco was not in the town centre but did provide the impact assessment required by officers to take into account the impact on Tesco. Without the Tesco store included the agent advises that their assessment suggests a 1.8% impact. With Tesco included in the assessment this impact goes up to 10%. As such this confirms the view that the main impact will be on the existing Tesco store rather than on the smaller shops. Even with this

increased impact the agent does not consider that the total impact on the town centre would significantly impact on vitality or viability.

- 6.3.8 Although the agent has acknowledged that shoppers currently link trips between Tesco, Aldi and the town centre they comment that the level of linked trips is minimal and therefore would not be significantly affected by the proposal. The suggestion is that shoppers undertake their main shop in either Tesco or Aldi on a separate trip to visiting the town centre. The results of a survey in Tesco car park shows that very few shoppers are parked in Tesco and then walk into the centre. The agent therefore suggests that if linked trips are carried out on the same visit the link is undertaken by car. As such the agent considers that the proposed food store would continue this principle of shoppers visiting the town centre by car then visiting the food store by car (or visa versa).
- 6.3.9 Furthermore the agent suggests that the Tesco and Aldi store have not had the impact on the town centre that was perceived by objectors at the time they were being considered for planning. The town trades positively and has a higher number of independent convenience goods retailers than average. The agent considers that the erection of a new food store will not affect the success of the town or market and that shopping patterns will not substantially alter as the retail offer in the town is different to the retail offer from the application.
- 6.3.10 The Policy Officer's detailed comments are included within this report under section 4.1.4. As previously noted these views have also been assessed by Peter Brett Associates acting as an independent retail consultant on the matter. Peter Brett Associates support the views of the Council's Policy officer with regard to the methodology for assessing impact, and the overall conclusions on impact. Both the Policy Officer and Case Officer would like members to note that forecasting impact is not an exact science but that a reasoned and evidence judgement should be made.
- 6.3.11 The agent's conclusion of the impact forecast is that the impact on the town centre, including the impact on the existing Tesco store, is 11% and without the Tesco store is 2.3%. The Council Policy Officer has advised that the "without Tesco" figure is unrealistically low but that the "with Tesco" figure is more reasonable. To this end the Council has accepted the applicant's assessment of the level of impact on the Tesco store.
- 6.3.11 Linked trips are also considered by the Policy Officer who suggests a greater loss of linked trips than assumed by the applicant and also advises that the impact of loss of linked trips should be added to the direct impact on the town centre. The Policy Officer concludes that the total impact on the town centre, with lost linked trips added, is likely to be between 10.98% and 11.37%. It is the Policy's Officers view that this conclusion has been arrived at following a suitably detailed assessment of impact on the town centre; a view which is supported by Peter Brett Associates.
- 6.3.12 The decision to be made is therefore whether an 11.37% impact is a significant impact on the town centre. Paragraph 27 of the NPPF advises that the impact on a town centre needs to be significantly adverse to justify refusal of a planning

application and that the current health of the town and trading levels of existing stores can also be taken into account.

- 6.3.13 Officers are of the opinion that Ludlow has a healthy town centre with low vacancies and an attractive environment. The existing Tesco store is overtrading against national benchmark figures and this has been confirmed by the Council Economic Development Officer in his comments at 4.1.5. As such officers accept that the proposed food store at Dun Cow will divert trade from the town and that 11% is more than a minor impact, however officers do not consider that 11% will result in a significant impact and as such would not justify refusing the current application on the basis of the impact on the vitality and viability of Ludlow town centre.
- 6.3.14 Due to the level of objections received and the controversial nature of this proposal officers considered it was appropriate to seek the external and independent advice of Peter Brett Associates on the submitted retail information and the opinion of the Council Policy Officer. It is accepted that the Policy Officer's view is contrary to the view of the Town Council, Chamber of Commerce, MP and local residents and as such the decision was taken to seek additional advice to ensure that Officers were taking the correct approach.
- 6.3.15 The external advice is from an independent retail consultant who has not got any conflicting interest in the application or Ludlow. The retail consultant has agreed with the Council Policy Officer on the position of the existing Tesco being within the town centre and that the impact on this store should therefore also be taken into account. The consultant has also agreed with the applicant that 35% of main food shopping trips are linked with a town centre visit and that the average spend at linked trips is £10. However, they have queried why the applicant hasn't considered loss of linked top-up shopping in Tesco and town centre and queried the potential for linked trips from the proposed store given the distance to the town centre.
- 6.3.16 Although the consultant has raised queries they do not suggest that either of these queries should be referred back to the developer for further work to be carried out. The consultant comments that they consider it unlikely that overall levels of trade impact resulting from direct and indirect impacts would be significantly higher than the figures set out at Table 2 of the Retail Addendum, even if an element of linked trips from diverted top-up food shopping trips were included and it was assumed that a higher proportion of linked trips associated with main food shopping trips were lost. The general points made by the applicant in terms of the distinctive offer of Ludlow Town Centre are noted, as is the fact that many linked trips will relate to spending on services and that impacts on the retail turnover of the town centre may therefore be lower than assumed.
- 6.3.17 Overall the consultant advises that the indirect impacts of the proposed development would not result in significantly higher trade impacts than the direct trade impacts estimated by the applicant within the Retail Addendum. The consultant advises that the estimated trade impacts of over 10 per cent at 2019 are clearly not insignificant. However, they also accept that Ludlow is a healthy town centre that performs well on a number of key indicators of vitality and viability

and that within this context the anticipated level of trade impact may not lead to significant adverse impacts under the terms of paragraph 26 of the NPPF or merit refusal of planning permission in accordance with paragraph 27 of the NPPF.

6.3.18 Taking account of all of the advice provided and the evidence before the Council it is officers opinion that the proposed development has proven the sequential test has been met and also proven that there will not be significant adverse impact on the vitality and viability of the existing town centre. Accordingly officers would advise that the application should be supported and that a refusal on the basis of the impact of the proposed store would not be a defensible refusal of the planning application.

#### 6.4 **Layout, scale and design**

6.4.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy requires development to protect and conserve the built environment and be appropriate in scale, density, pattern and design taking into account the local context and character. The development should also safeguard residential and local amenity, ensure sustainable design and construction principles are incorporated within the new development.

6.4.2 Although an outline application an indicative layout has been submitted to show how the site could be developed. The indicative layout suggests the food store to the northwest of the site with car parking between the store and the A4117 and the service area to the side. The indicative layout and the design and access statement suggest a food store of 3,525m<sup>2</sup> made up of 2,534m<sup>2</sup> on the ground floor and 991m<sup>2</sup> on the first floor with a sales area of 2,322m<sup>2</sup>. The D&A suggests a split of 75% convenience and 25% comparison goods. The petrol filling station is shown as a canopy with 6 pumps and a kiosk.

6.4.3 The submitted design and access statement acknowledges that the development will be a significant change to the existing landscape but considers that it will integrate over time as the landscape matures. The store will be built to meet BREEAM very good standard with low water consumption, surface water management systems, sustainably sourced materials and re-use of heat from refrigeration units.

6.4.4 The fuel tanks for the petrol filling station were initially proposed to be underground. However, following the objection from the Environment Agency the agent has confirmed that the tanks can be situated above ground. This is considered to overcome the objection from the EA who were reconsulted on the amendment but have not submitted any further comment.

6.4.5 Notwithstanding either the EA objection or the amendment the application is for outline consent with the layout, scale, appearance and landscaping of the site reserved for later approval. As such, if outline consent were to be granted, the position of the fuel tanks could be considered before or during a reserved matters application.

6.4.6 However, it is also officer's opinion that the indicative layout is not appropriate in terms of the positioning of the store and service yard at the rear of the site, the

removal of the roadside hedge and the impact this indicative layout would have on the character of the area and the amenities of the residents of Rocks Green. It is officer's opinion that the site should be designed to respect its position on the edge of Ludlow, the existing landscaping and the existing dwellings. As such officers would not support the indicative layout but also note that this is a matter which is reserved for later approval, along with scale and design. This is a view that is supported by the Conservation Officer's comments detailed at 4.1.6 above.

6.4.7 It is accepted that food store operators prefer to lay out their sites with the store at the rear and car park at the front with the store overlooking the car park and both being visible from the adjacent road. This may be a preference but it is not considered to be an appropriate layout for this site or for Ludlow. The existing constraints and opportunities have not been taken into account and as such, although officers are in support of the principle of the development proposed on this site and have no objection to the indicative layout of the petrol filling station, officers would not support the layout of the store and car park as shown and these matters would need revising and careful consideration before a reserved matters application is submitted.

#### 6.5 **Impact on residential amenity**

6.5.1 Policy CS6 'Sustainable Design and Development Principles' of the Shropshire Core Strategy indicates that development should safeguard the residential and local amenity.

6.5.2 Prior to submission of the application the applicant carried out a consultation exercise. There was general support for a petrol filling station and a balanced response to the proposal for the food store. Respondents raised issues regarding traffic, access, need, impact on town centre, design, opening hours and jobs.

6.5.3 All of these issues are dealt with elsewhere in the report. The comments received during the Council's consultation on the current planning application are detailed in section 4 above. At this time there are no objections on the basis of impact on residential amenity. However, as noted above, officers do not consider that the layout shown on the indicative plan is suitable.

6.5.4 A noise survey was carried out which has recorded background noise levels and considered potential noise from traffic, service yard, the car park, petrol filling station and equipment at the store. As a result of the noise survey work barriers are proposed around the service yard and parts of the car park where there are near to residential properties. Considerate vehicle movements, such as no reversing beepers, are also suggested for within the service yard. The noise survey notes that without this mitigation the nearest properties would be adversely affected. The applicants have indicated an intention to erect a 3m high acoustic barrier fence on the north boundary of the site.

6.5.5 As such the indicative layout and the noise survey suggests a very harsh barrier along the rear of the site between the proposed store and the existing residential area. This area was designed with a high quality finish and layout and provides dwellings with pleasant open aspects. The indicative layout as shown would result in a high fence along the boundary and does not respect the views of the

public from this housing development. It also provides the service area in close proximity to the existing dwellings. Officers are of the opinion that a different layout could be achieved which moves the store and service yard further from the existing dwellings and also retains the existing landscaping along the A49.

6.5.6 Although the mitigation proposed by the applicant would reduce the impact on the residents of these properties the mitigation may not be necessary if an alternative layout is provided.

6.6 **Highways, access, parking and rights of way**

6.6.1 Paragraph 32 of the NPPF advises that developments that generate significant amounts of traffic should be supported by a Transport Statement and promotes sustainable modes of travel, safe accesses and improvements to existing transport networks. Core Strategy Policy CS6 states that proposals likely to generate significant levels of traffic should be located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced.

6.6.2 A full Transport Assessment has been carried out and submitted with the application. This notes the existing highway situation, road widths, speeds, footpaths, street lighting and crossing points. It acknowledges that the A49 is a trunk road. The report details the proposed improvements to Dun Cow Road to widen the carriageway and add a mini roundabout. Improvements are also proposed to the junction with the A4117.

6.6.3 Trip generation and traffic surveys have been carried out on the A49, A4117 and Dun Cow Road. The TA predicts potential traffic movements and suggests that it is unlikely that all movements would be new as many would be from shoppers who already use other stores in the area. The prediction in the TA is that 51% of traffic would be diverted from the existing Tesco and Aldi stores. The report also considers that many store visits will be generated from traffic already passing the site on the A41.

6.6.4 The TA also comments on junction capacity noting that the junction of Dun Cow Road with the A4117 could be at or approaching capacity at peak times once the development is complete and open to trade but considers that this may be reduced by customer choice, ie customers choosing what time of day to visit the store and to avoid peak times. Furthermore the TA suggests that queueing vehicles can be accommodated on Dun Cow Road. Alternative junction arrangements such as traffic lights and a roundabout were considered but both were assessed as having the potential to result in other delays. With regard to the other local junctions the A41 to A4117 and A4117 to Henley Road would both operate well within capacity after the development.

6.6.5 The design and access statement submitted with the application advises that the proposal will include 227 parking spaces of which 13 are disabled spaces and 9 are parent and child spaces. Cycle parking is also proposed and the site is within 1 minute walk of the nearest bus stop which serves the town centre.

6.6.6 There are existing pedestrian crossings on both the A4117 and the A49 and the



applicant considers that the site is accessible on foot, bicycle and by bus with the town centre, train station and significant areas of residential development within walking distance. However, the TA accepts that as a main food shopping venue these trips are likely to be limited.

- 6.6.7 The Council Highway Officer's comments are provided in full at 4.1.8 above. The Highway Officer has acknowledged the potential traffic impact of the proposal but has raised no objection. Highways England have also commented, given that the site access is close to the A49 (as detailed at 4.1.8 above). Highways England also have no objection to the proposal concluding that the junction of the A49 and Rocks Green will continue to operate within capacity and that the development traffic can be accommodated on the strategic network without mitigation works being required.
- 6.6.8 Access to the foodstore is being sought from Dun Cow Road which the Council Highway Officer has advised is an unadopted (private) road. Consent from the landowner will be required separate to the planning application, however the access should be provided to an adoptable standard as the Council Highway Officer has advised that the landowner is intending on requesting adoption of the road.
- 6.6.9 The Council Highway Officer has considered the impact on the local road network and accepts that there will be an increase in traffic but that there is capacity to accommodate this development. Improvements to the junction for vehicles turning right are included in the proposed application and these are promoted by the Highway Officer as beneficial.
- 6.6.10 Walking and cycling has also been considered by the Highway Officer who notes that the A49 is currently a barrier to this type of movement. It is therefore recommended that as part of the development further pedestrian and cycle provisions should be delivered to encourage sustainable travel between the existing residential areas and the site. This matter can be dealt with through an appropriately worded condition.
- 6.6.11 A draft Travel Plan has also been proposed which recommends that the store employs a travel plan coordinator and that the travel plan is used to promote cycle access, the use of public transport and car sharing, especially for staff. The Council Highway Officer has confirmed that this should be developed further in accordance with PPG13 and associated best practice/guidance.

## 6.7 **Ecology and trees**

- 6.7.1 The NPPF and policy CS17 of the Shropshire Core Strategy require consideration to be given to the impact of the proposed development on the natural environment. This particularly relates to the impact on statutorily protected species and habitats and existing trees and landscaping. A protected species survey has been undertaken and submitted with the application and this has been considered by the Council Ecologist.
- 6.7.2 The submitted ecology report notes the existing buildings, grazing land and tree/hedge boundaries. There are no records of badgers, dormice, reptiles or

amphibians (including great crested newts). Records are available showing otters 1km west of the application site but there are no watercourses close to the application site which would serve as connecting corridors to the recorded siting. The nearest local nature reserve is 2km from the application site. A separate bat survey report has also been submitted on the basis that the site provides foraging opportunities. No evidence was found of bats using the buildings during the surveys but the author suggests that there is still a possibility of roosting bats and as such recommends removal of the roofs on the buildings is carried out under supervision. Bats were found to be using the site for foraging and bat boxes are therefore recommended.

6.7.3 It is accepted by the applicant's ecologist that almost all of the existing vegetation and habitats will be removed but the author considers that the existing site is of low nature conservation value and that the development of the site can enhance ecology by planting native species hedges and trees. Recommendations include site clearance under ecological supervision and further surveys if 12 months pass between the existing surveys and the commencement of development. However, it is also noted that the farmhouse was not surveyed as access was not possible.

6.7.4 A tree survey was carried out which accepts that most of the existing trees are to be removed. The hedge boundary to the east, with Dun Cow Cottage, is to be retained, all others are to be removed, including the hedges on the boundary with the A41 and A4117. The design and access statement recommends additional native species landscaping for decorative and ecological benefit.

## 6.8 **Drainage**

6.8.1 Policy CS18 'Sustainable Water Management' of the Shropshire Core Strategy indicates that development should integrate measures of sustainable water management to reduce flood risk and avoid an adverse impact on water quality and quantity.

6.8.2 A full Flood Risk Assessment (FRA) has been carried out and submitted in support of the application. The FRA advises that the highest part of the site is 117AOD, adjacent to Dun Cow Road, and the lowest point is 112AOD. The site is in flood zone 1 and therefore at lowest risk of flooding. The FRA recommends surface water from the development is drained to the existing surface water sewer in Rocks Green but that it may need to be pumped and attenuated to control run off to greenfield rate. The proposals include permeable paving, except at the petrol filling station, and that further assessment may enable the use of soakaways.

6.8.3 The Council Drainage Consultant has not raised any objection to the principle of approving the site and has recommended that drainage details, plans and calculations could be conditioned and submitted for approval at the reserved matters stage. There is no evidence to show that the site is not capable of being provided with a satisfactory drainage system which would ensure that the development complies with policy CS18 and as such this matter can be dealt with by condition.

## 6.9 **Other matters**

- 6.9.1 Dun Cow Farm, the farm which forms the application site, is recorded in the Shropshire Historic Farmstead Characterisation as being of archaeological interest. The farm dates from 1835 and as such there is a potential for archaeological remains but no previous surveys have been carried out. The applicant has also noted nearby heritage assets. However, it is the applicants opinion that the setting of Dun Cow Farm has already been affected by the construction of the A49 and Rocks Green housing estate. Any archaeological remains are likely to be local and of limited significance but the applicant accepts that the development of the site would destroy and archaeology and therefore accepts that there is a requirement for a condition.
- 6.9.2 The Council Conservation Officer has commented that the existing buildings on the site, a farmhouse and farm buildings, have some heritage importance. The applicant has therefore submitted a statement of significance which provides detail on the age of the building, their quality and rarity. The Conservation Officer, under section 4.1.6 above, confirms that the statement is sufficient for the NPPF requirements and has not raised any objection to the loss of the existing buildings providing they are recorded prior to demolition.
- 6.9.3 An assessment of potential for contaminants was also carried out. This has noted the existing buildings, previous uses and the presence of 2 above ground heating oil tanks on concrete bases. These tanks are considered to be in reasonable condition and as such the assessment suggests that there is not likely to be any contamination on site.

## 7.0 CONCLUSION

- 7.1 The proposed development has been assessed in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, namely that any determination must be made in accordance with the development plan unless material considerations indicate otherwise. In particular, the proposed development has been assessed against locally adopted policies and the National Planning Policy Framework in relation to retail development. This assessment concludes that approval of a food store on the application site would not have a significant adverse impact on the vitality and viability of Ludlow town centre.
- 7.2 Taking into account the provisions of the conditions, this proposal is considered to accord with the requirements of the current development plan as a whole including the need to protect the vitality and viability of town centres and to support appropriate retail and other economic development, taking into account sequential and impact assessments. This is with reference to Shropshire Core Strategy policies CS1, CS3, CS6, CS9 and C15, Shropshire Site Allocations and Management of Development policies MD2, MD10a and MD10b and paragraphs 23 to 27 of the National Planning Policy Framework.
- 7.3 Furthermore it is considered:
- That Ludlow is suitable for the form of development proposed (Policies CS1 and CS3 of the Shropshire Core Strategy);
  - That the proposal would not result in any significant adverse impact on Ludlow town centre (as assessed under the requirements of Paragraph 26 of the NPPF);
  - That, overall, it will deliver positive impacts (by reference to policies CS6 and

CS9 of the Shropshire Core Strategy) by reason of the employment generation and the potential to retain and clawback trade to Ludlow.

7.4 Furthermore, the access, parking and potential for enhanced pedestrian and cycle linkages to the surrounding area are considered to meet the principles of sustainable development and the requirements of the NPPF and policies CS6 and CS9 of the Shropshire Core Strategy. The site is capable of being drained without resulting in a greater flood risk as required by the NPPF and policy CS18 of the Shropshire Core Strategy; subject to an appropriate layout and noise mitigation the development can be designed so as not to have an unacceptable impact on the amenities of surrounding residents in accordance with the requirements of the NPPF and CS6 of the Shropshire Core Strategy; and the landscaping and ecological impacts can also be protected or mitigated in line with the NPPF and CS17 of the Shropshire Core Strategy.

7.5 Accordingly the proposal is considered to comply with the Development Plan Core Strategy policies CS3, CS6, CS7, CS17 and CS18 and with the requirements and aims of policy CS15 in seeking to protect the vitality and viability of Ludlow Town Centre. The scheme is also in accordance with the policies within the Shropshire Site Allocations and Management of Development (SAMDev) and the National Planning Policy Framework (NPPF), specifically paragraphs 23 to 27. In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

## **8.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL**

### **8.1 Risk Management**

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.

The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

### **8.2 Human Rights**

Article 8 give the right to respect for private and family life and First Protocol

Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

### 8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

## 9.0 **FINANCIAL IMPLICATIONS**

9.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.