

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 17/04605/FULL1

Ward:
Cray Valley East

Address : Land At Springvale Retail Park
Sevenoaks Way Orpington

OS Grid Ref: E: 547113 N: 168575

Applicant : c/o Agent

Objections : YES

Description of Development:

Erection of single storey building for class A1 and A3 flexible use (coffee shop) with "Drive Thru" facility and associated alterations to site layout and car parking.

Key designations:

Areas of Archeological Significance
Biggin Hill Safeguarding Birds
Business Area
Gas Pipelines
Smoke Control SCA 20
Flood Zone 2

Proposal

Planning permission is sought for a detached single storey building which would have a flexible A1 and A3 use as a coffee shop, with an associated 'drive-thru' facility. The building would have a maximum width of 21.3m and would have a staggered rear elevation with a length of between 9.8m and 10.9m. The proposed building would have a mono pitched roof which would extend over the frontage to create an overhang of between 1m and 4.5m and would slope towards the rear and north flank and would have a maximum height of 5.6m. The identified operator is Starbucks who would trade in their drive-thru format.

A signage tower is proposed to the south side of the proposed building adjoining the overhanging roof. The signage tower would have a height of 8m, a width of 2m and would be 0.4m deep.

The site area is approx. 0.2 hectares and the proposed building would have a Gross Internal Area of 186sqm.

The proposed opening hours would be 06.00 hours to 23.00 hours daily.

The proposal also involves a 'drive thru' lane which would wrap around the south and west elevations of the proposed building and incorporates an associated

window in the rear elevation for orders/collections and roof canopy to serve the drive thru customers.

Associated alterations to the site layout are proposed including the overall loss of 19 vehicle parking spaces which would be replaced by the proposed building and 'drive thru'. A paved area surrounding the proposed unit including an outdoor seating area and alteration to the car parking layout including 18 parking spaces, a waiting bay and 2 disabled parking spaces. 9 additional car parking spaces are proposed elsewhere in the car park surrounding the Springvale Retail Park, 7 to the rear of the Unit 4b 'Halfords' and 2 to the front, opposite Unit 1 'Wren Kitchens'. A refuse store to the south side elevation is also proposed which would have a width of 4.8m, a length of 4.4m and a height of 2.1m.

The application was supported by the following documents:

- Cover letter incorporating a planning statement
- Transport Assessment
- Phase 1 Flood Risk Assessment
- Phase 1 Desk Study Site Investigation Report
- Sequential Assessment submitted 20/12/2017
- Supporting Statement - response to Neighbour representations

Location and Key Constraints

The site comprises of part of the surface car park for the existing units at the Springvale Retail Park at the southern end of the site to the front of Units 3 - 4b (PC World, Dreams and Halfords). The Springvale Retail Park is accessed from the A224 Sevenoaks Way and is situated to the east of the road.

The local area is characterised by a mixture of commercial and residential properties. The Springvale Retail Park is composed of a row of two buildings comprising of 9 units and is bordered to the south by Meadow View which comprises terraced residential properties. The site is close to the junction with Station Road to the south. The site is within Flood Zone 2.

The existing retail park occupies an out of centre location for retail planning purposes as defined by the NPPF glossary and is situated within a Business Area. The primary shopping area of the nearest town centre, Orpington major town centre, is located 2km to the south of the application site

Comments from Local Residents and Groups

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

In objection

- Very little has changed in the plans since last one was refused (17/00547)
- No need for another Coffee Shop especially with drive through
- Already a lot of food/drink outlets in the area and in short walking distance

- Already a McDonalds with drive through almost opposite
- Nearby is Esso (Tesco), Ollie's Car Wash Marks and Spencer's Café, 1899 Pizza, Costa
- large Pret a Manger is about to open at the Nugent Retail Park
- Nugent Park facilities are just one bus stop away
- also only a short bus ride or short drive to Orpington High Street with variety of coffee shops including Starbucks and costa
- Meadow view is a small one way unadopted road with no street cleaning
- Building would be right outside the houses
- Proposed building would be much closer to houses than existing buildings
- Loss of privacy
- Lighting from signage will be closer
- Light pollution entering houses
- Additional noise and disturbance, irrespective of drive through
- And already a significant rat, litter and fly-tipping problem which has never been resolved
- Development would make rat and litter problems worse
- Drive through is just a few metres from houses in Meadow View
- Re-positioning of drive through 1m back from fence will make no difference to amount of pollution
- Cars will be stacked up with engines running
- traffic noise, nuisance and health issues from drive through
- traffic noise worse since gas repairs
- More pollution
- Less parking spaces that needed for customers for existing businesses
- Car park is already busy especially at weekends
- Customer will have to use spaces to side and back of Halfords and more traffic moving up and down outside houses
- Already insufficient room for two cars to pass outside Halfords and Dreams
- Queues from drive through will lead to frustrated users and more noise (car horns)
- At least shops shut by 8pm
- Could be a 24hr drive through leading to noise disturbance late at night
- Access to retail park is not great
- Often queues at junction and is already hazardous
- Greater risk of accidents from increased traffic
- Additional passing trade will be drawn in
- More congestion at entrance exit of retail park and knock on affect to traffic lights
- Overdevelopment
- Proposed closing at 23:00 but also make point that this development will not act as a destination in its own right
- Existing shops in retail park close at 20:00 so any opening time after this will only serve new journeys or new visitors to this retail location
- Something new and different to what Springvale Retail Park is currently

In support

- Welcome addition
- Would not cause any further problems
- Traffic problems in area is a separate issue not relating to shops but route itself

Comments from Consultees

Environmental Health: no objections subject to conditions. However, they would recommend that a Phase 2 intrusive survey be carried out which properly assesses the risk to Construction Workers in a refined Conceptual Model but would have no other objections to the scope of the Phase 1 Site Investigation Report. The Transport Assessment indicates that this part of the car park is currently quite well used and that there is a constant turnover of vehicles in that area. It is impossible to say whether the removal of these parking bays will be offset by a greater or lesser number of cars using the drive-thru lane, given the wider context of the car park and the proximity to Sevenoaks Road any change would be insignificant. No increase in pollution over existing car park. It is also recommended that a condition restricting operating hours be imposed as a 24hr operation would result in a loss of amenity to local residents.

Highways: No technical Highways objections subject to standard conditions.

Transport for London: Subject to the recommended conditions, the proposal as it stands would not result in an unacceptable impact to the Strategic Road Network (SRN).

Secure by Design: The Designing Out Crime Officer has recommended that a condition be imposed to ensure that the development achieves the principals of Secured by Design as the volume of crime in the area causes concern, the application does not include a design and access statement, or seem to give details as to what measures are to be incorporated into the development to deal with security, crime or to achieve Secure by Design standards, which is important, especially given the guidance within NPPF paragraphs 58 and 69.

Drainage: From a Drainage point of view, no objections subject to a standard condition.

Thames Water were consulted however no comments were received.

Policy Context

Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:-

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that any determination under the planning acts must be made in accordance with the development plan unless material considerations indicate otherwise.

According to paragraph 216 of the NPPF decision takers can also give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The Council is preparing a Local Plan. The submission of the Draft Local Plan was subject to an Examination In Public which commenced on 4th December 2017 and the Inspector's report is awaited. These documents are a material consideration. The weight attached to the draft policies increases as the Local Plan process advances.

The development plan for Bromley comprises the Bromley UDP (July 2006), the London Plan (March 2016) and the Emerging Local Plan (2016). The NPPF does not change the legal status of the development plan.

London Plan Policies

- 2.6 Outer London: vision and strategy
- 2.7 Outer London: economy
- 2.8 Outer London: Transport
- 2.13 Opportunity Area and Intensification Areas
- 2.15 Town Centres
- 2.17 Strategic Industrial locations
- 4.4 Managing industrial land and premises
- 4.7 Retail and Town Centre Developments
- 4.8 Supporting a Successful and Diverse Retail Sector and Related Facilities and Services
- 6.3 Assessing effects of development on transport capacity
- 6.13 Parking
- 5.3 Sustainable design and construction
- 5.12 Flood Risk Management
- 7.4 Local Character
- 7.6 Architecture
- 7.14 Improving Air Quality

Unitary Development Plan

- BE1 Design of New Development
- BE4 The Public Realm

S6 Retail and Leisure Development
S7 Retail and Leisure Development
S9 Food & Drink Premises
EMP4 Business Areas
T1 Transport Demand
T2 Assessment of Transport Effects
T3 Parking
T5 Access for People with Restricted Mobility
T6 Pedestrians
T18 Road Safety

Emerging Local Plan

Draft Policy 37 - General Design of Development
Draft Policy 26 - Health and Wellbeing
Draft Policy 30 - Parking
Draft Policy 31 - Relieving Congestion
Draft Policy 32 - Road Safety
Draft Policy 80 - Strategic Economic Growth
Draft Policy 83 - Non-Designated Employment Land
Draft Policy 91 - Proposals for Main Town Centre Uses
Draft Policy 98 - Restaurants, Pubs & Hot Food Takeaways
Draft Policy 115 – Reducing Flood Risk
Draft Policy 119 - Noise Pollution
Draft Policy 120 - Air Quality
Draft Policy 123 - Sustainable Design and Construction

Supplementary Planning Guidance

SPG No.1 - General Design Principles

Town Centres Supplementary Planning Guidance (2014)

National Planning Policy Framework (2012):

Chapter 1: Building a Stronger, Competitive Economy

Chapter 2: Ensuring the Vitality of Town Centres

Chapter 4: Promoting Sustainable Transport

Planning History

97/03137/FULMAJ - Demolition of existing buildings and erection of a single storey building comprising 4 class a1 non-food retail units with associated provision for access servicing car parking and landscaping - Granted

Details approved under ref. 98/02281/DET and subsequently revisions to this scheme was granted under ref. 98/02364/FULMAJ. A condition imposed on this permission restricted its use which is as follows:

'5 The premises hereby granted planning permission shall be used for non food retailing only and for no other purpose including any other purpose in Class A1 of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.'

The units have a long planning history including the sub division of the units into separate Class A1 units and mezzanine floors.

17/00547/FULL1 - Erection of single storey building for class A1 and A3 flexible use (coffee shop) with "Drive Thru" facility and associated alterations to site layout and car parking. - Refused

The application was refused for the following reason:

'The proposed Class A1 and A3 unit will serve to undermine the vitality and viability of Orpington town centre and nearby local centres and inadequate justification has been provided to exempt the development from the sequential approach to site selection, contrary to Policy S7 of the Unitary Development Plan, Policies 4.7 and 4.8 of the London Plan and the National Planning Policy Framework.'

In 2015/2016, a similar application however without an associated 'drive-thru' was allowed on appeal at the Nugent Shopping Park, Cray Avenue. The details of the application are as follows:

15/02678 - Erection of Class A1/A3 pod unit, works to car park, including additional car parking and associated landscaping works and provision of central plaza- Refused and subsequently allowed on appeal.

The Inspector noted the following in their decision which is of relevance to the proposal:

"It is small in scale and on the Appellant's evidence likely to be used by existing customers of the retails park, rather than attracting a significant number of new users to the detriment of neighbouring centres. They say that a unit of this size is likely to be occupied by a coffee/sandwich shop and that drive through restaurants, which might attract single purpose visits, tend to occupy larger premises of some 300m2."

"To my mind, the addition of some 186m2 GIA in an established retail park, representing some 1% of existing floorspace, is likely to have no more than a marginal and non-material effect on the vitality and viability of neighbouring centres."

"With regards to the other neighbourhood centres in the locality, while UDP Policy S6 refers to 'local centre, neighbourhood centres and parades', the emphasis in the Framework is on the protection of Town Centres rather than smaller neighbourhood centres." "(Local centres) would be unlikely to have anything approaching the same footfall as is experienced in the Retail Park and in

consequence are unlikely to be attractive to potential operators of the proposed pod unit."

Considerations

The main issues to be considered in respect of this application are:

- Resubmission
- Principle
- Vitality and viability of nearby town centres
- Business Area
- Design
- Highways
- Neighbouring amenity
- Drainage/flooding
- CIL

Resubmission

The proposal is a resubmission following a refusal under ref. 17/00547/FULL1 and the following amendments and additional information has been submitted:

- Addition of a signage tower (8m high and 2m wide)
- Alterations to the drive-thru layout
- Changes to refuse/plant area size from 2.5m wide x 6.5 deep to 4.8m wide x 4.4 deep
- Alterations to roof canopy to provide timber beam louvres in the overhang
- A sequential test has been submitted

Principle

The site is located within a designated Business Area and as such Policy EMP4 of the UDP is a key consideration in the determination of this application, it states:

Except where sites allocated for other uses are identified in the Schedule of Proposal Sites, in the Business Areas identified on the Proposals Map only the follow uses will be permitted:

- (i) Class B1, provided that the use does not impede effective operation of neighbouring businesses and large new offices meet provisions of Policy EMP1;
- (ii) Class B2; or
- (iii) Class B8; large scale warehousing development over 1000 sqm will be permitted only in the St Mary Cray Business Area.

Para 22 of the NPPF states that 'planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the

allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.'

The Council wishes to safeguard a supply of such land in the Borough to provide for the growth and development of business and industry. Consequently, proposals in the Business Areas for uses not within Use Class B1 to B8 will not normally be permitted. Business Areas provide appropriate locations for uses within the Business (B1) and General Industry (B2) Use Classes, which provide a sufficient, though limited, supply of good quality sites for modern business development. Therefore, proposals for new retail uses in business areas will not normally be permitted.

The area has not been designated as a Strategic Industrial Local (SIL) and therefore the relevant policy within the emerging Local Plan Policies would have limited weight. The site is situated on the forecourt of an existing retail park which is currently in use as a car park and therefore the proposal would not result in the loss of a business unit or suitable land available for additional business units in a designated business area.

Policy S7 states that proposals for new or extensions to existing retail development outside centres are expected to meet the following criteria:

- (i) There is a need for the proposal;
- (ii) All potential sites within town centres have been thoroughly assessed, followed by an assessment of edge of centre sites within easy walking distance of the primary shopping area; and
- (iii) the Applicant can demonstrate that they have been flexible about the format, scale, design, car park provision and the scope for disaggregation in the sequential search for sites.

The proposal would also be expected to:

- (iv) be easily accessible by cycling, walking and is/will be well served by public transport;
- (v) not harm the vitality or viability of existing centres, either by itself or in conjunction with other proposals; and
- (vi) the scale of the proposal will be appropriate to the size of the centre within which it is to be located.

Whilst it states within Policy S7 that the Applicant needs to state why there is a 'need' for the proposal, this is not required within the NPPF. The NPPF instructs that weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. It is therefore considered that there is no requirement for the Applicant to consider the need of the retail use and as such is not considered necessary within the determination of this application.

Paragraph 11.15 of Policy S7 states that 'The sequential approach, to site selection will be applied when considering the location of any new retail or leisure

proposals. The onus will be on the developer to demonstrate why edge or out-of-centre proposals cannot be located within an existing centre.'

In the London Plan, paragraph 4.45 of Policy 4.7, it is stated that: 'New, or extensions to existing, out of centre retailing and leisure development can compromise the strong 'town centres first' policy (see also Policy 2.15) which is essential to London's development as a sustainable, liveable city as well as exacerbating road traffic congestion and, for the large numbers of Londoners who do not have a car, undermining this Plan's social inclusion policies. Inappropriate out of centre development includes that which causes harm to the objectives of this Plan, which fails to fulfil the requirements of the sequential test, or which gives rise to significant adverse impacts (for example, on the vitality and viability of existing town centres, accessibility by a choice of means of transport or impacts on overall travel patterns).'

Para 24 of the NPPF states 'Local planning authorities should 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. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.'

Furthermore, under para 27 it is stated that '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.'

Regarding the sequential approach, the National Planning Practice Guidance (PPG) paragraph 010 confirms that it is the Applicant's responsibility to demonstrate compliance with the sequential test and that 'failure to undertake a sequential assessment could constitute a reason for refusing permission'.

PPG paragraph 010 states that in order to satisfy the sequential test applications must demonstrate that the following points have been considered:

- The suitability of more central sites to accommodate the proposal clearly setting out any associated reasoning;
- The contribution that more central sites are able to make individually to accommodate the proposal;
- Where the proposal is located in an edge or out-of-centre location, preference should be given to accessible sites that are well connected to the town centre; and
- The suitability of more central sites to accommodate the proposal with due regards to the requirement to demonstrate flexibility.

PPG paragraph 011 states the sequential test should recognise that certain main town centre uses may have particular market and locational requirements which

mean that they can only be accommodated in specific locations. However, the PPG emphasises that 'robust justification must be provided where this is the case'.

The proposed floorspace, being 186sqm falls well below the default threshold of 2,500sqm established in the NPPF and London Plan for impact assessments on out of centre retail proposals. It is therefore the case that an impact assessment is not applicable to this proposal.

No sequential test was submitted as part of the previously refused application (ref. 17/00547) instead the Applicants in their cover letter stated that the proposal is location specific and is intended to complement the primary retail function of the existing site and meet the requirements of the existing customer base who visit the Retail Park and therefore seeking to locate the proposed operation in a defined retail centre would not meet the specific customer and operator need that has been identified at the Retail Park.

The provision of a 'drive-thru' facility was considered to run contrary to their argument that the proposal would be specifically intended for the use of the customers of the existing retail park as the customers would already have arrived at their destination and would therefore not require the 'drive thru' facility. Furthermore, the 'drive-thru' would facilitate easy access for passing motorists which would indicate a level of reliance on passing trade from just beyond the retail park. This argument was not therefore supported by Officers and it was considered that the locational requirements for a retail/coffee shop use in an existing outside of a centre retail park would not exclude an out of centre retail/café proposal from following the sequential approach to site selection under the policy requirements in the more up to date policies. Therefore, it was considered to result in a diversification of the retail offer of the retail park which would threaten the retail primacy of Orpington Major Centre which would be detrimental to its vitality.

In the current application, although it is now accompanied by a sequential assessment, the Applicant continues to argue that the proposal is locationally specific in that it cannot be disaggregated from existing retail park. However, current guidance and case law on disaggregation in the sequential test is not relevant in this respect since it applies to the separation of elements of the proposed development. In this application, the only development proposed is the drive through coffee shop. The complementary nature of retail and leisure uses does not provide justification for the development being locationally specific to the retail park in policy guidance on the sequential approach. The point is also inconsistent with recent court judgements including the Mansfield judgment which clarifies the NPPF requirement for 'suitability' of sites in that it should 'be assessed by reference to the broad type of development and not a particular operator need which would render the sequential test inoperable as the demand could not be met by any other site.

Furthermore, the provision of the drive through differentiates the proposal from the permitted A1/A3 unit in 2016 at the Nugent Centre which the Applicant has referred to. Whilst the proposed development may well serve the existing retail park customers, as a result of the drive-thru component, it has the potential to become an attractor for passing motorists given its highly accessible location on the A224

Sevenoaks Way and proximity to the A20 and so would go beyond the 'complementary role' referred to by the Inspector in the 2016 appeal decision.

As such, the above locational requirements and complementary nature of the proposal are not considered to be a valid basis upon which to discount sequentially preferable sites and are not considered to be consistent with the criteria for suitability or locationally specific requirements. Therefore, it is considered that the justification that a sequential test is not needed in this case is not supported by the NPPF London Plan Policies 4.7, the UDP and Emerging Local Plan.

Notwithstanding the applicant's position, a Sequential Test to site selection has been submitted on the 20/12/2017 in line with paragraph 24 of the NPPF, at the request of the Council, including a supporting statement which assesses alternative sites.

The Savills' interpretation of the sequential approach to site selection can be summarised as follows:

1. The application site is out of centre and therefore the application should include a sequential assessment under the terms of adopted and emerging local policy and the NPPF
2. The proposed development is 'locationally specific' because is intended to complement the retail function of the existing retail park rather than functioning as a destination 'in its own right' and therefore it is not possible to disaggregate the proposed development from the retail park because the majority of the turnover will be derived from customers who visit the site for retail purposes
3. Development with a 'drive-thru' facility such as that proposed is 'typically not suitable or viable for a town centre location' because of the 'physical and financial constraints of development in town centres'
4. Starbucks, as the proposed tenant of the unit, already occupy a unit in the town centre and 'occupation of another facility within Orpington town centre would cannibalise the trade of the existing store, potentially having an untenable impact on the viability of both operations' which they argue is a 'key consideration in the suitability or viability of any new site.'

Following the court judgement of Tesco Stores Limited V City of Dundee, it is required that sequentially preferable sites must be capable of accommodating the Applicant's proposal as a whole which in this case comprises of a 'drive-thru' coffee shop, therefore the sequential test has been undertaken on this basis. There is no requirement to make the scheme smaller to fit into another site or disaggregate parts of the proposal in order to demonstrate reasonable flexibility of scale and format. It is the agent's argument within the supporting statement that the proposed development as a whole, including the drive-through could not be accommodated on any of the available sites within or on the edge of Orpington town centre in particular due to the 'drive-thru'. It is not accepted that the development is solely complementary to the retail park and therefore locationally specific, it is considered therefore that the drive through is a material part of the proposed development and it would not be reasonable to disaggregate the drive through from the proposal in order to accommodate it within or on the edge of a town centre site. "Drive-through restaurant" is also in the NPPF definition of main town centre uses, it is a

recognised format and therefore it is considered to be an integral part of the scheme.

An assessment of more sequentially preferable sites has been provided which includes an area of search in and on the edge of Orpington town centre as the Applicant states is the only town centre in the catchment area. The primary shopping area of the nearest designated town centre, Orpington major town centre, is located 2km to the south west of the application site. In the sequential assessment, this included units within a gross internal floor area in a range of between 150 - 230sqm. Outside of this range the Applicant has considered that the units would not be viable or would not meet the established needs of the operator and these units have not been assessed.

It is considered that the Applicants have provided parameters for identifying alternative sites that are consistent with the NPPF and PPG guidance as Orpington town centre is the only town centre designated in the vicinity of the application site. As for the second point, it is considered that the Applicant having identified sites within a range of 80% to 124% of the size of the proposal has demonstrated a reasonable degree of flexibility in relation to its size.

The sites which were identified are within the Walnuts, units 8, 20/22, 38, 38A and 267 High Street. These sites do not provide opportunity for 'drive thru' facility as the sites either front a footway or are in the interior of the shopping centre and are not therefore suitable for the type of development proposed. Other sites identified are the Walnuts Forecourt which is envisaged for extension to leisure/recreational facilities in development plan therefore departure from the plan and is not actively marketed for sale or to let and Station road Car Park which has already developed for Tesco superstore.

A further site has been identified at No. 252 High Street, Orpington which falls within the identified size range (153sqm) however the site is not considered suitable for the proposed development as it could not accommodate the proposed drive-through.

Another of the reasons cited by the Applicant to discount alternative sites is due to the proximity and resultant impact on trade to the existing Starbucks in Orpington Town Centre, this is contrary to the NPPF requirement for suitability in that this, as stated in the Mansfield High Court judgement 'excludes, generally, the identity and personal or corporate attitude of an individual retailer. The area and sites covered by the sequential test search should not vary from Applicant to Applicant according to their identity, but from application to application based on their content'. The proposed drive-through coffee shop could be occupied by another operator without the need to apply for planning permission should Starbucks later decide not to occupy the unit or vacate the site.

Nevertheless, based on the above, it is considered that there are no suitable available or viable sites in either the town centres or edge of centre locations for the reason that some of the sites within the Walnuts centre are already let (Nos. 20/22, 38 and 38A) and No. 267 High Street is occupied, notwithstanding this, it is agreed that the units would not be suitable for the proposed development since

they cannot accommodate the 'drive thru' aspect of the proposal. Other sites are also not currently available which are sites identified in the UDP for leisure/recreation use, the Walnuts Forecourt and Station Road car park, the former is not currently being marketed and not likely to be available within a reasonable period of time. It is also significantly larger than the proposed development at over 1000sqm. Station Road car park has already been developed and is occupied by a Tesco Extra hypermarket. Furthermore, it is considered that the Applicant has shown due flexibility with regards to the application of the sequential testing having incorporated alternative sites with a size range of between 150sqm - 230sqm.

The sequential test provided has not identified alternative sites in other neighbour centres such as St Mary Cray and St Pauls Cray and local parades. In the appeal decision for application ref. 15/02678, the Inspector stated that the emphasis in the NPPF is on the protection of Town Centres rather than smaller neighbourhood centres. It is also stated that units in these centres would likely have mainly local catchments of highly specialised shops and they would be unlikely to have significantly less footfall and as a consequence, are unlikely to be attractive to potential operators of the proposed unit.

Consequently, it is considered that the current application has overcome the previous grounds of refusal in respect of the lack of sequential test provided as a sequential approach to site selection has now been carried out. It is considered that this has demonstrated that there are no alternative sites available within or on the edge of Orpington town centre for the reasons previously stated in this report.

The second part of Policy S7 and the NPPF requires the Council to consider the accessibility of the site to non-vehicular methods of transport and public transport. The site is located within an area of PTAL Rating 2 and has good bus links within close proximity to the retail park, as well as a train station less than 0.5km away.

Policy S7 also requires the Council to consider whether the scheme would harm the vitality or viability of existing centres, either by itself or in conjunction with other proposals. Paragraph 26 of the NPPF sets out the circumstances under which a Retail Impact Assessment should be undertaken to accompany proposals for retail, leisure and office development outside of town centres, which are not in accordance with an up to date plan. Paragraph 26 states that where there is no locally set threshold the default threshold is 2500 sqm. As such, the Applicant is not required to submit a Retail Impact Assessment.

One of the points in the previous refusal grounds for application ref. 17/00547 related to the impact of the proposal on the vitality and viability of Orpington town centre. The Applicant has provided further justification and evidence to attempt to address this part of the refusal ground. It is stated that the development would represent just a 2% increase in floorspace of the retail park, that any impact will be on other similar nearby facilities such as the coffee shops in the Nugent Shopping Centre and the complementary role of the proposed unit to the existing retail park. It is considered that the impact assessment presented by the Applicant is proportionate to the scale of the development.

Paragraph 27 of the NPPF states that planning permission may only be refused where the development would have a significant adverse impact on planned public or private investments in town centre or the vitality and viability of town centre. The proposed A1/A3 and drive through unit would likely compete more readily with other similar facilities on retail parks or other units such as the McDonalds drive through and motorway services located on the strategic road network. Although it is likely that some impact would result on trade in Orpington town centre, however given the above, it is considered that sufficient evidence has been provided to demonstrate that the proposal would not have a significant adverse impact on local town centres.

It is therefore considered that the proposal is compliant with policy S7 of the UDP, the NPPF London Plan Policy 4.7 and the Emerging Local Plan.

Design

No concerns were raised in the previously refused application (ref. 17/00547) with regards to the design and siting of the development and the current proposal would have a similar appearance, size and siting as the previous proposal.

The existing retail park has a very linear and established front building line which is set back a significant distance from Sevenoaks Way by approximately 41.5m and 48m with a car park on the frontage. The proposed building would be constructed on the car park forecourt in front of the established building line. However, given the significant verges along Sevenoaks Road and additional soft landscaping and 'drive thru' lane along the west boundary by a distance of between 5m and 6m, the proposal would be well set back from the Highway to limit its visual impact on the street scene. The proposed building is also significantly lower in height and smaller scale than the existing units, and these would still appear more dominant than the proposed development. Accordingly, the proposed unit is not therefore considered to have a detrimental impact on the character of the existing retail park and local area in general which is varied in its appearance. Furthermore, the dwellings on Meadow View extend much closer to the Highway and the proposal would still be set back by some distance from the development along Meadow View and Station Road which flanks Sevenoaks Way. Therefore, it is not considered that the proposal would appear at odds with the surrounding pattern of development.

With regards to the design of the proposed unit, the building would have a high quality and modern architectural design and use of materials. It would incorporate features such as a canopy roof with a louvre opening in the overhang, curtain walling, lookalike glass panels and cladding with a standing seam construction to add visual interest and a sustainable form of development. The combination of materials, incorporating an anthracite grey cladding, powder coated metal fascia and western red cedar natural timber cladding would also contribute to creating a good quality design. The use of the standing seam grey cladding, 'drive thru' window and timber panel with a powder coated metal surround would provide a visual interest to the predominantly non-glazed west elevation which fronts the main road. The proposal would have a sloping roof with the highest part fronting the existing retail units. This would create a transition between the existing built development and open frontage of the site which would be sympathetic to the

surrounding development and character of the area. Therefore, and given the variety of property types including commercial, gas works and residential properties, it is considered that the proposal would have a high quality and sustainable design which would complement and be in keeping with the character of the local area.

In contrast to the previously refused application under ref. 17/00547, the proposal would involve a signage tower which would have a height of 8m, the maximum height of the development would therefore be 2.4m higher than the refused scheme. The proposed signage tower would have only a width of 2m and would be approximately level with the height of the existing retail units and would be located to the front of the unit nearer to these units therefore further into the site away from the open parts of the site to the front. Therefore, it would not appear conspicuous within the wider street scene or have a harmful impact on the character of the area.

Highways

The site is located off Sevenoaks Way which is the principal route into Orpington town centre and the proposed building would be located on the existing car park of Springvale Retail Park. The application is accompanied by a Transport Assessment which incorporates an audit of the existing accessibility of the site which demonstrates that the site is accessible by a number of sustainable transport modes, including on foot, by bicycle and by public transport. A parking beat survey was carried out by a highways consultant on behalf of the Applicant which demonstrates that the current maximum car parking occupancy on a typical Saturday is 48% and 41% on a weekday, with the proposed development it is estimated that, taking into account the net reduction in car parking, this would be augmented to 69% on a Saturday and 56% on a weekday which would still be within the industry standard norm for car parking provision at retail parks which is 85%.

Therefore, it is not considered that the proposal would have any impact on the operation of the car park. Delivery vehicles would access the site from the existing access on Leicester Way. Vehicle tracks have been prepared in the Transport Statement and this demonstrates that lorries 18t box lorries and refused vehicles could safely manoeuvre within the revised car parking layout.

No objections were raised from a technical Highways point of view and it is considered that the impact of the proposal on the operation of the car park and local highway network would be acceptable.

Neighbouring amenity

The application site is flanked by a terrace of residential properties with a private access road along its southern boundary and the proposed building would be situated on the existing car park adjacent to this boundary. The existing retail units are situated far back from Sevenoaks Way with a car park to the front which provides a largely unobstructed view across the car park for the dwellings on Meadow View which are situated nearer to the junction with Sevenoaks Way. The proposed structure would be located at a distance of over 29m from the frontages

of the terraced dwellings along Meadow View which would mitigate its visual impact on these properties to some extent. The development is also located so that its longest elevation is facing towards the existing retail units with its flank facing onto Meadow View, with a proposed width of 9.8m which is not excessive. The roofline would be lower than the existing retail units with a sloping roof with a height of between 4m and 5.6m which is not considered to appear visually dominant given the substantial separation to the flank boundary.

The proposal would now involve a signage tower which was not previously proposed in the refused scheme (ref. 17/00547) which would have a height of 8m and width of 2m, which would be an increase of 2.4m from the maximum height of the previously refused application, its impact on neighbouring amenity did not form part of the previous refusal grounds. Given its fairly minimal width (2m) and the increase in bulk above the roofline from the previous scheme would not be substantial therefore it is not considered that the signage tower would have a harmful visual impact to the neighbouring residential properties along Meadow View.

The proposed 'drive thru' would wrap around the proposed building however following the previously refused application, the drive thru would now be set back from the south boundary adjoining Meadow Way, providing a further level of separation from the adjacent dwellings of 5m. The Transport Assessment indicates that this part of the car park is currently quite well used and that there is a constant turnover of vehicles in that area. The Environmental Health Officer was consulted on the application and with regards to the impact of noise and pollution from the proposed 'drive thru' and proximity to the neighbouring properties, they did not consider that the proposal would have any measurable increase in noise or pollution over the existing car park. Furthermore, the order and collection point is operated in the same location to the front of the queue, and a substantial distance away from the dwellings on Meadow View which is preferable to a separate order point which would potentially generate more noise and disturbance nearer to the boundary.

The hours of operation for the wider retail park are restricted by Condition to 09:00 – 20:00 hours Monday to Saturday and 10:00 – 17:00 on Sundays. The applicant has stated that the proposed opening hours for the coffee shop would be from 06:00 to 23:00 on any day, which would result in activity at the site much earlier and later than is currently permitted. Given the relationship of the proposed development with neighbouring properties, it is considered that the applicant's proposed hours would be excessive and lead to an unacceptable loss of amenity to local residents when compared to the existing situation, due to the increased duration of activity at the retail park. Accordingly, it is recommended that the hours are restricted to 08:00 – 21:00 hours on Monday to Saturday and 09:00 – 18:00 on Sundays, which would allow the coffee shop a slightly extended operation period to serve customers before and after the wider retail park opening and closing to cater for passing trade, whilst safeguarding the amenities of neighbouring residents.

Drainage/flooding

The site is located within Flood Zone 2, and in flood risk terms the proposed development is classed as 'less vulnerable'. The applicant has submitted a Flood Risk Assessment which concludes that the proposed development is considered to be suitable based on the information currently available, and assuming appropriate mitigation (including adequate warning procedures) can be maintained for the temporary lifetime of the development. No technical objections have been raised by the Council's Drainage Officer. The proposed development is considered to be acceptable in Flood Risk terms.

CIL

The Mayor of London's CIL is a material consideration. CIL is payable on this application and the applicant has completed the relevant form.

Conclusion

In summary, a sequential test has now been provided and it is considered that the current proposal provides sufficient evidence to justify the proposed development under the terms of the sequential approach as set out in the NPPF, London Plan Policy 4.7 and UDP Policy S7. A sequential analysis has been provided to support the proposal which is a requirement and it has demonstrated that there are no available sites existing in Orpington Centre or if not possible, on the edge of the centre which meet the tests of being both suitable and available for the proposed development. The current application also provides sufficient evidence to justify the proposed development under the terms of the retail impact test as set out under the NPPF and London Plan Policy 4.7 and it is not considered that the proposal would have a significantly adverse impact on the Orpington town centre or nearby local centres. On this basis, it is considered that the proposal has overcome the previous grounds of refusal.

Furthermore, the proposal is not considered to have a significantly detrimental impact on the character of the area or the amenities of local residents or a prejudicial impact on highways safety or the free flow of traffic.

RECOMMENDATION: PERMISSION
as amended by documents received on 08.11.2018

Subject to the following conditions:

- 1 The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision notice.**

Reason: To comply with Section 91, Town and Country Planning Act 1990.

- 2 Details of a scheme of landscaping, which shall include all boundary treatment, the materials of paved areas and other hard surfaces, shall be submitted to and approved in writing by the Local Planning Authority**

before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted. Furthermore all boundary treatments shall be maintained in perpetuity.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan to secure a visually satisfactory setting for the development and to protect neighbouring amenity.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan to secure a visually satisfactory setting for the development and to protect neighbouring amenity.

3 The materials to be used for the external surfaces of the building shall be as set out in the planning application forms and / or drawings unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the appearance of the building and the visual amenities of the area.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the appearance of the building and the visual amenities of the area.

4 No trading shall take place before 08:00 hours and after 21:00 hours on Monday to Saturday, or before 09:00 hours and 18:00 hours on Sundays, and no trading shall take place on Christmas Day.

Reason: In the interest of the amenities of neighbouring residents and to comply with Policy BE1 of the Unitary Development Plan.

5 Details of a scheme of lighting (including the appearance, siting and technical details of the orientation and screening of the lights and the means of construction and laying out of the cabling) shall be submitted to and approved in writing by the Local Planning Authority before any work is commenced, and the approved scheme shall be implemented before the development hereby permitted is first occupied. Thereafter the approved scheme shall be permanently maintained in an efficient working manner and no further lighting shall be installed on the site without the prior approval in writing by the Local Planning Authority.

Reason: In order to comply with Policy ER10 of the Unitary Development Plan and in the interest of amenity and public safety.

6 The premises shall not be serviced and deliveries to and from the premises shall not be undertaken on any Sunday or Christmas Day.

Reason: In the interest of the amenities of neighbouring residents and to comply with Policy BE1 of the Unitary Development Plan.

7 The development hereby permitted shall incorporate measures to minimise the risk of crime. No development shall take place until details of such measures, according to the principles and physical security requirements of Secured by Design, have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason: In the interest of security and crime prevention and to accord with Policies H7 and BE1 of the Unitary Development Plan.

8 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

9 Details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority before work commences and the development shall be completed strictly in accordance with the approved levels.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in the interest of the visual and residential amenities of the area.

10 No part of the development hereby permitted shall be commenced prior to a contaminated land assessment and associated remedial strategy, together with a timetable of works, being submitted to and approved in writing by the Local Planning Authority.

a) The site investigation, including relevant soil, soil gas, surface water and groundwater sampling shall be approved in writing by the Local Planning Authority.

b) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors, a proposed remediation strategy and a quality assurance scheme regarding implementation of remedial works, and no remediation works shall commence on site prior to approval of these matters in writing by the Authority. The works shall be of such a nature so as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment.

c) The approved remediation works shall be carried out in full on site in accordance with the approved quality assurance scheme to demonstrate compliance with the proposed methodology and best practise guidance. If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme submitted to the Authority for approval in writing by it or on its behalf.

d) Upon completion of the works, a closure report shall be submitted to and approved in writing by the Authority. The closure report

shall include details of the remediation works carried out, (including of waste materials removed from the site), the quality assurance certificates and details of post-remediation sampling.

e) The contaminated land assessment, site investigation (including report), remediation works and closure report shall all be carried out by contractor(s) approved in writing by the Local Planning Authority.

Reason: In order to comply with Policy ER7 of the Unitary Development Plan and to prevent harm to human health and pollution of the environment.

11 While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud of the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.

Reason: In the interest of pedestrian and vehicular safety and in order to comply with Policy T18 of the Unitary Development Plan.

12 Before commencement of the use of the land or building hereby permitted parking spaces and/or turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use.

Reason: In order to comply with Policy T3 of the Unitary Development Plan and to avoid development without adequate parking or garage provision, which is likely to lead to parking inconvenient to other road users and would be detrimental to amenities and prejudicial to road safety.

13 The arrangements for storage of refuse (which shall include provision for the storage and collection of recyclable materials) and the means of enclosure shown on the approved drawings shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

Reason: In order to comply with Policy BE1 of the Unitary Development Plan and in order to provide adequate refuse storage facilities in a location which is acceptable from the residential and visual amenity aspects.

14 A minimum of 2 long and 5 short stay cycle spaces should be provided in line with the standards of the London Plan. All cycle parking should be located in a secure, accessible and well lit area.

Reason: In order to comply with Policy T7 of the Unitary Development Plan and Policy 6.9 of the London Plan and in order to provide adequate bicycle parking facilities at the site in the interest of reducing reliance on private car transport.

15 Prior to the commencement of the development hereby permitted a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation, but

shall not be limited to these. The Construction Management Plan shall be implemented in accordance with the agreed timescale and details.

Reason: In order to comply with Policy T5, T6, T7, T15, T16 & T18 of the Unitary Development Plan and in the interest of the amenities of the adjacent properties.

16 Surface water from private land shall not discharge on to the highway. Details of the drainage system for surface water drainage to prevent the discharge of surface water from private land on to the highway shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of works. Before any part of the development hereby permitted is first occupied, the drainage system shall be completed in accordance with the approved details and shall be retained permanently thereafter.

Reason: To ensure satisfactory implementation of the surface water drainage proposals and to accord with to London Plan Policy 5.13 Sustainable Drainage

17 Details of a surface water drainage system (including storage facilities where necessary) shall be submitted to and approved in writing by the Local Planning Authority before any part of the development hereby permitted is commenced and the approved system shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.

Reason: To ensure satisfactory means of surface water drainage and to accord with Policy 5.13 of the London Plan.