

## 4. Penderfyniadau Apeliadau/Appeal Decisions

03-03-2022 - 31-05-2022

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	APP/D6820 /V/19/32324 72	A181062	(Aldi Stores Ltd)	Called in application.	Cyn-Kwik Savies, Coedlan y Parc, Aberystwyth / Former Kwik Save, Park Avenue, Aberystwyth	Dismissed	15-03-2022
2	CAS-01347-X6P3Q3 A210044	A210044	Ms Beth Farr	Against Refusal	Llethr Melyn, Trawsgoed, Aberystwyth, Ceredigion, SY23 4HU	Dismissed	21-03-2022

## 5. Apeliadau a Dderbyniwyd/Appeals Received

03-03-2022 - 31-05-2022

#	Cyfeirnod yr Apel / Appeal Reference	Cais / Gorfodaeth / Linked Application / Enforcement	Apeliwr / Appellant	Rhesymau dros apelio / Grounds for Appeal	Lleoliad / Location	Penderfyniad Allanol / External Decision	Dyddiad Penderfyniad Allanol / External Decision Date
1	CAS-01594-H8F0N5	A200540	Sonia Gibbon	The failure of the LPA to give its decision within the appropriate period	Derry Omond Railway Halt Betws Bledrws, Lampeter		
2	CAS-01595-S1J5V3	A210392	Mckay Brothers	Against refusal of planning permission	Land At Plynlimon Fawr Eisteddfa Gurig, Ponterwyd, SY23 3LE		
3	CAS-01679-T9V3K5	A200773	Mr and Mrs A & S Irvine	Call-in application.	Llwydlo Fach, Aberarth, SA46 0JX		



Ein cyf/Our ref: qA1410263

Mr Phil Marsden  
Associate  
Planning Potential Ltd  
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By E-mail: [info@planningpotential.co.uk](mailto:info@planningpotential.co.uk)

15 March 2022

Dear Mr Marsden

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77.  
APPLICATION BY ALDI STORES LIMITED. THE ERECTION OF A CLASS A1 FOOD  
STORE WITH ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING AT LAND  
AT THE FORMER KWIK SAVE, PARK AVENUE, ABERYSTWYTH, CEREDIGION, SY23  
1PG. APPLICATION NO: A181062**

1. Consideration has been given to the report of the Inspector, regarding your client's planning application, Local Planning Authority ("LPA") reference: A181062.
2. On 3 July 2019, in accordance with Section 77 of the Town and Country Planning Act 1990 ("the 1990 Act"), the planning application was called in for decision by the Welsh Ministers. Under the provisions of the Government of Wales Act 2006, the power to determine applications under Section 77 of the 1990 Act has been transferred to the Welsh Ministers, these functions have been exercised by me as Minister for Climate Change.
3. The Inspector recommends planning permission be refused. A copy of the Inspector's report ("IR") and the Addendum Report are enclosed. All references to paragraph numbers, unless otherwise stated, relate to the IR.

**Main Issues**

4. The Inspector considers the main issues in this case are:

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- (i) Whether the proposed development is justified in a C1 flood zone with particular reference to local and national planning policies;
- (ii) The effect of the proposed development on the ecology of the area, particularly the special features of the National Sites Network and protected species;
- (iii) Whether any conflict with policy or harm identified in relation to the foregoing is outweighed by considerations which would justify granting planning permission with particular reference to a fallback position (i.e. the existence of an extant planning permission for retail development at this site).

**Whether the proposed development is justified in a C1 flood zone with particular reference to local and national planning policies**

5. The Inspector identifies the relevant policies in Planning Policy Wales (“PPW”) and Technical Advice Note 15: Development and flood risk (“TAN 15”). Retail schemes are identified as “less vulnerable development” in TAN 15 and the site is located in zone C1 of the Development Advice Maps (“DAM”) as defined in Figure 1 of TAN 15. Therefore, the justification criteria in paragraph 6.2 of TAN 15 apply. (IR 104-106).
6. Paragraph 6.2 of TAN 15 states highly vulnerable development and emergency services in zone C2 should not be permitted. All other new development should only be permitted within zones C1 and C2 if it is justified and it can be demonstrated that:-
  - i. Its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement ; **or**,
  - ii. Its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region;

**and,**

  - iii. It concurs with the aims of PPW and meets the definition of previously developed land (PPW fig 2.1); and,
  - iv. The potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 and 7 and appendix 1 found to be acceptable.

A footnote under criterion (i) clarifies that regeneration initiatives will be comprehensive, multi-approach and form part of an integrated suite of initiatives which have been subject to public consultation. A local authority strategy is taken to mean the development plan for the area (deposit version as minimum).

7. The Inspector considers criterion (iii) is satisfied as the site comprises previously developed land, it is located within a sustainable location and the proposal accords with the placemaking principles of PPW. I am satisfied the site is located on previously developed land. However, the national sustainable placemaking outcomes include “Maximising Environmental Protection and Limiting Environmental Impact”, with a focus on reducing environmental risk and climate change resilience, so I am less convinced the proposal accords with the placemaking principles in PPW. However, for the

purposes of the tests in TAN 15, I am satisfied the proposal broadly satisfies the criterion (iii) in paragraph 6.2 of TAN 15. (IR 107)

8. The Inspector notes both parties consider the proposal is generally in accordance with the site's allocation for comprehensive redevelopment for retail, office and community purposes (allocation reference M0303). The Inspector is satisfied the proposal is necessary to assist a local authority regeneration initiative in accordance with criterion (i) of paragraph 6.2 of TAN 15. (IR 108-109)
9. Regarding criterion (iv), the site falls within zone C1 on Natural Resources Wales's ("NRW") Development Advice Map. The Inspector notes the applicant's Flood Consequences Assessment ("FCA"), dated 2018, shows neighbouring areas of land could experience increased flood levels as a result of displacement from the proposed development of the application site. The FCA also shows the site is at risk of fluvial flooding during the 1% Annual Exceedance Probability ("AEP") event and the 1% AEP plus climate change and 0.1% AEP events. The FCA concludes the site is not at risk from tidal flooding in the 0.5% AEP event. (IR 111-112)
10. The FCA recommends a flood emergency plan is developed to manage the identified flood risk and also a subscription to the Flood Warning Service should be maintained. The Inspector notes subsequent reports on flood risk also reflect this recommendation. The Inspector states the applicant has committed to signing up to NRW's flood warning system and introducing a flood emergency plan, however, no specific flood emergency plans or procedures have been advanced. The Inspector considers the lack of detail means it is not possible to determine whether such a plan would be feasible and is a further indication that flood risk arising from the development has not been fully addressed. (IR 113)
11. The Inspector notes there has been regular liaison between the applicant and NRW, which has resulted in the production of two addendum reports on flooding. However, NRW's objection to the scheme remains. (IR 114)
12. The Inspector notes NRW's comments on the most recent (third) addendum report on flood risk are limited by the lack of model data supplied to it at the time it prepared its consultation response. NRW considers the proposed mitigation measures have not been adequately detailed. The Inspector notes the applicant responded to confirm there was no intention to provide any further clarification on the matter. The Inspector's view is that if NRW had considered the later submitted model data, it is unlikely that this would have resulted in any conclusive response on flood risk from NRW as they have also commented that the submission of a further FCA may then have been required. (IR 115)
13. I note paragraph 115 of the IR makes reference to "later submitted model data", on which, for reasons set out in that paragraph, NRW had not been formally asked for comment by the Inspector. However, following submission of the Inspector's report to the Welsh Ministers, NRW was invited to comment on the most recent model data, which had been provided to NRW by the applicant on 3 March 2021. In response, the Inspector states NRW advised it required additional time to consider the data. However, the Inspector notes in the Addendum Report that despite agreement to an extension of time for comment, NRW failed to respond. Therefore, the Inspector is satisfied the most up to date evidence is as addressed in the report and the conclusions and recommendations in the IR stand.
14. The Inspector notes although the applicant has specified mitigation would comprise box culverts, NRW states it has not been adequately demonstrated what the purpose

or intention of the mitigation is, how the proposed mitigation would work and the impact, if any, on third party land. (IR 116)

15. The Inspector considers there is some inconsistency in the applicant's evidence relating to the proposed mitigation measures and a lack of certainty on whether the mitigation proposed to address the identified flood risk has been consistently and accurately accounted for in the flood modelling carried out. (IR 117 - 118)
16. The Inspector states the inconsistencies and lack of clarity relating to the need for, purpose of and operation of the proposed culverts reinforce the concerns expressed by NRW, and shared by the Inspector, that these measures have not been demonstrated to be an appropriate or feasible method of acceptably mitigating flood risk in this case. (IR 119)
17. On the basis of the available information, the Inspector is not satisfied the potential consequences of a flood event for the proposed development could be adequately managed. The Inspector considers the potential efficacy of the proposed mitigation measures has not been adequately established, therefore, it has not been possible to determine whether flood risk would be acceptable either on site or on third party land. In assessing risk, the Inspector is mindful of the potentially significant implications of a flood event on human life and property, a concern given considerable weight by the Inspector. (IR 120-123)
18. For the above reasons the Inspector considers the proposed development would fail to satisfy criterion (iv) of paragraph 6.2 in TAN 15 and would conflict with policy DM11 of the Ceredigion Local Development Plan ("LDP") as it has not been demonstrated that the development would be resilient and adaptable to the effects of flooding. The Inspector also refers to advice in paragraph 7.2 of TAN 15 which refers to adopting a sensible approach to ensuring safe access and egress arrangements. The Inspector considers, in this case, the risk of flooding to the car park has been acknowledged and approval of a scheme where the safety of visitors walking to and from cars and driving through floodwater could be compromised and would conflict with the principle of sustainable development set out in PPW and Future Wales ("FW") (IR 124)
19. I agree the development would fail to satisfy criteria (iv) of paragraph 6.2 in TAN 15 and, therefore, fails to meet the justification test in TAN 15. I also agree, given the acknowledged risk of flooding to the car park, the site conflicts with the principle of sustainable development set out in PPW. I note PPW edition 11 was published since the last hearing date. However, there is no material difference between edition 11 of PPW and edition 10 in terms of the focus of national planning policy, regarding the need for the planning system to deliver sustainable development, which is also reflected in FW.
20. I note the Inspector also considers the application conflicts with policy DM11 of the LDP. Whilst I agree it has not been demonstrated that the development would be resilient and adaptable to the effects of flooding, I note paragraph 1 of policy DM11 requires this to be demonstrated for "justified development". In this case, due to the failure to satisfy criteria (iv) of paragraph 6.2 in TAN 15, the development fails the justification tests in TAN 15 and is not "justified development". However, paragraph 2 of policy DM11 also requires "the long term sustainability of the development" to be taken into account. Given the acknowledged risk of flooding to the car park I consider the proposal conflicts with this requirement in policy DM11.

**The effect of the proposed development on the ecology of the area, particularly the special features of the National Sites Network and protected species.**

21. The Inspector sets out the relevant policy position in PPW and FW, and notes a range of ecological surveys were undertaken by the applicant in support of the proposal. The Inspector has considered the impact of the proposal both on statutorily protected species and the impact on nationally and internationally designated sites. (IR 125 – 127)
22. The ecological survey identifies 3 Sites of Special Scientific Interest (“SSSI”) within 2km of the application site. The Inspector notes no concerns have been raised by NRW in relation to these SSSIs and there is no evidence to suggest any impact on any locally designated sites. (IR 127)
23. Regarding protected species, the surveys do not indicate bats are present on the site, although planning conditions to control lighting would be required as the site may be suitable for bats. The Inspector states, other than bats, there is no evidence to suggest the site is a suitable habitat for protected species. (IR 128)
24. Adopting the precautionary principle, the Inspector considers there is a risk potentially polluted water could enter the river Rheidol from the application site. The Inspector notes there are 22 National Sites Network sites within 10 kilometres of the application site including the West Wales Marine Special Area of Conservation and North Cardigan Bay Special Protection Area both falling within approximately 640 metres of the site. (IR 129)
25. A Shadow Habitats Regulations Assessment (“SHRA”) was submitted by the applicant. The SHRA identified 11 European/Ramsar sites to be considered. Likely significant effects on the qualifying features in relation to water quality during the construction phase was identified for 9 sites. (IR 130)
26. As a mitigation measure, the SHRA recommends the implementation of a Construction Environmental Management Plan (“CEMP”), secured by condition, to control construction activities to prevent contaminated water run-off. Although the SHRA concludes there would be no likely significant effect during the operational phase, the applicant has indicated a willingness to adhere to a Pollution Prevention Plan (“PPP”), although no suggested PPP has been provided. (IR 131-132)
27. The Inspector notes the concerns of NRW, regarding the need to update the SHRA to reflect recent flood modelling and the potential for the operation of the proposed culverts to affect flood water displacement, potentially creating a pathway for contaminated water to reach the river Rheidol. (IR 133-135)
28. On this matter the Inspector is satisfied overall that any potentially harmful impacts on nature conservation interests can be adequately addressed by the imposition of the conditions to secure a CEMP and PPP prior to commencement of development. The Inspector notes the proposal includes some provision for biodiversity enhancement in the form of bat and bird boxes and the conditions for landscaping include planting to increase biodiversity. The Inspector notes these enhancement provisions accord with local policy and the objectives of PPW and FW. (IR 136).

**Appropriate Assessment**

29. Given the finding of likely significant effect on sites forming part of the National Sites Network, the Inspector provides an Appropriate Assessment (“AA”) at Annex B of the

IR. The AA concludes it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would not have an adverse effect on the integrity of the sites listed and forming part of the National Sites Network. The Inspector notes this conclusion is predicated on securing the identified mitigation measures through the imposition of the recommended planning conditions. (IR 137 – 138)

**Whether any conflict with policy or harm identified in relation to the foregoing is outweighed by considerations which would justify granting planning permission with particular reference to a fallback position.**

30. The Inspector notes full planning permission was granted in 2011 for the demolition of a vacant foodstore, car showroom and garage and the erection of an Aldi foodstore, hotel and associated car parking (LPA reference: A090312). The permission was subsequently amended by permission A151045, which varied a number of conditions in order to enable information to be submitted after demolition has taken place. The Inspector notes the applicant has confirmed the buildings on site were demolished and the site cleared in 2016, and the LPA and applicant agree the permission has been implemented and is extant. (IR 139)
31. The LPA and applicant consider the extant permission represents a fallback position against which the current application should be assessed. (IR 140)
32. The Inspector notes the applicant states it intends to complete the approved development if permission for the current proposal was not obtained. However, the Inspector notes a development partner has not been secured and the applicant has commented in written evidence that a lack of sufficient car parking was an impediment to delivering the hotel element of the 2011 scheme. The Inspector states there has been no suggestion this issue has been resolved and there have not been any proposals to indicate how this obstacle could be addressed. Therefore, the Inspector does not consider the pleaded fallback position to represent a significant consideration which would justify permission for a scheme that fails to accord with national and local planning policies on flooding. (IR 141-142)

**Other Matters**

33. The Inspector has taken account of the duties under the Well-being of Future Generations (Wales) Act 2015 (“WFG Act”) and considers the scheme would not meet the goal of responding to challenges of climate change. The Inspector considers the scheme would not be consistent with the objectives of the WFG Act overall. (IR 143-145). I address the WFG Act in further detail below.
34. The Inspector acknowledges the proposal would regenerate a derelict site leading to investment in the area, offering competition and choice in the food retail market in a sustainable location. The scheme would also contribute to improving economic and social well-being in the local community through this investment and the creation of jobs. The Inspector also notes the biodiversity net gains offered by the proposal in the form of bat and bird boxes and landscaping using native planting. (IR 144)

**Planning Balance and Overall Conclusion**

35. The Inspector acknowledges the site would contribute to the delivery of a strategically important LDP site and redevelopment of the site would accord with the broad principles of FW, noting Aberystwyth is located in the Mid Wales Regional Growth Area in FW. The Inspector also recognises the scheme would provide a food store, located close to



the town centre, on a vacant site in a sustainable location with employment opportunities. Sustainable modes of transport would be encouraged. The scheme would also incorporate the principles of the energy hierarchy, to minimise carbon emissions. The Inspector gives these benefits significant weight. (IR 155-156)

36. I agree FW promotes a town centre first approach, which directs significant new facilities, including retail facilities, to town and city centres. I note Aberystwyth forms part of the Mid Wales Regional Growth Area, a region where sustainable growth and development is supported. However, I also note FW recognises that flooding is a potential risk for coastal and inland places in the region and the potential for flooding has implications for the delivery of growth in the region.
37. The Inspector notes the application site is located in flood zone C1 and it has not been demonstrated the potential consequences of a flood event could be adequately managed. Therefore, the application fails to accord with TAN 15 and policy DM11 of the LDP. The Inspector attaches considerable weight to this, particularly as PPW encourages a precautionary approach of positive avoidance of development in areas at risk of flooding. The Inspector concludes it has not been demonstrated risk to personal safety and property cannot be adequately managed and the development would conflict with the principle of sustainable development in PPW. (IR 157)
38. The Inspector does not consider the fallback position to be realistic and does not give it any appreciable weight in favour of the development. (IR 158)
39. In the overall balance, the Inspector considers the matters in favour of the scheme are outweighed by a fundamental conflict with an important component of national policy, particularly given the potentially harmful effects that could arise. (IR 159)
40. The Inspector recommends the application be refused. (IR 160)

### **Formal Decision**

41. Subject to the comments above I agree with the Inspector's reasoning and conclusions as detailed in IR 102 – 160. Therefore, in exercise of the power referred to in paragraph 2 of this decision letter, I hereby refuse planning permission for planning application A181062.
42. In reaching this decision I note the Welsh Ministers must, in accordance with the WFG Act, carry out sustainable development. I have taken into account the ways of working set out at section 5(2) of the WFG Act and 'SPSF1: Core Guidance, Shared Purpose: Shared Future – Statutory Guidance on the WFG Act'. My assessment against each of the ways of working is set out below.

#### *Looking to the long-term*

43. The decision takes account of the long-term risk of flooding.

#### *Taking an integrated approach*

44. I have considered the impacts from the development proposal on the Welsh Government's well-being objectives, which incorporate the well-being goals set out in section 4 of the WFG Act. Where an objective is not set out, the effect of this decision is neutral.

*Impact on well-being objectives*

- Embed our response to the climate and nature emergency in everything we do – positive effect.

*Involving people/Collaborating with others*

45. Within the framework of a statutory decision making process, which is governed by prescribed procedures, the application was subject to publicity and consultation, providing the opportunity for public and stakeholder engagement. Representations received through these procedures have been considered and taken into account in making a determination on this application.

*Prevention*

46. The decision would prevent development being undertaken on a site at risk of flooding, where it has not been demonstrated the potential consequences of a flood event could be adequately managed.
47. I consider my decision accords with the sustainable development principle set out in the WFG Act. The decision does not have any negative effects on the Welsh Government's well-being objectives, however if the application was approved, the benefits in terms of supporting the objective of responding to the climate emergency may not be secured. Therefore, I consider the decision is a reasonable step towards meeting the Welsh Government's well-being objectives.

Yours sincerely



**Julie James AS/MS**

Y Gweinidog Newid Hinsawdd  
Minister for Climate Change

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## Adroddiad

Gwrandawriad a gynhaliwyd ar 07/12/20,  
05/01/21

Ymweliad â safle a wnaed ar 08/12/20

**gan Janine Townsley LLB (Hons)  
Cyfreithiwr (Nad yw'n ymarfer)**

**Arolygydd a benodir gan Weinidogion Cymru**

**Dyddiad: 17.09.2021**

## Report

Hearing Held on 07/12/20, 05/01/21

Site visit made on 08/12/20

**by Janine Townsley LLB (Hons) Solicitor  
(Non-practising)**

**an Inspector appointed by the Welsh Ministers**

**Date: 17.09.2021**

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TOWN AND COUNTRY PLANNING ACT 1990 - Section 77

APPLICATION BY ALDI STORES LTD

LOCAL PLANNING AUTHORITY:

CEREDIGION COUNTY COUNCIL

**Full application for the erection of a Class A1 food store with associated access,  
car parking and landscaping.**

**Former Kwik Save, Park Avenue, Aberystwyth, Ceredigion, SY23 1PG.**

**File Ref: D6820/V/19/3232472**

**Site address: Site of Former Kwik Save, Park Avenue, Aberystwyth, Ceredigion, SY23 1PG.**

- The application was called in for decision by the then Minister for Housing and Local Government, one of the Welsh Ministers, in a letter issued under section 77 of the Town and Country Planning Act 1990, on 3 July 2019.
- The application is made by Aldi Stores Ltd to Ceredigion County Council.
- The application Ref A181062 is dated 2 November 2018.
- The development proposed is the erection of a Class A1 food store with associated access, car parking and landscaping.
- The reason given for making the direction was that it is considered the proposal may be contrary to the guidance set out in Technical Advice Note (TAN) 15: Development and Flood Risk and whether sufficient regard has been given to the potential effect of flooding on neighbouring areas.
- On the information available at the time of making the direction, the following were the matters on which the then Minister for Housing and Local Government particularly wished to be informed for the purpose of her consideration of the application: Whether the Flood Consequences Assessment prepared on behalf of the applicant fully addressed the relevant TAN 15 tests with particular reference to the potential impact of the development on flooding in neighbouring areas.

**Summary of Recommendation: That the application be refused.**

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**Background and Procedural Matters**

1. In advance of the call-in direction, the Council's Development Control Committee had resolved<sup>1</sup> to approve the application in accordance with the officer's recommendation as set out in the committee report.
2. Having regard to the Town and Country Planning (Environmental Impact Assessment (EIA)) (Amendment) (Wales) Regulations 2017, in a letter dated 26<sup>th</sup> April 2021 the Planning Inspectorate under the authority of the Welsh Ministers confirmed that the project is not EIA development within the meaning of those Regulations.
3. The matter was originally scheduled for an inquiry on 25<sup>th</sup> March 2020, however, due to the Covid-19 pandemic, the event was cancelled. With the agreement of the main parties the case has subsequently proceeded by way of a hearing to consider flood risk and all other matters have been dealt with solely on the basis of the written representations.
4. A hearing was scheduled for 10<sup>th</sup> November 2020, however, in the days leading up to the hearing it became apparent that Natural Resources Wales (NRW) and the interested parties had not received all of the applicant's evidence. A request for the postponement of the hearing was granted and it was rescheduled to 7<sup>th</sup> December 2020.
5. A hearing was held on 7<sup>th</sup> December 2020, however, NRW's assessment of flood risk had not been completed as all model files had not been provided to them. A commitment was made by both NRW and the applicant to liaise with one another to enable an exchange of information for NRW to provide their response on flood risk at a further hearing session arranged for 5<sup>th</sup> January 2021.

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<sup>1</sup> On 12<sup>th</sup> June 2019

6. During discussions at the hearing on 5<sup>th</sup> January 2021, NRW indicated flood modelling should account for local data and agreed to provide the applicant with hydrometric and river flow data to enable further modelling. I agreed that further exchanges could take place between them in writing. The applicant carried out further modelling and produced a third addendum report on flood risk and NRW maintained their objection to the scheme. On receipt of this information the hearing was closed in writing on 10<sup>th</sup> March 2021. Since that date there have been further written exchanges with the applicant and NRW to inform an appropriate assessment under the Habitats Regulations.
7. The further flood modelling has been conducted taking into account mitigation measures comprising box culverts. In order to accommodate the culverts, the applicant has indicated the finished floor level of the store would need to be increased from 4.94 metres AOD to 5.33 metres AOD and a revised plan<sup>2</sup> has been submitted to reflect this amended detail. I have had regard to this plan which would also raise the first-floor level by 400mm, adjust the ramps and steps accordingly and update culvert location detail. I am content to accept this revised plan as I am satisfied that this change does not materially alter the scheme.
8. Since the last hearing date, the Welsh Government has published Future Wales: The National Plan 2040 (Future Wales) and Planning Policy Wales (PPW) Edition 11. Future Wales refers to Aberystwyth as a regional growth area and supersedes the Wales Spatial Plan which lists Aberystwyth as a key settlement. I am satisfied that neither makes any material difference to the conclusions set out in this report.

### **The Site and Surroundings**

9. The application site amounts to approximately 0.48ha of brownfield land at the southern end of Park Avenue, located a short distance outside the Town Centre Boundary<sup>3</sup>. The site was previously occupied by a vehicle repair garage, car showroom and a food store. These have been demolished and the site is now devoid of any buildings and is bounded by security fencing.
10. The site is surrounded by mixed-use built form with the Rheidol Retail Park generally opposite (to the east), a vehicle repair garage to the north, a police station to the south and a football ground and flats to the west.
11. The river Rheidol runs close to the site; approximately 100 metres away at its nearest point. The river Rheidol is classified by Natural Resources Wales (NRW) as a main river and it flows generally in a westerly direction past the site and discharges into Cardigan Bay at Aberystwyth Harbour approximately 600 metres away. The river is tidally influenced.
12. The site falls within zone C1 of the Development Advice Maps (DAM) as defined in Figure 1 of Technical Advice Note 15: Development and Flood Risk (TAN 15) as areas of the floodplain which are developed and served by significant infrastructure, including flood defences.

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<sup>2</sup> 180266P(1)(03)(E)

<sup>3</sup> As shown on the LDP Inset Map 0302 – Aberystwyth Town Centre

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## Planning Policy

### *Local Development Plan*

13. The Development Plan for the area is the Ceredigion Local Development Plan 2007-2022 (LDP) adopted in 2013. The site has been designated in the LDP Settlement Strategy as a part of a 3.67 hectare mixed use allocation (M0303- Park Avenue, Aberystwyth) for "...comprehensive redevelopment for retail, office, community purposes". The site is identified in *A Masterplan for Aberystwyth* (2007)<sup>4</sup> which states that Park Avenue South should be seen as part of the main urban core of Aberystwyth. The LDP allocation states it will "help provide around 3000m<sup>2</sup> of floorspace in the form of a single supermarket".
14. The Council, through their evidence, lists a number of other policies of the LDP which are considered relevant. The allocation also cross references certain LDP policies. Those which are of particular relevance are:
- LU22 – Community Provision, which seeks to sustain and enhance community provision;
  - LU24 – Provision of New Open Space, states that land allocated for housing will be required to make provision for open space;
  - DM06 High Quality Design and Placemaking, states new development should have regard to and contribute to the context of its location and surroundings. The policy amplification refers to the importance of design to the appearance of the built and natural environment;
  - DM09 Design and Movement, which refers to the importance of development being welcoming and being able to encourage movement through the spaces created;
  - DM10 Design and Landscaping, states that development (other than household development) which has an impact on the landscape should be accompanied by a landscaping scheme;
  - DM11 Designing for Climate Change, requires that any development which is justified in the flood zone should be resilient and adaptable to the effects of flooding and that the long term sustainability of the development has been taken into account;
  - DM 13 Sustainable Drainage Systems, states that development will be permitted where an appropriate sustainable drainage system for all new development is proposed and that such a system is capable of adoption by the Approving Body;
  - DM14 Nature Conservation and Ecological Connectivity, states that development should protect and, where possible, enhance biodiversity and ecological connectivity;
  - DM15 Local Biodiversity Conservation, requires there should be no significant negative effects to biodiversity and ecological connectivity on and off site, and

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<sup>4</sup> A development brief prepared by consultants with the Council and The Welsh Assembly Government.

seeks to ensure that appropriate enhancements have been incorporated into the development;

- DM20 – Protection of Trees, Hedgerows and Woodlands, states that development will be permitted providing it does not remove, damage or destroy trees or hedgerows of value unless the need for the development outweighs this value; and
- DM22 General Environmental Protection and Enhancement, requires that development should protect and enhance, inter alia, the water environment and water resources where possible.

### **National Policy**

15. Planning Policy Wales (PPW), Edition 11 seeks to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales, as required by Future Wales, The Planning (Wales) Act 2015, the Well-being of Future Generations (Wales) Act 2015 and other legislation. It creates a presumption in favour of sustainable development that ensures social, economic, cultural and environmental issues are balanced by the decision-taker in making decisions on individual planning applications and emphasises the importance of placemaking.
16. Paragraph 6.6.22-29 of PPW deals with development and flood risk. It encourages a precautionary approach of positive avoidance of development in areas at risk of flooding from the sea or from rivers. It states that development should reduce, and must not increase, flood risk on and off the site itself and in areas of flood plain currently unobstructed, where water flows in time of flood, built development should be wholly exceptional and limited to essential transport and utilities infrastructure.
17. PPW seeks to protect and enhance landscapes, habitats, biodiversity, geodiversity and the historic environment in their own right. Among key issues it identifies is the long term and chronic decline of biodiversity and habitat loss.
18. Future Wales identifies Aberystwyth as a regional growth area within the Mid Wales region. Policy 1 states that in accordance with Future Wales' Spatial Strategy, growth should be focussed in the growth areas as focal points for the region's social and economic activities. Aberystwyth is identified as the largest town in the region and remains a strategic location. Policies 2, 3 and 8 ensure that development in towns will be sustainably located.
19. The following Technical Advice Notes have been taken into account in the consideration of this application: TAN 15 – Development and Flood Risk; TAN 4 – Retail and Commercial Development; TAN 5 - Nature Conservation and Planning; TAN 12 – Design.
20. Figure 1 of TAN 15 defines Flood Zone C1 as areas of the floodplain which are developed and served by significant infrastructure including flood defences. Within zone C1, and having regard to the precautionary framework, development can take place subject to application of the justification test including the acceptability of consequences.
21. Paragraph 6.1 of TAN 15 recognises that since much urban development in Wales has taken place alongside rivers and in the coastal plain it is inevitable that some existing development will be vulnerable to flooding and further development in such areas will

not be free from flood risk and could, in some cases, exacerbate the consequences of a flood event for existing development. A balanced judgement is therefore required.

22. Paragraph 6.2 states that new development should be directed away from zone C towards suitable land in zone A or zone B where river or coastal flooding will be less of an issue. In zone C the tests outlined in sections 6 and 7 will be applied. Development will only be justified if it can be demonstrated that: (i) its location in zone C is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy required to sustain an existing settlement; or (ii) its location in zone C is necessary to contribute to key employment objectives supported by the local authority, and other key partners, to sustain an existing settlement or region. In addition, it must meet the following tests: (iii) it concurs with the aims of PPW and meets the definition of previously developed land; and (iv) the potential consequences of a flooding event for the particular type of development have been considered, and in terms of the criteria contained in sections 5 & 7, and Appendix 1, found to be acceptable. Section 7 deals with assessing flood consequences and Appendix 1 provides further detail.
23. In October 2019, the Welsh Government published a consultation version of a revised TAN 15 which states that planning decisions should continue to refer to the extant version until such time as an updated TAN 15 is published.
24. TAN 5 provides advice about how the planning system should contribute to protecting and enhancing biodiversity and geological conservation. Paragraph 4 relates to the requirements on developers when preparing planning applications and the need for the information submitted with planning applications to be proportional to the likelihood of effects on nature conservation interests and to their potential significance.
25. TAN 4 sets out the Welsh Government's objectives for retail and commercial development are to promote viable urban and rural retail and commercial centres, as the most sustainable locations to live, work, shop, socialise and conduct business, to sustain and enhance retail and commercial centres' vibrancy, viability and attractiveness and improving access to, and within, retail and commercial centres by all modes of transport, especially walking, cycling and public transport.
26. TAN 12 is intended to equip all those involved with the design of a development with advice on how "promoting sustainability through good design" and "Planning for sustainable building" may be facilitated through the planning system.

## **Planning History**

27. The site was previously occupied by a KwikSave supermarket, a vehicle repair garage and car showroom. Applications relating to these previous developments date back to the 1970s.
28. In 2011, planning permission was granted<sup>5</sup> (the 2011 permission) for the "demolition of vacant food store building, car showroom and garage and erection of Aldi food store, hotel and associated car parking". There was a later associated application to vary conditions attached to that permission in 2016<sup>6</sup>, including the variation of the date for commencement of development. Both the Council and applicant state that the 2011 permission has been implemented and therefore is extant.

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<sup>5</sup> AO90321

<sup>6</sup> A151045



## **The Proposal**

29. The proposal is for the erection of a Class A1 retail food store with associated access, 85 car parking spaces (including 4 disabled parking spaces and 7 parent and child spaces), two motorcycle spaces, cycle and trolley bays and landscaping. The proposed building would be two storeys high with a net sales area of 1254m<sup>2</sup> at ground floor, with warehouse storage, welfare and other ancillary spaces at first floor.
30. The store would be located on the southern half of the site with the main shopfront facing Park Avenue. Vehicular access to the car park would be from Park Avenue. The loading bay would be sited to the rear of the building facing the police station. Delivery vehicles would use a separate access road to avoid conflict with patrons. Plant would be located upon the roof, screened by a parapet. The proposed internal floor level would be elevated in response to flood risk issues. As a result, a ramped and stepped access to the interior of the store is proposed.
31. In design terms, much of the north-west elevation would be glazed with a cantilevered canopy over two sides of the main frontage with a combination of obscure and clear glazing on the rear elevation facing the existing football club and flats.

## **Case for Aldi Stores Ltd**

32. The case for the applicant is set out in the pre application report, design and access statement, proofs of evidence of C Whitlow (flood risk), J Arthur (ecology), D Templeton (planning), various ecological appraisals, transport statement, travel plan, flood consequences assessments, planning and retail statement, final comments, responses to NRW on additional flood modelling and matters related to ecology, other documents which accompanied the planning application and the statement of common ground (SoCG).

### *Fallback*

33. The applicant was granted planning permission in 2011 for a food store on the site and therefore the principle of retail development has been established. The permission was implemented by the demolition of buildings which were previously on site and thus is extant. The 2011 permission was granted after the Council carried out a sequential assessment. The Council considered retail need and concluded that sufficient quantitative and qualitative need existed in the area. In relation to the application scheme, the Committee report concluded that the development permitted in 2011 would not have a significant effect on the vitality and viability of the town centre and that the sequential test had been satisfied since there were a lack of suitable alternative sites within the town centre. The Council's consideration of the 2016 application to vary conditions attached to the 2011 permission did not specifically address retail policy matters. However, it was granted after the adoption of the LDP and after permission was granted for two further food stores which have since located on an adjacent allocation<sup>7</sup>.
34. It has not been possible to bring forward development in the form originally proposed as a development partner for the hotel element of the 2011 scheme has not been secured. However, significant weight should be given to the fact there is an extant permission for a larger development which would result in greater flood risk. The approved scheme could be completed but refusal of the application scheme would result in part of a key regeneration site becoming virtually stagnant.

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<sup>7</sup> M0302

35. Should permission not be forthcoming for the application scheme, the consented scheme under the 2011 permission would be completed. It is against this background that the application should be assessed.

### *Flooding*

36. As the site lies with Zone C1, a flood modelling exercise was carried out in 2013 as part of the Council's Strategic Flood Risk Management to inform the LDP. This showed that the site is not affected by any of the modelled flood events for the minor watercourses within Aberystwyth and the only risk was from tidal/fluvial events in the Rheidol catchment. It is acknowledged that since the 2013 modelling was carried out, there have been changes to the way flood risk is assessed including the need for allowances for the impact of climate change, methodology for bridge and culvert losses and hydrological updates. There have also been site specific changes to be taken into account including demolition works on the application site and new developments which have since been constructed in the surrounding area.
37. A Flood Consequences Assessment (FCA) dated September 2018 was submitted with the application which concluded that the site is at risk of fluvial flooding during the 1% event (with and without climate change) and the 0.1% event, but not at risk of tidal flooding in 0.5% event. The elevated finished floor level, at a level no lower than 4.93 metres AOD, would mitigate against tidal and fluvial flooding within the store over the development's design life but would be at risk from the 1% plus climate change and 0.1% fluvial event within the 75 year design life (by reference to the Welsh Government requirement that the design life for commercial development should be 75 years). A flood emergency plan and subscription to the Flood Warning Service was recommended.
38. In response to NRW's objection to the scheme, further flood modelling was undertaken in October 2019 to address current and future flood risk and to consider possible flood mitigation measures to address flood risk on third party land. This included an update of the hydrological analysis and modelling of the bridges using current best practice adopted by NRW.
39. This modelling demonstrated that, with the existing flood defences, the site would not be at risk of fluvial flooding in the 0.1% event or tidal flooding in the 0.5% event. The revised modelling shows that in 75 years' time, the existing defences would be overtopped by between 120mm and 140mm for the 0.5% tidal flooding event with an allowance for climate change. The revised modelling shows that the current flood defences would have protection for the 0.5% tidal event including an allowance for climate change for a period of 61 years.
40. A design life of 75 years would be beyond the design life for a building such as that proposed which would have an expected design life of up to 50 years. NRW's Shoreline Management Plan for West Wales sets out future flood defence policy for Aberystwyth whereby existing protection afforded by flood defences for Aberystwyth will be maintained. To maintain the protection currently afforded, the existing flood defences would need to be raised over time in response to projected rising sea and river levels as a result of climate change.
41. Without reliance on increased flood defences, the supermarket and pedestrian entrance would still not be at risk of flooding in the 0.5% event with an allowance for climate change. However, the vehicle entrance from Park Avenue and the car park would have peak flood levels and speed of inundation in excess of those set out in Table A1.15 of TAN 15. Modelling also showed that the site was at risk in the event of a failure of

- flood defences when peak levels in the store and pedestrian access points would be no greater than the 600mm depth specified in Table A1.15 of TAN 15.
42. The modelling shows that the 2011 scheme would have had a slightly greater adverse impact on third party land than the proposed building and shows that flood risk arises from 2081 onwards (by which time flood forecasting and warning capability is expected to have evolved significantly). The flood plan should allow for this to ensure the store would not open on any day when flood defences were forecast to overtop.
  43. Following discussions with NRW after the first hearing session, a second addendum to the Expert Report on Flood Risk was produced to explain the form of modelling undertaken and to respond to the "Red, Amber, Green" review of the model undertaken by NRW. This second addendum report confirms that the hydrological analysis on the impact of catchment reservoirs was compliant with current NRW guidance and it is marginal whether the catchment should be classified as free from upstream reservoir influence.
  44. Further "Red" items addressed related to the impact on bridges and the second addendum report confirmed that the schematisation of bridges and bridge form losses had been accounted for in the model and technical matters related to software configuration for the flood model. "Amber" items related to ensuring flow estimates used the latest values to ensure the tidal boundary is at the same location as in the NRW supplied model, that three tidal cycles had been used for tidal flood simulations and justification had been provided for the use of varying roughness values. These details were also confirmed.
  45. Following the last hearing session, further modelling was undertaken using local data from hydrograph data provided by NRW. The analysis of this modelling is set out in Appendix A of the third addendum report.
  46. It was not intentional that that the proposed culvert soffit levels should be shown as above finished floor levels within the store. The soffit height could be adjusted to fall just below finished floor level and still operate effectively, the final construction details of which could be secured by condition. The proposed finished floor level for the store would be raised to 5.33metres AOD to accommodate the proposed culverts. This is considered to be a slight change to finished floor level and is a change which could be dealt with as a matter of detailed design through condition.
  47. The most recent modelling, set out in a third addendum report on flood risk, was run with the local data provided by NRW. This shows that the site would remain flood free for both the 1% plus climate change event and the 0.1% fluvial event. There remains no impact on peak flood levels beyond the site boundaries<sup>8</sup>.
  48. The most recent flood risk report addresses NRW's concerns and confirms that the correct ground levels have been inputted, including car park levels. It also confirms that the appropriate inputs have been used for the modelling process. Overall, there remains no impact in excess of 5mm on peak flood levels beyond the site boundaries.
  49. A Technical Note dated March 2021 has been produced by the manufacturer of the modelling software which states that the model used was reviewed in the light of the concerns which had been raised by NRW (and set out in the red/amber/green review)

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<sup>8</sup> The third addendum report does not detail whether the period over which site would be expected to remain flood free would extend to the design life of the building.

and confirms the baseline model and mitigation scenario are considered fit for purpose for the determination of flood risk in the area.

50. The latest modelling shows that the car park would flood but the store would not in a 1% fluvial event (with an allowance for climate change). In the 0.1% fluvial event, the building would not flood if its floor was elevated to 5.33metres AOD. The 0.5% plus climate change tidal event scenario did not give rise to an increase in peak water levels local to the proposed store. The 0.1% tidal event plus climate change without defence raising scenario did not give rise to flooding of the proposed store with a raised finished floor level for the new store of 5.33metres AOD and also caused no increase in peak water levels local to the proposed store when measured to centimetre accuracy.
51. The model results have shown that there is no adverse impact on peak flood levels beyond the site boundaries for the proposed new store, as measured to centimetre accuracy. Further tidal simulations have also been completed with the latest versions of the modelling software which showed that the proposed store does not flood in either the 0.5% or 0.1% events with an allowance for climate change. The impact on peak flood levels local to the proposed store is also zero when measured to centimetre accuracy. The applicant concludes that the latest modelling has thus confirmed that the development is compliant with TAN 15<sup>9</sup>.
52. In response to comments from NRW, the culvert mitigation proposed would involve a void under part of the floor slab between the existing ground level and the underside of the floor slab (with the slab elevated above ground to protect the building from flooding) which would provide a flow path for floodwater from the inlet on the north-eastern side of the building.
53. Overall, store and access areas meet the criteria set out in TAN 15 in the 1% scenario with an allowance for climate change and the 0.1% fluvial flood events, even with no improvements to the flood defences over the design life of the building. In both scenarios, the car park would flood but the proposed store would not. Tidal simulations show that the store would not flood in the 0.5% or 0.1% events with an allowance for climate change. The proposal therefore complies with TAN 15<sup>10</sup>.

#### *Ecology/ Habitats*

54. An ecological appraisal dated 20 December 2016 was included with the original planning application to the Council. This had been informed by a Phase I Habitat Survey carried out in October 2016. The appraisal detailed that the site comprised areas of bare earth, hardstanding, scattered scrub and a brick wall. It was acknowledged that the development would result in the loss of all habitats but due to the condition of the site no adverse impacts on biodiversity were anticipated.
55. A further survey was carried out in November 2018. The habitat was found to be largely unchanged from that observed in 2016, aside from the growth of some budleja scrub and the presence of two piles of rubble. The survey noted that the budleja presents an opportunity for nesting birds so any vegetation should be removed outside of the nesting season or be subject to a nest check by a suitably qualified person immediately prior to removal.

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<sup>9</sup> I have taken this to mean that the flood modelling shows that flood risk would be within the parameters of table A1.15 of TAN 15.

<sup>10</sup> Although the mitigation proposals to address flood consequences on third party land have been included in the most recent modelling, the third addendum report does not specifically address matters related to flood water displacement.

56. In relation to statutorily protected species, there was no evidence of amphibians on site and the appraisal concluded that there was no suitable habitat on site to support them. There was no evidence of badgers on site nor was the site considered a suitable habitat for badger, with the closest recorded sighting of badger being 0.5km away. In relation to bats, there have been records of bat activity within the study area with the nearest identified roosts at approximately 230 metres from the site. There are no mature trees or buildings on the site and opportunities for roosting bats are limited with the only potential for a roost being a gap in a wall in the north east boundary of the site. This wall is proposed for retention. The presence of adjacent street lighting and the availability of suitable habitat in the surrounding area including the river and surrounding trees means the site is of negligible ecological importance for bats. In relation to otter and water vole, records show that both use the Rheidol which runs to the south of the site, however, there are no habitats on site which would be suitable for either.
57. The site itself is not designated on account of its nature conservation importance nor is any adjacent site. The ecological appraisal states that the habitat on site has little inherent ecological interest and therefore is considered to be of negligible ecological importance.
58. A shadow Habitats Regulations Assessment (sHRA) was carried out in 2019 which identified 22 European protected sites within 10 kilometres of the application site and/or listed within the LDP HRA screening report dated April 2013. Since the LDP screening was carried out, a further special area of conservation (SAC), The West Wales Marine SAC and a special protection area (SPA), the North Cardigan Bay SPA have been designated. These two sites are within approximately 640 metres of the site. The next closest protected site is the Pen Llŷn a'r Sarnau SAC approximately 2.9 kilometres from the site.
59. The sHRA identified 11 European/Ramsar sites to be considered, with the remaining 11 scoped out due to absence of impact pathways that would result in likely significant effect to their qualifying features. Likely significant effect on the qualifying features in relation to water quality during the construction phase was identified for 9 sites<sup>11</sup> resulting in the need to consider possible mitigation measures.
60. The proximity of the application site to the River Rheidol results in a potential pathway for flood water containing building material, dust and pollutants during the construction phase. There are no obvious hydrological links from the site to the River Rheidol and due to the distance involved and the likely dilution effects, potential impacts from polluting runoff entering the river are unlikely. However, given the site is in flood zone C1, impact during the construction phase from pollutants cannot be discounted. There is therefore a low risk of a likely significant effect caused by flooding run-off during the construction period unless suitable mitigation measures were in place.
61. During the operational phase, the sHRA concluded that there is no risk of a likely significant effect. Any fuel spills from parked vehicles visiting the store would be minor due to limited parking time and surface water drainage plans would include the use of interceptors and separators to deal with minor spillages and leaks prior to the discharge into the sewage network.

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<sup>11</sup> West Wales Marine SAC; North Cardigan Bay SPA; Llyn Peninsula and the Pen Llŷn a'r Sarnau SAC; Cardigan Bay SAC; Dyfi Estuary SPA; Cors Caron SAC / Ramsar Site; Afon Teifi SAC; Afon Tywi SAC; and Afon Gwy SAC.

62. The assessment screened out potential likely significant effects as a result of habitat loss, disturbance and erosion, disturbance to otter, grey seal and bottlenose dolphin, changes to water availability and atmospheric nutrient deposition generated by traffic. As a result, no mitigation is required in relation to these matters.
63. As likely significant effect could not be discounted during the construction phase, avoidance or mitigation would be required and the sHRA recommends a Construction and Environment Management Plan (CEMP) should be implemented to control construction activities to prevent contaminated run-off. A Pollution Prevention Plan (PPP) and methods for dealing with potential flood water could also be included.
64. The sHRA concludes that through adherence with a CEMP, a draft of which has been produced, there would be no adverse effect on the protected sites caused by the proposed development either alone or in combination with other projects. The proposed CEMP also includes a strategy for the protection of nesting birds on site.

#### *Other Matters*

65. In relation to The Wellbeing of Future Generations Act (WFGA), the proposal has been assessed against the well-being goals and would meet the objectives of the WFGA. The development would help to regenerate a derelict site, leading to investment and the creation of jobs. The development would also provide competition and choice within the food retail market of Aberystwyth contributing to a more prosperous Wales. The development would be resilient to climate change and provide net gain for biodiversity therefore contributing toward a more resilient Wales. The site is in a sustainable location which would encourage walking and the offer of a range of health food would also contribute towards a healthier Wales.
66. The development would result in economic benefits through the creation of approximately 40 jobs, would integrate with the surroundings and would represent needed discount food provision.

#### **The Case for Ceredigion County Council**

67. The case for the Council is set out in the committee report, statement of case, written statements of evidence and the SoCG.

#### *Fallback*

68. There is an extant permission for retail development at this site. This means the principle of development is acceptable and this factor carries significant weight. This is considered to be the starting point for addressing the merits of the application.
69. It is noted that NRW state the development will result in the displacement of flood water which could result in an increase of 280mm flood depth on third party land. However, regard must be given to the fallback position in that there is already an extant consent for the erection of a building on this site with a footprint 133m<sup>2</sup> larger than the application scheme. Therefore, the reduced size of the building would increase the available storage area for flooding on the site. The 2011 permitted scheme would result in greater flood risk to third parties. Furthermore, the proposed scheme omits the hotel element of the 2011 permission. Hotels are classed as highly vulnerable development in TAN15. The strategic importance of the site justifies the development coming forward despite the flood risk. Any refusal of development at this site would potentially indicate that the immediate area comprising allocated site M0303 would become virtually stagnant irrespective that the site has been formally allocated

in the LDP as a key site for regeneration in one of the major thoroughfares into the town centre of Aberystwyth.

70. Whilst the Council would be disappointed to have the development go ahead without a hotel element, it is recognised that no development partners were forthcoming. It is also understood that the available car parking area was considered insufficient by prospective development partners for a 100-room hotel.

#### *Flooding*

71. The Council has taken into account the representations of NRW and concludes that any new development on the floodplain will result in additional risks.
72. Whilst it is acknowledged that the proposed development would potentially result in additional flood risk in the wider area it is for the Council to arrive at a judgement on the acceptability of the flood risks. In this case, there is a fallback position that the applicant could build a store with a larger footprint. The smaller size of the application scheme would allow for more storage area for flood water on the site, reducing the off-site flood risk. The removal of the more vulnerable hotel element of the 2011 scheme reduces the flood risks. This together with the strategic importance of the site justifies the permitting the development despite the flood risk.

#### *Ecology/ Habitats*

73. Reference is made to the applicant's ecological appraisals of the site where no protected habitats were identified. The Council notes that some features on site may be suitable for use by bats and any increased lighting proposed should be considered in the context of the surroundings with the lighting at the football club and street lighting. The Council states that the proposal should not result in an increase in lighting of the river or river corridor.
74. From the HRA Screening, which was carried out in preparation for the LDP, the Council states that the protected species referred to in relation to the M0303 allocation is otter, a species which is not a qualifying feature of any of the marine SACs or SPAs in Cardigan Bay. The HRA also identifies that mixed use LDP allocations including M0303, could have a significant negative affect from suspended sediment entering the watercourses from the construction process and run off. However, the LDP HRA identifies that compliance with the Flood and Water Management Act 2010, PPW, TAN 5 and LDP Policies DM13, DM14 and DM22 as being sufficient to be able to screen out any potential issues.
75. Since the LDP and its HRA were published, a new Marine SAC and an SPA have been designated. The West Wales Marine SAC, whose qualifying feature is the harbour porpoise, was designated in February 2019 having been confirmed as a candidate SAC in December 2017. The West Wales Marine SAC area covers a large proportion of Cardigan Bay, overlaps with the Cardigan Bay SAC and the Pen Llŷn a'r Sarnau SAC and its closest boundary to the site is outside Aberystwyth harbour. The Northern Cardigan Bay Special Protection Area (SPA) was designated in January 2017. Its qualifying feature is the red-throated diver.
76. The proposed development would not increase disturbance to bottlenose dolphins, grey seals, harbour porpoise or red-throated divers through increasing boating traffic or other mechanisms and the potential for having a "significant negative effect from suspended sediment entering the watercourses" is a matter which is controlled by legislation. Nor, with the appropriate pollution control and surface water management,

would the proposal have a significant negative effect on water courses entering the marine environment.

77. Therefore, although an additional marine SAC and an SPA have been designated since the original HRA Screening, the same issues are relevant to those as apply to the Pen Llŷn a'r Sarnau SAC and therefore, it was not considered necessary to carry out a further Habitats Regulations Assessment Screening of the proposal. This conclusion, the Council states, is supported by the consultation response from NRW at the time when the Council was processing the application which did not require any further habitats assessments.

#### *Other Matters*

78. In relation to compliance with the WFGA, the LDP policies seek to maintain and create distinctive and sustainable urban and rural communities.
79. The proposed development would create approximately 40 full time jobs and would therefore meet the needs of the Act in fostering the economic and social well-being of the local community. It would also address the employment objectives of both the Local Authority and the Welsh Government since Aberystwyth is identified in the Wales Spatial Plan<sup>12</sup> as being a settlement of Primary National Importance and its role as a strategic regeneration centre for Central Wales. The redevelopment of a brownfield site would maintain and improve the vitality and viability of the existing settlement and also of the immediate surrounding area. The development would also seek to incorporate the principles of the Energy Hierarchy and the combination of passive measures, including building fabric design improvements and the utilisation of zero and low carbon technologies. This approach seeks to meet the goals and objectives of the WFGA.
80. Although the development would have the potential to displace flood water which would conflict with the WFGA, the risk of flooding is small and the allocated status of the site outweighs any potential conflict.
81. The Council considers the appearance and design of the proposal would conform with policy DM06 of the LDP and the provisions of the Aberystwyth Masterplan.
82. The Council is satisfied with the highways access arrangements subject to conditions including a Construction Traffic Management Plan and implementation of the recommendations set out in the Travel Plan.

#### **NRW**

##### *Flooding*

83. Flood modelling shows that during the 1% event, the site could be affected by up to 0.75m in the northern corner alongside Park Avenue. In the 0.1% event this would increase to up to 1.25 metres.
84. On this basis an objection to the scheme was made during the initial consultation response.<sup>13</sup> A revised FCA and pollution prevention plan was requested to demonstrate that the risks and consequences of flooding could be managed to an acceptable level. Further advice was given in relation to waste, ground contamination and protected

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<sup>12</sup> Now superseded by Future Wales

<sup>13</sup> In December 2018



species confirming that the Ecological Report dated 20th December 2016 by Tyler Grange has been conducted to an acceptable standard.

85. A further consultation response was submitted on 29 March 2019. This confirmed a pollution prevention plan had not been submitted and reiterated that the proposed development does not comply with the requirements of TAN 15 and, therefore, the application should be refused.
86. Analysis of the applicant's flood modelling carried out in 2019 showed that no data on the 0.1% tidal event had been produced as the model had become unstable when operated and some GIS files were missing preventing model outputs being checked. There were also some concerns with the data used to run the model; how the tide cycles had been selected to be inputted into the model and clarification was sought that the topographical layers were operating as intended. It was also queried what ground levels were modelled.
87. A full list of concerns with the modelling was produced with comment that there are indicators that the model was not performing satisfactorily. Advice was issued that the model data should be as accurate as possible to ensure the model produced is robust enough for the results to support a FCA.
88. The applicant was advised at the hearing on 5<sup>th</sup> January 2021 that local hydrograph data should be modelled. This hydrometric data to inform further flood modelling work was provided to the applicant.
89. The additional modelling set out in the third addendum report on flood risk does not address all concerns relating to the proposed mitigation measures, including whether third party land would be affected or how the culverts would work. It has not been explained how the proposed culverts would operate with a void below ground level which does not seem to have been factored into the previous model which was supplied. From the information supplied, this does not seem to be workable.
90. The plans submitted do not show the current ground levels of the car park. The plans also appear to show the car park sloping towards a vehicle repair garage whereas it does not at present so it has not been possible to assess whether surface water would be displaced.
91. Overall, the position of NRW is that they cannot state that the proposals comply with TAN 15 without further work and cannot advise whether the proposed mitigation would be technically feasible.

#### *Ecology/ Habitats*

92. NRW were consulted on the sHRA. From that, likely significant effect during the construction phase could not be ruled out. There is a particular concern of the effect on the West Wales marine SAC and North Cardigan Bay SPA because they are the mouth of the river Rheidol
93. There is a lack of certainty over the method of operation of the proposed culverts and whether, during flood conditions, displaced water would introduce pathways for polluted water to enter the river during the operational phase of the development.
94. No existing or proposed drainage plans have been provided to assess the likelihood of pollutant run off and therefore it is not possible to conclude that a CEMP or a PPP would secure sufficient safeguards to be implemented. Without this information, NRW cannot provide assurances that the development in its current form will not result in a significant adverse impact on the protected sites.

## **Other Representations**

95. Local residents have expressed support for the proposal, referencing a need for the store, the provision of employment opportunities, variation in choice of products available, that the company supports the Welsh language, and the improvement of the appearance of a run-down site.
96. A letter of objection cites the absence of additional trees on the road facing frontage to break-up the outline of the building and the absence of bird and bat boxes.
97. Another objection states that the applicant has not justified the removal of the hotel element in the 2011 scheme and without it, the scheme does not fulfil the aspirations of the local plan.
98. Representations were received from Lidl in writing and they were present at the hearing sessions. In relation to flood risk, it is stated that justifying the development by reference to it being "less vulnerable" development is irrational as the NRW objection is based upon the vulnerability classification of the development and in any event, the vulnerability of the development is irrelevant in respect of increased flood risk elsewhere. The "strategic importance of the site" justification has not been demonstrated and the proposal is for an additional supermarket in a town which is well served by supermarkets and so it is unreasonable to attach sufficient strategic importance to the development so as to outweigh the NRW objection. The development has not detailed a suitable surface water drainage scheme.
99. In relation to the HRA requirements, allocation M0303 states that "The site is upstream of the Pen Llŷn a'r Sarnau SAC which should be protected in accordance with national policies and Policy DM14. In particular, development on this site could have an effect through disturbance." The Habitats Directive applies a precautionary principle to protected areas and development should only be permitted if it has been demonstrated that there would be no adverse effect on the integrity of the site. Despite this, the ecological appraisal concludes that there will be no direct impacts on habitats or species within any of the protected sites whereas the LDP HRA final screening report notes the potential for construction impact. Stating that increased disturbance is "not likely" does not address the requirements of the Habitats Directive as the development has not been screened for likely significant effects nor has an Appropriate Assessment been carried out.
100. In relation to the duties which arise from the WFGA, no reference is made to the legal duty imposed by the 2015 Act in the committee report which is irrational given the flooding and SAC issues have been referred to.
101. Lidl asserts that the proposed scheme does not amount to a "comprehensive redevelopment" of the site as it does not include the hotel element of the 2011 scheme. This means the scheme is not compliant with the M0303 allocation. It is also not clear if the footprint of the proposed development was smaller than that approved under the 2011 permission when account is taken of the area for trolleys and cycle parking which would be raised in response to flood issues.

## **Conclusions**

102. My conclusions are drawn from the documentary evidence contained in the respective submissions and my site inspection.
103. Both the applicant and the Council have assessed the merits of the application against the pleaded fallback position of an extant planning permission before going on to assess the application against national and local planning policy. My starting point has been to address the main considerations against local and national planning policy before consideration of any fallback position. Accordingly, the main considerations are as follows:
- (i) Whether the proposed development is justified in a C1 flood zone with particular reference to local and national planning policies;
  - (ii) The effect of the proposed development on the ecology of the area, particularly the special features of the National Sites Network and protected species;
  - (iii) Whether any conflict with policy or harm identified in relation to the foregoing is outweighed by considerations which would justify granting planning permission with particular reference to a fallback position.

### ***Consideration (i): Flooding***

104. The national policy position in Wales as set out in PPW and TAN 15 is that new development should be directed away from areas with a high flooding risk, and to reduce the consequences from flooding.
105. As a retail use, the proposal comprises less vulnerable development as defined in TAN 15. At section 6, TAN 15 states that less vulnerable developments may be acceptable in zone C1 subject to a justification test, the consequences of flooding on-site being acceptable and the development not leading to an increase in flood risk elsewhere.
106. The justification list is set out at paragraph 6.2 of TAN 15; only development that is not highly vulnerable should be permitted within zones C1 and C2 and only if it is justified in that location.
107. There is no dispute that the site comprises previously developed land. The site is located within a sustainable location and the proposal accords with the placemaking principles of PPW and therefore satisfies criterion (iii.). Of the first two tests it is justification test (i.) which the main parties seek to rely upon and below I have assessed the proposal against the contribution it would make to a local authority strategy.
108. The Council's committee report did not expressly assess the proposal against the first criterion of paragraph 6.2 of TAN 15. However, the evidence of both main parties refer to the proposal as generally being in accordance with the M0303 allocation. It is a matter of common ground between the parties that the site is part of an important strategic regeneration allocation. The allocation sets out an ambition for the comprehensive development of the allocated site for retail, office and community purposes. With a net sales area of 1254m<sup>2</sup> the proposed sales area is similar to that of the 2011 permission. However, it would be significantly smaller than that anticipated by the LDP allocation which provides for around 3000m<sup>2</sup> of convenience floorspace in the form of a single supermarket I note that since the allocation was made there has been further food-based retail development built on

an adjacent allocation. Despite its smaller retail provision and the absence of the hotel element referred to in the allocation, the proposed development would align with the Council's growth strategy through the delivery of retail provision which broadly accords with the LDP allocation.

109. I note that representations from Lidl are that the proposal does not comprise a "comprehensive redevelopment" of the site as there is no hotel propose. However, there is no requirement for hotel development within allocation M0303 and paragraph 6.2 of TAN 15 does not refer to a requirement for comprehensive redevelopment. I am satisfied the proposal is necessary to assist a local authority regeneration initiative in accordance with the first criterion of paragraph 6.2 of TAN 15.
110. My attention then turns to the fourth justification test, whether the identified flood risk can be considered acceptable.
111. The application site falls within an area subject to flood risk of greater than 0.1% for fluvial flood risk and greater than 0.5% for tidal flood risk without consideration of flood defences. There are engineered flood defence walls along the river Rheidol in the vicinity of the site such that the site is classified as being within zone C1.
112. The 2018 FCA<sup>14</sup> shows that neighbouring areas could experience increased flood levels as a result of displacement from the proposed building on the application site and concluded that the site is at risk of fluvial flooding during the 1%, 1% (with an allowance for climate change) and 0.1% events. The site was not considered at risk from the 0.5% tidal flood event. The most recent flood modelling has been run with mitigation measures which the applicant indicates are intended to address the potential for flood water displacement onto third party land. However, the flood risk report and addendum reports do not detail this risk as the original FCA does.
113. Although evidence related to flood risk has evolved since receipt of the 2018 FCA through additional flood modelling, the 2018 FCA remains pertinent since no further FCA has been carried out. Subsequent reports on flood risk have echoed the original FCA recommendation<sup>15</sup> that the development should be subscribed to NRW's Flood Warning Service and that a flood evacuation plan should be devised since, in the event of an extreme event (0.1%), flood depths would be too great for unassisted evacuation and patrons would therefore need to remain within the store until assisted by the emergency services. The applicant has committed to signing up to NRW's flood warning system and introducing a flood emergency plan, however, they have not put forward any specific flood emergency plans or procedures. In relation to the more frequent 1% events, hazard ratings range from very low to medium dependant on the access routes to the site. This, the applicant states, would enable use of the very low risk route (to the south) in the event of a flood although it is not clear from the evidence whether this has been modelled for capacity. This means that although the applicant has indicated a willingness to provide a flood emergency plan, there are no details of what this might involve so it is not possible to ascertain whether such a plan would be feasible. This is a further indication that flood risk arising from the development has not been fully addressed.
114. There has been regular liaison between the applicant and NRW to attempt to resolve differences related to flood risk and these discussions have resulted in the

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<sup>14</sup> At section 7.3

<sup>15</sup> At section 7.5

production of two addendum reports to the expert report on flood risk. Despite these efforts, the objection to the scheme from NRW remains.

115. NRW's comments on the most recent (third) addendum report on flood risk are limited by the lack of model data supplied to them at the time they prepared their consultation response. NRW comments that the proposed mitigation measures have not been adequately detailed. In response, the applicant confirmed that there was no intention to provide any further clarification on the matter. I consider that had NRW gone on to consider the later submitted model data, it is unlikely that this would have resulted in any conclusive response on flood risk from NRW as they have also commented that the submission of a further FCA may then have been required.
116. In relation to the proposed mitigation measures, although the applicant has specified that these would comprise box culverts, NRW states that it has not been adequately demonstrated what the purpose or intention of the mitigation is, how the proposed box culverts would work and the impact (if any) on third party land. NRW has also commented that the mitigation proposals suggest a void within the culverts which appears to form part of the mitigation, but it has not been confirmed if this detail has been included in the modelling.
117. The applicant has sought to explain the mitigation proposals by reference to a diagram but has also stated that there is scope for this design to be amended. It is not clear which proposed solution has been used for the most recent flood modelling and for this reason the applicant has not produced conclusive evidence of a mitigation proposal in response to an identified flood risk.
118. Thus, there is some inconsistency in the applicant's evidence relating to the proposed mitigation measures in relation to what height the culverts would or should be positioned relative to internal floor level of the proposed store. There have been a number of amendments to the location and number of culverts proposed as this case has evolved and it is not clear why these amendments have been made. While the original FCA expressly acknowledged the risk of flood water displacement, subsequent reports have not addressed this risk in sufficient detail to reach any firm conclusions on whether any impact on third party land has been taken into account. There is also a lack of certainty on whether the mitigation proposed to address this risk has been consistently and accurately accounted for in the flood modelling carried out.
119. These inconsistencies and lack of clarity relating to the need for, purpose of and operation of the proposed culverts reinforce the concerns expressed by NRW (and shared by me), that these measures have not been demonstrated to be an appropriate or feasible method of acceptably mitigating flood risk in this case.
120. The quality assurance of the software creator stating that the baseline model is fit for purpose relies on the accuracy of the inputs. However, a number of the concerns expressed by NRW relate to whether appropriate and reliable inputs have been entered.

121. The applicant considers that flood modelling has demonstrated that the development complies with the TAN 15 advice. NRW has maintained a position of objection as the information supplied to them has been incomplete, preventing the formulation of a full response and advice on whether the proposed development is capable of complying with the guidance set out in TAN 15 and consequently PPW.
122. I note what Dr Whitlow said in his second addendum report about the prospects of flood defences being improved in the future. However, there is no assurance that there will be measures in place to improve flood defences or ensure their efficacy.<sup>16</sup>
123. The applicant appears to accept that there may be changes required in relation to the siting and design of the culverts but asserts that such details can be agreed by condition. However, on the basis of the available information, I cannot be satisfied that the potential consequences of a flood event for the proposed development could be adequately managed. In the absence of adequate details regarding the purpose for and operation of the proposed culverts, the potential efficacy of the proposed mitigation measures has not been adequately established. Accordingly, it has not been possible to ascertain whether flood risk would be acceptable either on site or on third party land. In assessing the risk, I am mindful of the potentially significant implications of a flood event on human life and property and this is a concern to which I must attach considerable weight.
124. For these reasons, the proposed development would, in my view, fail to satisfy the fourth justification set out in paragraph 6.2 of TAN 15 and would conflict with LDP policy DM11 since it has not been demonstrated that the development would be resilient and adaptable to the effects of flooding. In reaching this conclusion, I am also mindful of the advice set out at paragraph 7.2 of TAN 15 which refers to adopting a sensible approach to ensuring safe access and egress arrangements. In this case, the risk of flooding to the car park has been acknowledged and approval of a scheme where the safety of visitors walking to and from cars and driving through floodwater could be compromised would conflict with the principle of sustainable development set out in PPW and Future Wales.

### ***Consideration (ii): Ecology***

125. The Welsh Government is committed to reversing the decline in biodiversity and increasing the resilience of our ecosystems. Future Wales' Natural Resources Policy identifies the key priorities, risks and opportunities to achieve the sustainable management of natural resources, including addressing the climate emergency. Future Wales confirms that the strategic focus on urban growth requires an increased emphasis on biodiversity enhancement in order to show that growth is sustainable. PPW highlights the role of the planning system in contributing to the reversal of the decline in biodiversity and increasing the resilience of ecosystems by ensuring appropriate mechanisms would be in place to both protect against loss and to secure enhancement.
126. A range of ecological surveys have been carried out by the applicant to accompany the application and following the call-in. These have assessed the potential impact of the development on the habitats and species recorded in the area and on protected sites.
127. I have taken into consideration the impact of the proposal both on statutorily protected species and the impact on nationally and internationally designated sites.

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<sup>16</sup> PPW 6.6.23

The applicant's ecological survey has identified three SSSIs within 2km of the application site<sup>17</sup> and demonstrates that there would be no impact on habitats or species within any of these. No concerns have been raised by NRW in relation to these SSSIs. There is no evidence to suggest an impact on any locally designated sites.

128. The Council notes that although surveys show no bats on site, some features on the application site may be suitable for use by bats. I concur that lighting should be controlled (by condition) even though there is existing external lighting in the area. The intention would be to avoid any increase in lighting of the river or river corridor. Other than bats, there is nothing in the evidence to suggest that the application site would offer a suitable habitat for protected species.
129. The river Rheidol lies in close proximity to the application site and Council records show that it is used by both otter and water vole. There are 22 National Sites Network sites within 10 kilometres of the application site including the West Wales Marine SAC and North Cardigan Bay SPA both falling within approximately 640 metres of the site. There are no obvious pathways for water run-off from the site to enter the river. Despite that, although the risk may be small, the possibility of flood water from the site entering the river cannot be excluded. Therefore, adopting the precautionary principle, there is a risk that potentially polluted water could enter the river from the application site.
130. A number of the protected species identified as qualifying features of protected sites are acknowledged within the sHRA to have the potential to use the river. For example, harbour porpoise are listed as a qualifying feature of the West Wales Marine SAC and although the sHRA states that there are no records of harbour porpoise using the river, it is possible that there is use of lower section towards the SAC. Pen Llŷn a'r Sarnau SAC has bottlenose dolphin, otter and grey seal listed as features and the sHRA acknowledges that all may use the banks of the river. If pollution were to enter the river as a result of the development then this could have a harmful effect on protected species and a qualifying feature of a protected site, despite that effect not taking place within the area of protection. The sHRA identifies a total of nine sites<sup>18</sup> where likely significant effect on qualifying features of the site could be caused by the development. In each case, the effect is related to water quality during the construction phase due to the potential for contaminated water during the construction phase to enter the Rheidol and impact species from protected sites which may be present.
131. The sHRA concluded no likely significant effects as a result of habitat loss, disturbance and erosion, disturbance (through noise or lighting) to harbour porpoise, red throated diver, otter, grey seal and bottlenose dolphin, brook lamprey, sea lamprey, river lamprey, white fronted geese, whooper swan, water vole, atlantic salmon, bullhead, allis shad, twaite shad or white clawed crayfish. No impact through changes to water availability and atmospheric nutrient deposition or changes in water quality from operational activities.
132. The sHRA recommends the implementation of a CEMP, secured by a pre-commencement condition to control construction activities to prevent contaminated water run-off and a suggested CEMP has been produced. Although the sHRA

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<sup>17</sup> Gweunydd Pendinas, Allt Wen a Traeth Tenbwllch & Rheidol Shingles and Backwaters.

<sup>18</sup> West Wales Marine SAC; North Cardigan Bay SPA; Pen Llŷn a'r Sarnau SAC; Cardigan Bay SAC; Dyfi Estuary SPA; Cors Caron SAC / Ramsar; Afon Teifi SAC; Afon Tywi SAC and Afon Gwy SAC.

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concludes there would be no likely significant effect during the operational phase, the applicant as indicated a willingness to adhere to a Pollution Prevention Plan albeit no suggested PPP has been provided.

133. NRW has stated that the sHRA requires updating in the light of the most recent flood modelling as this may have demonstrated the presence of a pathway for polluted water during both the construction and operational phase of the development. NRW has asked for a drainage plan showing the existing and proposed surface water drainage methods. These have not been produced by the applicant.
134. Despite the concerns of NRW, potential hydrological links during the construction phase have already been considered in the sHRA which concluded that whilst the risk was low, likely significant effect on protected sites, including the West Wales Marine SAC and the North Cardigan Bay SPA cannot be out ruled. It is due to this risk that a CEMP has been proposed and a draft submitted.
135. NRW does not dispute the need for a CEMP for the construction phase. However, due to the lack of clarity on how the proposed culverts would work, NRW is concerned that there is potential for their operation to affect flood water displacement during the operational phase and the potential for this to create a pathway for contaminated water to reach the Rheidol. Despite these concerns, NRW have not objected in principle to managing the risk of pollutant run off by condition. I consider that suitably worded pre-commencement conditions requiring the approval of both a CEMP and a PPP to be appropriate. This would require the applicant to liaise with the Council, in consultation with NRW, in order to reach agreement on a sufficiently robust CEMP and PPP to offer protection for the designated sites against the risk of harmful effects from pollutants entering the river from the application site. In adopting this approach, I recognise that an effective CEMP or PPP may not be secured. In that eventuality the conditions are worded such that they would prevent the commencement of the development.
136. Overall, therefore, I am satisfied that any potentially harmful impacts on nature conservation interests can be adequately addressed by the imposition of the suggested conditions. The proposal includes some provision for biodiversity enhancement in the form of bat and bird boxes and the conditions for landscaping include planting to increase biodiversity. These enhancement provisions accord with local policy and the objectives of PPW and Future Wales.

#### *Habitats Regulations Assessment*

137. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) imposes a requirement to consider the potential effects of a proposed development on the National Site Network, in this case of the relevant sites have been considered in the sHRA which concludes that likely significant effect cannot be ruled out during the construction phase due to the flood risk on site. Indeed, I have found that the operational phase also gives rise to likely significant effects. Thus, it is necessary for the decision maker to undertake an Appropriate Assessment (AA).
138. At Annex B have set out an AA for the Welsh Ministers. It is based on the sHRA, the advice of NRW including in its role as the statutory nature conservation body, and the comments received by other parties in response to the application. The AA concludes that, subject to the identified mitigation measures being secured, the scheme, either alone or in combination with other projects, would not have an adverse effect on the integrity of the protected sites.



### **Consideration (iii): Fallback**

139. Planning permission was granted for the demolition of vacant food store, car showroom and garage and the erection of Aldi food store, hotel and car parking in 2011. That permission was varied in February 2016 through an application to vary conditions 1, 3, 18 and 25 to enable the discharge of conditions post demolition. The applicant confirms that the buildings on site were demolished and the site cleared and secured in spring 2016. The 2011 permission does not contain any pre commencement conditions which could prevent the implementation of the permission by the demolition of the vacant buildings which were previously on site and the permission granted in 2016 for the variation of conditions specifies in relation to condition 3 and 18 that "no development shall take commence (other than required demolition works)". It is for these reasons the Council and applicant are in agreement that that the permission has been implemented and is extant.
140. On the basis of the existence of an extant permission for a similarly sized store, the Council and the applicant consider that this represents a fallback position against which the current application should be assessed.
141. The applicant's written evidence states they have been unable to identify a development partner to deliver the hotel element of the 2011 scheme. Conversely, in evidence at the hearing the applicant stated that it would be their intention to complete the approved development should this permission not be forthcoming and written confirmation of this intention from a director of the applicant company has been provided. However, no development partner has been secured and the applicant has commented in written evidence that a lack of sufficient car parking availability was an impediment to delivering the hotel element of the 2011 scheme. There has been no suggestion that this issue has been resolved nor have there been any proposals as to how this obstacle could be addressed. Therefore, whilst I acknowledge a theoretical possibility that the 2011 scheme could be built, I do not consider the prospect of it being so to be any higher than this. Likewise, I regard the comments made by the applicant to construct the 2011 scheme to be no more than assertion at this point in time. Accordingly, I do not consider the fallback position to be a realistic one.
142. For the above reasons, the pleaded fallback position is not a significant consideration which would justify the grant of permission for a scheme which, for the aforementioned reasons, fails to accord with local and national policy designed to control flood risk associated with new developments.

### *Other Matters*

143. The WFGA imposes a duty on public bodies and requires public bodies in Wales to consider the long-term impact of their decisions (including planning decisions), to help prevent problems such as poverty, health inequalities and climate change.
144. I acknowledge that the proposal would regenerate a derelict site leading to investment in the area and would offer more competition and choice in the food retail market in a sustainable location. It would contribute to improving the economic and social well-being of the local community through this investment and the creation of jobs. I note also the biodiversity net gains offered by the proposal in the form of bat and bird boxes and landscaping using native planting.
145. I have taken into account all of the above factors which have been raised to support the contention that the scheme would comply with the Act's sustainable development principle and would contribute towards the Welsh Ministers' well-being

objectives of driving sustainable growth and building healthier communities and better environments. Despite that, it has not been demonstrated that the scheme would be resilient and adaptable to the effects of flooding and for this reason would not meet the goal of responding to the challenges of climate change. Given this significant conflict with local and national policy and the serious implications a flood event could have on the safety of potential workers and customers at the site, I consider the scheme would not be consistent with the objectives of the WFGA overall.

## **Conditions**

146. In the event that the Welsh Ministers decide to approve the application, I consider that the conditions set out in the attached schedule to be reasonable and necessary and would satisfy the tests set out in Circular 16/14: The Use of Planning Conditions in Development Management.
147. The main parties submitted an agreed list of draft conditions with reasons within a statement of common ground. This was discussed at the hearing and forms the basis of the Schedule to this report.
148. As discussed with the parties at the hearing, I have re-worded some conditions, combined some where appropriate and deleted those that were not necessary.
149. I have concluded above that the details relating to the siting and design of the proposed culverts should not be reserved for conditions. Although a plan for the proposed box culvert design has been submitted by the applicant it is clear from the evidence that this plan may require changes so cannot be considered a final design. For this reason, I have not included it in the list of plans as I cannot be satisfied it is accurate.
150. I have not included a requested condition in relation to section 278 highways works as this is a matter which would be covered by other legislation.
151. A condition has been suggested for ecological enhancements in the form of bat and bird boxes. However, the condition put forward lacks precision and effectiveness insofar as no details of the boxes or their locations are specified. This would leave it to the installer to decide on both their specification and what constitutes an 'appropriate' location. For this reason, I have amended the condition to allow these details to be agreed in advance with the Council.
152. A condition requiring the retention of trees has been suggested but since there are no trees on site identified as worthy of retention this condition is not necessary.
153. Three conditions have been proposed to limit retail activity on site; to limit opening hours, to limit the net retail floorspace and to limit the goods and services which are permitted to be sold. The reason given is to protect the interests of retail activities. No local or national policy justification has been put forward for these conditions nor does the evidence point to why these conditions would be necessary. I am mindful of Welsh Government Circular 016/2014 which provides<sup>19</sup> that conditions controlling retail are intended to prevent a development changing over time with the potential to impact the vitality and viability of an existing town centre. None of the evidence nor the applicant's Planning and Retail Statement (November 2018) contains any

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<sup>19</sup> At Paragraph 5.110

reference to the need for such control. In the absence of any justification for these conditions I conclude they would fail the test of necessity.

154. In addition to the pre-commencement condition requiring the submission of a CEMP in the agreed list, I have also included a condition precedent for the submission of a PPP for the reasons which have already been set out.

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

155. I acknowledge that the site would contribute to the delivery of a strategically important site identified in the LDP and the redevelopment of this site would accord with the broad principles of Future Wales with Aberystwyth being a regional growth area. I am mindful also that the site is currently vacant and boarded up and that the scheme would introduce a food store in a location close to the town centre which would offer additional choice of produce for shoppers in Aberystwyth. The scheme would also result in employment opportunities and would seek to incorporate the principles of the Energy Hierarchy.
156. I recognise that the site falls within a sustainable location, close to the town centre and that the proposals include a staff travel plan and transport statement to encourage the use of sustainable modes of transport. Taken together, I afford these benefits significant weight.
157. The appeal site falls within a C1 flood zone and, for the reasons I have set out, it has not been demonstrated that the potential consequences of a flood event could be adequately managed. Therefore, it fails to accord with the tests set out in TAN 15 and with policy DM11 of the LDP. This is a factor to which I attach considerable weight particularly as PPW encourages a precautionary approach of positive avoidance of development in areas at risk of flooding. I am also mindful of the serious implications of a flood event on the health and safety of future customers and staff. In this case, where it has not been demonstrated that risk to personal safety and property cannot be adequately managed, the development would conflict with the principal of sustainable development at the heart of PPW.
158. I have already addressed the pleaded fallback position and found it not to be a realistic one and therefore afford it no appreciable weight in favour of the development.
159. In the overall balance I consider the matters in favour of the scheme are outweighed by a fundamental conflict with an important component of national policy, particularly given the potentially harmful effects that could arise.

### **Recommendation**

160. For the aforementioned reasons, and taking into account all matters raised, I recommend that the application be refused.

*Janine Townsley*

Inspector

## **ANNEX A – Schedule of Recommended Conditions**

- 1) The development shall begin not later than five years from the date of this decision.  
*Reason: To conform with the requirements of Section 91 of the Town and Country Planning Act 1990.*
- 2) Subject to compliance with other conditions in this schedule, the development shall be carried out in accordance with the following approved plans: Site Location Plan 180266 P(1)01; Proposed Site Plan 180266 P(1)03 E; Proposed Ground Floor Plan 180266 P(1)04 B; Proposed First Floor Plan 180266 P(1)05 A; Proposed Roof Plan 180266 P(1)06; Proposed Elevations 180266 P(1)07 I (Revision 'I'),  
*Reason: to comply with Paragraph 4.16 of Welsh Government Circular 016/2014 (Conditions).*
- 3) No development shall commence, except ground investigations, until details of the proposed flood management measures, as outlined in the Flood Consequences Assessment and Technical Note, and Third Addendum Report on Flood Risk but also specifying details of a safe egress evacuation route are submitted to and approved in writing by the Local Planning Authority This shall include: subscription to NRW's Flood Warning Service and an evacuation plan to ensure that users stay within the building to await emergency service evacuation. The approved flood management measures shall be implemented before the development hereby permitted is brought into use and shall be thereafter retained.  
*Reason: In the interests of public safety and to accord with TAN 15 and policy DM11 of the Ceredigion Local Development Plan 2007-2022*
- 4) No development shall commence until a Pollution Prevention Plan (PPP) has been submitted to and approved in writing by the local planning authority. The PPP shall include: an assessment of the effectiveness of existing containment measures; details of any remediation or replacement of the containment measures; details of containment construction and quality assurance; and details of future inspection and maintenance. The PPP shall include detailed pollution prevention assessments and mitigation methods to prevent pollution entering the water environment at the river Rheidol. The approved PPP shall be implemented and adhered to throughout the course of the development.  
*Reason: To avoid adverse effects on protected wildlife and habitats in line with TAN 5 and policies DM 14, DM 15 and DM 20 of the Ceredigion Local Development Plan 2007-2022.*
- 5) No development shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include details of and measures to secure the following: (i) Risk assessment of potentially damaging construction activities. (ii) Identification of "biodiversity protection zones". (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce environmental impacts during construction. (iv) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs. (v) The times during construction when specialist ecologists need to be present on site to monitor works to ensure

compliance with the CEMP, and the actions that will be undertaken. (vi) Responsible persons and lines of communication. (vii) Details of how lighting will be controlled during the construction phase of development. The CEMP shall be adhered to throughout the construction period of the development that it relates to.

*Reason: To avoid adverse effects on protected wildlife and habitats in line with TAN 5 and policies DM 14, DM 15 and DM 20 of the Ceredigion Local Development Plan 2007-2022.*

- 6) No development shall commence until details of a scheme for the disposal of foul and surface water has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the opening of the development hereby permitted and retained in perpetuity.

*Reason: To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing occupiers and ensure no pollution of or detriment to the environment to accord with policy DM 13 of the Ceredigion Local Development Plan 2007-2022.*

- 7) No development shall commence until an assessment of the nature and extent of contamination affecting the application site area has been submitted to and approved in writing by the local planning authority. This assessment must be carried out by or under the direction of a suitably qualified competent person in accordance with BS10175 (2011) *Investigation of Potentially Contaminated Sites Code of Practice* and shall assess any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

- i) a desk top study to identify all previous uses at the site and potential contaminants associated with those uses and the impacts from those contaminants on land and controlled waters. The desk study shall establish a 'conceptual site model' (CSM) which identifies and assesses all identified potential source, pathway, and receptor linkages;
- ii) an intrusive investigation to assess the extent, scale and nature of contamination which may be present, if identified as required by the desk top study;
- iii) an assessment of the potential risks to:
  - human health,
  - groundwater and surface waters
  - adjoining land
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - ecological systems; and
  - any other receptors identified at (i)
- iv) an appraisal of remedial options, and justification for the preferred remedial option(s).

All work and submissions carried out for the purposes of this condition must be conducted in accordance with Welsh Local Government Association and the Environment Agency Wales' *'Development of Land Affected by Contamination: A guide for Developers'* (2012).

*Reason: To control any risk of the potential of contamination from the site and to accord with policies DM 15 and DM 22 of the Ceredigion Local Development Plan 2007-2022.*

No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority.

*Reason: In the interest of road-user safety and the free-flow of traffic and to accord with policy DM06 of the Ceredigion Local Development Plan 2007-2022.*

- 8) No development shall take place until details of both hard and soft landscape works and a scheme of management and maintenance have been submitted to and approved in writing by the local planning authority. These details shall include:
- i) A statement setting out the design objectives and how these will be delivered, including future maintenance arrangements;
  - ii) earthworks showing existing and proposed finished levels or contours;
  - iii) means of enclosure and retaining structures;
  - iv) vehicle and pedestrian access and circulation areas;
  - v) hard surfacing materials;
  - vi) minor artefacts and structures (for example, furniture, refuse or other storage units, signs, etc.); and
  - vii) Soft landscape works shall include primarily native species of local provenance, with trees of extra heavy standard size.

The landscaping works shall be carried out in accordance with the approved details within 12 months of the commencement of development unless otherwise agreed with the local planning authority and thereafter the completed scheme shall be managed and maintained in accordance with the approved scheme of management and maintenance.

*Reason: To provide ecologically valuable landscaping and in the interests of visual amenity to accord with policies DM06 and DM10 of the Ceredigion Local Development Plan 2007-2022.*

- 9) Prior to the opening of the development hereby permitted, details of the type and location of a minimum of 2 bat boxes and 2 bird boxes shall be submitted to and agreed in writing by the Local Planning Authority. The approved bat and bird boxes shall be installed within one month of opening and shall be permanently retained thereafter.

*Reason: To enhance biodiversity in line with LDP policies DM06, DM14 and DM15 of the Ceredigion Local Development Plan 2007-2022.*

- 10) Prior to the construction of the building hereby approved details of the materials to be used in the construction of the external surfaces of the building and any boundary features shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

*Reason: To protect visual amenity in accordance with policies DM06 and DM09 of the Ceredigion Local Development Plan 2007-2022.*

- 11) Before the commencement of any other works hereby approved the access shown on drawing No. 180266 P(1)07 (Rev. I) shall be completed in accordance with the approved plans and retained for as long as the development remains in existence.

*Reason: In the interest of road-user safety and the free-flow of traffic and to accord with policy DM06 of the Ceredigion Local Development Plan 2007-2022.*

- 12) Prior to opening to customers, all parking spaces shall be laid out in accordance with the approved plans and shall thereafter be kept available for the parking of vehicles.

*Reason: In the interest of road-user safety and the free-flow of traffic and to accord with policy DM03 of the Ceredigion Local Development Plan 2007-2022.*

- 13) No part of the development hereby permitted shall be brought into use prior to the implementation of the approved Travel Plan. The Travel Plan shall be implemented within the timescale agreed with the Local Planning Authority and will be audited and updated at intervals not greater than 12 months to ensure that the approved plan is carried out.

*Reason: In the interest of road-user safety and the free-flow of traffic and to accord with policies DM03 and DM04 of the Ceredigion Local Development Plan 2007-2022.*

- 14) Before any chilling or refrigeration equipment is installed full details of its design, siting, discharge points and predicted acoustic performance shall be submitted to and approved in writing by the Local Planning Authority.

*Reason: In the interests of amenity of the occupiers of neighbouring buildings in terms of noise to accord with policy DM06 of the Ceredigion Local Development Plan 2007-2022.*

- 15) Prior to the installation of any means of external lighting, a lighting strategy, including measures to control light spillage onto foraging habitats for bats shall be submitted to and approved in writing by the local planning authority. All external lighting on the sites shall accord with the detailed requirements of the strategy.

*Reasons: To safeguard biodiversity in line with LDP policies DM06, DM14 and DM15 of the Ceredigion Local Development Plan 2007-2022.*

## **ANNEX B – Appropriate Assessment**

### **Preliminary Matters**

1. The purpose of this Annex is to report on the impacts of the scheme on the West Wales Marine SAC; North Cardigan Bay SPA; Llyn Peninsula and the Sarnau SAC (Pen Llŷn a'r Sarnau); Cardigan Bay SAC; Dyfi Estuary SPA; Cors Caron SAC / Ramsar; Afon Teifi SAC; Afon Tywi SAC and Afon Gwy SAC. It takes the form of an Appropriate Assessment (AA) for consideration by the Welsh Ministers in their role as the competent authority and has been prepared in accordance with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). In light of the requirements of Regulation 63(3) in carrying out my assessment, I have had particular regard to the comments of Natural Resources Wales (NRW) in its emails dated 11<sup>th</sup> May 2021 and 11<sup>th</sup> June 2021.
2. The application was accompanied by a shadow Habitats Regulations Assessment (sHRA) dated 12<sup>th</sup> August 2019.

### **Background**

3. The application site is not covered by nor adjacent to any site within the National Sites Network or Ramsar protected sites, however, there are 22 such protected sites within 10km of the site. The designated sites are not connected to the site by any identified or known waterway.

### **Likely Significant Effect**

4. Of the closest 22 National Sites Network sites, those listed above were identified within the sHRA as being potentially subject to likely significant effect either from the development proposals alone or in combination with other plans or projects.
5. The likely significant effect arises as a consequence of potential pollution from the site entering the River Rheidol thereby impacting on qualifying mobile animal, fish or bird species using the river or the protected sites.
6. The risk of pollution of the river Rheidol is the only potential pathway of impact. The Rheidol is approximately 95 metres from the site at its closest point and discharges to Cardigan Bay. Whilst there are no clear hydrological links from the site to the river, the location of the site within the floodplain means that during a flood event polluted water could enter the river as flood water. The sHRA assesses the risk of significant effect to all designated sites as low and relates to the effect on water quality in all instances.
7. The sHRA confirms that the potential impact pathways on qualifying features which have been taken into account comprise changes to water quality from construction activities. There are no visible pathways from the site to the River such that impacts from runoff are unlikely but nevertheless cannot be entirely discounted. There is therefore a low risk of significant effect on these protected sites through marine pollution caused by runoff from the construction period at the site entering the River Rheidol.
8. The sHRA identifies the habitats of importance within each of the protected sites as well as the significant species in each. The potential impacts on those species that are a primary reason for selection or a qualifying feature of the relevant protected sites comprise: harbour porpoise; red throated diver; bottlenose dolphin; otter; grey seal; water vole; sea lamprey; river lamprey; brook lamprey; atlantic salmon; bullhead; twaite shad; allis shad; white-clawed (or Atlantic stream) crayfish; over



wintering white-fronted geese; wintering whooper swan; large heath; rosy marsh moth; golden bog moss; slender cow-horn bog moss; slender smooth cap; violet crystalwort; bog earwort; ranunculus fluitans and callitriche-batrachion vegetation; floating water-plantain, oligotrophic to mesotrophic standing waters with vegetation of the littorelletea uniflorae and/or of the Isoëto-Nanojuncetea; transition mires and quaking bogs.

9. Whilst the use of the river by any of these species is not considered likely, there is considered to be a possibility of such use in some instances and, therefore, the potential effects have been assessed. For example, it is acknowledged that individual porpoise associated with the West Wales Marine SAC could enter the Rheidol and swim upstream at certain states of the tide. If this were to occur, porpoise could be impacted if there were any pollution runoff present in the River Rheidol. In each instance, the presence of pollution in the river is assessed as causing a likely significant effect on all of the above mobile listed species. The risk is considered to be small but due to the risk of polluted flood water entering the Rheidol and the potential for use of the river by protected species, likely significant effect arises.
10. The sHRA considered that due to the distance involved and the likely dilution effects, potential impacts from polluting runoff entering the river during the operational phase would be unlikely and any fuel spills from parked vehicles visiting the store would be minor due to the limited time vehicles would be parked.
11. NRW agrees that likely significant effect arises in relation to the construction phase but also considers there is a risk during the operational phase. Their position is that further information in the form of a drainage plan is required to explore the potential effects. NRW has stated that the sHRA findings are outdated due to the most recent flood modelling work and as a result of the most recent modelling there is the potential for a pollution pathway during the construction and operation of the scheme to the Rheidol. This risk arises as no detail of the effects of the proposed flood mitigation measures have been provided. NRW states that the applicant has failed to provide a drainage plan and so it cannot be ascertained where surface water currently drains to or in which direction flood water would be displaced to. As a result of this, it is not possible to ascertain whether a pathway for potentially polluted water exists between the application site and the river Rheidol.
12. I agree with NRW that the potential for pollution entering the Rheidol during a flood event cannot be discounted and therefore there would be a likely significant effect on the integrity of the aforementioned sites arising from the scheme during both the construction and operational phases.

### **Appropriate Assessment**

13. As likely significant effect cannot not be discounted during the construction phase, avoidance or mitigation would be required and the sHRA recommends a Construction and Environment Management Plan (CEMP). The sHRA concludes that with the CEMP in place, there would be no adverse effect on the protected sites caused by the proposed development either alone or in combination with other projects during the construction phase. A suggested pre-commencement condition to secure this and a draft Construction and Environment Management Plan has been produced. The sHRA does not recommend any form of protection during the operational phase as it found no likely significant effect from the operational phase.
14. The response of NRW to the sHRA is that they are not satisfied that likely significant effect during the operational phase can be ruled out as flood risk has not been fully

addressed. Applying the precautionary principle to the available evidence, I concur with NRW that an adverse effect cannot be ruled out. I will therefore take these considerations forward to Appropriate Assessment.

15. NRW have confirmed that there is insufficient information before them to be satisfied that likely significant effect can be mitigated. The applicant and NRW differ in that the applicant states that these effects can be managed by means of a CEMP whereas NRW states that there is insufficient information before them to conclude that a CEMP would be an appropriate means of adequately mitigating the risk.
16. Although their sHRA finds no likely significant effect during the operational phase, the applicant has indicated a willingness to comply with a pre-commencement condition requiring the submission of an agreed Pollution Prevention Plan (PPP) to include methods for dealing with potential flood water displacement during the operational phase of the development.
17. The sHRA has referred to the risk of small fuel spills from vehicles using the parking areas and the risk of these contaminants entering the river via floodwater. The applicant has referred to surface water drainage plans for the use of interceptors and separators to deal with minor spillages and leaks. However, this does not address the risk of contamination during a flood event. I accept that the risk may be small and acknowledge the likely dilution of any contaminated water by the time it would reach the Rheidol, however, adopting the precautionary principle I cannot exclude the possibility of contaminants particularly from the parking areas being carried by floodwater to the Rheidol with consequential the risk of likely significant effect on the features of the protected sites. As a result of this, I consider a PPP to be necessary to mitigate this effect. In order that the risk can be adequately managed, this should be secured by a condition precedent in the same way as necessary for a CEMP.
18. I acknowledge that due to the lack of hydrological links between the application site and the river, that likely significant effect would only arise during a flood event and due to the distances involved the likely effects of dilution would be high. Nonetheless, I consider that there is a risk of harmful polluted water entering the river Rheidol during both the construction and operational phases of the development.
19. Whilst there is presently a lack of detail over the content of both CEMP and PPP, suitably worded conditions can secure adequate information. The acceptability of the plans would be for the Council to determine, in conjunction with NRW before any development works could commence. This would provide assurances for NRW that any submitted CEMP and PPP would need to be adequate and effective to be able to satisfy the requirements of the conditions and would therefore comprise an effective safeguard against the potentially harmful effects that have been identified.
20. The sHRA considers the need for an in-combination effect assessment and concludes that through adherence with a CEMP the project alone would have no adverse effects on the integrity of any protected site and, as such, no in-combination assessment is required. I have taken into account the evidence and no other projects have been referred to. I am satisfied on this basis that, with a CEMP and PPP in place, there would be no adverse impact caused by the development to the national sites network either alone or in combination with any other scheme.
21. I have taken into account all the available evidence, including the concerns raised by those who oppose the scheme, and I have adopted the precautionary principle in carrying out my assessment. I conclude that it is beyond reasonable scientific doubt that the scheme, either alone or in combination with other projects, would not have

an adverse effect on the integrity of the sites listed in paragraph 1 of this assessment that form part of the National Sites Network. This conclusion is predicated on securing the identified mitigation measures through the imposition of the recommended planning conditions.

**Recommendation**

22. For the reasons given above, and having had regard to all other matters raised, I recommend that this report be accepted as an Appropriate Assessment which complies with the requirements of Regulation 63 of the Conservation of Habitats and Species (Amendment) Regulations 2017 (as amended).

*Janine Townsley*

INSPECTOR

## **APPEARANCES**

### FOR THE APPLICANT:

Mr D Templeton	Director - Planning Potential
Dr C Whitlow	Director - Edenvale Young
Mr R Hogarth	Aldi Stores Ltd.
Mr R Jones	Aldi Stores Ltd.

### FOR THE LOCAL PLANNING AUTHORITY:

Mr J Eurig	Planning Officer - Ceredigion County Council
Ms C Newbold	Planning Officer – Ceredigion County Council

### INTERESTED PERSONS:

Mr P Waldren	Lidl Stores Ltd.
Mr N Parker	Natural Resources Wales Team Leader – Development Planning Team
Mr G Blayney	Natural Resources Wales - Advisor – Development Planning Team
Mr F Scimone	Natural Resources Wales (Author – Model Review Report)
Mr S Alison	Natural Resources Wales
Mr D Jones	Natural Resources Wales
Mr T Brown	Natural Resources Wales
Mr A Williams	Natural Resources Wales
Councillor M Benjamin	Local Ward Member

## **DOCUMENTS**

Letter from NRW dated 6 November 2020.

Applicant's Second Addendum Report on Flood Risk December 2020

Applicant's Third Addendum Report on Flood Risk with plans

Model Review document from NRW dated February 2021.

Email from NRW in response to Third Addendum Report dated 25 February 2021

Email from Applicant with details model review and plan of culverts attached dated 5 March 2021

Email from Applicant in response to NRW's comments on ecological matters dated 20 May 2021

Emails from NRW in response to ecological consultation dated 11 May 2021 & 20 May 2021.

Email from NRW to PINS with final comments on ecological matters comprising response pursuant to Regulation 63 of the Conservation of Habitats and Species (Amendment) Regulations 2017 (as amended) dated 11 June 2021.



**PCAC  
PEDW**

Penderfyniadau Cynllunio  
ac Amgylchedd **Cymru**  
Planning & Environment  
Decisions **Wales**

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## **Adroddiad Adendwn**

Gwrandawriad a gynhaliwyd ar 07/12/20,  
05/01/21

Ymweliad â safle a wnaed ar 08/12/20

**gan Janine Townsley LLB (Hons)  
Cyfreithiwr (Nad yw'n ymarfer)**

**Arolygydd a benodir gan Weinidogion  
Cymru**

**Dyddiad: 24.02.2022**

## **Addendum Report**

Hearing held on 07/12/20, 05/01/21

Site visit made on 08/12/20

**by Janine Townsley LLB (Hons)  
Solicitor (Non-practising)**

**an Inspector appointed by the Welsh  
Ministers**

**Date: 24.02.2022**

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### **TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77**

APPLICATION BY: ALDI STORES LTD

LOCAL PLANNING AUTHORITY: CEREDIGION COUNTY COUNCIL

FOR: FULL APPLICATION FOR THE ERECTION OF A CLASS A1 FOOD STORE WITH  
ASSOCIATED ACCESS, CAR PARKING AND LANDSCAPING.

AT: FORMER KWIK SAVE, PARK AVENUE, ABERYSTWYTH, CEREDIGION, SY23 1PG.

REFERENCE: D6820/V/19/3232472

1. Following submission of my Report on this called-in application, NRW were invited to comment on the most recent model data provided by the applicant to NRW on 3rd March 2021. No request for comments had been made at the time for the reasons set out in paragraph 115 of my Report. NRW indicated that they required additional time to consider this data but despite agreement to an extension of time for them to comment, NRW failed to do so by the end of that extension.
2. The most up to date evidence, therefore, is that addressed in the report and the conclusions and recommendation stands.

*Janine Townsley*

Inspector



## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 1 Chwefror 2022

gan Nia Jones, BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 21.03.22

## Appeal Decision

Site visit made on 1 February 2022

by Nia Jones, BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 21.03.22

Cyf yr apêl: CAS-01347-X6P3Q3

Cyfeiriad y safle: Llethr Melyn, Trawscoed, SY23 4HU

**Mae Gweinidogion Cymru wedi trosglwyddo'r awdurdod i benderfynu ar yr apêl hon i mi fel yr Arolygydd penodedig.**

- Gwneir yr apêl o dan adran 78 Deddf Cynllunio Gwlad a Thref 1990 yn erbyn gwrthod rhoi caniatâd cynllunio.
- Gwneir yr apêl gan Miss Beth Farr yn erbyn penderfyniad Cyngor Sir Ceredigion.
- Y datblygiad arfaethedig yw datblygiad twristiaeth sy'n cynnwys codi 4 o bodiau gwyliau ar safle manège presennol, a daliedydd dŵr brwnt ac ardal barcio.

### Penderfyniad

- Gwrthodir yr apêl.

### Prif Fater

- Y prif fater yw p'un a fyddai'r cynnig mewn lleoliad cynaliadwy ar gyfer y datblygiad, gan roi ystyriaeth i bolisiâu cynllunio cenedlaethol a lleol sy'n cefnogi'r economi wledig, ac effeithiau'r datblygiad ar gymeriad a golwg yr ardal.

### Rhesymau

- Byddai'r podiau gwyliau arfaethedig yn meddiannu safle tir caeedig uwch â ffens pyst a rheiliau a ddefnyddir fel manège, gyda man parcio wedi'i osod yn ymyl trac mynediad wyneb caled. Mae coed a pherthi aeddfed yn fframio'r safle i'r cefn, ond fel arall, mae'r safle'n rhan o dirwedd amaethyddol agored. Adeg f'ymweliad, roedd pod a thwba twym wedi'u lleoli ar y safle.
- Strategaeth Cynllun Datblygu Lleol (CDLI) Ceredigion yw gwella cynaliadwyedd y Sir, gan gynnwys diogelu a gwella amgylchedd ac adnoddau'r Sir. Er mwyn cyflawni hyn, mae'r Cynllun yn nodi hierarchaeth o fathau o aneddiadau sy'n cynnwys canolfannau gwasanaeth trefol a gwledig sy'n canolbwyntio twf yn y lleoliadau mwyaf cynaliadwy. Mae'r safle o fewn y categori 'Aneddiadau Cysylltiedig a Lleoliadau Eraill' y dywed Polisi Strategol S04 y CDLI eu bod yn llai cynaliadwy na Chanolfannau Gwasanaethau'r Sir. Yn fwy penodol, ac yn gyson â'm arsylwad o gyd-destun y safle, mae safle'r apêl mewn 'lleoliad arall' y mae'r CDLI yn ei nodi fel cefn gwlad agored yn bennaf. Dim ond mewn Aneddiadau Cysylltiedig a Lleoliadau Eraill' y mae Polisi S04 y CDLI yn caniatáu datblygiad economaidd yn ddarostyngedig i'w feini prawf rhestredig, gan gynnwys lle



maent yn cydsynio â gofynion Nodyn Cyngor Technegol 6 'Cynllunio ar gyfer Cymunedau Gwledig Cynaliadwy' (TAN 6). Dylid darllen TAN 6 ar y cyd â Pholisi Cynllunio Cymru Rhifyn 11.

5. Mae'r cynnig yn cael ei roi gerbron fel prosiect arallgyfeirio fferm fel modd o gynnal y fferm bresennol. Mae Adroddiad Arfarniad Amaethyddol yn cadarnhau nad yw'r gweithgarwch ffermio a weithredir ar y daliad yn gynaliadwy yn ariannol heb fod incwm ychwanegol yn cael ei gynhyrchu. Mae Polisi Cynllunio Cymru yn datgan, er y dylid rhoi ystyriaeth gychwynnol i addasu adeiladau presennol ar gyfer arallgyfeirio busnes gwledig, gallai darparu adeilad newydd wedi'i ddylunio'n sensitif ar fferm weithio o fewn cyfadeiladau fferm presennol fod yn briodol lle nad yw cyfle i addasu yn bodoli. Tynnwyd fy sylw i at ddefnydd gwely a brecwast o'r annedd yn flaenorol, ac at adeiladau allanol ar y safle lle mae caniatadau cynllunio blaenorol ar gyfer defnyddiau gwyliau wedi'u cadarnhau gan yr apelydd iddynt gael eu rhoi i gefnogi arallgyfeirio'r fferm. Nodaf fod y caniatadau hyn wedi'u rhoi o dan gyd-destun polisi gwahanol cyn mabwysiadu'r CDLI presennol yn 2013. At hynny, mae'r Cyngor yn cadarnhau bod polisïau'r CDLI, yn gyson a TAN 6, yn caniatáu addasiadau, ni waeth am unrhyw gyfiawnhad arallgyfeirio fferm. Serch hynny, gwelais ei bod yn ymddangos bod un o'r adeiladau wedi'i addasu i'w ddefnyddio fel anecs o dan ganiatâd cynllunio diweddar, tra'i bod yn ymddangos bod y llall yn cael ei ddefnyddio fel lle storio. Yng nghyd-destun Polisi Cynllunio Cymru, a chan ystyried natur 'glampio' y cynnig, byddai'n ymddangos nad yw cyfle i addasu yn bodoli, ond beth bynnag, o ystyried ei leoliad i ffordd oddi wrth y tŷ a'r adeiladau allanol presennol, ni fyddai'r cynnig wedi'i leoli o fewn cyfadeiladau fferm presennol.
6. Mae'r Cyngor o'r farn fod y gweithgareddau amaethyddol yn Llethr Melyn yn gyfystyr â 'ffermio hamdden' heb unrhyw 'fferm weithio i arallgyfeirio ohoni'; fodd bynnag, mae'n derbyn bod yr apelydd yn ffermio'r tir. Serch hynny, ni waeth p'un a ellir disgrifio'r cynnig fel arallgyfeirio fferm, nid yw cynigion datblygu economaidd a ganiateir o dan Bolisi S04 wedi'u cyfyngu i brosiectau o'r fath yn unig. Mae'r CDLI yn cadarnhau, wrth gymhwyso maen prawf 3 o Bolisi S04, fod datblygu economaidd yn cwmpasu pob agwedd ar yr economi, gan gynnwys manwerthu, hamdden a thwristiaeth. Mae TAN 6 yn cadarnhau hefyd at ei ddibenion, fod mentrau gwledig cymwys yn cynnwys tir yn gysylltiedig â busnesau, gan gynnwys amaethyddiaeth, coedwigaeth a gweithgareddau eraill sy'n cael eu prif fewnbynnau o'r safle, gan gynnwys mentrau twristiaeth a hamdden.
7. Mae Polisi LU14 y CDLI, gan ehangu ar egwyddorion Polisi S04, yn ymdrin yn benodol â safleoedd llety twristiaeth, sydd, yn ddarostyngedig i'w feini prawf rhestredig, yn cefnogi ystod o letyau i ddarparu ar gyfer pob angen er mwyn mynd i'r afael â bylchau yn y ddarpariaeth. Nid oes unrhyw anghytundeb rhwng y partion mewn perthynas â chydymffurfiaeth y cynnig â thri maen prawf cymwys Polisi LU14, sef cyfrannu at gefnogi nodau twristiaeth strategol a rôl a swyddogaeth aneddiadau cyfagos heb effeithio ar hanfodolrwydd gwasanaethau sydd eisoesyn bodoli o fewn yr anheddiad agosaf. Mae'r apelydd wedi darparu Asesiad o Anghenion Twristiaeth ac Effaith Datblygiad hefyd, yn amlinellu'r angen am y datblygiad yn unol â gofynion Polisi LU14. Nid yw'r Cyngor yn herio'r dystiolaeth hon.
8. Serch hynny, o ran lleoliad ffisegol y datblygiad, a chan ystyried amcanion cynaliadwyedd cyffredinol Polisi S04, mae'r testun ategol at Bolisi LU14 y CDLI yn egluro y dylai safleoedd twristiaeth newydd fod yn briodol i'r lleoliad. Er enghraifft, er y dylai safleoedd mwy fod wedi'u lleoli o fewn neu'n gyfagos i ganolfannau gwasanaeth, gellir darparu ar gyfer safleoedd twristiaeth llai, fel cynnig yr apêl, sydd efallai ond yn darparu ar gyfer 5 llain ac yn cynnig cyfleusterau sylfaenol, mewn Aneddiadau Cysylltiedig neu'n gyfagos i dyddynnod lle maent wedi'u sgrinio'n addas. Mae hyn yn adlewyrchu TAN 6 sy'n cefnogi mentrau newydd i arallgyfeirio'r economi wledig ehangach ond sydd, o ran lleoliad ffisegol

datblygiad, er mwyn lleihau effeithiau ar y gymuned leol a'r amgylchedd, yn mynnu, lle bo modd, y dylai safleoedd fod wedi'u lleoli o fewn neu'n gyfagos i aneddiadau.

9. Gan na cheir unrhyw ddiffiniad o 'dyddyn / farmstead' yn y Polisi, rwyf wedi cymryd ei ystyr cyffredin, a fabwysiadwyd yn yr un modd yn Adroddiad Arfarniad Amaethyddol yr apelydd, sef tŷ sy'n perthyn i fferm a'r adeiladau gweithredol o'i amgylch. Er bod yr apelydd yn awgrymu diffiniad ehangach i gynnwys caeau ar gyfer tendio stoc, nid wyf o'r farn fod hyn yn adlewyrchu nod strategol Polisi S04 i sicrhau datblygiad cynaliadwy na chynghor polisi cenedlaethol o gyfyngu cyffredinol mewn perthynas â datblygu yng nghefn gwlad agored.
10. Byddai'r datblygiad arfaethedig wedi'i leoli dros 100m o'r tyddyn yn Llethr Melyn. Er bod y safle arfaethedig wedi'i osod yn erbyn cefndir o goed a pherthi, mae'n safle agored ac uchel sy'n weledol o'r ffordd a'r llwybr ceffylau cyfagos. Er y bwriedir gwneud gwaith plannu i liniaru effeithiau, mae'r cynnig yn annhebygol o gael ei sgrinio'n gyfan gwbl o olygon y cyhoedd, ac o ystyried ei bellter o'r tyddyn, byddai'n ymddangos fel math o ddatblygiad ynysig ac ymwthiol. Rwyf yn cydnabod y byddai'r podiau wedi'u gwneud o goed, fodd bynnag, byddent wedi'u gosod ar ffurf drefnus a byddai tybiau twym yn nodweddion trefol a fyddai'n ychwanegu at anghydnawsedd y cynnig. Mae'r apelydd yn cadarnhau bod gosodiad y podiau o fewn y safle wedi'i ddylunio i wynebu'r olygfa. O ystyried y prif agoriad sengl yn y podiau a'u lleoliad ar y safle, mae'n debygol y byddai angen cadw unrhyw blanhigion ar lefel gymharol isel er mwyn cynnal y golygfeydd hynny. Byddai'r cynnig yn ymddangos fel datblygiad ar wahân ac anghydweiddol heb fod yn gysylltiedig â'r tyddyn, a byddai'n amharu ar y dirwedd amaethyddol agored a dymunol.
11. Deuaf i'r casgliad na fyddai'r cynnig yn lleoliad cynaliadwy ar gyfer datblygiad newydd ac y byddai'n niweidio cymeriad a golwg yr ardal yn groes i Bolisiâu S04 a LU14 y CDLI, Polisi Cynllunio Cymru a TAN 6.

### **Materion eraill**

12. Byddai'r cynnig wedi'i leoli cryn bellter i ffwrdd oddi wrth yr eiddo preswyl agosaf, ac nid wyf yn ystyried y byddai unrhyw effeithiau annerbyniol ar amodau byw yn deillio o'r datblygiad arfaethedig. Ni wnaed unrhyw wrthwynebiad i'r cynnig gan yr Awdurdod Prifffyrdd yn ddarostyngedig i amodau, a gellid darparu mynediad addas i gerbydau ar y safle i wasanaethu'r datblygiad arfaethedig. Fodd bynnag, nid yw fy nghanfyddiadau i ar y materion hyn yn drech na'r niwed a nodais mewn perthynas â'r prif fater.

### **Casgliad**

13. Byddai'r cynnig yn darparu incwm ychwanegol i ategu'r incwm a gynhyrchir ar y daliad. At hynny, byddai'n fath o ddatblygiad economaidd gwledig ehangach a gynhwysir ym Mholisiâu S04 a LU14 y CDLI. Fodd bynnag, canfyddaf nad yw'r cynnig yn bodloni gofynion lleoliadol polisiâu cynllunio cenedlaethol a lleol ac, oherwydd ei leoliad ynysig a'i ffurf anghydweiddol, byddai'n niweidio cymeriad a golwg yr ardal yn sylweddol. Nid wyf o'r farn y byddai buddion y cynllun yn gwrthbwysu'r niwed sylweddol a nodais yn hyn o beth ac, am y rhesymau uchod, gwrthodir yr apêl.
14. Wrth wneud fy mhenderfyniad, rwyf wedi ystyried gofynion adrannau 3 a 5 Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015. Rwyf o'r farn fod y penderfyniad hwn yn gyson ag egwyddor datblygu cynaliadwy'r Ddeddf trwy ei gyfraniad at un neu fwy o amcanion llesiant Gweinidogion Cymru fel y mynnir gan adran 8 y Ddeddf.

*Nia Jones* Arolygydd



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## Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 1 Chwefror 2022

gan Nia Jones, BA (Hons) MSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 21.03.22

## Appeal Decision

Site visit made on 1 February 2022

by Nia Jones, BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 21.03.22

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**Appeal Ref: CAS-01347-X6P3Q3**

**Site address: Llethr Melyn, Trawscoed, SY23 4HU**

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Miss Beth Farr against the decision of Ceredigion County Council.
- The development proposed is tourism development comprising the erection of 4 no. holiday pods on the site of an existing manège and foul water receptacle and parking area.

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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether the proposal would be in a sustainable location for development, having regard to national and local planning policies supporting the rural economy, and the effects of the development on the character and appearance of the area.

### Reasons

3. The proposed holiday pods would occupy the site of an elevated post and rail fenced enclosure used as a manège, with parking space laid out beside a hard surfaced access track. Mature trees and hedges frame the site to the rear but the site is otherwise part of an open agricultural landscape. At the time of my visit, there was a pod and hot tub located on the site.
4. The Ceredigion Local Development Plan's (LDP) strategy is to improve the sustainability of the County, including protecting and enhancing the County's environment and resources. To achieve this the Plan identifies a hierarchy of settlement types including urban and rural service centres that focuses growth to the most sustainable locations. The site falls within the 'Linked Settlements and Other Locations' category which Strategic Policy S04 of the LDP states are less sustainable than the County's Service Centres. More specifically, and consistent with my observation of the site's context, the appeal site

is in an 'other location' which the LDP identifies as mainly open countryside. LDP Policy S04 only permits economic development in Linked Settlements and Other Locations subject to its listed criteria including where they accord with the requirements of Technical Advice Note 6 'Planning for Sustainable Rural Communities' (TAN 6). TAN 6 should be read in conjunction with Planning Policy Wales Edition 11 (PPW).

5. The proposal is put forward as a farm diversification project as a means of sustaining the existing farm. An Agricultural Appraisal Report confirms that the farming activity operated on the holding is not financially sustainable without an additional income being generated. PPW states that while initial consideration should be given to adapting existing buildings for rural business diversification, the provision of a sensitively designed new building on a working farm within existing farm complexes may be appropriate where a conversion opportunity does not exist. My attention was brought to a previous bed and breakfast use of the dwelling and to existing outbuildings at the site where previous planning permissions granted for holiday uses are confirmed by the appellant to have been granted in support of farm diversification. I note that these permissions were granted under a different policy context before the adoption of the current LDP in 2013. Moreover, the Council confirms that LDP policies, consistent with TAN 6, allow conversions irrespective of any farm diversification justification. Nevertheless, I saw that one of the buildings appears to have been converted for use as an annexe under a recent planning permission while the other appeared to be in use for storage. In the context of PPW and having regard to the 'glamping' nature of the proposal, it would appear that a conversion opportunity does not exist, but in any event, given its location away from the existing house and outbuildings, the proposal would not be sited within an existing farm complex.
6. The Council consider the agricultural activities at Llethr Melyn amount to 'hobby farming' with no 'working farm to diversify from', however it accepts that the appellant is farming the land. Nonetheless, irrespective of whether the proposal can be described as farm diversification, economic development proposals permitted under Policy S04 are not solely restricted to such projects. The LDP confirms that in applying criterion 3 of Policy S04, economic development covers all aspects of the economy, including retail, leisure and tourism. TAN 6 also confirms for its purposes, qualifying rural enterprises comprise land related to businesses including agriculture, forestry and other activities that obtain their primary inputs from the site, including tourism and leisure enterprises.
7. LDP Policy LU14, expanding on the principles of Policy S04, deals specifically with tourism accommodation sites, supporting, subject to its listed criteria, a range of accommodation to cater for all needs to address gaps in provision. There is no disagreement between the parties in relation to the proposal's compliance with the three applicable criteria of Policy LU14 of contributing towards supporting strategic tourism nodes and the role and function of nearby settlements without affecting the vitality of services which already exist within the nearest settlement. The appellant has also provided a Tourism Needs and Development Impact Assessment outlining the need for the development in accordance with Policy LU14 requirements. The Council does not challenge this evidence.
8. Nonetheless, in terms of the physical location of development, and having regard to the overarching sustainability objectives of Policy S04, the supporting text to UDP Policy LU14 clarifies that new tourism sites should be appropriate to the location. For example, whilst larger sites should be located within or adjacent to service centres, smaller tourism sites, such as the appeal proposal, which perhaps only cater for 5 pitches and offer basic facilities, can be accommodated in Linked Settlements or adjacent to farmsteads where suitably screened. This reflects TAN 6 which supports new enterprises to diversify the broader rural economy but which, in terms of a development's physical location, in order

to minimise impacts on the local community and the environment, requires that, where possible, sites should be located within or adjacent to settlements.

9. As no definition of 'farmstead' is contained within the Policy, I have taken its ordinary meaning, similarly adopted in the appellant's Agricultural Appraisal Report, of being a house belonging to a farm and the functional buildings around it. Although the appellant suggests a wider definition to include fields for tending stock, I do not consider this reflects the strategic aim of Policy S04 to secure sustainable development or national policy advice of general constraint in relation to development in the open countryside.
10. The proposed development would be located over 100m from the farmstead at Llethr Melyn. Whilst the proposed site is set against a backdrop of existing trees and hedges, it is an open and elevated site visible from the highway and the nearby bridleway. Although planting is proposed to mitigate impacts, the proposal is unlikely to be wholly screened from public views and given its distance from the farmstead, would appear as an isolated and intrusive form of development. I acknowledge that the pods would be timber however they would be laid out in a regimented form and the hot tubs would be urban features that would add to the inharmoniousness of the proposal. The appellant confirms that the layout of the pods within the site has been designed to face the view. Given the single main opening in the pods and their placement on the site, it is likely that any planting would need to be kept fairly low level to maintain those views. The proposal would appear as a separate and incongruous development unrelated to the farmstead and would detract from the open and pleasant agricultural landscape.
11. I conclude that the proposal would not be a sustainable location for new development and it would harm the character and appearance of the area contrary to LDP Policies S04 and LU14, PPW and TAN 6.

### **Other matters**

12. The proposal would be sited some distance from the nearest residential property and I do not consider that any unacceptable impacts on living conditions would arise from the proposed development. No objection was made to the proposal by the Highway Authority, subject to conditions, and the site could be provided with a suitable vehicular access to serve the proposed development. However, my findings on these matters do not override the harm I have identified in relation to the main issue.

### **Conclusion**

13. The proposal would provide an additional income to supplement that generated on the holding. Moreover, it would represent a form of wider rural economic development included under LDP Policies S04 and LU14. However, I find that the proposal does not meet the locational requirements of national and local planning policy and, due to its isolated location and incongruous form, would significantly harm the character and appearance of the area. I do not consider the benefits of the scheme would outweigh the considerable harm I have identified in this regard and, for the above reasons, the appeal is dismissed.
14. In reaching my decision I have taken into account the requirements of sections 3 and 5 of the Well-being of Future Generations (Wales) Act 2015. I consider this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Minister's wellbeing objectives as required by section 8 of the Act.

*Nia Jones* Inspector