

# **Report to Area Planning Sub-Committee West**



**Epping Forest  
District Council**

**Date of meeting: 19 August 2009**

**Subject: EPF/1305/08 1 Cartersfield Road, Waltham Abbey, Essex, EN9 – Demolition of existing buildings and erection of new 'Lidl' food store and construction of five start-up industrial units (revised application).**

**Responsible Officer: Graham Courtney (01992 564228).**

**Democratic Services: Gary Woodhall (01992 564470).**

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## **Recommendation:**

**To vary the required legal agreement in connection with the above planning application to remove the following clause:**

***That the Discount food store must not sell or advertise to sell any of the following products or services unless otherwise agreed by the Council in writing:***

- (a) Fresh meat counter***
- (b) Fresh fish counter***
- (c) Delicatessen/cheese counter***
- (d) Hot food counter***
- (e) Dry-cleaning service***
- (f) Post Office services***
- (g) Lottery sales including scratch cards***
- (h) Photographic shop***
- (i) Café/restaurant***
- (j) Fresh bakery counter***
- (k) Tobacco products***
- (l) Loose confectionary***
- (m) Newspapers or Magazines***
- (n) Greeting Cards***
- (o) Pharmacy***
- (p) Post Office Services***
- (q) Cash Machines (ATM's)***

## **Report Detail:**

1. The above planning application was considered at Plans Sub-Committee West on 2 December 2008, and subsequently recommended approval. This was then referred to District Development Committee, where the application was approved subject to a S106 agreement. This agreement has not yet been signed, so technically planning permission has not yet been granted. The applicant is now seeking to amend the requirements of the legal agreement.

2. The applicant originally submitted a unilateral undertaking with the planning application which offered the following restrictions:

1. *The developer will use all reasonable endeavours to recruit staff resident in the Waltham Abbey High Beach, Waltham Abbey Honey Lane, Waltham Abbey North East, Waltham Abbey Paternoster and Waltham Abbey South West wards.*
2. *The food store will only be operated by Lidl or another 'deep or hard discounter' as defined by Verdict in the Verdict Report on Grocery Retailers 2008, or subsequent updates (these retailers currently include Lidl, Aldi and Netto), unless otherwise agreed by the Council.*
3. *The number of product lines (stock keeping units) available within the food store at any one time shall not exceed 3,000 lines, unless otherwise agreed with the Council.*
4. *The proportion of the net sales area of the food store used for the display of non-food (comparison) goods (excluding household cleaning and cosmetic products) shall not exceed 20% of the total net sales area, unless otherwise agreed with the Council.*
5. *The food store will not provide any of the following services:*
  - (a) *Fresh meat counter*
  - (b) *Fresh fish counter*
  - (c) *Delicatessen/cheese counter*
  - (d) *Hot food counter*
  - (e) *Dry-cleaning service*
  - (f) *Post office services*
  - (g) *Lottery sales*
  - (h) *Photographic shop*
  - (i) *Café/restaurant*

3. The planning application was agreed subject to the above, with additional restrictions required in the legal agreement. Along with the legal agreement Members also requested a condition be added to the planning permission reading:

*The food retail floorspace, as identified and agreed in writing by the Local Planning Authority, shall not sell, or advertise to sell; tobacco products, loose confectionary, newspapers, magazines, greeting cards, lottery tickets or scratch cards; and shall not contain a pharmacy, dry cleaners, post office services, cash machine, butchers, fishmongers or bakers, unless otherwise agreed in writing by the Local Planning Authority.*

4. As a result of the Members decision one of the changes to the legal agreement put forth to the applicant was to match the list of restricted items to that shown in the imposed condition. The applicant however does not wish to accept such a legal restriction, (with the added restriction on selling greeting cards, magazines, newspapers, tobacco, loose confectionary and preventing the provision of a cash machine and a pharmacy) despite raising at this stage no objection to the wording of the condition.

5. It is considered that this particular obligation can be removed from the legal agreement as the goods to be sold or advertised at the proposed store would still be restricted by the condition. Furthermore, paragraph 12 of Part 1 of Circular 11/95: Use of conditions in planning permission states that, where possible, *"the local planning authority should impose a condition rather than seek to deal with the matter by means of a planning obligation"*.

6. Despite some reservations from Officers, as it seems likely, given the reluctance to sign the legal agreement, that there may be a later application to vary the condition, it is considered that the condition is valid (being reasonable, necessary, precise, relevant to planning and enforceable) and is therefore defensible on appeal and that the imposed condition would successfully restrict the goods sold and the services provided at the application site, as intended, in order to limit harm to the viability of the town centre. The duplication of this restriction within the legal agreement is therefore unnecessary and contrary to the advice in Circular 11/95 and the removal of this particular element of the legal agreement is recommended for approval.