

**PLANNING COMMITTEE**

**2<sup>nd</sup> November 2021**

**APPLICATION FOR CONSIDERATION**

**REPORT OF ASSISTANT DIRECTOR - GROWTH & REGENERATION**



**Application Number:** 0069/2020

**Development:** Demolition and site clearance of Co-Operative superstore (former Use Class A1) and car park, to facilitate a mixed-use development comprising of retail foodstore and non-food retail (5,240m<sup>2</sup>), two central retail units (222m<sup>2</sup>) and gym (1,394m<sup>2</sup>) (Use Class E) and drive thru restaurant/take-away (Sui generis) (413m<sup>2</sup>), B2 and B8 including ancillary trade counters (3,659m<sup>2</sup>), and associated car parking, pedestrian and vehicular accesses and landscaping  
Demolition and site clearance of Co-Operative superstore (former Use Class A1) and car park, to facilitate a mixed-use development comprising of retail foodstore and non-food retail (5,240m<sup>2</sup>), two central retail units (222m<sup>2</sup>) (Use Class E) and drive thru restaurant/takeaway (Sui generis) (413m<sup>2</sup>), builders merchant (sui generis) for the display, sale and storage of building timber and plumbing supplies, plant and tool hire, including outside display and storage area along with storage racking, B1/E(g)(iii) and B8 including ancillary trade counters and offices (1,912m<sup>2</sup>), and associated car parking, pedestrian and vehicular accesses, landscaping and associated works.

**Location:** Central England Co-Operative Supermarket, Brent, Wilnecote, Tamworth, B77 5DL

This application was presented to Planning Committee on 1<sup>st</sup> December 2021 and approved subject to a Section 106 Agreement for a Framework Travel Plan, which is necessary to secure the uptake of more sustainable modes of transport, along with a Framework Travel Plan monitoring fee of £12,320 regarding highway works.

The recommendation for approval remains as before.  
Updates are highlighted in bold and italics.

*Amendments have since been made as the developers have secured a new tenant. The proposed amendments to the scheme are primarily related to layout changes at the southern part of the site and a minor change to the description of development associated with the introduction of a new tenant.*

*Since the resolution to grant planning permission, Travis Perkins (builders' merchant) agreed terms with the developer to occupy a significant part of the southern part of the site, and Starbucks agreed to lease one of the drive through units. This resulted in alterations to the site layout and a minor change to the description of development.*

*The proposed amendments do not deviate substantially from the previous scheme and can be considered under the current application. The proposed amendments were submitted in July 2021. No significant issues or objections were raised through the re-consultation process as detailed below.*

#### **Updates since December 2020 Committee**

*Following the closure of the Co-op store on Ninian Way in 2018. Since July 2021, Newlife (a charity for disabled children supported by the Co-Op) have been retailing clothing from part of the former store with storage in the remainder. The site has a small area of parking and is open 5 days a week operating under Use Class E (as per the extant planning permission). This use is expected to continue until at least the end of the year when construction is due to commence, subject to approval. The remainder of the site is fenced and closed off to public access.*

*There have been no material changes in planning policy, planning policy guidance nor in NPPF since the application was considered by planning committee that would have a material bearing on the determination of this application. Similarly there are no new development proposals or planning applications that have a material bearing on the Council's consideration of this proposal.*

*The proposals have been reassessed by highway officers and other consultees and have been found to be acceptable.*

**The updated scheme has resulted in:**

- **Omission of the gym (Unit 8);**
- **Replacement of the multi-let trade terrace (units 1-7) with a single trade building for Travis Perkins builders merchant (with an associated storage building for them also included);**
- **Changes to the parking layout around builders merchants only;**
- **A change to proposed opening hours for Travis Perkins – from 0700 to 0630 on Mondays to Friday – to reflect their operational requirements (this is currently captured in condition 4);**
- **Additional landscaping along the southern boundary (fronting Forties); and**
- **Minor elevational changes to one of the Drive-thru Units, reflecting the requirements of Starbucks.**

**The updated proposed site layout plan submitted for approval (ref: 1509-0330-P-04) illustrates that the amendments only relate to the southern half of the site. The two proposed builders merchant buildings are approximately 1,912 sqm, within their own separate enclosure of the Site, of approximately 1.7acres. The largest building also includes a mezzanine floor (584 sq m GIA). A total of 13 parking spaces have been proposed specifically for TP, as per their normal operational parking requirements. The remainder of the enclosed area is proposed for vehicle access and manoeuvring, as well as storage space (186 sqm). The total floor area of these units is 3,141 sqm below the combined floor space of the former trade counters and gym.**

**The rest of the proposals remain unchanged, save for minor elevational changes to the Starbucks drive thru unit.**

**The following table sets out the previous and amended (current) floorspaces. Notably there is an overall reduction in floorspace proposed as set out above, following the omission of the trade counters and the gym. The proposed retail floorspace has not been altered, which in itself remains only 620 sqm above the size of the existing Co-op store.**

**Table 1: Comparison of Floorspace - Previous Proposal and Amended Proposal**

<b>Use Class</b>	<b>Previous Floorspace (sqm)</b>	<b>Amended Floorspace (sqm)</b>
<b>E (retail)</b>	<b>5,462</b>	<b>5,462</b>
<b>E (Gym)</b>	<b>1,394</b>	<b>0</b>
<b>Sui generis drive thru</b>	<b>413</b>	<b>413</b>
<b>Sui generis and mix of uses (Trade / or Builders merchant)</b>	<b>3,659</b>	<b>1,912</b>
<b>Totals</b>	<b>10,982</b>	<b>7,787</b>

## **1. Site and Surroundings**

1.1 The application site comprises an area of land situated adjacent to employment allocation (E2) Tame Valley Industrial Estate and is approximately 3.3km to the south-east of Tamworth town centre. The site has an area of approximately 3.3ha (8.15 acres) and is roughly rectangular in shape. Land levels vary considerably across the site, sloping from east to west resulting in the site occupying a lower position than the adjacent highway (Ninian Way). The site is host to the former Co-op superstore, and was historically host to ancillary development including a petrol filling station and car wash (now demolished) and a large surface car park. Along the site boundary, and within the site are a scattering of mature trees. Aside from this the boundaries are relatively open. Access to the site is taken from Brent at x2 access points. The site is adjacent to Brent to the north, Ninian Way to the east and Forties to the south. Owing to its developed status, the site is considered to be defined as previously developed (brownfield) land.

1.2 The employment allocation, which is host to various forms of development bounds the site to the north and west, to the south are a range of large, primarily retail units including the Range and Topps Tiles and further to the east is residential development. The site is situated approximately 650m from Wilnecote Railway Station to the north west. By virtue of the range of uses and forms of development within the vicinity of the site, the areas character is mixed use. The nearest bus stop is situated roughly 130m to the north east and provides services to Hockley, Wilnecote, Two Gates and Tamworth town centre.

## **2. Proposal**

2.1 The application proposes the demolition and site clearance of the former Co-Operative superstore (previous Use Class A1) and associated petrol filling station and car park to facilitate a mixed-use development comprising of a retail foodstore and non-food retail (5,240m<sup>2</sup>), two central retail units (222m<sup>2</sup>), drive thru restaurant/take-away (413m<sup>2</sup>), gym (1,394m<sup>2</sup>) (Use Class E), B2 and B8 uses, including ancillary trade counters (3,659m<sup>2</sup>) and associated car parking, pedestrian and vehicular accesses and landscaping.

***However, the gym and ancillary trade counters are to be replaced with a builders merchant (sui generis) for the display, sale and storage of building timber and plumbing supplies, plant and tool hire, including outside display and storage area along with storage racking, B1/E(g)(iii) and B8 including ancillary retail and trade counters and offices (1,912m<sup>2</sup>).***

The application follows a previous application for the redevelopment of the site to provide a Class A1 supermarket, a terrace of Class A1 retail units, 3 No. Class A3 units and a Class D1 creche. However, this application was withdrawn in March 2018 following concerns raised by Officers on grounds of potential conflicts with Policy EC1 of the adopted Local Plan in respect of the associated retail impact and sequential test.

2.2 Throughout the course of this application, various amendments have been secured to the scheme resulting in the submission of amended plans and triggering a requirement to modify the description of development. The primary amendment secured a reduction in the overall amount of retail floorspace. In addition, the description has been amended to remove reference to the provision of a Post Office, as there are no specific details of such provided within the submission, and to reflect an update in legislation.

2.3 During the lifecycle of the application, the Use Classes Order (which assigns development to specific classes of use) was updated by Government. As set out within the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (introduced on 20th July 2020, and effective from 1st September 2020), various Classes of the Order were amalgamated into Use Class E. Class E (commercial, business and service) includes retail, restaurant, office, financial/professional services, indoor sports, medical and nursery uses along with 'any other services which it is appropriate to provide in a commercial, business or service locality'.

2.4 The description of development is now considered to more accurately reflect the development under consideration, taking into account the legislative changes, and on this basis a targeted re-consultation has been undertaken.

## **3. Relevant Policies**

### **3.1 Adopted Tamworth Borough Council Local Plan 2006-2031:**

- SS1 - The Spatial Strategy for Tamworth
- SS2 – Presumption in Favour of Sustainable Development
- EC1 - Hierarchy of Centres for Town Centre Uses
- EC2 - Supporting Investment in Tamworth Town Centre
- EC6 – Sustainable Economic Growth
- EN4 – Protecting and Enhancing Biodiversity
- EN5 – Design and New Development
- SU1 - Sustainable Transport Network
- SU2 – Delivering Sustainable Transport
- SU4 - Flood Risk and Water Management

SU5 – Pollution, Ground Conditions and Minerals and Soils  
 IM1 – Infrastructure and Developer Contributions  
 Appendix C – Car Parking Standard

National Policy and Guidance

The National Planning Policy Framework (NPPF) (as amended) 2021  
 Planning Practice Guidance (PPG)

Other Guidance/Legislation

The Conservation of Species & Habitats Regulations 2017

**4. Relevant Site History**

UK	T03146	PROPOSED RETAIL STORE INCORPORATING CAR PARKING, AND DISPLAY AREA AND GARDEN CENTRE SITES.	EXHIBITION
F	0065/2018	Demolition of existing supermarket, petrol filling station, and associated ancillary buildings, and erection of a new supermarket (Use Class A1), comparison goods retail units (Use Class A1), a Post Office (Use Class A1), a first floor flexible space for a community use (Use Class D1) or sports/leisure use (Use Class D2), cafe/restaurant units (Use Class A1/A3/A5), and a creche (Use Class D1), along with associated accesses, car and cycle parking, lighting, drainage, hard and soft landscaping, and associated infrastructure.	
DEM	0073/2019	Prior Notification: Demolition of petrol station kiosk, canopy and car wash	

**5. Consultation Responses**

- 5.1 Cadent Gas: No objection.  
 TBC Policy and Delivery: No objection.  
 TBC Economic Development: No objection.  
 Coal Authority: No objection subject to conditions.  
 Environment Agency: No objection subject to conditions.  
 Local Lead Flood Authority: No objection subject to conditions.  
 Severn Trent Water: No objection subject to conditions.  
 Staffordshire Ecology: No objection subject to conditions  
 Staffordshire County Council Highways Authority: No objection subject to conditions.  
 TBC Environmental Health: No objection subject to conditions.  
 TBC Tree Officer: No objection subject to conditions.  
 Staffordshire Fire and Rescue: No response.  
 Staffordshire Police: No response.  
 Staffordshire Wildlife Trust: No response.

5.2 Whilst every effort has been made to accurately summarise the responses received, full copies of the representations received are available to view at <http://planning.tamworth.gov.uk/northgate/planningexplorer/generalsearch.aspx>

5.3 The consultation responses comments are précised if conditions are proposed these are included within the conditions at the end of the report unless stated otherwise.

***5.4 Updated consultations to revised proposals – No objections from consultees***

**6. Additional Representations**

6.1 As part of the consultation process, adjacent residents were notified and a press notice and site notices were erected. Whilst every effort has been made to accurately summarise the

responses received, full copies of the representations received are available to view at [www.tamworth.gov.uk](http://www.tamworth.gov.uk).

6.2. 56 responses were received including letters objection, support and general comment. The issues raised are summarised in the table below and where necessary are addressed within the main body of the report.

Objections/Concerns	Supporting
<ul style="list-style-type: none"> <li>• We do not need another supermarket</li> <li>• Let's make best use of this opportunity rather than going for same old same old.</li> <li>• Highways concerns relating to increased congestion on the roads and junctions surrounding the site</li> <li>• Impact on Town Centre</li> <li>• Is the development sustainable?</li> <li>• Increased litter</li> <li>• Anti-social behaviour concerns</li> <li>• Crime</li> <li>• Obesity</li> <li>• Car Parking – will there be enough?</li> <li>• Better quality of shops/restaurants instead of fast food and repetition of other shopping centres</li> <li>• More on street parking causing problems at junctions</li> <li>• Concern over impact on local independent businesses</li> <li>• Increase in traffic on congested island at peak times, difficult to access A5</li> <li>• To many takeaways – noise and smells</li> <li>• Would be great if it could include an NHS walk in centre</li> <li>• Catastrophic efforts on Town Centre, public transport cut backs with fewer people going into Town</li> <li>• Hope slope not too steep for wheelchair users</li> <li>• Boring development/White elephant</li> <li>• More of the same shops, why not different brands</li> <li>• Unfair to let B&amp;M next to The Range</li> <li>• What will the B use trade centres be?</li> </ul>	<ul style="list-style-type: none"> <li>• Greatly enhance the area and provide much needed services to people living nearby.</li> <li>• Fantastic idea gives us back a post office and gym</li> <li>• Great addition to ever growing town taking some strain from Ventura</li> <li>• a benefit to local businesses and residents of Wilnecote</li> <li>• Great for all nearby residents</li> <li>• Welcome to see a pub</li> <li>• Great to see site developed instead of current eyesore</li> <li>• Good choice of shops – might need cycle storage</li> <li>• Job creation</li> <li>• Great for local community and for disabled access in local area avoid the need to go into town for Post Office.</li> <li>• Great for Wilnecote</li> <li>• Sooner the better</li> <li>• Great to see post office back, could be collection point instead of Blythe Street</li> <li>• Fantastic boost and resource for local area</li> <li>• Great for people who live further out in Dosthill/Kingsbury.</li> <li>• Very excited for additional retail parks</li> <li>• More pubs less coffee shops</li> <li>• Good to increase competition</li> <li>• Pleased to see post office included</li> <li>• Great news, could access from A5 (Watling Street) being included with traffic lights?</li> </ul>

**6.3 Note – one additional representation in response to revised proposals, that site has been vacant for years and should be developed as soon as possible.**

## **7. Equality and Human Rights Implications**

7.1 Due regard, where relevant, has been taken to the Tamworth Borough Council's equality duty as contained within the Equalities Act 2010. The Council has had due regard to the Public Sector Equality Duty (PSED). Under Section 149 of the Equality Act 2010, a public authority must in the exercise of its functions, have due regard to the interests and needs of those sharing the protected characteristics under the Act, such as age, gender, disability and race. Some issues have been raised within the letters of representation in regards to disability and concerns that the accesses may be too steep for some users. Access gradients and ensuring suitable access is provided for all users is subject to Building Regulations control and thus will be subject to, and secured by separate legislation. It is not therefore considered that this proposal would adversely impact on such protected characteristics.

7.2 There may be implications under Article 8 and Article 1 of the First Protocol of the Human Rights Act, regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these issues have been taken into account in the determination of this application.

## **8. Environmental Impact Assessment**

8.1 As is required under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (as amended) Regulations 2017, a Screening Opinion has been undertaken and this concluded that the development proposal does not require an Environmental Impact Assessment.

## **9. Planning Considerations**

9.1 Taking into account the application made, the documents submitted (and supplemented and/or amended where relevant) and the site and its environs; the main issues central to the determination of this application are:

- Principle of development including impacts on the Town Centre and Economy
- Design, Character and Appearance
- Residential Amenity
- Highway Issues
- Contamination and Pollution
- Drainage and Flood Risk
- Historic Coal Mining Legacy
- Landscaping and Ecology
- Developer Contributions
- Other Material Planning Considerations

## **9.2 Principle**

9.2.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is a material planning consideration. Both the Local Plan (LP) and the NPPF contain a presumption in favour of sustainable development. Policy SS2 (presumption in favour of sustainable development) of the LP makes reference to the presumption contained within para 11 of the NPPF (2021), which states:-

*Plans and decisions should apply a presumption in favour of sustainable development.*

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

The adopted Tamworth Local Plan 2006-2031 (LP) is the starting point in assessing the acceptability of this planning application. The proposed development is comprised of a range of town centre uses (Use Class E) along with restaurants/takeaways and industrial development (Use Classes B2 and B8). On this basis, the most relevant policies in terms of determining the in principle acceptability of the proposal would be Policies SS1, EC1, EC2 and EC6.

9.2.2 A summary of the existing and proposed uses along with their Use Class and associated floor spaces are provided within the table below.

Unit	Use	Use Class (as originally proposed)	Use Class (revised proposal)	Updated Use Class (New Order September 2020)	Total Floor space proposed (m2) (GIA)
Unit A	Retail Foodstore (Aldi)	A1	A1	Class E	2,175
Unit B	Comparison Retail (B&M)	A1	A1	Class E	2,369
Garden Centre	Comparison Retail (B&M Garden Centre)	A1	A1	Class E	696
Unit 1	General industrial/distribution with ancillary trade counter	A1	B2/B8 (removing A1)	B2/B8	325
Unit 2	General industrial/distribution with ancillary trade counter	A1	B2/B8 (removing A1)	B2/B8	659
Drive Through	Restaurant/Take-away	A3/A5	A3/A5	Sui Generis	167
Drive Through	Restaurant/Take-away	A3/A5	A3/A5	Sui Generis	246
Unit 3	General industrial/distribution with ancillary trade counter	B1/B2/B8 (with A1)	B2/B8 (removing A1)	B2/B8	464
Unit 4	General industrial/distribution with ancillary trade counter	B1/B2/B8 (with A1)	B2/B8 (removing A1)	B2/B8	532



Unit 5	General industrial/distribution with ancillary trade counter	B1/B2/B8 (with A1)	B2/B8 (removing A1)	B2/B8	534
Unit 6	General industrial/distribution with ancillary trade counter	B1/B2/B8 (with A1)	B2/B8 (removing A1)	B2/B8	532
Unit 7	General industrial/distribution with ancillary trade counter	B1/B2/B8 (with A1)	B2/B8 (removing A1)	B2/B8	613
Unit 8	Gym	D2	D2	Class E	1,394
Unit 9	Retail	A1	A1	Class E	111
Unit 10	Retail	A1	A1	Class E	111
<b>Total floor space</b>					<b>10,928</b>
<b>Total retail (A1) floor space proposed</b>					<b>5,462</b>
<b>Existing retail floor space</b>					<b>4,842</b>
<b>Net increase of overall A1 floor space</b>					<b>620</b>

9.2.3 The application proposes demolition of the Co-op supermarket building, which has a floor area of approximately 4,842m<sup>2</sup>. This would be replaced by the construction of a total of 10,928m<sup>2</sup> (approx.) of new floor space across a number of Use Classes. The proposed development would therefore equate to a net increase of 6,086m<sup>2</sup> of floor space.

9.2.4 On the basis of the submitted details, 8,253m<sup>2</sup> of the proposed floor space would be defined as main town centre uses<sup>1</sup>, amounting to an increase of at least 3,411m<sup>2</sup> above the existing town centre uses at the site, and the B1, B2 and B8 uses would constitute employment related uses. On account of this, specific appraisal needs to be undertaken as to the suitability of the volume of main town centre uses in an out of town location, along with the provision of employment related development outside of an allocated employment site or strategic employment area.

#### Impact upon Town Centre

9.2.5 Local Plan policy SS1 (The Spatial Strategy for Tamworth) states that Tamworth town centre will be the primary focus for new retail, leisure and tourism development over the Plan period. Policy EC2 (Supporting investment in Tamworth Town Centre) also states that the town centre will be the preferred location for town centre uses, with a particular focus on the Gungate redevelopment scheme until 2021. Policy EC2 continues, that if substantial progress has not been made towards securing the Gungate scheme by 2020/21, the Council will consider the potential for retail developments on other sites, but these would be required to be in accordance with the 'town centre first' hierarchy set out in policy EC1 (Hierarchy of Centres for Town Centre Uses).

9.2.6 The application site is shown on the Policies Map accompanying the Local Plan as 'Out of Centre Retail'. The supporting text to policy EC1 states, 'Whilst proposals to refurbish existing units and environmental and accessibility improvements will be encouraged, development which results in the creation of additional retail and or leisure floor space at the existing out of centre

<sup>1</sup> Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). (NPPF)

retail parks at Ventura, Jolly Sailor, Cardinal Point & Tame Valley will therefore not be supported.' In determining the weight to be attributed to this, advice has been sought from Counsel. This has confirmed that as the wording is not included within the specific Policy text, it can only offer a supporting role and cannot therefore be attributed weight in the determination of planning applications.

9.2.7 The relevant policy requirements are found within Policy EC1, as follows:- *where a development involving main town centre uses is proposed outside of the town centre, local or neighbourhood centres, it must demonstrate:*

- a.) Compliance with the sequential test*
- b.) Good accessibility by walking, cycling and public transport*
- c.) That there will be no adverse impact on the vitality and viability of other existing centres*
- d.) It will not prejudice the delivery of other strategic objectives*

9.2.8 Policy EC1 continues, defining a floorspace threshold for 'main town centre uses' within out of centre retail parks, (such as this) of 250sq.m, for when an impact assessment is required. Impact assessments are necessary to assess the impact of the new use on existing comparable uses. To this end both the sequential and impact tests are required in order to assess the acceptability of the proposed development.

9.2.9 Furthermore, para 86 of the NPPF offers further support, advising that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan and para 87 continues that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre.. In regard to impact assessments, para 89 identifies that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold.

9.2.10 There are also a number of Court Judgements and appeal decisions which provide further clarity on the application of the sequential test. The key points can be summarised as follows:

- If a site is not suitable for the commercial requirements of the developer in question then it is not a suitable size for the purposes of the sequential approach;
- Provided the developer has demonstrated flexibility with regard to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site;
- 'Suitable' and 'available' generally mean 'suitable' and 'available' for the broad type of development which is proposed in the application by approximate size, type and range of goods;
- The area and site 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 (i.e. the identity and corporate attitudes of an individual retailer are excluded);
- There is no requirement to consider the scope for disaggregation (unless specific circumstances dictate);
- A site needs to be available at the current time or expected to become available within a reasonable period.

### *Sequential Test*

9.2.11 Application of the sequential site assessment must be attributed significant weight when assessing the acceptability of the proposal. This approach to site selection seeks to focus new

development within existing town centres, where only if sites within, or on the edge of the centre are not suitable or available, will an out of centre site be appropriate. The application site comprises of an existing out of centre retail park, thus triggering the need for a sequential assessment.

9.2.15 In accordance with relevant guidance and case law the sequential test needs to consider the availability of more centrally located opportunities for the specific development proposed. The applicant has sought to rely on the sequential test submitted as part of the previous application on this site (0065/2018). A central issue raised in regards to the former application was the consideration of the Gungate site as an alternative site for the proposed development. During the intervening time period between the former and current submission however, the circumstances surrounding the Gungate site have changed. The Council have taken ownership and are currently exploring options for its redevelopment as part of a wider regeneration scheme. In this context, Officers are satisfied that the site would not need to be considered as available in the context of the sequential test. The content and scope of the submitted sequential test have been considered and Officers concur that there would be no other similarly sized, available sites in a more sequentially preferable location, and so on this basis consider the sequential test to have been passed.

9.2.16 In regards to criterion b.), the site previously functioned as a retail destination and the surrounding area continues to support a board range of uses. As a result of this, the existing level of infrastructure and opportunities to access the site by walking, cycling and public transport is relatively good. The proposal would also encourage sustainable transport modes (walking and cycling), with pedestrian and cycle links as well as cycle parking on site proposed as part of the scheme. Officers therefore consider that the proposal would be in compliance with this element of the Policy.

#### *Impact Assessment*

9.2.17 Policies EC1 and EC2 of the LP along with the NPPF require an assessment of the impact of relevant developments on the town centre, and assert that development proposals should be refused if a proposal would be likely to have a significant adverse impact on town centre vitality and viability.

9.2.18 The application is accompanied by a retail impact assessment Addendum Note, (as required by policy EC1) to determine whether the proposed development would have an adverse impact upon other existing centres and consequently whether it would be compliant with criterion c.). Independent analysis of the content of the submitted report has been sought from a specialist retail consultant. In addition, throughout the course of the application further advice has been requested from the independent consultant in regards to the potential impacts of the Covid 19 pandemic on the Town Centre and on the basis of the reduced retail element now proposed.

9.2.19 The Addendum Note undertakes a reassessment of the potential retail impact of the revised proposals on the Town Centre. A concise summary is set out in the section on Retail Impact Analysis (Paragraphs 10 to 37) of the Addendum Note. The Analysis section refers to detailed tables that are contained in Appendix 1 (Tables 1 to 18) of the Addendum Note. Following a careful review of the information contained, the retail assessment methodology adopted has been considered thorough and sound by the independent consultant, and more acceptable than the approach used in assessing the previous application.

9.2.20 Two scenarios have been assessed within the Addendum, both taking account of cumulative impact with commitments at Ventura Park. Scenario 1 recognises that the existing vacant floorspace in the former Co-op superstore could be re-used to accommodate the requirements of Lidl and B&M. This is a fallback position which is material to the determination of the planning application. Scenario 2 assesses the impact of the full turnover of the proposed retail uses. Accordingly, the turnover in Scenario 2 is higher than that in Scenario 1 and is regarded within the report as a 'worst-case' assessment of impacts. Both scenarios assume that the

Gungate redevelopment will not now proceed as a retail-led scheme, which influences the future turnover of the town centre. The independent consultant has accepted the base data and forecasts used in the assessment, including the estimates of turnover and trade draw.

9.2.21 The independent consultant has further commented that High streets across the UK have been facing significant challenges over the course of the last decade and the Covid-19 pandemic has placed an increased burden on shops and businesses, with non-essential businesses having to close during lockdown and others having to adapt to continue operating, with footfall across the UK's high streets down approximately 81% during lockdown. This said, it is expected that there will be a recovery in the national economy and in the retail market but the timing is uncertain. It is considered quite possible that total turnover in the town centre in 2025 will be no higher than it is in 2020.

9.10.22 Within the initial conclusions of the independent report, the retail consultants forecast was that the proposal could give rise to an impact of between 7.1% - 7.8% on the total turnover of the town centre, which, was concluded to be a lesser impact than was predicted by the previous assessment relating to the earlier scheme. Notwithstanding this however, the identified level of impact has been viewed as significant in similar centres already suffering from poor vitality and viability. Furthermore within their audit of the previous scheme it was concluded that 'it is not considered that the town centre is in robust health and is vulnerable to further trade diversion.' In this regard, there has been no material change in circumstances during the intervening period that would alter this conclusion and it is apparent that the recent COVID-19 outbreak would be likely to result in a further negative impact on the overall health of the town centre; although it must be raised that any future impacts in this regard are clearly difficult to quantify at this stage.

9.2.23 On the basis of the above, concerns have been raised over a trading impact (in the range of 7.1% - 7.8%) on the overall vitality and viability of the town centre. Notwithstanding this, the consultant continued, acknowledging that a potential fall-back position exists, whereby the existing unrestricted Class E floor space could be used by Units A and B without the need for planning permission and, consequently, the trading impacts within the fall back scenario would be lower. On this basis the consultant confirmed that, in the context of the identified fall-back position it may be difficult to sustain a position that the proposals would give rise to a 'significant adverse' impact on Tamworth Town Centre that would warrant a refusal of planning permission on retail impact grounds. Since the initial comments were provided, amended plans, reducing the retail component of the scheme have been submitted and a further opinion from the independent consultant has been sought to address this.

9.2.24 On the basis of the revised proposal the independent consultant has confirmed that whilst the retail impact issues were finely balanced and it may have been difficult to sustain a position that the proposals would give rise to a significant adverse impact on the town centre to warrant refusal on retail impact grounds, clearly a further reduction in the level of retail floorspace proposed would further reduce the impact on the town centre and further tip the balance away from a refusal on such grounds.

9.2.25 On the basis of the independent retail advice it is considered that whilst there may be an element of harm in terms of vitality and viability, it is unlikely that there would be a demonstrable quantitative significant adverse impact on the vitality and viability of the town centre that would warrant refusal of the application. On this basis Criterion c) is considered to have been satisfied.

9.2.26 In relation to criterion d. (of Policy EC1), policy EC2 states that the Gungate redevelopment scheme is the preferred location for main town centre uses in Tamworth up to 2021 and that this remains the case until either the site is developed or the end of 2020/21 has been reached with no substantial progress having been made; in which case a review of Tamworth's retail requirements will be carried out to consider potential alternatives. On this basis, whilst the Gungate site remains the preferred location for town centre uses, any proposed development that prejudices the delivery of that site should be considered to be contrary to policy EC1. This said, we are now partway through 2020/21 with no progress having been made on the delivery of a retail-led development on

the Gungate site. Additionally, the Council has now taken ownership of the site and is exploring options for its redevelopment with a scheme that is more appropriate in the current economic and social climate. Officers therefore consider that, should the proposed development be approved and implemented, it would be unlikely to be a factor in the failure of a retail-led scheme being delivered on the Gungate site. On that basis, Officers are satisfied that the proposal would be unlikely to prejudice the delivery of other strategic objectives set out in the Local Plan.

9.2.27 Whilst the existing use of the application site is retail, the proposal would result in a significant increase in the amount of 'main town centre use' floor space in an out of centre location. As a result, in order to be considered appropriate, the proposal would need to meet the requirements as set out in policy EC1. Due to the change in circumstances on the Gungate site, Officers are satisfied that the proposal would comply with requirements a) and d). Furthermore, due to its existing and enhanced accessibility, there would be no conflict with requirement b). Finally, on the basis of the conclusions as set out with the revised response from the Independent Retail Consultant, there would be no significant adverse impact on the vitality and viability of the existing centres.

9.2.28 On balance, it is not considered that the impact upon the town would be significant enough to justify refusal of the application. This is particularly the case when the fall-back position is taken into account. The application is therefore considered to be in accordance with policy EC1 of the adopted Local Plan.

#### *Impact on Existing Employment Centres and Economic Growth*

9.2.29 Policy EC6 – Sustainable Economic Growth sets out that new office development (former use class B1a) should be located in accordance with Policy EC1 and that proposals for new employment development outside of an allocated employment site or strategic employment area will be supported, provided the proposed employment development would achieve the following:-

- Is accessible to public transport.
- Be compatible with its surrounding uses and would not have an adverse impacts on the amenities or character of the surrounding area.
- Is supported by necessary infrastructure.
- Meets the requirements of other policies in the LP where applicable.

9.2.30 The proposed office use has been assessed in relation to the requirements of Policy EC1 and overall the development has been concluded as compliant with this Policy. In regards to the remaining Policy requirements (listed above), as already set out within this appraisal, the site currently benefits from good public transport linkages, which are to be further enhanced by the proposal, so the site is accessible to public transport. In regards to character related impacts, by virtue of the mixed use character of the area, formed by the wide variety of uses and built form, despite the more intensive use of the site as proposed, on the basis of the composition of the uses and the overall design and layout, it is not considered that the development would result in any materially harmful impacts in regards to amenity or character. The infrastructure requirements required by this proposal are to be secured through S106 contributions and/or conditions (as set out in further detail below) and through Community Infrastructure Levy Requirements. On this basis it is considered that the development would be supported by the necessary infrastructure. In regards to the final bullet point, the developments acceptability will be further assessed against the applicable LP Policies under the relevant headings below and an overall conclusion in regards to the developments overall acceptability will subsequently be provided.

9.2.31 In regards to economic impacts more generally, the NPPF at para 80 sets out that:- *Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.* With Paragraph 81(d) advising that policy should *be flexible*

*enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), and to enable a rapid response to changes in economic circumstances.*

9.2.32 The application site is currently vacant and has been for some time. The proposal would bring the site back into viable economic use, and due to the intensified form of development proposed, the scheme would result in the efficient use of land. Furthermore, the development would result in environmental enhancements through the re-use of a previously developed site. Therefore on this basis there would be enhancements to the local and wider economy and overall, the development would be compliant with Policy EC6 of the LP and the overarching intentions as set out within the NPPF.

### **9.3 Design, Character and Appearance**

9.3.1 An important consideration in determining the acceptability of the proposal are impacts of the proposed design on the character and appearance of the site and the surrounding area.

9.3.2 The importance of design is highlighted in policy EN5 of the LP. This seeks to ensure that high quality buildings and places are achieved across Tamworth and includes specific criteria (a – j) to ensure such. The criteria seeks to specify requirements relating to architectural style, mass, layout and scale, materials and landscaping, the incorporation of active frontages and measures to aid legibility, minimise or mitigate environmental impacts, pay regard to highways safety and secure health benefits.

9.3.4 Furthermore, para 124 of the NPPF sets out that: - *The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.*

9.3.5 The site is situated adjacent to an allocated employment site to the north and west, which is host to various styles of industrial buildings, reflective of their time and to the south, there are large modular retail units. Whilst there is some variation in building form, the majority lack specific architectural detail or interest. The proposal would enhance the visual appeal of the area through the introduction of a contemporary design approach, more reflective of recent developments in other areas of the Borough, including Next (Ventura) and (the former) John Lewis Home Store. The proposal would incorporate dark and lighter modular cladding, with expanses of glazing and mono-pitched roofs, providing a functional yet modern appearance. Landscaping would be incorporated to the edges of the development and within site, to soften its appearance, aid its assimilation within the wider area and break-up expanses of surface parking.

9.3.6 The design solution proposed would improve the appearance of this part of Tame Valley and would have a positive impact on and enhance its built character. In this regard the development is considered to comply with the requirements of policy EN5 of the Local Plan along with the intentions of Chapter 12 of the NPPF.

### **9.4 Residential Amenity**

9.4.1 Criterion g of Policy EN5 of the LP seeks to minimise or mitigate environmental impacts for the benefits of the existing and future occupiers of adjacent land. Notable impacts identified include loss of light, privacy or security, unacceptable noise, pollution and flooding and a sense of enclosure and Criterion e of Para 170 of the NPPF states that LPA's should: - *prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.*

9.4.2 Due to the intensified use of the site, there would be the potential for increased levels of noise and disturbance along with increased light pollution. However appraisal of these issues must be considered in the context of the fallback position (in that the site has a lawful retail use) and on the basis of the character and composition of uses in the surrounding area. In terms of land use, there are no residential properties immediately adjoining the site. On consideration of the intervening distances between the site and closest residential area, it is not considered that the proposal would result in a material level of harm in terms of residential amenity (on the basis of issues identified above). Concerns have been raised in regards to potential increases in crime and disorder, however there is no evidence to suggest this would be the case, and through bringing the site back into a viable use, associated anti-social behavior would be reduced. Furthermore, where necessary conditions could be imposed to control lighting and security measures.

9.4.3 Overall, on the basis of the site context, the fall-back position and the distance of nearby residential properties from the site, it is not considered that the proposal would result in any materially harmful impacts in terms of residential amenity. The proposal is therefore considered compliant with the requirements of policy EN5 of the Local Plan and the overarching intentions of the NPPF.

## **9.5 Highway Issues**

### ***Revised SCC Highways Comments***

***The revised scheme proposes 307 No.car parking spaces which is a reduction on the 352 No.car parking spaces proposed for the consented scheme. However given it is a mixed use development, car parking requirements will differ at different times of the day with regards to the proposed end users. Also taking into account the replacement of 8 No.units in the trade terrace with a single end user, the cycle parking provision within the site and the proposed widening of the existing southern footway on Brent from its junction with Ninian Way to the new northern site access I am comfortable with the proposed level of onsite parking provision.***

***I have no objection subject to the following being secured via conditions and an appropriate legal agreement.***

9.5.1 Policy SU1 of the LP seeks to ease and improve the quality of access within the Borough through a range of policy criteria (a – i) of specific relevant to this application criterion i) requires improvements and traffic management measures as required to mitigate the impact of development traffic, with the Policy continuing to state that contributions towards infrastructure will be required where proportionate and necessary. In addition, Policy SU2 of the LP requires development to be accessible by walking, cycling, and public transport... and that planning permission should only be granted where development would ensure adequate highway safety, suitable access for all.. The Policy continues that Planning Permission will be refused where travel to and from the development would be likely to cause harmful levels of pollution, highway safety or capacity issues. In regards to new roads, design advice is provided, in that they should result in a high quality public realm and finally a section on parking requirements is included, supplemented by Appendix C.

9.5.2 The NPPF at para 108 states that:- *in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*

*a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*

*b) safe and suitable access to the site can be achieved for all users; and*

*c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

*9.5.3 And para 109 continues that:- Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

9.5.4 The application site was previously occupied by the Co-Op superstore, the associated car park and storage area and a petrol filling station (PFS). When considering the highway impacts of the current proposal, the previous situation and fallback position must be considered. On this basis, the previous use would have generated a considerable number of vehicle movements, thus impacting on the surrounding highway network. The application is accompanied by a Transport Assessment which considers the highway and accessibility impacts of the proposal. Staffordshire County Council (SCC) Highway Authority (HA) have been consulted on the application and have responses on the basis of the submitted (and amended) documents.

9.5.5 In regards to the existing highway network, a series of capacity assessments of existing junctions were undertaken (in accordance with current industry standards). In summary, 7 local junctions were assessed (including Brent/site access, Brent/Ninian Way junction, Forties/Ninian Way junction, Ninian Way/Watling Street/B5440 junction, Watling Street/Tamworth Road/Dosthill Road junction, Hilmore Way/Bird Bush Drive junction and Ninian Way/Hedging Lane junction) and on the basis of the submitted information the HA have commented that these all identified no significant impact was recorded on the basis of the proposed development and therefore, that no mitigation measures would be required. As part of the highway consultation, further advice was sought from the Strategic Community Infrastructure Manager within the HA, who also raised no concerns on the basis of the information provided. Thus in regards to impacts on the local highway network the HA are satisfied.

9.5.6 Current guidance within the NPPF states that planning applications can only be refused on highway grounds if the development would result in a severe impact upon the local highway network. Given the robust analysis within the Transport Assessment, the HA considers that it has no grounds to refuse this application on its traffic impact.

9.5.7 In relation to on-site parking provision, the application would provide x352 parking spaces. This is slightly below the recommended parking standards within the Local Plan. (Appendix C) However on the basis of the mixed-use nature of the development, which would result in altering demands throughout the day, the HA are satisfied with the provision and have therefore confirmed no objection in this regard.

9.6.8 The main pedestrian accesses to the site are proposed via Brent and Forties, which both connect to Ninian Way. Cyclists are able to legally cycle on the footway from the existing crossing on Ninian Way and along a small section of Brent, which connects to the northern access. In addition, footway links into the site have been provided off Brent, Forties and Ninian Way, which will help to promote sustainability and increase linkages from the site to the wider area. A total of x40 on-site cycle parking spaces would be provided within the site, along with cycle lockers at key locations for use by employees. The provision of cycle parking facilities and staff lockers should provide additional encouragement for the uptake of more sustainable modes of transport.

9.5.9 During the course of the application further information was requested from the HA, as the application had originally failed to demonstrate sufficient turning and manoeuvring space for HGV delivery vehicles serving the units along the western perimeter of the site, and unsuitable traffic management measures had been proposed. To address the concerns, a Service Management Plan was provided. This includes various proposals, one of which being that the on-site parking will likely be subject to waiting restrictions in the form of a maximum stay of 2hrs with no return allowed for 1hr (excluding staff).



9.5.10 In relation to deliveries and servicing requirements, the Service Management Plan confirms that units 1-10 and the drive-thru's would be serviced by smaller vehicles entering the site via Brent and exiting the site via Forties and that generally such would only result in x1 delivery per day, per unit. Unit A would have up to x2 deliveries per day, via an articulated HGV gaining access from Brent and using the internal car park roads to gain access to a dedicated service ramp adjacent to the store. Unit B and the garden centre would be serviced via a dedicated service area, accessed directly off Forties. Details have also been provided confirming that a large articulated HGV can safely access and egress the service area successfully. Refuse collection has been confirmed as taking place outside of trading hours.

9.5.11 The applicant has also provided additional plans detailing double yellow lines on both sides of the road, at Brent and Forties to protect the roads and neighbouring junctions, to allow HGVs to safely manoeuvre into and out of the site.

9.5.12 There are currently x2 existing bus stops located on Ninian Way adjacent to Brent. One bus stop currently has a bus shelter, whilst the second only has a pole and flag arrangement. It has been agreed that both of these existing facilities would be upgraded as part of the proposal (secured by the suggested highway conditions and delivered via a Highway Works Agreement with SCC Highways (using the Highways Act as the delivery mechanism)) to encourage public transport usage at the applicant/developer's expense. An existing zebra crossing located on Ninian Way adjacent to Brent has recently been upgraded to a toucan crossing by Staffordshire County Council, along with associated widening of the footway to allow the facility to be used by both pedestrians and cyclists. There is currently a missing cycle link from the corner of Ninian Way/Brent to the proposed northern access into the site. The development proposals include widening of the existing southern footway on Brent, from its junction with Ninian Way to the proposed northern site access. This would result in a continuous 3m wide footway which would meet the current national standards for a shared footway/cycleway.

9.5.13 On the basis of the above, it is considered that the scheme would improve existing infrastructure and facilitate the use of more sustainable modes of transport. SCC Highway Authority have confirmed that they have no objection to the proposal subject to conditions and a Section 106 agreement. The agreement is required to secure a Framework Travel Plan and a Framework Travel Plan monitoring fee of £12,320, without which SCC Highways would object to the proposed development. The application is therefore considered to comply with policy SU2 of the adopted Tamworth Local Plan 2006-2031 and the NPPF 2019.

## **9.6 Contamination and Pollution**

9.6.1 Criterion g) of Policy EN5 of the LP seeks to ensure that environmental impacts associated with a development are minimised or mitigated and Policy SU5 of the LP states that development should manage the risk of...ground or water pollution and where risk is identified it should be mitigated. The Policy continues that permission will be refused where pollution would pose an unacceptable risk to public health, quality of life or the environment which is not mitigated. The NPPF at para 178 (a) states, planning policies and decisions should ensure that: *a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation)* and at para 179 it is confirmed that where a site is affected by contamination..., responsibility for securing a safe development rests either the developer and/or landowner.

9.6.2 By virtue of the historic uses on the site, particularly the petrol filling station (PFS) the site is defined as contaminated land. Owing to this the application is accompanied by a land contamination report and TBC's Environmental Protection have been consulted. In addition, as there is the potential for ground water pollution, the Environment Agency (EA) have also been consulted.

9.6.3 Development of contaminated land is a material planning consideration and the actual or possible presence of contamination and associated risks should be established. Environmental Protection responded that subject to confirmation that all structures from the PFS have been removed, including the tanks and that the ground is subsequently remediated to the satisfaction of the LPA, they would have no objection to the proposed development. To ensure these measures take place various conditions have been recommended, which would be imposed on any consent.

9.6.4 The Environment Agency (EA) have responded in their capacity to ensure the protection of 'Controlled Waters'. The EA have commented that the submitted information indicates that the site was initially developed in the 1980s and has been host to retail, a car park and PFS. The PFS is reported to include five underground storage tanks, four of which were installed in 1980. (approx.) They have confirmed that on-site/off-site activities could potentially disturb contamination that could re-mobilise during site development. The preliminary risk assessment considered the risk of contamination to groundwater as moderate, and consequently recommended that intrusive investigations be undertaken to enable a quantitative risk assessment.

9.6.5 On the basis of the submitted information, the EA have responded with no objection subject to conditions requiring further investigation of the presence of contamination, focusing on the potential impact on 'Controlled Water' receptors.

9.6.6 Subject to the imposition of the recommended conditions and associated mitigation there would be no remaining harm in relation to the previous use, on either contamination or pollution, or ground water pollution. To the contrary, through remediation, the ground conditions would be improved as a result of the development. As such, the proposal would therefore be in accordance with Policies EN5 and SU5 of the LP and the relevant paragraphs of the NPPF.

## **9.7 Drainage and Flood Risk**

9.7.1 Policy SU4 of the LP states that all new developments including regeneration proposals, will need to demonstrate that there is no increased risk of flooding...and shall seek to improve existing flood risk management. The Policy continues that all development will be expected to incorporate appropriate Sustainable Urban Drainage Techniques (SUDS) that will manage flow rates on site, limit surface water runoff discharge rates and limit or avoid the connection of surface water discharge into the combined sewer network. The Policy further requires that development should not have an adverse impact on water quality and that major development should demonstrate that there is adequate wastewater infrastructure in place to serve the development. The NPPF at para 163 advises that LPA's should ensure that floor risk is not increased elsewhere and c) that SUDS are incorporated unless there is clear evidence that this would be inappropriate.

9.7.2 The application site is in Flood Zone 1 and has experienced surface water flooding in the past. The updated Flood Map for Surface Water shows ponding that would be rationalised through development. On the basis of the specific site circumstances and due to the application being a major development proposal, the Environment Agency (EA), the Local Lead Flood Authority (LLFA) and Severn Trent Water have been consulted.

9.7.3 As part of the application a Flood Risk Assessment (FRA) has been provided. This has assessed the potential flooding risks within the site along with the risks associated with the proposed development. The FRA has indicated that the site would not be at significant risk of flooding on the basis of it being located within Flood Zone 1 and would only therefore be subject to flood risks associated with a 1 in 1000 year event. The site would however be subject to higher flood risks associated with Pluvial flooding in its South Western corner (1 in 30 year event). This is as a result of surface runoff as a consequence of the sites topography. (which varies considerably) Notwithstanding this, the FRA confirms that the risks associated with Pluvial flooding can be addressed and overcome via the implementation of the Drainage Strategy which accompanies the proposal. The FRA also confirms that there would be no significant risks associated with sewer or groundwater flooding within the site.

9.7.4 The Drainage Strategy sets out the water management techniques proposed. This identifies that there would be 2 Geocellular Storage Provisions to accommodate excess surface runoff and that the overall solution would be connected into the existing drainage network maintained by Severn Trent ,at points along Brent and Fortes. The suitability of connecting into an existing 100mm PVC mains has been deemed to be acceptable in this location. As part of the Surface Water Drainage Strategy, the ground level of the site would also be raised by 150mm and re-profiled to divert surface water away from the surrounding residual flood risk areas and towards the drainage points. As the entire site is currently covered by impermeable surfaces, through its redevelopment, including the introduction of soft landscaping, along with the measures identified within the proposed Surface Water Drainage Strategy, risks associated with flooding would be reduced.

9.7.5 The LLFA have responded with no objection to the proposal, subject to conditions. The LLFA confirmed that the proposed development would be acceptable subject to the measures detailed in the Drainage Statement and subsequent correspondence being incorporated within an acceptable surface water drainage scheme. Such details would be secured by the imposition of a pre commencement conditioned should the application be approved.

9.7.6 Severn Trent Water have also responded to confirm that they have no objections subject to a pre-commencement condition requiring the submission of details for surface and foul water drainage.

9.7.7 On the basis of the above it is not considered that the proposed development would increase the risk of flooding within the site, to the surrounding highways or to the nearby commercial/residential properties. Due to the nature of the proposed layout and the proposed flood mitigation methods, the development would result in a reduction of the risks associated with flooding. The LLFA, EA and Severn Trent have all expressed no objections to the proposed development, subject to conditions. Therefore the proposed development is compliant with Policies SU4 and SU5 of the Local Plan and the NPPF para 163. As such the proposed development is deemed to be acceptable.

## **9.8 Coal Mining Legacy**

9.8.1 Policy SU5 of the LP requires that all new development consider site characteristics... including land stability and that applications should be supported by an appropriate risk assessment where such issues are present, and para 170 e) of the NPPF seeks to ensure that new and existing development is not put at unacceptable risk from, or is adversely affected by ... land instability.

9.8.2 Coal mining legacy is a material planning consideration and the actual, or possible associated risks should be established. The application site falls within the Development High Risk Area, therefore, within the site and surrounding area there are coal mining features and hazards which need to be taken into account during the determination process. The Coal Authority has therefore been consulted on the proposal.

9.8.3 The Coal Authority has confirmed that the applicant has obtained appropriate and up-to-date coal mining information for the site and has used this information to inform the Coal Mining Risk Assessment Report. The Coal Mining Risk Assessment Report correctly identifies that the site may have been subject to historic coal mining activity. The Coal Authority records indicate that the site has been subject to historic recorded underground coal mining at shallow depth and is also likely to have been subject to historic unrecorded underground coal mining at shallow depth. Their records also indicate that part of the site may have been subject to past surface mining operations.

9.8.4 Based on this review of existing sources of geological and mining information the Risk Assessment concludes that whilst it is unlikely that the opencast void would have extended beneath the site, shallow mine workings pose a potential risk to the proposed development. The Risk Assessment also demonstrates awareness of the potential risk posed by mine gas.

9.8.5 On the basis of the submitted information the Coal Authority have responded with no objection subject to conditions. The suggested conditions are to secure further intrusive site investigation works prior to development, to establish the exact situation regarding ground conditions and to enable appropriate remedial measures to be identified, if necessary. In addition, the Coal Authority have advised that the applicant should ensure that the exact form of any intrusive site investigations are agreed with the Coal Authority's Licensing and Permitting Department as part of their Permit application. The findings of the intrusive site investigations will subsequently inform any mitigation measures which may be required in order to ensure the safety and stability of the proposed development.

9.8.6 Subject to recommended conditions, the development would not result in any material harm in terms coal mining legacy issues and would be compliant with Policy SU5 of the LP and the relevant paragraphs of the NPPF.

## **9.9 Landscaping and Ecology**

9.9.1 Policy EN4 of the LP states that development should not result in a net loss of biodiversity by ensuring that where harm to biodiversity is unavoidable and it has been demonstrated that no alternative sites are suitable, development is adequately mitigated or as a last resort, compensated for. In regards to landscape related matters the Policy suggests that developments should incorporate planting of native trees, where appropriate. The NPPF at para 175 advises that when determining planning applications, local planning authorities should apply the following principles:

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

9.9.2 A landscaping scheme has been submitted with the proposal. This illustrates existing and proposed tree planting and general hard and soft landscaping (for both amenity and structural purposes) comprising of grass turf, wildflower grass and post and three rail fencing. TBC's Tree Officer has been consulted on this detail and has responded with no objection, subject to the conditioning of a more in-depth method statement regarding tree protection. The method statement is required primarily in relation to the minimal dig path and the foundations to the rear of Units 1-8.

9.9.3 The application is also supported by Ecology Reports and an associated lighting plan and as such Staffordshire County Council Ecology have been consulted on their content.

9.9.4 The original lighting plan illustrated there would be a considerable impact on boundary tree and shrub habitat. As a result, amended plans were requested and received to show an amendment to the lighting plan, to reduce the impact upon tree and shrub planting. The amended details illustrate that louvers/spill shields would be installed to control the direction of, and minimise light spill from the site, thus reducing impacts on the nearby habitats. In addition, the building mounted luminaires would also operate at a reduced output to minimise light spillage. The landscaping plan has also been amended to include honeysuckle (*Lonicera periclymenum*) and the provision of bat boxes would be conditioned should the application be approved.

9.9.5 As a result of surveys undertaken to inform the ecology report, a day roost of pipistrelle bats were identified. The identified bats are defined as a European Protected Species (EPS) under the Conservation of Species & Habitats Regulations 2017 and owing to this, a Natural England Licence would be required prior to the development taking place.

9.9.6 The Regulations transpose certain prohibitions against activities affecting EPS. These include prohibitions against the deliberate capturing, killing or disturbance and against the damage or destruction of a breeding site or resting place of such an animal. The Habitats Directive

provides for the derogation from these prohibitions for specified reasons and providing certain conditions are met. Those derogations are transposed into the Regulations by way of a licensing regime that allows what would otherwise be an unlawful act to be carried out lawfully.

9.9.7 Among the reasons why a licence may be granted and the reason relied upon by developers when seeking a licence to carry out operations for the purposes of development, is that there are imperative reasons of overriding public interest why the operation should be carried out.

9.9.8 Natural England is the licensing authority for the purposes of this licensing regime. In addition to satisfying itself that one of the reasons provided for by the Regulations, in this case imperative reasons of overriding public interest exists, before granting a licence Natural England must also be satisfied that there is no satisfactory alternative and that any action licensed will not be detrimental to the maintenance of the population of the species at favourable conservation status in its natural range. The reason for granting the licence together with the two conditions that must be met before a licence can be granted are what Natural England refers to as the three statutory tests.

9.9.9 The Regulations also provide that a competent authority, **including a planning authority** must, in the exercise of any of their functions, have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions.

9.9.10 Officers therefore have a duty to consider whether the proposal would be likely to secure a Licence. To do so, the proposals must satisfy the three derogation tests which are:

1. There are imperative reasons of overriding public interest (e.g. health and safety, economic or social)
2. There is no satisfactory alternative
3. The action will have no detrimental impact upon population of the species concerned, for example, by way of adequate compensation being provided.

9.9.11 Officers are of the opinion that the submitted application details would satisfy the three derogation tests on the basis of the following:-

1. The proposal would result in the redevelopment of a currently derelict site. This would lead to a range of benefits including economic benefits through re-introducing a viable use to the area, social benefits associated with job creation and the reduction of antisocial behaviour and environmental enhancements through the remediation of land contaminated by historic activities and more general enhancements in terms of the overall character and appearance of the area. If the site remained undeveloped it would fall into a further state of disrepair resulting in various adverse social, environmental and economic implications.
2. The existing buildings have reached the end of their life and would continue to deteriorate.
3. Bat surveys have been undertaken which demonstrate that adequate mitigation can be delivered for the species present, which would be secured through various conditions regarding lighting, landscaping and the provision of bat boxes.

9.9.12 Staffordshire County Council Ecology have responded to confirm that they are satisfied with the ecology reports provided and their recommendations, which include measures to prevent accidental harm to wildlife during demolition and construction work, along with biodiversity enhancements. Furthermore, the evidence/details provided with the application demonstrate that the three derogation tests would be satisfied and that on this basis it is considered that a Natural England Licence would be granted. Overall, although EPS have been identified, subject to the recommendations within the ecology report and the suggested conditions it is not considered that the proposal would result in a materially harmful impact in terms of ecology or biodiversity. In relation to landscaping, similarly, subject to the recommended conditions, the natural environment

and character of the area would be preserved and enhanced. As a result the proposal would be compliant with Policy EN4 of the Local Plan and the relevant paragraphs of the NPPF.

### **9.10 Developer Contributions and Obligations**

9.10.1 Policy IM1 of the LP states that planning permission will only be granted if it is supported by appropriate infrastructure at a timely stage. The Policy continues, identifying when specific contributions will be requested, what is required across the Borough and how funds will be spent. The Policy also outlines criteria (a – g) which identify strategic infrastructure requirements.

9.10.2 When considering whether or not to request a developer contribution there are applicable legal tests which must be met, identifying the circumstances in which a s106 agreement can be utilised. These tests are set out in regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, as amended (and within paragraph 56 of the NPPF).

9.10.3 The contributions sought must address the specific impacts brought about by the new development. To ensure this, contribution requests must meet the following tests, they must be:

1. Necessary to make the development acceptable in planning terms
2. Directly related to the development; and
3. Fairly and reasonably related in scale and kind to the development.

9.10.4 The requested contributions for this proposal have been sought by the Highway Authority (HA). The HA have set out that that a Framework Travel Plan is necessary to secure the uptake of more sustainable modes of transport, along with a Framework Travel Plan monitoring fee of £12,320 regarding highway works.

In this case it is considered that the contributions requested would meet the identified tests and therefore can be secured by way of a legal agreement. The proposal is thus compliant with policy IM1 of the Local Plan and the section 106 guidance.

### **9.11 Material Planning Considerations**

9.11.1 The application site has been vacant since early January 2018. Whilst endeavours have been made to secure consent on the site for its redevelopment over this time, there have been delays caused by various complexities uncovered. As a direct consequence, the buildings have fallen into a state of disrepair and the general appearance of the site has degraded, thus having negative ramifications on the wider area. These circumstances have unfortunately attracted a range of anti-social behaviours to occur and the site has been subject to vandalism. Through redevelopment of the site these issues would be addressed, resulting in social, environmental and economic benefits and so this must be considered as a material consideration and attributed weight in favour of the application.

9.11.2 The Council aims to support the redevelopment of brownfield sites through bringing them back into a viable use. This approach is supported by para 117 of the NPPF which states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses and para 118 c) identifies that:- substantial weight should be attributed to the value of using suitable brownfield land within settlements for homes and other identified needs, and decisions should support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. The application site constitutes a previously developed site (brownfield land) and this alone is considered as favourable to the alternative of developing a greenfield site and so should be attributed weight, however this development would also seek to remediate the land which is contaminated and suffers from stability issues as a result of its historic uses (coal mining and petrol filling station). This remediation would have positive impacts on the ground water quality and the environment

more generally and as such also be attributed favourable weight in the determination of the application.

9.11.3 Through the redevelopment of the site employment opportunities would be created. These would comprise of construction related employment as well as a range of opportunities created by the proposed uses. By virtue of the wide range of uses, there would be diversity in the types of jobs created, thus appealing to a wider cross-section of the market. This should help boost local job creation and the local economy as a whole. In terms of numbers, it is estimated that the proposal would result in approximately 242 full-time equivalent jobs, with the construction phase resulting in roughly 133 full-time equivalent jobs. This must be attributed favourable weight in the determination of the application.

## **9.12 Overall Planning Balance and Conclusion**

9.12.1 The application proposes the demolition of a vacant Co-op superstore and site clearance to facilitate its development to a mixed use site comprising of both main town centre and employment related development. Throughout the appraisal various harms have been identified relating to drainage and flood risk, highways, ecology, coal mining and pollution/contamination, however all of these would be addressed and so reduced to an acceptable level through the imposition of planning conditions or obligations. Residual harm would however remain in relation to impacts on the vitality and viability of the Town Centre as a consequence of the out of centre location of main town centre uses. This said, the level of this harm is not considered significant enough to warrant refusal of the application. This conclusion has been drawn on the basis that the application site is already host to established retail use, the retail component of the scheme has been reduced throughout the course of the application and on the basis of the increased provisions contained within the Use Class Order (2020). Furthermore a range of material planning considerations exist in favour of proposal, which would further off-set this harm. These have been identified as benefits associated with bringing the site back into a viable economic use (including job creation), reductions in antisocial behaviour, efficiencies of land use (as the site is brownfield) and environmental enhancements associated with the sites remediation.

9.12.2 Throughout the course of the application, officers have negotiated amended details with the developer to ensure that any adverse impacts associated with the proposal would be removed or reduced to an acceptable level.

***As regards current amendments, there is an overall reduction in floorspace proposed as set out above, following the omission of the trade counters and the gym. The proposed retail floorspace has not been altered, which in itself remains only 620 sqm above the size of the existing Co-op store.***

**Table 1: Comparison of Floorspace - Previous Proposal and Amended Proposal**

<b>Use Class</b>	<b>Previous Floorspace (sqm)</b>	<b>Amended Floorspace (sqm)</b>
<b>E (retail)</b>	<b>5,462</b>	<b>5,462</b>
<b>E Gym</b>	<b>1,394</b>	<b>0</b>
<b>Sui generis drive thru</b>	<b>413</b>	<b>413</b>
<b>Sui generis and mix of uses (Trade / or Builders merchant)</b>	<b>5,053</b>	<b>1,912</b>
<b>Totals</b>	<b>10,928</b>	<b>7,787</b>

9.12.3 On balance, and on the basis of the content of this appraisal and the submitted application documents, suggested conditions and planning obligations it is considered that the development would be acceptable and in accordance with the adopted Tamworth Local Plan 2006-2031 and the National Planning Policy Framework 2019 (as amended).

## **10 Recommendation**

A. Grant delegated authority to the Head of Planning to conclude negotiations on and complete an agreement under section 106 of the Town and Country Planning Act 1990 so to secure the planning obligations outlined in this report; and

B. Subject to A, Approve the application subject to the following condition(s):

## **11 Conditions/Reasons:**

1. The development hereby approved shall be begun before the expiration of three years from the date of this permission.

*Reason: To conform with Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).*

2. The development hereby permitted shall be carried out in accordance with plan(s)/drawing(s):

DRAWING TITLE	DWG No	REVISION
Site Location Plan	100	P01
Existing Site Plan	101	P02
Existing Site Sections	103	P01
Proposed Site Plan	330	P03
Proposed Site Sections	331	P00
Ground Floor Plan, Unit A	332	P00
Roof Plan, Unit A	333	P01
Elevations, Units A	334	P01
Ground Floor Plan, Unit B	335	P00
Roof Plan, Unit B	336	P00
Elevations, Unit B	337	P00
Ground Floor Plan, Block A	338	P00
First Floor Plan, Block A	339	P00
Roof Plan, Block A	340	P00
Elevations, Block A	341	P00
Block B Drawings	342	P00
Drive Thru A Drawings	343	P01
Drive Thru B Drawings	344	P01
TRO Plan, Brent and Forties	NMT-BWB-HGN-XX-DR-TR-114-S2	P02
Proposed Signalised Pedestrian Crossing Point	NMT-BWB-HML-XX-DR-TR-101-S2	P04
Vehicle Tracking Assessment	NWT-BWB-HGN-XX-DR-TR-110	P05
Vehicle Tracking Assessment	NWT-BWB-HGN-XX-DR-TR-110	P06

***Site Location Plan 100 P01***

***Existing Site Plan 101 P02***

***Existing Site Sections 103 P01***

***Proposed Site Plan 330 P04***

***Proposed Site Sections 331***

***P00 Ground Floor Plan,***

***Unit A 332 P00 Roof Plan,***

***Unit A 333 P01 Elevations,***

***Units A 334 P01 Ground Floor Plan 4***

***Unit B 335 P00 Roof Plan***

***Unit B 336 P00 Elevations***

***Unit B 337 P00 Ground Floor Plan***

***Block A 338 P02 Ground Floor Plan,***

***Block A 339 P01 Upper Floor Plan,***

***Block A 340 P01 Roof Plan***

***Block A 341 P01 Proposed Elevations***

***Block A 341 P02 Proposed Elevations (Rendered)***



**Block A 0346 P00 Proposed Storage (Rendered)**  
**Block B Drawings 342 P00**  
**Drive Thru A Drawings 343 P02**  
**Drive Thru B Drawings 344 P01**  
**TRO Plan Brent and Forties NMT-BWB-HGN-XX-DR-TR-114-S2 P02**  
**Proposed Signalised Pedestrian Crossing Point NMT-BWB-HML-XX-DR-TR-101-S2 P03**  
**Vehicle Tracking Assessment NWT-BWB-HGN-XX-DR-TR-110 P05**  
**Vehicle Tracking Assessment NWT-BWB-HGN-XX-DR-TR-110 P06**  
**Vehicle Tracking Travis Perkins NMT-BWB-GEN-XX-DR-TR-117 P02**  
**Action Travel Connections NMT-BWB-HGN-XX-DR-TR-116 P02**  
**Proposed Access Arrangements NWT-BWB-HGN-XX-DR-TR-103 P03**

Unless as otherwise required by condition attached to this permission or following approval of an application made pursuant to Section 96A of the Town and Country Planning Act 1990.

*Reason: For the avoidance of doubt and in the interests of achieving sustainable development.*

3. The ancillary trade counters in Units 1-7 shall occupy no more than 25% of the floor space of each unit for retail sales purposes.

*Reason: To protect the vibrancy and vitality of Tamworth town centre to comply with policy EC1 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

4. The scheme hereby permitted and shown in Drawing Number 330 Revision P03, shall only operate between the hours detailed below:

Unit	Opening hours
Lidl Food & B&M	Monday – Saturday 07:00 – 22:00 Sunday 10:00 – 17:00
Units 1-7 within Terrace	Monday – Saturday 07:00 – 20:00 Sunday 09:00 – 17:00
Drive-Thru Costa/KFC	Monday – Saturday 06:00 – 00:00 Sunday 06:00 – 00:00
A1 Retail Units	Saturday 06:00 – 22:00 Sunday 06:00 – 18:00
Unit 8 Pure Gym	Monday – Sunday 24 Hours

***The scheme hereby permitted and shown in Drawing Number 330 Revision P03, shall only operate between the hours detailed below:***

***Unit Opening hours Lidl Food & B&M Monday – Saturday 07:00 – 22:00 Sunday 10:00 – 17:00 Travis Perkins Monday – Saturday 06:30 – 20:00 Sunday 09:00 – 17:00***

***Drive-Thru Costa/KFC Monday – Saturday 06:00 – 00:00 Sunday 06:00 – 00:00***

***A1 Retail Units Saturday 06:00 – 22:00 Sunday 06:00 – 18:00***

*Reason: To safeguard the amenities of nearby occupiers, in accordance with policy EN5 of the Tamworth Borough Council Local Plan 2006-2031.*

5. Notwithstanding the details provided, prior to the occupation of a unit hereby approved a scheme of hard (including details of all boundary treatment) and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. All hard landscaping shall be carried out in accordance with the approved details prior to occupation of each respective unit, whilst all planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of each respective unit or the completion of the development, whichever is the sooner; and any plants which within a period of five years (ten years in the case of trees) from the 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 and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.

*Reason: In the interest of the visual setting of the development and the surrounding area in accordance with policy EN4 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

6. All site works must comply with recommendations R1, R5, R6 and R7 of the submitted Preliminary Ecological Appraisal (Middlemarch Environmental, November 2019).

*Reason: To protect and enhance biodiversity in accordance with policy EN4 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (2019).*

7. **No development shall commence** until details of biodiversity enhancement measures, including x4 bat boxes suitable for crevice-dwelling bats of wood-concrete composition to be installed on the new buildings to the east and west side of the site have been submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be implemented as approved and retained thereafter.

*Reason: To protect and enhance biodiversity in accordance with policy EN4 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (2019).*

8. **No development shall commence** until an in-depth method statement regarding tree protection is submitted to, and approved in writing by, the Local Planning Authority. This should also include minimal dig path and foundations to the rear of Units 1-8. The approved details shall be implemented as approved and retained for the duration of the construction works.

*Reason: To protect and enhance biodiversity in accordance with policy EN4 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (2019).*

9. **No development shall commence** (excluding demolition) until intrusive site investigations have been carried out on site to establish the exact situation in respect of coal mining legacy features. The findings of the intrusive site investigations shall be submitted to the Local Planning Authority for consideration and approval in writing. The intrusive site investigations shall be carried out in accordance with authoritative UK guidance.

*Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with policy SU5 of the Tamworth Borough Council Local Plan 2006-2031 and paragraphs 178 and 179 of the National Planning Policy Framework.*

10. Where the findings of the intrusive site investigations (required by condition 9) identify that coal mining legacy on the site poses a risk to surface stability, **no development shall commence** until a detailed remediation scheme to protect the development from the effects of such land instability has been submitted to the Local Planning Authority for consideration and approval in writing. Following approval, the remedial works shall be implemented on site in complete accordance with the approved details.

*Reason: The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with policy SU5 of the Tamworth Borough Council Local Plan 2006-2031 and paragraphs 178 and 179 of the National Planning Policy Framework.*

11. Notwithstanding the details provided **No development shall commence** until a detailed surface and foul water drainage scheme for the site has been submitted to, and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority and Severn Trent Water. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed. The scheme to be submitted shall demonstrate:

- a.) Surface water drainage system(s) designed in accordance with the non-statutory technical standards for sustainable drainage systems (DEFRA, March 2015).
- b.) Provision of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Runoff Management for Developments'.
- c.) Detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- d.) Plans illustrating flooded areas and flow paths in the event of exceedance of the drainage system.
- e.) Provision of an acceptable management and maintenance plan for surface water drainage to ensure that surface water drainage systems shall be maintained and managed for the lifetime of the development.

*Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface and foul water from the site in accordance with policy SU4 and SU5 of the Tamworth Borough Council Local Plan 2006-2031 and with paragraph 163 of the National Planning Policy Framework (2019).*

12. **No development shall commence** until a remediation strategy which includes the following components to address the risks associated with contamination of the site shall be submitted to, and approved in writing by, the Local Planning Authority:

- a.) A preliminary risk assessment which has identified:
  - i.) all previous uses
  - ii.) potential contaminants associated with those uses
  - iii.) a conceptual model of the site indicating sources, pathways and receptors
  - iv.) potentially unacceptable risks arising from contamination at the site.
- b.) A site investigation scheme, based on (a.) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c.) The results of the site investigation and the detailed risk assessment referred to in (b.) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- d.) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

*Reason: Due to the potential for contamination to be present on the site as indicated by the preliminary risk assessment included within the 'Preliminary Risk Assessment for a Site on Ninian Way, Wilnecote, Tamworth' (DTS Raueburn Limited, June 2017). Any contamination present has the potential to impact on the 'Controlled Waters' receptors of groundwater in the underlying Secondary Aquifers and local surface water features. The extent of any contamination and significance to these receptors should be assessed to determine the need for remedial actions. National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to, or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that*

*planning policies and decisions should also ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121).*

13. No occupation of any part of the development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing by, the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a 'long-term monitoring and maintenance plan') for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.

*Reason: To ensure that any remedial works required as an outcome of the site investigation and risk assessment are completed to a satisfactory standard. National Planning Policy Framework (NPPF) paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to, or being put at unacceptable risk from, or being adversely affected by unacceptable levels of water pollution. Government policy also states that planning policies and decisions should ensure that adequate site investigation information, prepared by a competent person, is presented (NPPF, paragraph 121).*

14. The scheme shall be implemented in accordance with the approved details in condition 13 before the development is first brought into use.

*Reason: To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site in accordance with policy SU4 of the Tamworth Borough Council Local Plan 2006-2031 and with paragraph 163 of the National Planning Policy Framework (2019).*

15. **No development shall commence** until a scheme to deal with contamination of land, controlled waters and/or ground gas has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include all of the following measures, unless the Local Planning Authority dispenses with any such requirement specifically in writing:

a.) A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model, and a human health and environmental risk assessment, undertaken in accordance with BS 10175: 2011 Investigation of Potentially Contaminated Sites – Code of Practice.

b.) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites – Code of Practice. The report should include a detailed quantitative human health and environmental risk assessment.

c.) A remediation scheme detailing how the remediation will be undertaken, what methods will be used, and what is to be achieved. A clear end point of the remediation should be stated, such as site contaminant levels or a risk management action, and how this will be validated. Any ongoing monitoring should also be outlined.

d.) If during the 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, and approved in writing by, the Local Planning Authority.

*Reason: To protect the health of future occupiers of the site from any possible effects of contaminated land, in accordance with policy SU5 of the Tamworth Borough Council Local Plan 2006-2031*

16. Prior to occupation, a validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the

approved methodology shall be submitted to, and approved in writing by, the Local Planning Authority. Details of any post-remedial sampling and analysis to show that the site has reached the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

*Reason: To protect the health of future occupiers of the site from any possible effects of contaminated land, in accordance with policy SU5 of the Tamworth Borough Council Local Plan 2006-2031*

17. If during the 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, and approved in writing by, the Local Planning Authority.

*Reason: To protect the health of future occupiers of the site from any possible effects of contaminated land, in accordance with policy SU5 of the Tamworth Borough Council Local Plan 2006-2031*

18. The development hereby permitted shall be serviced using the principles as set out in the submitted Service Management Plan (ref: NWT-BWB-GEN-XX-RP-TR-0005-TN V2) for the lifetime of the development and shall only be amended unless otherwise agreed in writing by the Local Planning Authority.

*Reason: In the interests of pedestrian and highway safety in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

19. **No development shall commence** until a Construction Management Plan is submitted to, and approved in writing by, the Local Planning Authority. The submitted Construction Management Plan shall provide the following details:

- a.) The routing of construction vehicles to and from the site including measures to mitigate the impact on the local highway network.
- b.) Parking facilities for vehicles of site personnel, operatives and visitors;
- c.) Arrangements for the loading and unloading of plant and materials;
- d.) Site working times and times of deliveries to the site
- e.) Areas of storage for plant and materials used during the construction of the proposed development;
- f.) Measures, including designated wheel cleaning areas, to prevent the deposition of deleterious material on the public highway during the construction of the proposed development.

The Construction Management Plan shall be adhered to for the duration of the demolition and construction phase.

*Reason: To avoid indiscriminate parking and obstruction of the highway in the interests of pedestrian and highway safety in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031*

20. Prior to occupation, the off-site traffic management scheme comprising of double yellow lines on Brent and Forties, as broadly indicated on submitted Drg. No. NWT-BWB-HGNXX-DR-TR-114 S2 Rev. P02, shall be implemented.

*Reason: In the interests of pedestrian and highway safety in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

21. Prior to occupation, the extension to the existing shared use footway/cycleway, as broadly indicated on submitted Drg. No. NWT-BWB-HML-XX-DR-TR-101 S2 Rev. P4, will be provided and shall thereafter be retained for the lifetime of the development.

*Reason: In the interests of pedestrian and highway safety and to encourage the use of sustainable modes of transport in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

22. Prior to occupation, details of the upgrading of two existing bus stops on Ninian Way will be submitted to, and approved in writing by, the Local Planning Authority and shall thereafter be constructed in accordance with the approved drawings prior to first occupation.

*Reason: In the interests of pedestrian and highway safety and to encourage the use of sustainable modes of transport in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

23. Prior to occupation of Units 1-8, the northern and southern drive throughs, Unit A, Unit B and the garden centre, the associated cycle spaces and cycle lockers, as indicated on submitted Drg. No.15029-330 Rev. P03, shall be installed and retained for the lifetime of the development.

*Reason: In the interests of pedestrian and highway safety and to encourage the use of sustainable modes of transport in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

24. Prior to occupation, the accesses to the site, as shown on Drg. No.0330 Rev. P-03 within the limits of the public highway, will be provided.

*Reason: In the interests of highway safety and to comply with SCC Highway Authority requirements for access and in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

25. Prior to occupation, any lengths of existing site accesses, which shall include the access crossing between the site and carriageway edge, made redundant as a consequence of the development hereby permitted will be permanently closed with the access crossing reinstated as verge/footway.

*Reason: To avoid the proliferation of redundant accesses in accordance with policy SU2 of the Tamworth Borough Council Local Plan 2006-2031.*

26.) Prior to occupation, the associated parking areas, indicated on submitted Drgs. No.NWT-BWB-HGN-XX-DR-TR-110 S2 Rev. P06 and NWT-BWB-HGN-XX-DR-TR-110 S2 Rev. P5, shall be provided with the parking bays clearly delineated and thereafter retained at all times for their designated purpose.

*Reason: In the interests of pedestrian and highway safety accordance with policies EN5 and SU2 and Appendix C of the Tamworth Borough Council Local Plan 2006-2031.*

27. The garden centre as shown on Drawing Number 330 Revision P03 hereby approved shall be occupied solely in connection with, and ancillary to the existing business operating from Unit B (as shown on Drawing Number 330 Revision P03) and shall not be sold off, sub-let or used as a separate business premises.

*Reason: To protect the vibrancy and vitality of Tamworth town centre to comply with policy EC1 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

28. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, as amended, or any order revoking and re-enacting that Order with or without modification, the gymnasium as shown as unit 8 on Drawing Number 330 Revision P03 shall be used only for the purposes of a gymnasium as defined by Class E of the Town and Country Planning (Use Classes) Order 1987, as amended, or any order revoking and re-enacting that Order with or without modification, and for no other purpose in Class E of the schedule to that Order.

*Reason: Only the approved use has been considered in establishing whether the proposal would have acceptable impacts in this location, and other uses would require further detailed consideration by the Local Planning Authority. In accordance with policy EC1 the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

29. The open land within the curtilage of the site generally and within the curtilage of individual units as shown on Drawing Number 330 Revision P03 hereby approved shall not be used for the storage, display or sale of anything whatsoever.

*Reason: In the interests of the visual amenities of the area and the openness of the land and to protect the vibrancy and vitality of Tamworth town centre to comply with policies EC1 and EN5 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

30. Notwithstanding the details provided, prior to their incorporation in to the building(s) hereby approved, details and/or samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.

*Reason: In the visual interest of the building(s) and the surrounding area in accordance with policy EN5 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

**31 No development, including preparatory works, shall commence** until details of the finished floor levels of the buildings hereby approved, and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels, shall be submitted to and approved in writing by the Local Planning Authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.

*Reason: To protect the amenities of adjoining properties and the appearance of the area generally, recognising that site levels across the site as a whole are crucial to establishing infrastructure routeing/positions in accordance with policy EN5 of the Tamworth Borough Council Local Plan 2006-2031 and the National Planning Policy Framework (as amended) 2019.*

### **Informative Notes:**

#### Ecology:

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2017 which identifies 4 main offences for development affecting European Protected Species (EPS):

- 1.) Deliberate capture or killing or injuring of an EPS
- 2.) Deliberate taking or destroying of EPS eggs
- 3.) Deliberate disturbance of a EPS including, in particular, any disturbance which is likely:
  - a.) To impair their ability:
  - i.) To survive, to breed or reproduce, or to rear or nurture their young, or
  - ii.) In the case of animals of a hibernating or migratory species, to hibernate or migrate; or
  - b.) To affect significantly the local distribution or abundance of the species to which they belong.
- 4.) Damage or destruction of an EPS breeding site or resting place.

#### Ecology:

The applicant/developer is advised of the requirement to secure a Natural England Licence before commencing development.

#### Flood Risk:

The Environment Agency (EA) advises that the applicant/developer should:

- a.) Follow the risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.

b.) Refer to the Environment Agency (EA) document 'Guiding Principles for Land Contamination' for the type of information that the EA required in order to assess risks to controlled waters from the site. The Local Planning Authority can advise on risk to other receptors, such as human health.  
c.) Refer to the EA's 'Groundwater Protection: Principles and Practice' (GP3) document, available from [www.gov.uk](http://www.gov.uk). This sets out the EA's position on a wide range of activities and developments, including:

- i.) Waste management
- ii.) Discharge of liquid effluents
- iii.) Land contamination
- iv.) Ground source heat pumps
- v.) Drainage
- vi.) Storage of pollutants and hazardous substances
- vii.) Management of groundwater resources

All precaution must be taken to avoid discharges and spills to ground both during and after construction. For advice on pollution prevention measures, the applicant/developer should refer to guidance available on the EA's website ([www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)).

d.) Refer to the EA website: [www.gov.uk/environment-agency](http://www.gov.uk/environment-agency) for more information.

#### Drainage:

Severn Trent Water advise that there may be a public sewer located within the application site. Although statutory sewer records do not show any public sewers within the area specified, there may be sewers that have been recently adopted under the Transfer of Sewer Regulations 2011. Public sewers have statutory protection and may not be built close to, directly over or be diverted without consent and contact must be made with Severn Trent Water to discuss the proposals. Severn Trent will seek to assist in obtaining a solution which protects both the public sewer and the building. Please note that there is no guarantee that you will be able to build over, or close to, any Severn Trent sewers, and where diversion is required there is no guarantee that you will be able to undertake those works on a self-lay basis. Every approach to build near to, or divert, Severn Trent Water assets has to be assessed on its own merit and the decision of what is or isn't permissible is taken based on the risk to the asset and the wider catchment it serves. It is **vital** therefore that the applicant/developer contacts Severn Trent Water at the earliest opportunity to discuss the implications of Severn Trent Water assets crossing the site. Failure to do so could significantly affect the costs and timescales of the project if it transpires diversionary works need to be carried out by Severn Trent Water.

#### Highways

The proposed traffic management scheme referred to in the conditions requires a Traffic Regulation Order (TRO) to provide safe off-site mitigating works. The recommendation of approval by SCC Highways Authority should not be construed as though the County Council is prejudging the outcome of the Order making process. The applicant/developer should note that the Order will be made on behalf of the applicant/developer by Staffordshire County Council at the applicant/developer's expense and has to be secured before development commences, as it is a mitigating measure associated with the proposed development. In case the Order is not already being processed, the applicant/developer is requested to contact <https://www.staffordshire.gov.uk/Highways/TRO/Overview.aspx> with immediate effect to enable the Order to be secured at the earliest convenience to avoid delays to implementation of the planning consent. Please note that there are no guarantees that the Order will be successful.

#### Highways

Conditions requiring off-site highway works shall require a Highway Works Agreement with Staffordshire County Council. The applicant/developer is requested to contact Staffordshire County Council in order to secure the Agreement. The link below is to the Highway Works Information Pack, including an application form. Please complete and send to the address indicated on the application form, or email to ([nmu@staffordshire.gov.uk](mailto:nmu@staffordshire.gov.uk)). The applicant/developer is advised to begin this process well in advance of any works taking place in order to meet any potential timescales.



<https://www.staffordshire.gov.uk/transport/staffshighways/highwayscontrol/HighwaysWorkAgreements.aspx>

### Cadent Gas

Before carrying out any work the applicant/developer must:

- Note the presence of an Above Ground Installation (AGI) in proximity to the site. You must ensure that you have been contacted by Cadent and/or National Grid prior to undertaking any works within 10m of this site.
- Carefully read these requirements including the attached guidance documents and maps showing the location of apparatus.
- Contact the landowner and ensure any proposed works in private land do not infringe Cadent and/or National Grid's legal rights (i.e. easements or wayleaves). If the works are in the road or footpath, the relevant Local Authority should be contacted.
- Ensure that all persons, including direct labour and contractors, working for you on or near Cadent and/or National Grid's apparatus follow the requirements of the HSE Guidance Notes HSG47 'Avoiding Danger from Underground Services' and GS6 'Avoidance of Danger from Overhead Electric Power Lines'. This guidance can be downloaded free of charge at <http://www.hse.gov.uk>.

In line with the above guidance, verify and establish the actual position of mains, pipes, cables, services and other apparatus on

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