

ADDENDUM
MEETING OF THE PLANNING COMMITTEE
TUESDAY 25th JULY 2023

ITEM NO: 5

PLANNING APPLICATION: 22/01400/F The Air Balloon 60 Brighton Road Horley Surrey RH6 7HE

Further representations

To date a further 17 representations have been received since the publishing of the agenda.

13 received supporting the application raising the additional comments beyond those reported in the committee report:

- If this application is refused there would still be an impact on town centre if Lidl was to close.
- Refusing the application would not prevent the loss of the Air Balloon pub

4 received objecting to the application. The only additional comments beyond those in the committee report are:

- Concern that residents in Church Road did not received notification [Officer note: the legislation does not require the Council to notify these properties as they do not adjoin the site. As part of the application a site notice was put up and the application was advertised in the local paper.]
- A letter from Martin Robeson Planning Practice, acting on behalf of Tesco Stores Limited, raising a number of points on Town Centre Impact, Sequential Test, ecological harm and quality of design. The letter is appended to this addendum at **Appendix A**. Officers are satisfied that the issues raised adequately dealt with within the Committee Report and reason for refusal.

Clarification on heritage matters

With regard to the reference by the Conservation Officer in their comments (paragraph 7.25, Page 31, third paragraph down of the Committee Report), to the recent exercise by the applicant looking at but rejecting some alternative options, for ease this document from the applicant is attached at **Appendix B**.

At paragraph 7.25 the Conservation Officer has noted that they have included a typo in their quoted consultation response. At page 31 of the agenda, third paragraph down, the Conservation Officer meant to say:

“In regard to the other two proposals these were rejected by the applicant due to the reduction in car parking and the loss of service access. However, I consider that if a **smaller** footprint scheme as has occurred elsewhere were used then potentially these issues could be overcome.”

In terms of the consideration of the application clearly the impact on the identified heritage assets is a key consideration. Officers therefore consider it useful to clarify the relevant tests for members and how this fits in to the weighing exercise.

As set out in the Committee report it is considered that there would be the complete loss of a non-designated heritage asset and less than substantial harm to the setting of the grade II listed war memorial (a designated heritage asset).

Policy NHE9 (1) of the Development Management Plan (DMP) states:

Development will be required to protect, preserve, and wherever possible enhance, the Borough’s designated and non-designated heritage assets and historic environment including special features, area character or settings of statutory and locally listed buildings.

In terms of the impact on the setting of the war memorial policy NHE9 (criteria 3) states:

“In considering planning applications that directly or indirectly affect designated heritage assets, the Council will give great weight to the conservation of the asset, irrespective of the level of harm” and at 3(c); “Where less than substantial harm to a designated heritage asset would occur as a result of a development proposed, the harm will be weighed against the public benefits of the proposal.” This policy is in line with the requirements set out in the NPPF at paragraph 202.

As per paragraph 7.29 of the committee report Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also applies a legal obligation to all decisions concerning listed buildings. As per paragraph 7.30 Historic England advise that the Court of Appeal decision in the case of Barnwell vs East Northamptonshire DC 2014 (ref. 2) made it clear that in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 Parliament’s intention was that ‘decision makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise’.

In terms of the impact of the loss of the non-designated heritage asset. Policy NHE9 (5.) of the DMP states:

“In considering proposals that directly or indirectly affect other non-designated heritage assets, the Council will give weight to the conservation of the asset and will take a balanced judgement having regard to the extent of harm or loss and the significance of the asset.” This test follows that set out in the NPPF at paragraph 203.

Paragraph 2.5.46 of the DMP also states that:

“The Borough Council, with the assistance of the County Council and local organisations, has compiled a comprehensive list of buildings of local interest to supplement the Statutory List. The Borough Council will seek to ensure that buildings of local architectural or historic interest are not demolished and that their inherent qualities are taken into account in considering proposals which may affect them”.

The level of weight afforded to the complete loss of the locally listed building is not set out within local policy, national policy or legislation. Therefore as per paragraph 7.26 of the committee report it is “a judgement for the decision maker to determine the level of harm attributed to the significance of the non-designated heritage asset.” In this case as the proposal result in the complete loss of the heritage asset it is the view of officers that the harm is substantial and this level of harm is given great weight in the balancing exercise.

Given the above it is note that there is an error in the report where great weight is given to the protection of both designated and non-designated heritage assets. Therefore the following changes are proposed to the committee report. At the summary on page 14, paragraph 2, and paragraph 7.29 it should say:

“Therefore, the starting point is that great weight is given to the protection of designated heritage assets. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also applies a legal obligation to all decisions concerning **statutory** listed buildings. When making a decision on a planning application for development that affects a listed building or its setting, a local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Preservation in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged.”

Summary and updated Reason for Refusal

In summary great weight is given to the impact on the setting of the designated heritage asset. The complete loss of the non-designated heritage asset is considered to cause substantial harm to the heritage asset and this substantial harm must be weighed against the public benefits. In this case officers consider that this should be given great weight. The benefits and material considerations are not considered to outweigh the great weight afforded to the identified harm to the designated and non-designated heritage asset.

To make the distinction of the above discussed tests clear it is proposed to update the Reason for Refusal to the following:

1. The proposed development by reason of the complete loss of the locally listed Air Balloon Pub (a non-designated heritage asset) and the unsympathetic scale, form and layout of the proposed supermarket, would result in substantial harm to the locally listed building and less than substantial harm to a designated heritage asset (setting of Grade II listed war memorial). Having considered the benefits of the scheme put forward by the applicant it is considered that there

are no public benefits or material considerations which outweigh the great and considerable weight afforded to the identified harm to the designated ~~and non-designated~~ heritage asset (as **indicated** by the NPPF and policy NHE9 of the Development Management Plan by Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990), and **great weight afforded to the substantial harm caused by the loss of the non-designated heritage asset**. The proposal would therefore be contrary to Policy NHE9 and DES1 of the Council's Development Management Plan 2019 and paragraphs 199 to 203 of the NPPF.

Proactive and Positive Statements

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and whilst planning permission been refused regard has been had to the presumption to approve sustainable development where possible, as set out within the National Planning Policy Framework.

Additional plan

It was noted that the agenda did not include the existing site plan. This is attached at **Appendix C**.

ITEM NO: 6

PLANNING APPLICATION: 22/01965/F 49, 51 And 53 Shelveys Way, Tadworth, Surrey, KT20 5QJ

The following corrections/ clarifications are made to the report, which are highlighted in **bold and italics**.

Representations

Letters were sent to neighbouring properties on 20th December 2022. Following the submission of amendments and additional supporting information, further consultations were sent to neighbouring properties **and consultees** on the 12th January 2023, 14th March, 16th March and the 14th June. 351 responses have been received raising the following issues:

Since the publication of the report, a further 5 representations have been received in support of the application, citing the following:

- Benefit to housing need
- Community/regeneration benefit

Additional objections have been received since publication of the report, which are noted. These include matters that have been noted or substantively covered within the case officer report. Further objection was also received specifically in response to the Preliminary Ecological Appraisal and Preliminary Roost Assessment, which is noted.

Trees

Additional comments have been made by the Tree Officer as follows:

'The revised layout addresses my original concerns relating to the impact this scheme will have on the off-site trees. By reducing the number of dwellings from three to two increases the size of the gardens reducing the post development pressure on the woodland to the rear. To ensure there is a clear line of communication during the course of the development the following conditions should be attached to the decision notice.'

In view of the comments above conditions regarding tree protection, supervision and monitoring and landscaping have been recommended and are within the addendum.

Other Matters

The wording of the following paragraph has been amended as follows:

6.37 With regard to objections made on the grounds of increased noise and disturbance resulting from the development, it is not considered that the development of **two dwellings** would result in a substantial level of noise that would be untypical of a residential area. Statutory noise legislation is in place to deal with any unacceptable levels of noise disturbance.

Conditions

Condition 9 is amended as follows:

9. Notwithstanding the approved drawings full details (and plans where appropriate) of the waste management storage and collection points, (and pulling distances where applicable), throughout the development shall be submitted to and approved in writing by the Local Planning Authority.

All waste storage and collection points should be of an adequate size to accommodate the bins and containers required for the dwelling(s) which they are intended to serve in accordance with the Council's guidance contained within Making Space for Waste Management in New Development.

Each dwelling shall be provided with the above facilities in accordance with the approved details prior to occupation of the relevant dwellings and thereafter retained.

Reason: To provide adequate waste facilities in the interests of the amenities of the area and to encourage recycling in accordance with the Development Management Plan 2019 policy DES1.

Condition 13 is amended as follows:

13. No development shall commence including demolition and or groundworks preparation until a detailed, scaled finalised Tree Protection Plan (TPP) and the related finalised Arboricultural Method Statement (AMS) is submitted to and approved in writing by the Local Planning Authority (LPA). These shall include details of the specification and location of exclusion fencing, ground protection and any construction activity that may take place within the Root Protection Areas of trees (RPA) shown to scale on the TPP, including the installation of service routings, type of surfacing for the entrance drive and location of site offices. The AMS shall also include a pre commencement meeting, supervisory regime for their implementation & monitoring with an agreed reporting process to the LPA. All works shall be carried out in strict accordance with these details when approved.

Reason: To ensure good arboricultural practice in the interests of the maintenance of the character and appearance of the area and to comply with British Standard 5837:2012 'Trees in Relation to Design, demolition and Construction – Recommendations' and reason: To ensure good landscape practice in the interests of the maintenance of the character and appearance of the area and to comply with policies NHE3, DES1 and DES3 of the Reigate and Banstead Development Management Plan 2019 and the recommendations within British Standard 5837:2012 Trees in relation to design, demolition and construction.

A further condition is added as follows:

20. No development, groundworks or demolition processes shall be undertaken until an agreed scheme of supervision for the arboricultural protection measures have been submitted to and approved in writing by the local planning authority. The pre commencement meeting, supervision and monitoring shall be undertaken in accordance with these approved details. The submitted details shall include.
 1. Pre commencement meeting between the retained arboricultural consultant, local planning authority Tree Officer and individuals and personnel responsible for the implementation of the approved development
 2. Timings, frequency of the supervision and monitoring regime and an agreed reporting process to the local planning authority.
 3. The supervision monitoring and reporting process shall be undertaken by a qualified arboriculturist.

Reason: To ensure good arboricultural practice in the interests of the maintenance of the character and appearance of the area and to comply with British Standard 5837:2012 'Trees in Relation to Design, demolition and Construction – Recommendations' and policies DES1, DES2 and NHE3 of the Reigate and Banstead Borough Local Plan.

Informatives

Informative 18 is amended as follows:

18. The applicant should ensure that construction activities on site have regard to the potential presence of terrestrial mammals to ensure that these species do not become trapped in trenches, culverts or pipes. All trenches left open overnight should include a means of escape for any animals that may fall in.

The applicant is advised that a precautionary method of working is adopted for badgers. If badger activity is detected, works should cease, and advice be sought from a suitably experienced ecologist to prevent harm to this species. The Applicant is required to proceed in line with the Protection of Badgers Act (1992).

Appendix A

Our Ref: 2995/MR/LT20230721

21st July 2023

Andrew Benson
Reigate and Banstead Borough Council
Head of Planning
Town Hall
Castlefield Rd
Reigate
RH2 0SH

MRPP
MARTIN ROBESON
PLANNING PRACTICE

*Town Planning Consultants
Development Advocacy*

21 BUCKINGHAM STREET
LONDON WC2N 6EF
TELEPHONE: [REDACTED]
FACSIMILE: [REDACTED]

Via Email: Andrew.benson@reigate-banstead.gov.uk

Dear Mr Benson,

ITEM 5 PLANNING COMMITTEE TUESDAY 25TH JULY 2023. DEMOLITION OF LOCALLY LISTED PUBLIC HOUSE AND REDEVELOPMENT TO PROVIDE A FOODSTORE (LIDL). THE AIR BALLOON PUBLIC HOUSE, 60 BRIGHTON ROAD, HORLEY. PLANNING REFERENCE: 22/01400/F

As you may be aware we act on behalf of Tesco Stores Limited and made representations to the above application by letter of 3rd March 2023. We have now reviewed the Officer's Report to the 25th July Planning Committee and make further representations.

These further representations concern:

- The acknowledged harmful retail impact being “*significantly adverse*”,
- The inflexibility applies to sequential assessment,
- Substantial ecological harm arising from the loss of biodiversity, and
- Poor quality design warranting a specific reason for refusal.

The Acknowledged Harmful Retail Impact being “Significantly Adverse”

Lidl's existing town centre store has been assessed as having a total turnover of £15.01m (Table 4 of RPS's Planning and Retail Statement (June 2022)). That is very substantially in excess of its average trading level. The proposed store is however assessed as having a lower total turnover of £10.23m (Table 5) i.e., very substantially below the turnover of the existing store. It suggests a fundamental anomaly within the Retail Assessment.

On the basis that the existing Lidl store is turning over well in excess of its company average it demonstrates that any deficiencies relating to it are not directly affecting its performance. However, such trading information is absent in making the comparison with the four stores announced for closure in the letter from Lidl's Regional Property Director (25th May 2023). Such information would seem to be fundamental to any justification of store closure.

Without cogent evidence the threat being made that “*If the planning application is refused the future of Lidl in Horley is at risk...*” has no justifiable foundation. Indeed, at least one of the stores in the comparison is being proposed for closure because the Council had granted permission for a new Aldi store nearby. That is not the case here with the Aldi

proposal to the north of the town having been rejected by the Borough Council earlier this year.

The Council's retail advisor (Q+A) confirms that "...the convenience percentage impact on the town centre is likely to exceed 20% whichever approach is used" (3.10 of their February 2023 Advice) and that "Even a small negative impact can cause an unacceptable harm on the town centre" (paragraph 3.11). In the context of this they refer to the National Guidance (NPPG) that "A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances". Whereas the Council's consultant comes to the conclusion that the proposal "will cause an adverse impact" (paragraph 3.37), they have to pose the question as to "...whether the level of impact is significantly adverse that would warrant a refusal of planning permission" (paragraph 3.37). Importantly, their advice on impact concludes "It is recognised that this is a balanced judgement and other parties may apportion more weight to the negative impacts on the town centre and could reach an alternative conclusion." (paragraphs 3.39 and 4.6). Members should be advised of this position that is critical to their decision making.

Were the Council to make a decision to grant permission to secure 'a replacement for Lidl' then they would need to ensure that a suitable legal framework is adopted since planning permission runs with the land rather than the applicant. Nowhere within the report submitted on behalf of Lidl or in the letter from the Regional Property Director is there any suggestion that Lidl would accept a condition on a planning permission or by way of a s106 obligation, limiting it solely to occupation by that company.

The Inflexibility Applies to Sequential Assessment

The Officer's Report sets out the advice of the Council's own internal experts in the Policy Team that finds that "Without having considered land assembly opportunities within the town centre, we cannot conclude that the application has passed the retail sequential test required under NPPF paragraphs 87, 88 and 91" (paragraph 7.11).

As a consequence, Officers instructed an external consultancy to review the application of the sequential test in terms of opportunities rejected by Lidl's advisors. Our letter of 3rd March provided what we consider to be a robust insight into the suitability of several sites within the town centre and how 'availability' should be assessed. We do not demur from any of the matters raised but add in response to the shortsighted approach taken by Q+A (on behalf of the Council) to the assessment of the 'availability' of sites within what is described in national policy as a "reasonable period". It is inappropriate to apply a time period that relates to the development process associated with an out-of-centre opportunity. For example, the NPPG advises "When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be taken into account".

The approach taken by Q+A with regard to what is "a reasonable period" is flawed. They assert that "There is no requirement to actively consider land assembly opportunities..." (paragraph 2.28). However, such issues of land assembly are inherent in the delivery of more complex town centre opportunities. Indeed, Lidl agreed to a 3-4 year timeframe being reasonable to secure the development of a town centre Lidl through an application, development and delivery process at Altrincham in 2022 (see paragraph 10 of Appeal Decision APP/Q4245/W/21/3267048).

Significantly, Q+A advise that whilst sites might be “...being marketed quietly [a reference to the High Court decision in the Newtownabbey Case] and this is entirely possible. However, our conclusions are based on the evidence before us, and we cannot speculate what might be available without further evidence”. They provide an example that “...if a site is in active use as a car park and there is no evidence provided by the site owners or any other third parties that it will become available for development within a reasonable period, it is our view that is sufficient evidence that the site is not available” (paragraph 2.21). This does not accord with the need for scrutiny as is required by case law and policy. We therefore consider that the assessment undertaken on behalf of the applicant “fails to satisfy the sequential test” and thus, as paragraph 91 of the NPPF provides “should be refused”.

Substantial Ecological Harm Arising from the Loss of Biodiversity

The site will result in a significant loss of trees and vegetation and as such will lead to a net loss in biodiversity of -32.49%. That is a substantially adverse result. There is an important need to balance any merits arising from the development of a site and preserving its biodiversity. Here, the applicants are proposing that offsite credits should be bought to address the deficiency elsewhere. However, in circumstances such as this, the assessment can be so adverse that it serves to determine that a site should not be developed for the application form of development.

The proposed development would result in such a significant loss of biodiversity that a substantial contribution to fund biodiversity improvements elsewhere in the district is required. There can be no guarantee that these improvements will directly mitigate the loss of biodiversity on the site and indeed the Council do not have any projects or sites currently identified for this (as confirmed at paragraph 7.61 of the Officer’s Report). Whilst Policy NHE2 does identify that contributions to appropriate biodiversity projects elsewhere may be permissible, this is subject to the proviso that it cannot be “provided on site in an effective manner”. It is the scale of the proposal for this site which results in the inability to provide mitigation on site, a more appropriate form of development on the site might be able to ensure the biodiversity net gain can be ‘effectively achieved on the site’ itself.

The considerable loss of biodiversity caused by the proposal further indicates that the development is one whose scale and character is not suitable for this site. Contrary to the Officer’s position, the failure to provide an effective biodiversity solution should justify a reason for refusal. It seems wholly inappropriate to resist such a reason based only on the applicant’s assertion “...that it is not possible to achieve a net gain in biodiversity...” (paragraph 7.62 of the Officer’s Report). It is possible to achieve such a net gain, even were there to be a retail scheme developed on the site. Our letter of 3rd March explained the opportunity to develop a store using a smaller land-take limited to no more than 0.4ha. That contrasts with the application site’s 0.64ha. Current examples of discount retailers adopting such an efficient solution exist in proposals at Orpington and Thames Ditton.

Poor Quality Design Warranting a Specific Reason for Refusal.

The proposed reason for refusal is based on the substantial harm to the heritage asset. In this regard, the proposed development is described as suffering from a “...unsympathetic scale, form and layout”. That is rated as causing “...substantial harm”. The advice at paragraph 130 of the NPPF includes six factors to guide design quality. These include that proposed development should:

- “add to the overall quality of the area,

- *Visually attractive as a result of good architecture, layout and appropriate and effective landscaping,*
- *Sympathetic to local character and history, including the surrounding built environment and landscape setting,*
- *Establish or maintain a strong sense of place...to create attractive, welcoming and distinctive places to live, work and visit.”*

The considerable loss of mature trees on the site combined with the Officer’s recognition of poor design quality results in the proposal not delivering “*a high quality design that makes a positive contribution to the character and appearance of its surroundings*” (per Policy DES1 of the Development Management Plan). The proposal does not therefore comply with Policy DES1 and should therefore also be refused on this basis.

Conclusions

Planning permission should therefore not only be refused on heritage grounds but also on:

- The significant adverse impact on the vitality and viability of the town centre.
- Failure of the sequential test to review opportunities on smaller sites and having proper regard to an appropriate timescale relating to availability.
- Substantial harm to ecological interests which are not appropriate to be mitigated offsite.
- Design of a quality that fails to make a positive contribution to the area.

Yours sincerely,



Martin Robeson



CC: Michael.parker@reigate-banstead.gov.uk



Appendix B

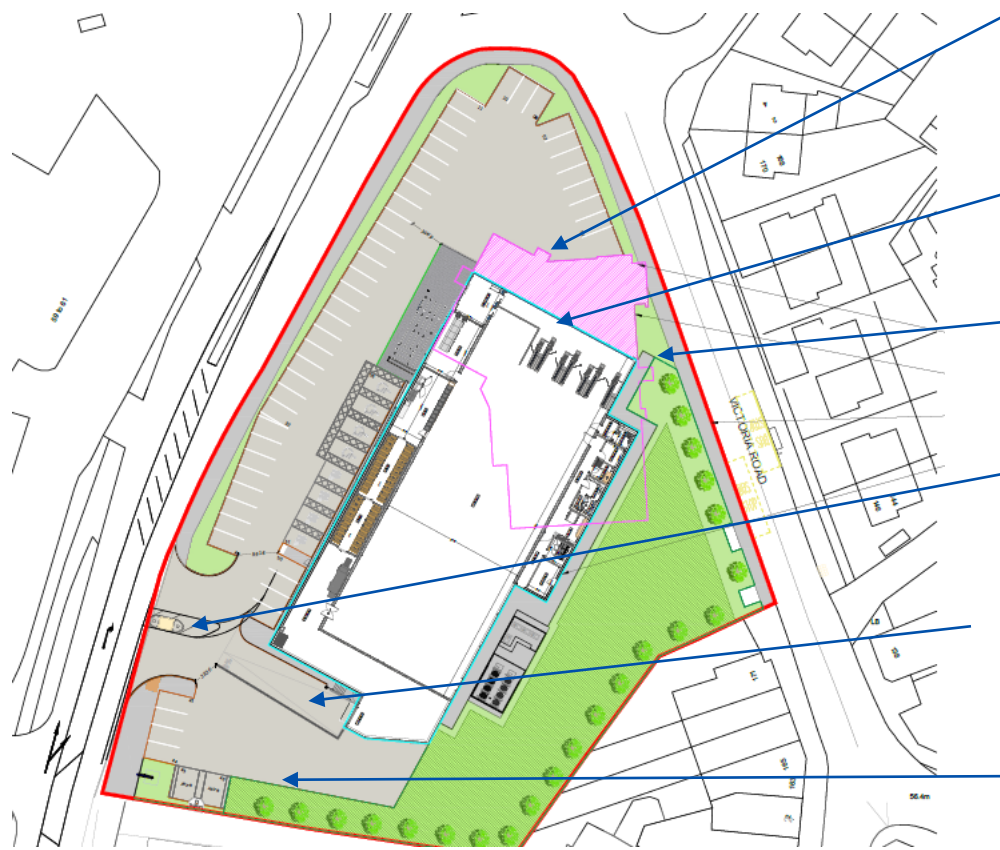
Design Assessment

Exploration of design changes following Conservation Officer feedback

Lidl Horley, June 2023



Option 1 – Retaining part of the existing building



Northern section of the existing building to remain in situ.

Removal of shopfront glazing.

Removal of egress to Victoria Road.

Compromised main access on Brighton Road.

Unserviceable delivery bay to store.

Insufficient total number of parking spaces: 58

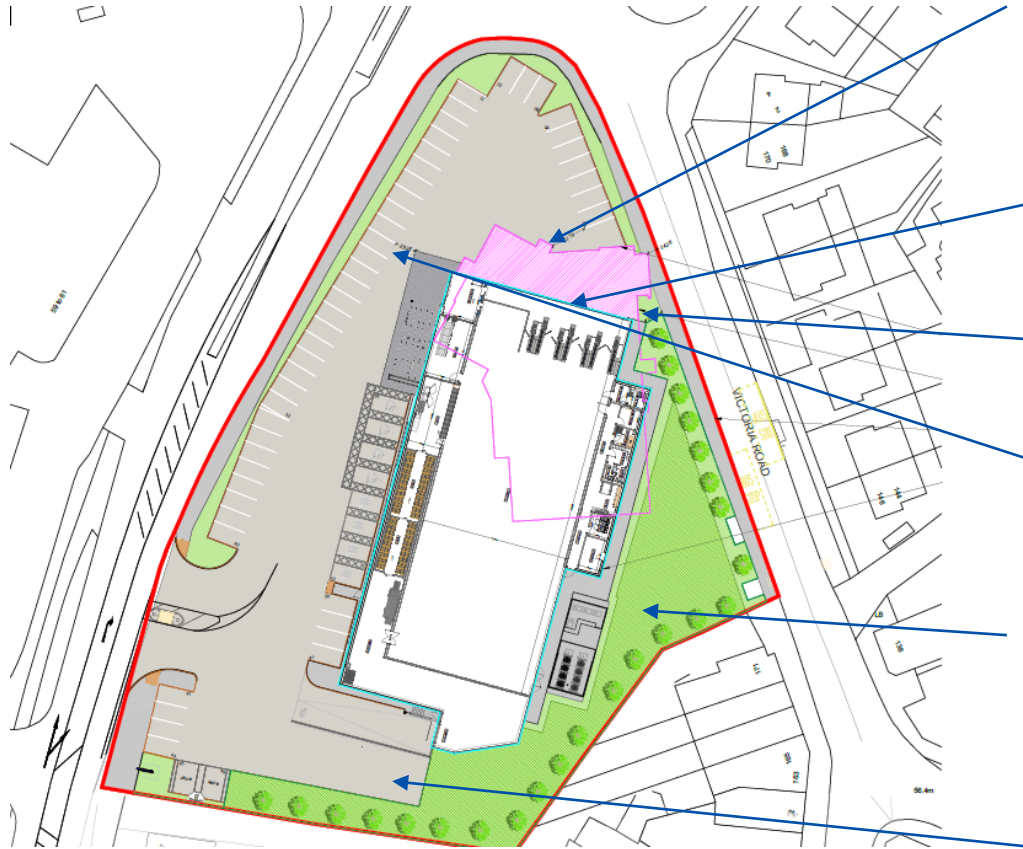
The store has been moved in order to be aligned to the northern part of the existing building (shown coloured magenta on the plan).

Retaining this section of the existing building will mean that the curtain walling (glazing) will have to be removed. This will affect the energy performance of the store, obscure the main retail elevation from public view, and remove natural light from the sales area.

The store's new position results in access/egress changes, completely restricted servicing arrangements, and a reduction in car parking.

Ultimately, this is not a viable option.

Option 2 – Retaining part of the existing building



Northern section of the existing building to remain in situ.

Removal of shopfront glazing.

Removal of egress to Victoria Road.

Reduced vehicle circulation.

Reduced landscaping buffer between site and neighbouring residential properties.

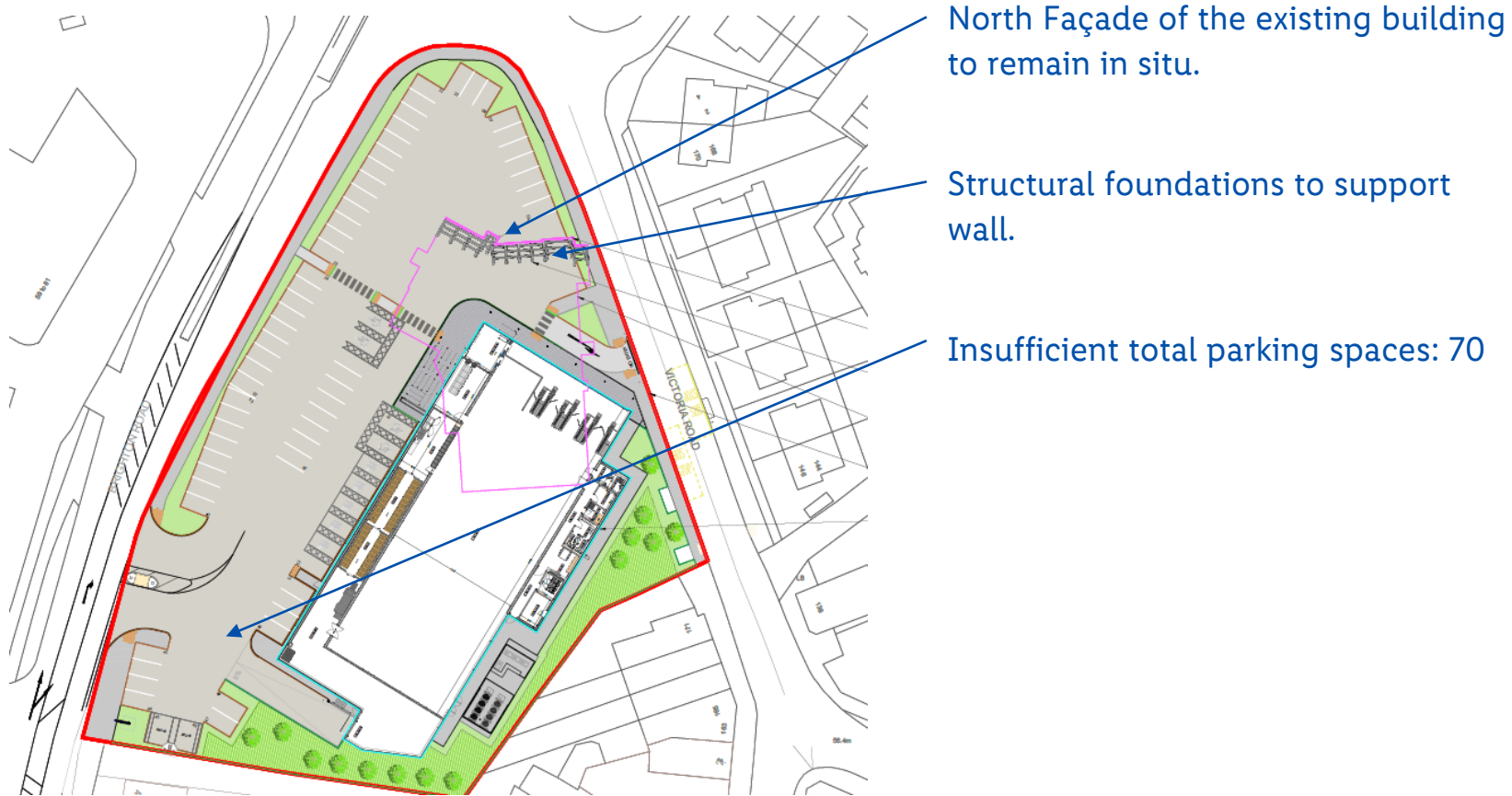
Insufficient total number of parking spaces: 58

In addition to the changes made in Option 1, this option shows the store rotated to try to preserve the access/egress to Brighton Road, and enable a HGV route to the store- albeit not in line with the Highway's approved layout.

The northern façade is retained, but to the detriment of car parking, landscaping, natural light to the store, and access/egress.

Again, this is not a viable option.

Option 3 – Retaining the façade only



The store has been kept in the originally proposed location with the northern façade of the existing building retained (shown coloured magenta on the plan).

Retaining the façade is not feasible as it will neutralise the proposed parking areas, obscure the main retail elevation, and stand completely out of nowhere with no function other than to exist.

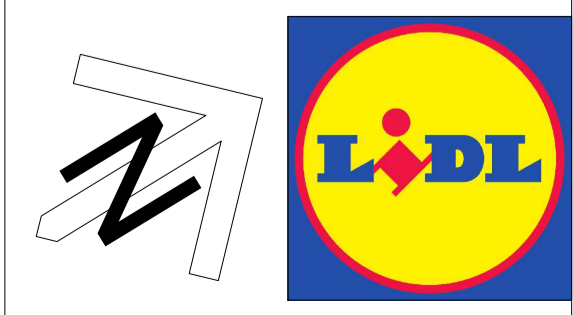
Notwithstanding the visual impact of this, a two-storey high wall would require significant foundations with vertical cantilevers and/or shoring to support it. Trying to disguise the structural work for it to be in keeping with the retail purpose and functionally is not possible.



0 5m 10m
SCALE 1:200 @ A1

RIBA Chartered Practice
 Architects Registration Board
 CIAT

Appendix C



Client
 LIDL GREAT BRITAIN LTD.
 Northfleet RDC, Crete Hall Road,
 Gravesend, DA11 9BU
 Project
 AIR BALLON PUB SITE,
 HORLEY
 Drawing
 EXISTING SITE PLAN
 Project No: 17104
 Drawing No: AD_101

Purpose of Issue
 PLANNING
 Scale @ A1
 1:200
 Drawn
 OT
 Checked
 LMC
 Revision
 -
 Date
 FEB 2022



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Notes

Revisions

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Architectural