

## DELEGATED DECISION OFFICER REPORT

AUTHORISATION	INITIALS	DATE
File completed and officer recommendation:	MP	20/08/18
Planning Development Manager authorisation:	AN	21/8/18
Admin checks / despatch completed	ER	23/8/18

*xxx*

**Application:** 17/01878/FUL **Town / Parish:** Clacton Non Parished

**Applicant:** WM Morrison Supermarkets Plc

**Address:** Morrisons Supermarket Centenary Way Clacton On Sea

**Development:** Development of a drive thru unit, car wash area, tyre service area and small retail pod (within and adjoining the existing car park).

### 1. Town / Parish Council

Clacton Non-Parished.

### 2. Consultation Responses

Anglian Water Services Ltd

Anglian Water would recommend the following planning condition if the Local Planning Authority is mindful to grant planning approval:

No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.

Policy Section (Dated 5 January 2018)

The development plan for Tendring is the 2007 'adopted' Local Plan, despite some of its policies being out of date. Paragraph 215 of the NPPF allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 216 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 2nd November 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (2017). Whilst this plan is at a relatively advanced stage of preparation, some of its policies still have unresolved objections levelled against them. Policies in the emerging Plan can therefore be given limited weight in the determination of planning applications, the weight to be given to emerging policies will increase as the plan progresses through the last stages of the process. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 216 of the NPPF, they should be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

The application presents town centre uses outside of a town centre location as defined by the National Planning Policy Framework (NPPF).

The case officer should consult Local Policy in the form of Policy ER32 of the Adopted (2007) Plan and Policies PP4 and PP5 of the Emerging (2017) Plan. In broad terms these policies seek a sequential approach for new retail development outside of town centre boundaries. The agent has submitted a Sequential Assessment as part of the application documentation in which it is claimed that this test has been met and there are no other sequentially more preferable properties than that of the application site. The Case Officer has received comments from the Council's Regeneration team. This consultation broadly states that there is another unit to be considered at 22-24 West Avenue and 81-83 Pier Avenue, both within the town centre boundary.

Since this time the agent has made comments on what was submitted by the Regeneration Team. They state that the two properties which were suggested by the regeneration team are unsuitable. Reasons given for this include the lack of suitability of locating a drive-thru, however no details to this have been submitted. We consider that both the suggested sites need further consideration by the agent and should not be dismissed at this stage.

The above illustrates the lack of policy compliance at a local level. The Planning Policy team have no choice but to object to the proposed development. Should any details change, this may not necessarily be the case and we would wish to be re-consulted.

Building Control and  
Access Officer

No comments at this stage.

ECC Highways Dept  
(Dated 29 November  
2017)

This Authority has assessed the highway and transportation impact of the proposal and does not wish to raise an objection subject to the following:

Prior to occupation of the development the vehicular parking and turning facilities, as shown on the submitted plan shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.

Reason: To ensure that vehicles can enter and leave the highway in a forward gear in the interest of highway safety in accordance with policy DM1 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

Prior to the commencement of the development the details of the amount, location and design of cycle/powered two wheeler parking facilities shall be submitted to and approved in writing by the Local Planning Authority. The approved facility shall be secure and shall be provided prior to occupation of the development and retained for that purpose at all times.

Reason: To ensure an appropriate level of parking facility for powered two wheelers is provided in the interest of highway safety and amenity in accordance with Policy DM8 of the Development Management Policies as adopted as County Council Supplementary Guidance in February 2011.

INF01 Highway Works - All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the

requirements and satisfaction of, the Highway Authority, details to be agreed before the commencement of works.

The applicants should be advised to contact the Development Management Team by email at [development.management@essexhighways.org](mailto:development.management@essexhighways.org) or by post to:

SMO1 ' Essex Highways, Colchester Highways Depot, 653, The Crescent, Colchester Business Park, Colchester CO49YQ

INF02 Cost of Works - The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims a cash deposit or bond may be required.

INF03 - Site Workers - Steps should be taken to ensure that the Developer provides sufficient turning and off loading facilities for delivery vehicles, within the limits of the site together with an adequate parking area for those employed in developing the site.

ECC Highways Dept  
(Dated 26 March 2018  
following submission of  
amended plans)

The Highway Authority does not object to the amended proposal.

Environment Agency  
(Dated 28 November  
2018)

The consultation was returned as the Environment Agency was consulted in error.

Environment Agency  
(Dated 26 March 2018  
following the submission  
of amended plans)

No objection to the application provided the below conditions are appended to any permission granted.

Surface water draining from areas of hardstanding shall be passed through an oil separator or series of oil separators, prior to being discharged into any watercourse, soakaway or surface water sewer. The separator(s) shall be designed and constructed to have a capacity compatible with the area being drained, shall be installed prior to the occupation of the development and shall thereafter be retained and maintained throughout the lifetime of the development. Clean roof water or vehicle washdowns and detergents shall not pass through the separator(s) and should be drained instead to foul sewer or sealed system.

Effluent discharged from any premises carrying on a trade or industry and effluent generated by a commercial enterprise where the effluent is different to that which would arise from domestic activities in a normal home is described as trade effluent. If you are not able to discharge effluent it will be classed as waste and you must then comply with your duty of care responsibilities.

If you wish to discharge effluent after appropriately treating it to groundwater or surface water please contact the Environment Agency (Tel: 03708 506 506) as a permit under the Environmental Permit Regulations will be required.

A trade effluent consent or a trade effluent agreement with your water and sewerage company must be obtained before you discharge trade effluent to a public foul sewer or a private sewer that connects to a public foul sewer.

**Environmental Protection** EP will require noise and dust assessments for the development and methodology to control any fugitive emissions from the carwash and tyre areas.

We will need to know end users identified and the type of processes to be carried out in the units and any proposed plant therein as well as hours of operation in each unit to enable us to make further comments.

**Food Health and Safety** No comment.

**Policy Section (Dated 16 March 2018 following submission of amended plans)** Thank you for re-consulting the Planning Policy Team. We previously made comments on the above applications on 4th January. At that time the Planning Policy Team objected to the applications in line with the Council's Regeneration department. In essence our concerns revolved around the lack of additional work provided by the applicant to demonstrate local policy compliance.

It now appears that the retail element of both schemes has been removed. This belays our aforementioned objections and they are therefore withdrawn. It is worth noting that the case officer should still consider any outstanding comments from the Council's Regeneration team in this respect.

**Building Control and Access Officer** No adverse comments at this stage.

**Environmental Protection (Dated 4 May 2018 following submission of amended plans)** Due to the proximity of the proposed fast food drive through development to the caravans on the adjoining site EP will require an acoustic survey to help us determine whether we believe that noise generated from the proposed commercial site is acceptable e.g vehicle noise, tannoy noise hours of proposed deliveries and collections from the site etc.

If this is not provided than I recommend refusal.

**Food Health and Safety** No comment.

### 3. Planning History

TRE/96/30	Various works to trees to manage	Current	27.08.1996
01/00350/ADV	Sign mounted on canopy of Safeway Petrol Filling Station adjacent to existing Safeway logo sign	Approved	22.03.2001
01/00351/ADV	Banners mounted on lamp columns in store car park	Approved	22.03.2001

91/01444/OUT	Retail supermarket, car park and petrol filling station	Refused	14.07.1992
91/01445/OUT	Retail supermarket, car park and petrol filling station (duplicate)	Refused	14.07.1992
92/00881/OUT	(Land north west of Highfield Holiday Park, London Road, Clacton on Sea) A1 retail store, petrol filling station and ancillary facilities	Refused	02.02.1993
93/00032/OUT	(Land forming part of Bovill Hall Farm to the south of Little Clacton) Outline planning application for a retail supermarket car park and petrol filling station	Refused	30.03.1993
93/00791/OUT	(Land forming part of Bovill Hall Farm to the South of Little Clacton) Outline planning application for a retail supermarket car park and petrol filling station	Refused	27.09.1993
95/00872/DETAIL	Construction and fitting out of A1 retail store with ancillary uses and petrol filling station together with associated car parking areas, roads, off site sewerage works and new roundabout to Centenary Way (submission of	Approved	26.09.1995
96/00339/ADV	(The Safeway Site, Centenary Way, Clacton on Sea) Two temporary signboards	Approved	11.04.1996
96/00426/DETAIL	(Land adjacent to the Highfield Holiday Park off) Construction and fitting out of A1 Retail Store (Variation to Design Scheme approved under planning permission TEN/95/0872)	Approved	14.05.1996
96/00592/ADV	(Safeway Supermarket, Centenary Way, Clacton on Sea) Internally illuminated and non illuminated corporate and information signs	Approved	12.06.1996
96/01107/FUL	(Safeway Petrol Filling Station, Centenary Way,) To install on flat roof above kiosk area, a 1.2 metre diameter satellite antenna for the purpose of 2-way datacommunication	Approved	30.09.1996
96/01108/FUL	(Safeway Superstore, Centenary Way, Clacton on Sea) To install on flat roof, a 1.8 metre diameter satellite antenna for the purpose of 2-way data communication	Approved	30.09.1996

99/00112/FUL	Extension to existing Safeway Retail Store	Refused	15.03.2001
99/01536/FUL	Proposed cyclepath/footway crossing existing open space within development	Approved	22.11.1999
99/01543/TPO	Lop low branches overhanging proposed cycle path	Approved	24.11.1999
02/02072/FUL	Extension to existing warehouse and other associated works	Refused	23.12.2002
04/01213/ADV	Various store and car park signage, converting to Morrisons Supermarket.	Approved	10.08.2004
14/00308/TPO	G4 - 1 Oak - fell because of excessive shading and low amenity value. Replant with 1 standard Ash in the same place.	Refused	10.04.2014
17/01343/ADV	Rebranding of external sign age to include 3no. fascia signs, 1no. motif sign, 1no. totem sign, canopy signs, and car wash signs.	Approved	03.10.2017
17/01389/TPO	3 No. Oak - to be taken back from the building by 2 metres to deter rodent access to the roof of the building.	Approved	12.09.2017
17/01764/TPO	Trees around car park - prune back to the boundary, crown lift to at least 3 m, retaining limbs with a girth great than 75 mm where possible. prune trees/vegetation adjacent lampposts to give clearance of 500 mm at the base. Oak and Poplar trees around site and yard area - prune back to the boundary line to give 2 m clearance from the building.	Approved	07.11.2017

#### **4. Relevant Policies / Government Guidance**

NPPF National Planning Policy Framework July 2018

National Planning Practice Guidance

Tendring District Local Plan 2007

COM22 Noise Pollution

ER32 Town Centre Uses Outside Existing Town Centres

QL9 Design of New Development

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1A Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017)

PP1 New Retail Development

PP2 Retail Hierarchy

PP5 Town Centre Uses

SPL1 Managing Growth

SPL3 Sustainable Design

CP1 Sustainable Transport and Accessibility

### **Status of the Local Plan**

The 'development plan' for Tendring is the 2007 'adopted' Local Plan. Paragraph 213 of the NPPF (2018) allows local planning authorities to give due weight to adopted albeit outdated policies according to their degree of consistency with the policies in the NPPF. Paragraph 48 of the NPPF also allows weight to be given to policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency with national policy. As of 16th June 2017, the emerging Local Plan for Tendring is the Tendring District Local Plan 2013-2033 and Beyond Publication Draft.

Section 1 of the Local Plan (which sets out the strategy for growth across North Essex including Tendring, Colchester and Braintree) was examined in January and May 2018 and the Inspector's initial findings were published in June 2018. They raise concerns, very specifically, about the three 'Garden Communities' proposed in north Essex along the A120 designed to deliver longer-term sustainable growth in the latter half of the plan period and beyond 2033. Further work is required to address the Inspector's concerns and the North Essex Authorities are considering how best to proceed.

With more work required to demonstrate the soundness of the Local Plan, its policies cannot yet carry the full weight of adopted policy, however they can carry some weight in the determination of planning applications. The examination of Section 2 of the Local Plan will progress once matters in relation to Section 1 have been resolved. Where emerging policies are particularly relevant to a planning application and can be given some weight in line with the principles set out in paragraph 48 of the NPPF, they will be considered and, where appropriate, referred to in decision notices. In general terms however, more weight will be given to policies in the NPPF and the adopted Local Plan.

## **5. Officer Appraisal**

### **Site Description**

The application site is land adjacent to Morrisons Supermarket, Centenary Way, Clacton-on-Sea, with the main supermarket located to the west of the site. The site does not fall within a recognised Settlement Development Boundary, as indicated within both the Adopted Tendring Local Plan 2007 and the Emerging Tendring District Local Plan 2013-2033 and Beyond Publication Draft. The character of the surrounding area is a mix of urban built form, notably to the east and south where there is Highfields Holiday Park, and rural grassed and agricultural land further to the north and west.

## Description of Proposal

This application seeks planning permission for the erection of one drive thru unit (Class A5) a car wash, retail pod and a tyre service area.

The application initially requested planning permission for the erection of four additional retail units; however amended plans have removed these following Officer concerns.

## Assessment

The main considerations in the determination of this planning application are the principle of development, the visual impact, the impact to residential amenities and highways impacts.

## Principle of Development

The initial proposal included four retail units, and would fail the sequential test due to being sited outside of the Clacton Town Centre, which can clearly demonstrate a number of potential available units that would have been suitable for the proposed development. Therefore, amended plans have been provided to remove the retail units, and is instead solely for one drive thru unit, a hand car wash, a tyre changing unit and a retail pod to the east of the Morrisons food store.

It is acknowledged that the site is located outside of a defined shopping area; however it is an established commercial site and the land in question is not designated for any particular use. The majority of the proposed works are not defined town centre uses, and are instead associated with out of town locations. However, whilst the proposed drive thru is a town centre use, there are no suitable or available sites within either the Clacton Town Centre or the edge of any town centre sites for its siting. Accordingly it is considered that this would be a good and suitable use of the existing site, which is currently vacant land, and as such there is no principle objection to the proposed development, subject to the detailed assessment below.

## Visual Impact

The adopted Tendring District Local Plan (2007) "Saved" Policies QL9, QL10 and QL11 seek to ensure that all new development makes a positive contribution to the quality of the local environment and character, by ensuring that proposals are well designed, relate satisfactorily to their setting and are of a suitable scale, mass and form. These sentiments are carried forward in Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Whilst the proposals will be visible to the occupants of Highfield Holiday Park to the south and east, the existing areas character consists of a petrol station and the Morrisons supermarket and therefore the proposed development will be in-keeping with that character. Furthermore, the development will be well set back within the site, set away from Centenary Way to the north, which will further reduce its prominence.

Therefore, there is not considered to be significant adverse visual impacts as a result of the proposed development.

## Impact to Neighbouring Amenities

Paragraph 127 of the National Planning Policy Framework (2018) states that planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users<sup>46</sup>; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties' and within QL11 (iv) states that development will

only be acceptable if it will not have a materially damaging impact on air, land, water, amenity, health or safety through noise, smell, dust, light, heat, vibration, fumes or other forms of pollution or nuisance. These sentiments are carried forward in Policy SPL3 Part C (b) of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

There are adjacent properties to the south and east of the application site who form part of Highfield Holiday Park, and whilst these will not be occupied all year round, under planning permission 04/01359/FUL the caravans shall be occupied between 1st March and 14th January each year. Whilst the car wash, retail pod and tyre service area are relatively low key operations and are sited far away from the nearest properties to the east and south, the drive thru element of the proposal is more closely related. Further, cooking odours, the likely hours of operation (11pm closing and 6am opening would not be uncommon for this type of use), and the noise of the comings and goings of vehicles associated to the drive-thru unit have the potential to significantly impact upon the existing amenities of the aforementioned residents.

Despite numerous requests for the submission of amended plans to re-site the drive-thru element of the proposal further to the west of the application site, away from neighbouring residents, and to submit an Environmental Noise Assessment, neither has been supplied. Therefore, the applicant has failed to demonstrate that the proposed drive-thru unit can be operated without causing a significant adverse effect on the quality of life of the occupants of the adjacent neighbouring properties at Highfield Holiday Park and therefore fails to accord with the above policies.

### Highways Impact

The proposal will result in the loss of 21 parking spaces serving the Morrisons supermarket, however due to a number of proposed parking spaces to serve the proposed drive thru unit, the overall site will see an increase of 47 spaces. Essex County Council as the Highways Authority have considered the supporting information and raise no objections to the loss of the parking spaces serving the Morrisons supermarket and are satisfied that the loss has been sufficiently demonstrated in this case. Further, no issues have been raised by highways in respect of increased trips and congestion as a result of the proposed development.

### Other Considerations

Whilst the Environment Agency initially stated they had been consulted in error, upon re-consultation following the submission of amended plans, they have stated they have no objections subject to a condition relating to surface water drainage. However, given that the site does not fall within a recognised flood zone and that the site area is below the 1 hectare threshold for consultation with ECC SUDs as the lead Local Flood Authority, it would be unreasonable to attach the suggested condition had this decision been one of approval. However, the comments regarding discharge and trade effluent will be added as an informative.

Clacton-on-Sea is non-parished so no comments are required.

There have been two letters of objection received, with the following concerns:

1. There are alternative sites available for the four retail units;
2. The site is not located within either a town centre or edge of centre; and
3. Result in an increased reliance on the private vehicle.

In answer to this, points 1 and 2 have been addressed within the principle of development section within the main body of the report above. With regards to point 3, Highways have not objected to the proposal, the site is on the edge of Clacton-on-Sea and not within an isolated unsustainable location, whilst the proposed units would likely not encourage trips and would be more likely to be visited in conjunction with the main Morrisons supermarket.

## **6. Recommendation**

Refusal.

## **7. Reason for Refusal**

- 1 Paragraph 127 of the National Planning Policy Framework (2018) states that planning policies and decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Policy QL11 of the Saved Plan states that amongst other criteria, 'development will only be permitted if the development will not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties' and within QL11 (iv) states that development will only be acceptable if it will not have a materially damaging impact on air, land, water, amenity, health or safety through noise, smell, dust, light, heat, vibration, fumes or other forms of pollution or nuisance. These sentiments are carried forward in Policy SPL3 Part C (b) of the Tendring District Local Plan 2013-2033 and Beyond Publication Draft (June 2017).

Policy COM22 of the Saved Plan states that noisy developments should be located away from sensitive developments unless adequate provision has been made to mitigate the adverse effects of noise likely to be generated or experienced by others.

There are adjacent properties to the south and east of the application site who form part of Highfield Holiday Park, and whilst these will not be occupied all year round, under planning permission 04/01359/FUL the caravans can be occupied between 1st March and 14th January each year. Whilst the car wash, retail pod and tyre service area are relatively low key operations and are sited far away from the nearest properties to the east and south, the drive thru element of the proposal is more closely related. Further, cooking odours, the likely hours of operation (11pm closing and 6am opening would not be uncommon for this type of use), and the noise of the comings and goings of vehicles associated to the drive-thru unit have the potential to significantly impact upon the existing amenities of the aforementioned residents.

Despite numerous requests for the submission of amended plans to re-site the drive-thru element of the proposal further to the west of the application site, away from neighbouring residents, and to submit an Environmental Noise Assessment, neither has been supplied. Therefore, the applicant has failed to demonstrate that the proposed drive-thru unit can be operated without causing a significant adverse effect on the quality of life of the occupants of the adjacent caravans at Highfield Holiday Park and therefore fails to accord with the above policies.

## **8. Informatives**

### Positive and Proactive Statement

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.