



# Appeal Decision

Inquiry held on 14 -17 February, 29 - 30 March, 24 - 25 April 2006

Site visits made on 13 & 17 February, 29 & 30 March, 24 & 25 April

by **David Bushby** BA [Hons] MCD MRTPI

an Inspector appointed by the First Secretary of State

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**File Ref: APP/G3110//A/04/1171310**

**Former Hartwells, Watlington Road, Cowley, Oxford OX4 6NF**

- 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 Lidl UK GmbH & Oakhill Group Ltd against the decision of Oxford City Council.
- The application Ref 04/01052/FUL dated 21/5/04 was refused by notice dated 13/12/04.
- The development proposed is demolition of existing buildings and erection of single storey building for use as discount food store (1,837m<sup>2</sup>) plus provision of 102 parking spaces, cycle store (36 spaces), 11 external cycle spaces and compactor.

**Summary of Recommendation: Appeal A is dismissed.**

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**File Ref: APP/G3110//A/05/1195688**

**Former Hartwells, Watlington Road, Cowley, Oxford OX4 6NF**

- 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 Lidl UK GmbH & Oakhill Group Ltd against the decision of Oxford City Council.
- The application Ref 05/01551/FUL dated 26/7/05 was refused by notice dated 20/12/05.
- The development proposed is demolition of existing buildings, and erection of 2 storey building for use as Class A1 discount food store (1,871m<sup>2</sup>) at ground floor level and Class B1 offices (840m<sup>2</sup>) at first floor plus provision of 102 car parking spaces, cycle store (36 spaces) cycle stands (9 spaces), revised vehicular access, compactor, public art and landscaping.

**Summary of Recommendation: Appeal B is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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## Site and Surroundings

1. The site and surroundings are described in paragraphs 3.1 and 3.2 of the Statement of Common Ground [CD1]. In short the site covers some 0.7ha. A vacant car showroom – “Yes Car Credit” – and petrol filling station occupies the site. The immediate surroundings are commercial and industrial. The northern boundary of the nearby residential area, known as Blackbird Leys, is just over 100m south of the site.
  2. The site is about 5km to the south east of Oxford City Centre, and about 1.7km from Cowley Centre which includes Templars Square.
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### **Planning Policy**

3. The most relevant development plan policies are TC2 of the 2005 Oxfordshire Structure Plan and EC.2, RC.2 and CP.3 of the 2005 Oxford Local Plan [OLP]. A more detailed list of policies is given in paragraph 7.1 of the Statement of Common Ground [CD1]. Policy guidance in PPS6 is an important material consideration.

### **Planning History**

4. Planning history is described in section 1 of the Statement of Common Ground [CD1].

### **The Proposals**

5. The two appeal proposals – appeal A: discount food store of 1,837m<sup>2</sup>, 102 parking spaces, 36 space cycle store, 11 cycle spaces and compactor; and appeal B: discount food store of 1,871m<sup>2</sup>, Class B1 offices at first floor, 102 parking spaces, 36 space cycle store, 9 cycle stands, revised vehicular access, compactor, public art and landscaping - are described in paragraphs 2.1-2.14 of the Statement of Common Ground [CD1]

### **Other Agreed Facts**

6. Progress of the two applications, as appeal A and appeal B, is set out in paragraphs 4.1-4.13 of the Statement of Common Ground [CD1].
7. Plans and accompanying documents for both appeals are listed in paragraphs 5.1-5.3 of the Statement of Common Ground [CD1].
8. Sequential sites considered in the inquiry were: (a) Blackbird Leys Regeneration Zone, (b) Templars Square, Cowley, (c) Crowell Road car park, Cowley, (d) John Allen Retail Centre, Cowley, (e) BMW garage, Banbury Road, Summertown, (f) Suffolk House, 263 Banbury Road, Summertown, (g) Diamond Place car park, 220 Banbury Road, Summertown.
9. Agreed highway and transport matters are set out in paragraphs 1-14 of the second Statement of Common Ground [CD2]. These matters include trip rates, traffic generation, generated traffic flows, proposed highway improvements, proposed access arrangements, current bus routes and timetables, car ownership levels in Oxford, cycle routes and cycle usage.

### **Main Issues**

10. There was agreement that the main issues are:
  - (a) whether the proposals accord with relevant development plan policies;
  - (b) whether proposals comply with PPS6 policy in respect of (i) the need for the development, (ii) the sequential approach to site selection, (iii) the impact on existing centres and (iv) accessibility in terms of a choice of means of transport and changes in travel patterns;
  - (c) whether the proposals would have an adverse impact on employment and regeneration in Oxford.

## **The Case for Oxford City Council**

### **Development plan policies**

11. The Lidl proposal is not in accordance with the statutory development plan. The Planning and Compulsory Purchase Act 2004 imposes a legal duty on decision makers to give primacy to development plan provisions when making decisions on planning applications. Paragraph 8 of PPS1 says "This plan-led system and the certainty and predictability which it aims to provide, is central to planning and plays a key role in integrating sustainable development objectives." There should be a commitment to the plan led system.
12. No challenges were made by Lidl to the recent adoption of the Oxford OLP; the 6 week period for such challenges expired early in 2006. Lidl could have taken part in the plan making process. Lidl did not suggest the plan was in any way inconsistent with Government policy.
13. Great weight should be attached to the OLP. A decision to permit a substantial development in conflict with its recently adopted provisions would inevitably undermine confidence in Oxford's plan led system. This would be especially damaging in such a constrained district, which has so many competing demands for its limited supply of development sites.

### **Retail**

14. The proposal is retail. In terms of size, it would be more than 4 times the size of retail development defined as "large" [280m<sup>2</sup>] and subject to the 6 hour restriction under the 1994 Sunday Trading Act – Schedules 1.1, 2.1 and 4.1b. It would be almost double the size at which the maximum parking provision of PPG13 applies.
15. OLP Policy CP3 requires 3 conditions to be satisfied before permission can be granted for unallocated retail developments. First there must be a need for the development. Second, the location must be the most sustainable when assessed against the sequential test. For large developments, the purpose must be one which could not be served by several smaller developments in more sustainable locations. Third, the location must be realistically accessible by walking, cycling or public transport for the majority of people travelling to the site. The proposal fails all 3 conditions.
16. Lidl just about meets all of the 1,400m<sup>2</sup> convenience floorspace identified until 2011 in paragraph 12.4.4 of the OLP.

### *Quantitative Need*

17. There is no quantitative need for the development. Lidl has not shown a shortage of capacity in quantitative terms.
18. The OLP states in paragraph 12.4.4 that "There is no need to make specific allocations for convenience goods. This is partly because the scale of the future capacity for floorspace is low, amounting to only approximately 1,400m<sup>2</sup> net by 2011. In addition, most parts of Oxford are relatively well provided for in terms of existing food stores." Thus the OLP does not envisage any need for any new out-of-centre sites for developments that would require a large number of people to travel by private car. The OLP does not allocate any out-of-centre sites for convenience retail.

19. By 2011 ORNS identifies £12.3m of convenience goods expenditure growth in supermarket spending and £5.3m in local convenience store spending. This growth in spending would be directed towards retail provision on the OLP allocated mixed use sites and existing retail outlets within centres. This is where surplus expenditure should go.
20. The OLP does not identify a need for a “deep discount” store in Oxford. These stores had existed for many years. Lidl had been looking in Oxford for a site since 1994. Those involved in the plan making process – including the Council and Lidl – knew about deep discount stores. This is not a case of the OLP not making provision for a type of store that did not exist when the plan was prepared. The social circumstances of Blackbird Leys were well known to Council members. The OLP makes provision for the enhancement of Blackbird Leys centre. The OLP does not identify a need for a deep discount store in Blackbird Leys.
21. Need and capacity should be distinguished. Capacity is the amount of floorspace for which sufficient expenditure exists. Need is the amount of floorspace which must be provided in the public interest.
22. Lidl suggests that analysis of quantitative need is focussed on an arbitrarily defined 5 minute drive time. This RPS/Lidl Primary Catchment Area [PCA] is unrealistic. Lidl argue that it demonstrates a need for about 1,300m<sup>2</sup> net of convenience floorspace in this PCA. This suggestion is bizarre.
23. First, there is no support in the OLP or PPS6 that a 5 minute drive time area should be self sufficient in shopping. If that was so, there would be 5 such areas in Oxford – all needing a substantial increase in facilities. Second, the assessment demonstrates that shops in the area, and immediately to it, receive a high proportion of the expenditure calculated to arise in it. Paragraph 5.11 in the RPS Shopping Survey [CD6] showed that more than 75% of main food shopping was done in 4 stores alone in the PCA and the immediately adjacent Sainsbury’s Heyford Hill. Third, and most importantly, this area is very well provided with convenience shopping. Within it, and immediately adjacent to it, are two major competing superstores –Tesco, Oxford Retail Park and Sainsbury’s, Heyford Hill. Within the PCA is the Cowley Templars Square Centre, with supermarket stores such as Iceland and the Co-op plus a number of independents. This Centre is well provided with car parking and is a public transport node. Also within the PCA are 8 neighbourhood centres. The area has excellent frequent [5 minute] bus services both to Cowley Road District Centre, to the Tesco Metro and to the City Centre, with its many stores and 2 markets. Fourth, it would be astonishing if this one area of Oxford had a need for the whole amount of additional floorspace envisaged in the OLP for the whole of Oxford.
24. For a quantitative needs assessment, first, the whole City would be assessed as in ORNS; then second, a more localised area such as the SE sector would be assessed. The £10.77m convenience goods expenditure growth for Oxford at 2008 Lidl calculated from ORNS is not a measure of need. This growth would be likely to be taken up by other sequentially preferable development.
25. Lidl’s evidence shows there is no quantitative need for additional convenience floorspace. The survey of stores shows no overtrading and no problems calling for additional floorspace – Appendix 3 of Mr M. Krassowski’s Rebuttal gives no indication of overtrading in terms of fullness of car park, closed tills or queues. Overtrading is an excessive level of trade

harmful to the public interest. There is no basis for claiming that for Tesco, Oxford Retail Park, Sainsbury's Heyford Hill or Tesco Metro. Lidl should not suggest that above average turnover means overtrading. With a normal distribution, half the stores of a company would be above the average and overtrading. From Lidl's evidence it would appear that Tesco, Oxford Retail Park and Sainsbury's Heyford Hill are undertrading; they appear to have less turnover than their expected average turnover. Lidl try to suggest Tesco and Sainsbury's are overtrading on the basis of the RPS household survey. However the sample size is too small, and the methodology exaggerates the trade of large stores and underestimates the trade of small stores – this can be seen by comparing Tables 5 and 9 in Appendix 12 of Mr Krassowski's Rebuttal for Iceland, Somerfield and Blackbird Leys stores. These show the trading figures are way out. It can also be seen that the survey only allows one answer to the question as to where people do main food shopping and only one place for top-up shopping. This is a fundamental flaw in the methodology.

26. According to paragraph 3.10 of PPS6, the quantitative need assessment should have been based on the development plan. This has not been done by Lidl

#### *Qualitative need*

27. As for qualitative need, PPS6 paragraph 2.33 says that greater weight should be given to quantitative need rather than qualitative need. Paragraph 2.35 of PPS6 explains that a key consideration is to provide for consumer choice. Oxford has a good range and choice of supermarkets. In the south east of Oxford residents have good access to a range of food stores. If there is a gap, it is within Blackbird Leys. There is no reason why Oxford residents are disadvantaged by the absence of a "deep discounter".
28. The Newhaven Secretary of State appeal decision is relevant. This decision made it clear in paragraph 12 [M Krassowski Appendix 11] that he did not accept that "deep discounters" should be assessed as distinct types of retail development in their own right. This makes clear what is implied in the Government's policy in relation to quantitative considerations in paragraph 2.34 of PPS6 and its policy on qualitative considerations set out at paragraph 2.35. Lidl claim a price advantage as a "deep discounter". This is not accepted.
29. There is no policy justification for a qualitative "deep discounter" need in Oxford.
30. As for the proposed s.106 obligation, this mechanism would present insurmountable practical difficulties. It is also questionable whether such an obligation could lawfully control the pricing policy of a shop. The wording of the Act does not lend itself to a pricing structure. This agreement should not influence the decision.

#### *Sequential approach*

31. The appeal site does not satisfy the sequential test on the basis of the OLP's hierarchy of centres. The national and local policy of focussing investment in centres is not disputed. The OLP has made provision for retail development, often as mixed use schemes in existing centres. These are difficult to get off the ground compared with an employment site conversion. As for the guidance in paragraph 3.19 of PPS6, the "reasonable period of time" means at least up to 2011. The OLP and ORNS have used this period of time.
32. Closing submissions refer only to the Crowell Road car park site. The Crowell Road car park at Cowley Centre is a development opportunity. There is a real chance of development

going ahead at this site. The Montagu Evans letter dated 21 March 2006 gives a clear indication of an intention to redevelop the site. The owners, Zurich Assurance, must be in the best position to judge the site's prospects. But this development is not certain; therefore the appeal should not put this scheme at risk. The Lidl proposal would divert retailer interest, investment and energy away from Cowley Centre and the Crowell Road car park site.

33. The VSL/Lidl viability study of the Crowell Road site should not be relied on. No witness was called to the inquiry to support it. The scheme examined is different to the Threadneedle scheme. There is no residential, and there are only 4 floors in the Lidl scheme. The Ridge/Lidl report was too inflexible in the way it rejected the option to extend and convert.
34. The appeal site location is not appropriate for additional development to serve Blackbird Leys. The isochrones shown in Mr Staley's Figures 2 and 3 show its unsuitability. First, it is neither within, nor on the edge of the neighbourhood centres of Blackbird Leys. It would provide extremely limited scope for linked trips. Second, it is not central. It is on the outer edge of the residential area. It is more than 0.8km from the majority of the residential area; a large part of the residential area is more than 1.2km from it. Only 65 properties are within 300m; only 215 properties are within 400m. In short, not many houses would be close.
35. Other sites examined in the inquiry are Diamond Place and the BMW garage in Summertown and Blackbird Leys.
36. At Diamond Place, Summertown there have been very recent discussions between the University and Council officers. A food store retailer had expressed interest in the site. At the former BMW garage, Summertown, the owners apparently wish to develop the site themselves. This site would not be large enough for a Lidl food store. At Blackbird Leys, there are 2 potential development sites: the garages site and the Community Centre site. The 4,000m<sup>2</sup> Community Centre could be relocated. The 2,560m<sup>2</sup> garages site could be developed.
37. The sequential test has not been met by Lidl. Lidl has been looking for a site in Oxford since 1994 and had the opportunity to go to Cowley Centre. This was rejected for commercial reasons. Instead of Cowley Centre, Lidl are proposing an out-of-centre site. This means Lidl fail the sequential test.

### ***Impact***

38. The key point is the diversion of investment and retailer energy away from centres. Allowing Lidl to develop out-of-centre food store could pre-empt investment interest in Cowley Centre and the Blackbird Leys Regeneration Area.
39. Lidl/RPS based its impact assessment on a small household telephone survey of people in the PCA. Lidl/RPS have downplayed the impact on the Cowley Centre. It is likely that Lidl would have impacts of over 10% on 3 Cowley stores: 11.6% for Co-op, Cowley, 10.5% for Somerfield, Cowley and 11.7% for Iceland, Cowley. This impact could direct investment away from Cowley Centre. Lidl/RPS say the proposal would have zero impact on Blackbird Leys. This shows intransigence rather than common sense. The Lidl/RPS impact assessment should be viewed with suspicion.

40. Lidl have not been flexible. In the recent past [CD18] Lidl have opened smaller stores – less than the 1,063m<sup>2</sup> considered at this inquiry.
41. A key difference between the Council assessment and the Lidl impact assessment is that the Council believe proportionally more trade would be diverted from smaller stores within the PCA, rather than Tesco at Oxford Retail Park and the Sainsbury's store.

### **Accessibility**

42. The Lidl proposal would not satisfy the 3<sup>rd</sup> condition of OLP policy CP3. It would not be realistically accessible by walking, cycling or public transport for the majority of people travelling to the site.
43. First, it would not be realistically accessible by walking other than for less than half of the population of Blackbird Leys. A 400-800m walking distance is acceptable. The 1.2km walking distance claimed by Lidl is not realistic. The acceptable distance for carrying shopping is quite different from that for walking to work. The walk from Cowley would be unattractive.
44. Second, Lidl's research shows that cycling is a realistic mode of transport for Lidl food shopping for only a very small proportion of people – 3%. Only 1.2% use their cycle for this purpose in this area of Oxford.
45. Third, the site has limited bus services connecting it with a small part of its catchment area. These areas are also connected by bus to the City Centre, Templars Square and Cowley Road District Centres and Blackbird Leys neighbourhood centre. Bus services to the Lidl site are infrequent by the standards of this area. A good bus service would be every 15-20 minutes. It is unrealistic therefore for more than a small proportion of Lidl customers to come by bus. This is so, because no linked trips can in practice be made, as every one would involve waiting for and getting on a bus again, for the next activity.
46. In this case, very few people would walk to the site, cycling can be ignored, and buses do not serve much of the catchment area. The appeal site is not accessible for the majority of people.
47. The store would be a predominantly car borne store. Lidl customers who use cars are some 61% for London, and by car or taxi 69%. In this part of Oxford, the propensity to do food shopping is even higher – more than 75% use car/van or taxi.

### **Employment**

48. The appeal site is allocated for employment use and designated as part of an area of "key employment generating sites and premises" for B1, B2 and B8 under policy EC2 in the OLP. Under this policy, the recently adopted OLP expressly protects sui generis uses such as the motor showroom use of the existing buildings, and the development permitted by the almost expired 2003 permission.
49. The proposal should therefore be rejected because of its conflict with this part of the plan. Oxford needs to retain a variety of opportunities both in existing and modernised premises for the uses protected by EC2.

50. There should be little confidence in the suggestion that refusal of permission for the Lidl development would lead to its development for the permitted combination of fast food and motor showroom use, rather than for B1, B2 and B8 uses. No analysis of relative site values as between the permitted development and the most lucrative EC2 uses was presented to the inquiry. The reserved matters submission was made at the very last minute. No prospective tenants were identified.
51. Even if the permission were implemented on the basis of the submitted reserved matters scheme, the majority of the site would be in sui generis use as required by EC2. The remainder would be performing a hot food and drink service of value to the larger industrial area. By contrast, Lidl do not offer food services.
52. Even if the site were lost to employment uses the OLP is clear that the appropriate uses would not be retail. It would be residential or mixed use employment and residential.

### **The Case for Lidl UK GmbH & Oakhill Group Ltd**

#### **Ambit of Council's case**

53. Article 22(1)(c) of the Town and Country Planning (General Development Procedure) Order 1995 provides that, when planning permission is refused, the decision notice "shall state clearly and precisely [the Council's] full reasons for the refusal". Mrs Byrne, the Council Case officer confirms that this legal duty was complied with in both cases.
54. This means the Council do not object to appeal B on grounds of need or scale. This was confirmed in cross-examination. It is clear that appeal A raises the question as to whether there is a need for the development. It is also clear that appeal B raises the question as to whether the development would direct investment away from existing centres.

#### **Events leading up to the determination of the applications**

55. With the first application, the Officer's report in August 2004 gave no explanation as to why Lidl's need assessment in CD5 was inadequate and also asserted that the sequential test had not been complied with, but gave no explanation for this assertion. These matters were not properly addressed by the Council in reports to its Committees. Lidl asked the Council for information on sequential sites, but this only led to inadequate responses.
56. With the second application, a Supplementary Report was prepared in October 2005. The only new points related to the Competition Commission report and a basket of goods comparison. These new points came from Mr B Brisbane. Neither members, nor Lidl/RPS were told the source of these new points. In fact both points were misleading and defective, but members were not informed. While Mr Brisbane was appointed in mid-2005, Lidl/RPS was not told and no meetings were initiated to discuss retail matters. This was a catalogue of misfortune.

#### **Retail**

##### *Quantitative need*

57. Paragraph 3.10 of PPS6 advises that the catchment area used to assess future need "should be realistic and well related to the size and function of the proposed development and take account of competing centres". Mr Brisbane for the Council, contends that the assessment

should be conducted city-wide, in accord with ORNS. Mr Krassowski for Lidl adopts a 5 minute drive time isochrone, in accordance with the RPS study. The 5 minute drive time isochrone is reasonable for a deep discount food store assessment. These stores do not provide a one stop shop and so shoppers are unlikely to travel significant distances. Lidl look for a catchment of about 20-40,000.

58. On either basis a quantitative need for more convenience floorspace can be demonstrated, which is unlikely to be met on sequentially preferable sites.
59. Using ORNS [CD15 Table 10], it is clear there would be £10.77m of surplus convenience expenditure available in 2008. ORNS Table 11 then splits expenditure growth into convenience expenditure for supermarkets [70%] and for small local convenience stores [30%]. Normally a 70:30 split is used to split bulk food and top-up shopping expenditure available to all stores. ORNS would underestimate turnover of stores such as Tesco, Oxford Retail Park if its turnover was only assumed to derive from the 70% of available expenditure; this is because Tesco acts as both a main food and top-up shopping store. Lidl would also derive expenditure from both the 70% supermarket and 30% small store expenditure.
60. ORNS then in Table 12 takes the 70% of expenditure available for supermarkets from Table 11 and converts it to a floorspace requirement. This conversion assumes sales density or turnover per square metre of £8,500/m<sup>2</sup> [CD15 paragraph 5.16]. From this a notional floorspace requirement of 483m<sup>2</sup> is identified in 2006, and 1,360m<sup>2</sup> in 2011. ORNS concluded that as the figures were small, the OLP should not make any specific allocations.
61. In fact Lidl's sales density is much lower. The correct Mintel sales density for Lidl adjusted to 2000 prices, and applying a 5.81% Vat figure, is £2,802m<sup>2</sup>. When this figure is used to calculate the estimated turnover of the appeal proposals, the total convenience goods turnover is £3.1m.
62. The total convenience goods turnover of £3.1m for the appeal proposal can be compared against the City-wide figure of £10.77m surplus convenience expenditure. Thus based on ORNS figures, there is a quantitative need for further convenience floorspace in Oxford by the store design year of 2008.
63. This surplus is not likely to be taken up by sequentially preferable development opportunities. Some of it can therefore be taken up by the appeal proposal. Redevelopment of the Westgate Sainsbury's store is unlikely before 2011. Replacement or extension of the Tesco, Oxford Retail Park is also unlikely given its out-of-centre location. Other sites will be considered under the sequential test.
64. The surplus is also not likely to be used by potential growth in existing store turnover. ORNS did not allow for such growth. All stores do not increase turnover year on year – some increase some decrease.
65. Using the RPS catchment – the 5 minute drive time isochrone, adjusted to reflect post code boundaries – gives a population of about 23,250, plus a further 8,000 working within that isochrone. In the Household Survey, 57% of residents identified proximity to home as the main reason for shopping where they do, the figures for resident and working population are highly significant. The Survey also shows that over 55% of residents undertake main food shopping at stores within the catchment. This response shows people do not travel far to

shop – discount stores tend to cater for local shopping needs. The fact that 18% of customers in store door surveys undertook Lidl shopping by foot reinforces the choice of a localised catchment for the quantitative need assessment. And the very low car ownership in Blackbird Leys makes walking to the Lidl proposal more likely.

66. The RPS assessment indicates there is £15.5m more expenditure available than floorspace [trading at company averages] within the catchment area at the 2008 design year. Mr Krassowski's Appendices Document 9 Table 6 shows total available expenditure on convenience goods in catchment area to be £31.7m in 2005; turnover of existing and committed convenience floorspace would be £17.6m. Thus notional surplus of convenience goods expenditure is £14.2m in 2005 and £16.0m in 2009.
67. This means that some stores could overtrade above company averages and some expenditure and some expenditure would leave the catchment. Overtrading can be derived from surveys of food stores and calculations of stores trading above company averages. Even if overtrading is not accepted, it is clear that surplus expenditure leaves the catchment. This is contrary to sustainability principles. Locating Lidl in the PCA would reduce the necessity for people to travel further afield.
68. There is clearly a quantitative need for further convenience floorspace in the PCA by 2008. The surplus of £15.5m is not likely to be taken up by other sequentially preferable development opportunities. Thus some of it could justifiably be taken up by the Lidl proposal.
69. There is no basis for defining "large" by reference to the Sunday Trading Act or PPG13 parking standards. The OLP does not suggest this, nor does any Council witness.

#### *Qualitative Need*

70. Paragraph 3.11 of PPS6 recognises that qualitative considerations can provide additional justification for a proposal. Paragraph 2.33 says development which serves communities in deprived areas provides "clear and demonstrable benefits"; and paragraph 2.35 says a key consideration would be to provide for consumer choice by ensuring that (a) an appropriate distribution of locations is achieved, and (b) provision is made to allow genuine choice to meet the needs of those living in deprived areas. What drives this part of Government policy is the need to address social exclusion.
71. Deep discounters are now well-represented in the UK, with a total of 861 stores at March 2006. Virtually every city has at least one deep discounter and many towns – far smaller than Oxford – have representation. For example Banbury and Newbury have discounter representation. While Oxford is reasonably well-served with mainstream supermarkets, there is no deep discount food store in the City or in any of the surrounding towns. Mr Brisbane tried to argue that Tesco, Iceland and the Co-op operate inside the RPS catchment "within the value for money" sector. Iceland is different to Lidl, and Tesco and the Co-op were found to be much more expensive than Lidl when compared on a like for like basis. Lidl goods are 15% or more cheaper than other convenience stores in the area. The Council shopping basket is flawed; Mr Brisbane chose products of lower quality in the Tesco shopping basket. The PCCE of 20 products at Lidl, Wembley, and 2 local Tesco stores and the Cowley Co-op show Lidl prices to be significantly cheaper.

72. There is no dispute that Blackbird Leys is one of the most socially deprived wards within Oxford and the UK. 41% of households have no car, against a County average of 16.5%. The Council acknowledges Blackbird Leys falls within the worst 10% in England in terms of multiple deprivation. 98% of local respondents are supportive of the Lidl proposal.
73. In the Newhaven case, the Inspector found the Lidl proposal met a qualitative need. The Secretary of State agreed the proposal would extend consumer choice and aid competition. But the Secretary of State was not persuaded that the proposal would lead to clear and demonstrable benefits to deprived communities. This was because the site was poorly located in relation to deprived areas in Newhaven.
74. The evidence shows first, the proposal would extend consumer choice, aid competition and provide premises that meet the needs of a retailer operating in the “value for money” sector. Second, deep discount food stores provide a level of choice that can be reasonably expected in every town. This market niche is not provided for in the PCA or in Oxford. Third, this part of Oxford shows high indices of multiple deprivation. Fourth, the proposal would provide genuine choice to meet the needs of those living in this deprived area. Fifth, the site is well located to serve the deprived area. In these circumstances, the proposal would provide the “clear and demonstrable benefits” described in paragraph 2.33 of PPS6. These qualitative considerations provide additional justification for the proposal in line with paragraph 3.11 of PPS6.
75. The late evidence about City markets adds nothing to the debate on prices.
76. The Newhaven case raises the issue about how the Lidl store could remain as one selling goods at a discount. In paragraph 14 of his decision the Secretary of State did not accept the Newhaven store would continue to sell goods at a discount, because another retailer could implement any permission granted. Lidl responded to this concern by introducing the Unilateral Undertaking. This promotes a mechanism to ensure Lidl goods are at least 15% cheaper than comparable goods from other convenience stores in the area. With the proposed Unilateral Undertaking, these price benefits could be guaranteed.
77. The principle that underpins the executed Undertaking cannot be criticised. It is Government policy that retail provision be made which allows genuine choice to meet the particular needs of those living in deprived areas. It is for the market to devise a mechanism to deliver this part of Government policy. The Undertaking would enable the store to remain as one which sells goods at a discount.
78. The Council argues that s.106 of the Act does not refer to prices. However s.106 allows restriction on the use of land. A s.106 can lawfully restrict the use of land – uses can include sale of goods. A restriction on how a company may trade is a restriction on how the company sells goods and is therefore a restriction on the use of land. A restriction on the pricing of goods is plainly a restriction on the use of land.
79. The Costco “membership warehouse” is classed as a sui generis use. These warehouses rely on a certain proportion of turnover being derived from individual members, rather than trade members. Every Costco warehouse has a s.106 Agreement in place which seeks to control this trading feature. This approach has been accepted by the Secretary of State on 5 occasions. This is an example of a s.106 restricting trading.

*Sequential approach*

80. From PPS6 and paragraph 3.19, local planning authorities should be realistic in considering whether sites are suitable, viable and available. Local planning authorities should take account of genuine difficulties, which the applicant can demonstrate are likely to occur in operating the applicant's business model from sequentially preferable sites in terms of scale, format, car parking provision and scope for disaggregation. As to availability, suitability and viability, the guidance in paragraph 3.19 of PPS6 should be followed.
81. Lidl's approach to opening a new store is to follow the sequential search advocated in PPS6. CD17 shows Lidl occupy many town and district centre sites [45%], as well as edge-of-centre sites [27%].
82. As for flexibility – PPS6 paragraphs 3.15-3.18 – Lidl's business model has a number of inherent characteristics critical to the ability to deliver the benefits of deep discount retailing. A minimum store size of about 1,063m<sup>2</sup> is necessary both to deliver the Lidl product range, with sufficient product facing, and to facilitate the placing of full pallet items direct from the delivery warehouse onto the sales floor. Lidl already keep storage and staff areas to a minimum – typically about 25% of gross floor area – compared with 40% for mainstream retailers. Lidl also have a minimum area required for servicing. The fact that Lidl only sell a limited range of goods means there is no realistic scope for disaggregation. Lidl stores cannot be broken down into constituent parts. These points are not challenged by the Council.
83. The sequential analysis should be undertaken with regard to the need for a minimum store sales area of 1,063m<sup>2</sup>, a single storey operation with no disaggregation, and a 75 space car park.
84. As to availability, PPS6 advises that “a reasonable period of time” should be “determined on the merits of a particular case”. The Council are wrong therefore to argue for a time frame based on the 5 years needs assessment in paragraph 3.10 or the time frame of a development plan. If the Government had intended that the assessment of sequential sites' availability should conform to either the assessment of need or with the duration of the development plan, it would have said so. Instead PPS6 says the reasonable period of time will be determined on the particular facts of the case.
85. In this case, it cannot be considered reasonable to wait for 5 years – or more, until 2011 or 2016 to meet development plan requirements – for sites to be assembled or otherwise come forward for new convenience floorspace. This must be so when there is a clearly identified need to provide more floorspace now. In any event, none of the sites relied on by Mr Brisbane could accommodate a Lidl store, or address the identified need, whether now or in 5 years time.
86. Mr Brisbane for the Council began with 7 sequentially preferable sites claimed to be suitable, viable and available. Following cross-examination this list was reduced to 4. Then in the cross-examination of Mr Krassowski, only one site – Crowell Road car park – was put as being suitable, viable and available.
87. Templars Square is no longer relied on by the Council. There are no opportunities of accommodating a Lidl in 5 years. John Allen Retail Park is no longer relied on by the Council. Again there is no development that could be reasonably be contemplated. Suffolk

House, Summertown is no longer relied on by the Council. The site is far too small. The BMW garage, Summertown is not viable. It is not available for a Lidl store. The owners wish to develop this site with small retail units. The Diamond Place car park, Summertown has been allocated for development since 1997. There are far too many questions about its availability and suitability, particularly with the mixed ownership. Council evidence on the site is contrived and implausible. The Blackbird Leys Community Centre site is not available. The Community Centre would not be relocated. Access from this site would be unacceptable. The Blackbird Leys garages site of 24 lock-up garages is not suitable or available. It is too small and would have unacceptable access problems.

88. The Crowell Road car park site has new evidence in the form of the Montagu Evans letter dated 21 March 2006. This letter is plainly an exercise in defensive planning. It is quite normal that new owners should investigate potential redevelopment opportunities at Templars Square. That is what Zurich Assurance's predecessor in title – Fairacre - did, and their conclusion was that redevelopment options were not worth pursuing for the car park. In these circumstances, Montagu Evans' assertion that "there is a very real chance of the project going ahead" can elicit no surprise. This optimism should be tempered by the fact that the results of the feasibility studies are not known.
89. The Council said the plans given to Lidl for its feasibility study were wrong. But the Council was unable to say how the plans now being considered differed from those given to Lidl. The work by VSL and Ridge & Partners only gives a broad indication of viability. But the disparity of between redevelopment costs [£9.5m] and investment value [£7.6m] of the completed development is so great that there are reasonable prospects Zurich's feasibility study will show the proposed development is not viable. This conclusion was reached by Fairacre – the predecessors in title. Thus this site is not a viable alternative for meeting the retail need identified.

#### *Impact on existing centres*

90. There is no suggestion in either Council decision on the Lidl proposals that retail impact per se is unacceptable. It had always been understood that the Council objection related to divergence of potential investment away from existing centres.
91. However Mr Brisbane takes matters further and says that there would be a divergence of trade from Cowley Centre; he suggests a convenience goods impact of some 10-11%. His view on the divergence of trade from Cowley Centre is based on 3 assumptions. First, he says the turnover of the Lidl store is understated. Second, he says the supermarkets are trading at company averages. Third, he says the distribution of trade diversion is excessively focussed on Tesco, Oxford Retail Park and Sainsbury's Heyford Hill.
92. In response first, the correct figure for Lidl's turnover is £3.1m. This is based on the average sales density of £2,802/m<sup>2</sup>. This figure is not challenged. Second, Mr Brisbane fails to take into account whether the 2 stores are trading above or below company averages. Lidl/RPS use the Household Survey to calculate actual turnovers and % trade draw to the Lidl proposal is calculated on this basis. Third, the trade diversion patterns are based on actual shopping patterns disclosed in the Household Survey. Thus 39% of the population within the catchment undertake their food shopping at Tesco, Oxford Retail Park; from this 39% of Lidl's turnover is assumed to be drawn from that store. By contrast the trade draw rates of Mr Brisbane are purely judgemental.

93. In fact, Mr Brisbane explained that the Council's concern about investment diversion related to the potential effect on investment decisions for the Crowell Road car park. He said that if Lidl went to the appeal site, this might diminish competition. He thought that there needed to be competition from retailers to keep the level of rents up and thus justify redevelopment of the Crowell Road site. However there is no suggestion from the owners or managers of this site that Lidl could jeopardise potential redevelopment of the site.

#### *Accessibility*

94. OLP policy CP3(c) requires the location for development to be "realistically accessible by walking, cycling or public transport for the majority of people travelling to the site". The Council's highway proof did not identify conflict with that policy. The wording of CP3(c) is noted. The location is required to be "realistically accessible....for the majority". The development is not required to be accessed by walking, cycling or public transport by the majority. The distinction is important. It echoes Government recognition that all that can be required of developers is the provision of a realistic choice of non-car modes.
95. PPG13 paragraph 3 gives advice on land use planning. "Consistent application of the policy in PPG13 will "help to reduce some of the need for car journeys (by reducing the physical separation of key land uses) and enable people to make sustainable transport choices". The realism should be noted. First, government recognises that PPG13 can only help to reduce some of the need for car journeys. This acknowledges that many forms of development will inevitably involve some need for car journeys. In this case locating retail development close to residential and employment development would reduce the necessity for a large population to travel further afield using unsustainable methods of transport. Second, Government recognises that all that can be done is give people a choice – inevitably many people will choose to travel by car even when their destination is realistically accessible by walking, cycling or public transport, for the majority of people travelling to the site. In these circumstances there is no conflict with policy.
96. It is worth noting that when granting consent for the drive through restaurant and car dealership in 2003, the Council and Highway Authority did not view this location as being inaccessible by public transport, walking and cycling. The report said the location was within reasonable walking and cycling distance of nearby residential and industrial areas. Nothing has changed since then. The Council should not change its mind on this matter.

#### *Walking*

97. Paragraph 75 of PPG13 provides that walking "offers the greatest potential to replace short car trips, particularly under 2km". While the Council's advocate suggested this was irrelevant, the Council's highway witness did not. The Institution of Highways and Transportation guidance in CD 8 "Providing for Journeys on Foot" shows the preferred maximum walking distance is generally 1.2km – or 15 minutes walking time. With Lidl stores there are a high proportion of customers travelling on foot. For example at the Reading Lidl some 24% of customers travel on foot to the store. At 4 stores, including Reading, an average of 18% of customers travels by foot to shop.
98. The area surrounding the appeal site is generally flat and therefore attractive for walking. Pedestrian facilities in the area are of a high standard. Segregated footways with crossing points are located near to the site. Footway links through Blackbird Leys are along lightly trafficked residential roads and traffic free footway links. The area is good for pedestrians,

with many connections to the highway network, so walking distances can be minimised. Routes are well lit. In summary, all the circumstances are in place to make walking a realistic choice.

99. For Lidl workers, the residential areas of Blackbird Leys, Cowley, Temple Cowley, and Littlemore are all within convenient walking distance. For those walking to shop at Lidl, about 85% of Blackbird Leys lies within 1.2km of the site. Thus 85% of this residential area of about 2,500 households would have walking as a realistic choice. It should be noted that 41% of households in Blackbird Leys do not have a car – this is important.

100. The appeal site is close to employment sites – about 8,000 people work to the north of the site. This would encourage trips by foot during lunch breaks or after work.

### *Cycling*

101. There are cycle routes in the vicinity. There are cycle lanes adjacent to the site in Watlington Road. There are 2 major cycle routes through the Blackbird Leys estate. A 5km contour shows that a very large part of Oxford lies within the distance Government recognises as making cycling a realistic choice. Paragraph 78 of PPG13 says cycling has the potential to substitute for short car trips, particularly those less than 5km. Oxford is renowned for its cycling facilities. CD2 shows that cycling accounts for 15% of journeys to work in Oxford, compared with 3% in the UK. Cyclists cannot fill up a car boot once a week, but they can fill up panniers two or three times a week instead.

### *Public transport*

102. Routes 5A, 5B and 101 use the Watlington Road bus stops, immediately adjacent to the site. They provide an hourly service as shown in Figure 5 of C McKay's Appendices. They link the site with Templars Square and the City Centre. During peak hours these services provide a service 3 times an hour. Routes 1 and 5 stop at the bus stops some 400m away on Balfour Road. These services operate around Blackbird Leys and provide a 5 minute service to Templars Square and the City Centre.

103. The Council's Mr Staley considers that bus stops should be within 400m of properties if they are to be well used. Applying this point to the appeal means that as all 5 bus services are within 400m of the site, shoppers could reasonably be expected to walk from all these bus stops to the site. All 5 services must have thousands of people within 400m of bus stops and again shoppers could be expected to walk to these stops and then take a bus to the site.

104. In summary, the development is well located to offer a realistic choice of access by public transport. The combined coverage of the routes serving the site provides a genuine level of bus accessibility for those who chose this mode of travel.

### **Employment**

105. The 2003 consent is important. Planning permission was granted on 7 March 2003 for a drive through restaurant and new car dealership. This 2003 remains extant. No problems are anticipated with the reserved matters application, recently submitted.

106. OLP policy EC2 represents a significant change in policy since the 2003 consent. The question arises as to how this policy should be applied to mixed use applications such as

- appeal B. Mrs Byrne for the Council takes a clear and correct position when she says in her report that the OLP would permit mixed use developments which involve the larger part of a site in employment use with small elements of other types of land uses [Mrs Byrne Proof Appendix 18 paragraph 17]. Policy EC3 erects a presumption in favour of “development that modernises existing employment-generating sites.” such as the appeal site. Paragraph 8.4.1 of the OLP confirms that modernising employment sites may involve the larger part of a site in employment use along with small elements of other types of land uses to create a mixed-use development.
107. Appeal B was found to be in conflict with policy EC2 because the retail element was not small. The Committee Report concluded that this scheme would “result in the loss of a key protected employment site”. Were the 2003 scheme to be determined today against the changed policy, then – by parity of reasoning with the Committee Report approach – the Council would have to conclude that the Class 3 use is not small. Thus the 2003 scheme would be refused as it would lead to the loss of a key protected employment site.
108. It follows that implementation of the 2003 consent would lead to the loss of a site protected by policy EC2.
109. However when appeal B was considered, members were not advised about the fall-back position in the event that permission was refused. This is a flaw in process of fundamental importance. The Planning Encyclopaedia on page 2-3285 paragraph 8 in CD4 makes this clear. The planning authority must have regard to the fall-back position. In this case the Council – in breach of the legal duty to have regard to all material considerations – failed to take into account the fall-back position.
110. VSL’s letter dated 26 January 2006 shows there is a demand for both a drive through restaurant and car showroom [Mr Krassowski Proof Appendix 18]. In fact the original application was made following an expression of interest from Kentucky Fried Chicken. McDonalds are now interested in the site. The letter from the owners, Oakhill, confirms that if the appeal fails, the 2003 consent will be implemented. The Council have called no market evidence to dispute the VSL conclusions on demand, and no Council witnesses have attempted to challenge that evidence.
111. Given the consent will be implemented, the fall-back position entails the loss of a site protected by policy EC2. It is planning orthodoxy that permission can only be refused if a proposal causes harm to an interest of acknowledge importance when compared with the fall-back position. Given that the loss of a site protected by EC2 will arise in the fall-back position, permission cannot be refused for the appeal schemes on the grounds that they would lead to the loss of a site protected by EC2. That loss would occur in any event so that, compared with the fall-back position, no harm arises to the Council’s employment policies.
112. The Council tried to distinguish between the 2003 scheme and appeal B on the one hand, from appeal A on the other, on the grounds that the former would only involve the partial loss of a key protected employment site, while the latter would involve the complete loss of such a site. This was wrong. In the Committee Report it was said that appeal B would “result in the loss of a key protected employment site” [Mrs Byrne Proof Appendix 18 paragraph 6.20]. This does not say partial loss. In fact, both the 2003 scheme and appeal B, no less than appeal A would result in the loss of a key protected employment site. A

mixed use development which did not have a truly “small” element of non-employment generating use is regarded as resulting in the total loss [not partial loss] of a key protected employment site. “Small” is matter of fact and degree – both the retail component to appeal B and the drive through restaurant in the 2003 scheme are not small.

113. Assessment of the employment issue can also be made without regard to the fall-back position. Article 22(1)(c) of the Town and Country Planning (General Development Procedure) Order 1995 provides that, when planning permission is refused, the notice shall specify all policies in the Development Plan relevant to the decision. The only 2 employment policies in the then emerging local plan were EC2 and EC3. There is no objection on grounds of precedent.
114. Paragraph 8.2.1 of the OLP confirms the context for the Council’s employment policies to be one of “restraint”. Against this background, the ethos which underpins the employment policies is stated in paragraph 8.2.2 to be: to encourage and support a variety of businesses; to strengthen and diversify the local economy; and to maximise employment opportunities for local people.
115. Lidl has a strong policy of social inclusion. Lidl employs local people. Blackbird Leys and Temple Cowley areas would be targeted for the recruitment of staff. The store would provide employment for approximately 40 staff, of which 30 would be full time equivalent. The offices in appeal B would provide employment for approximately 40 people. The previous use of the site generated 19 full time staff. The uses permitted by the 2003 consent are expected to provide 30 jobs – 15 each in the car dealership and drive through restaurant.
116. It follows that: appeal A would generate more jobs [30] than the previous use [19]; appeal B would generate more jobs [70] than the previous use [19]; and the 2003 consent would generate more jobs [30] than the previous use [19].
117. Given the ethos underpinning the Council’s employment policies is to encourage and support a variety of businesses, to strengthen and diversify the local economy, and to maximise employment opportunities for local people, it cannot be said that the grant of consent for appeals A and B would be in conflict with that ethos. If there is no conflict with the ethos underpinning the employment policies, there cannot be substantive conflict with the policies themselves.
118. To try to overcome the employment refusal reason for appeal A, Lidl included the office floorspace in the revised application – appeal B. OCC claim the proposal would result in a net loss of the present designated employment use and would reduce the limited supply of employment land available for modernisation.

### **Conclusion**

119. Both appeals should be allowed.

### **The Case for Third Parties**

120. Mr M Holt supports the Lidl proposals. The merchandise is interesting and cheaper than in the larger superstores, such as Tesco and Sainsbury’s. The nearest similar stores are at

Cirencester and Reading. There is a need for a Lidl at Oxford, and particularly close to the Blackbird Leys housing estate.

121. Mr N Toms supports the Lidl proposals. Oxford needs a Lidl store. The location would benefit residents in Blackbird Leys.

122. Mrs Bishton considers that Blackbird Leys and Great Leys are very poorly served by shops. The Lidl store would be within walking distance.

### **Conditions and Obligations**

123. Proposed conditions are in CD13A. Draft condition 6 was not acceptable to Lidl. Lidl argues that the proposed restriction of vehicular access to Transport Way is not justified in any Council highway or traffic evidence given to the inquiry. The Council explain that the safety problems of using the Watlington Road access were set out in the Council Committee report [LPA9 in F Byrne proof].

124. The Unilateral Undertaking is in CD12.

125. The proposed Obligation [CD12 & CD12a] was disputed. The Council says this type of approach had not been supported by the Secretary of State, endorsed by an Inspector and was not suggested in PPS6. The Council says there are questions about the price check comparison exercise [PCCE] such as: who chooses the independent assessor for (b)? how will the 20 product lines in (c) be chosen? why are markets not mentioned in (d)? why should special offers be excluded in (e)? how could price manipulation be avoided in the 2 week period after the PCCE is set up? The Council adds that it would be absurd that a Lidl employee should go to Court if Tesco had lower prices on 3 occasions in any year.

126. Lidl explains that the reason for the obligation comes from the Secretary of State's decision and comments on the Newhaven Lidl proposal. The s.106 would ensure the material benefits of the proposed Lidl provision for this deprived area of Oxford. The s.106 would be a novel and imaginative solution for a decision letter. The Council's questions about the independent assessor and 20 product lines do not raise matters of difficulty. A fair comparison of items requires a comparison of items that are comparable. Special offers should not be included. Prices could not be manipulated as other operators would not be known to Lidl and so Lidl could not know what prices to alter and Lidl prices are nationally determined.

### **Conclusions**

127. The main issues will be addressed in the following order:

(a) whether the proposals accord with relevant development plan policies;

(b) whether proposals comply with PPS6 policy in respect of (i) the need for the development, (ii) the sequential approach to site selection, (iii) the impact on existing centres and (iv) accessibility in terms of a choice of means of transport and changes in travel patterns;

(c) whether the proposals would have an adverse impact on employment and regeneration in Oxford.

### ***Development plan***

128. As for the Oxfordshire Structure Plan, policy TC2 or TC4 addresses the sequential approach to site selection. This subject will be addressed under the same heading in relation to PPS6. To address this matter here would simply lead to repetition.
129. As for the Oxford OLP, policy EC2 is concerned with protecting key employment sites. This matter will be better addressed under main issue (c). Policy RC2 is concerned with maintaining and enhancing district centres; this matter will be better addressed under main issue (b) (iv). Policy CP3 is concerned with the need for the development, the sequential approach and accessibility; these matters are best addressed under the main issues (b) (i), (b) (ii) and (b) (iv).
130. It is clear that where the development plan has relevant policies, applications for planning permission should be determined in line with this plan, unless material considerations indicate otherwise. The weight to be attached to the material considerations in this case is important.

### ***Need for the development***

#### ***Quantitative need***

131. Need should be demonstrated for the two proposals as they are in out-of-centre locations. Dealing first with quantitative need, this should be assessed using the guidance in paragraph 3.10 of PPS6. This guidance calls for the catchment area used to assess future need to be realistic and well related to the size and function of the proposed development.
132. The PCA selected by Lidl is based on a 5 minute drive time. Such a catchment appears realistic and reasonable. Applying the Lidl PCA with its 5 minute drive time, there appears to be surplus convenience goods expenditure available in the PCA in 2008 to accommodate the Lidl proposal. From the evidence, even if the £15.5m surplus is reduced to take account of some expenditure generated in the PCA but spent outside it and other "leakage", there is still enough surplus convenience expenditure available to represent a quantitative need. In any event the Council's criticisms on this matter were not convincing. The estimated Lidl turnover of £3.1m would be well within the estimated available surplus convenience goods expenditure.
133. A different way of estimating quantitative need is to use aggregate growth in convenience goods expenditure in Oxford in 2008 as calculated by ORNS. This is agreed to be £10.77m [CD15 Table 10]. This can be compared with the estimated Lidl turnover of £3.1m. The Lidl turnover assumes a Lidl sales density of £2,802/m<sup>2</sup>.
134. The 2008 £10.77m figure is taken from the ORNS calculation that by 2011 there would be £12.3m of supermarket convenience goods expenditure growth and some £5.3m of more localized convenience shopping growth. These 2011 figures are based on a supermarket sales density assumption and a 70:30 split between supermarket: local shopping growth. Neither factor is explained at all in the OLP. The OLP simply concludes, without any explicit justification, that there is capacity for 1,400m<sup>2</sup> of additional supermarket floorspace.

135. The 1,400m<sup>2</sup> of additional convenience floorspace identified in paragraph 12.4.4 of the OLP requires a clear explanation and justification. Without a clear explanation and justification the figure is meaningless. In fact, the inquiry was told the figures and calculations that the 1,400m<sup>2</sup> figure is based on are in another document. This floorspace figure is derived from Table 12 of ORNS. The assumed sales density used is £8,500/m<sup>2</sup>. But this higher sales density figure is relevant for main supermarket operators, and not for a limited range discount operator such as Lidl. A reasonable sales density for Lidl would be about £2,802/m<sup>2</sup>. If the lower sales density is used it gives an overall floorspace requirement of about 3,800m<sup>2</sup>. Similarly if the somewhat arbitrary 70:30 supermarket: local shopping split is not used, there is more available convenience expenditure available for an operator such as Lidl.
136. In the inquiry it was found that paragraph 12.4.4 of the OLP fails to explain how the floorspace requirement is derived and provides no explanation on the limitations of this figure. It is thus insufficiently precise to lead to clear implementation. It is also misleading in this particular case. This is a serious flaw in the OLP in relation to the Retail Developments section of this plan. Development plan policies should be clearly presented and justified. Development plan policies or important guidance should not rely on other documents for essential clarification, which are not part of the development plan. Thus this defect in the OLP on convenience floorspace requirements becomes an important material consideration in this case. Given the obvious inadequacies of the OLP written statement paragraph 12.4.4, it would be unreasonable to insist that quantitative need assessment should be entirely based on this particular OLP statement. This amounts to a serious material consideration in relation to the development plan.
137. In short, the evidence suggests that there is a quantitative need for the Lidl proposals. This need does not conflict with the OLP statement in paragraph 12.4.4, as that statement is misleading and not properly justified. This need also indicates that the Lidl proposal does not conflict with OLP policy CP3(a).
138. As for overtrading, this is difficult to assess – either visually or theoretically. To assess whether a store is overtrading by till queues, car park use, till closures or customer congestion seems subjective. For example the Sainsbury's store had 23 check outs closed on 24/4/06 at 20.00; this led to queues of 3 and more. At a similar time Tesco had 5 check outs closed; not surprisingly there were minimal queues at the tills. On 25/4/06 Sainsbury's at 16.25 had 22 check outs closed with a 75% capacity car park and again queues of 3-4 people at each till. At a similar time with a similarly full car park, Tesco by contrast had 12 tills closed and again minimal queues at the check outs. Consistently longer till queue lengths at Sainsbury's suggests a different Management approach to customers compared to Tesco, rather than this representing a symptom of overtrading.
139. Arguments about assessing overtrading in relation to stores apparently trading above company averages were not made out. Arguments about allowances for a growth rate of 1% per annum in floorspace efficiency were not made out. In short, overtrading was not a factor that could be taken into account in the need assessment. The Council's arguments on this matter are preferred.
140. It would seem that there is sufficient growth in convenience expenditure in Oxford by 2008 [store opening] to accommodate the Lidl proposal. Thus in an Oxford wide catchment there

is a need for more convenience floorspace, which could be met by Lidl. It follows that significant weight should be given to the quantitative need that has been demonstrated.

*Qualitative need*

141. As for qualitative need, PPS6 and paragraph 2.35 describes 2 factors which provide for consumer choice. First, an appropriate distribution of locations of development, and second, a range of sites to meet the needs of the whole community, particularly the needs of those in deprived areas. This latter point is also addressed in paragraph 2.33 of PPS6; here it is said that additional weight should be given to any benefits from serving deprived areas. However quantitative need should be given greater weight in assessing need.
142. Lidl argues that there is no “deep discounter” in Oxford or the surrounding towns. Thus Lidl says Oxford residents are deprived of this type of shopping. Lidl argues that its products are significantly cheaper than other supermarkets and that this is shown by the PCCE on 20 product lines. The Council dispute all these arguments.
143. Although the PCCEs by Lidl and OCC came to different conclusions, it seems that on the evidence Lidl does offer many products at significantly cheaper prices, compared with mainstream supermarkets. The evidence of Lidl on this matter is preferred. Although there are markets in Oxford City Centre, there is no clear evidence that they would compete directly with Lidl. Additionally Lidl, as a limited range discount store, occupies a relatively new form of food retailing according to the 2000 Competition Commission Report on Supermarkets [CD3]. This Report states that Lidl, Aldi and Netto are the only new entry in the last 10 years and it says they are “niche players at the discount end of the market” [paragraph 2.205]. It adds that they aim to “attract lower income customers” [2.205] and “put the emphasis on low prices” [2.225], and they “seek to occupy the lowest position in the price range”. Then in paragraph 2.260 it says the “average price of the limited range discount stores are significantly below those of Kwik Save and Asda”. It is therefore fair to say that as there is no limited range discount food store in Oxford; this represents a gap in retail provision in a qualitative sense. It follows that consumer choice in Oxford would benefit from the introduction of a limited range discount store. The fact that there is a reasonable choice of supermarkets in the SE Oxford area does not diminish this point.
144. Thus it seems reasonable to conclude that a Lidl in Oxford would extend consumer choice [PPS6 para 2.35]. Additionally a Lidl store would be likely to aid competition with other food retailers. It also seems reasonable to conclude that a Lidl in the location proposed would offer particular benefits to Blackbird Leys residents. Convenience shops serving this housing area would include both the Tesco and Sainsbury’s stores [not sequentially preferable sites], the Cowley Centre supermarkets and the very small convenience stores in the housing area. A Lidl store would significantly improve provision for local residents from Blackbird Leys. Significantly, this housing area is classified as a deprived area. The Lidl on Watlington Road would be reasonably well located to Blackbird Leys residents, as it is some 200m from the northern edge of the nearest housing. The Lidl proposal would therefore provide increased consumer choice for these residents. For all these reasons there is thus a reasonable qualitative need for the proposed Lidl. This amounts to an additional justification for the proposal.

145. The Newhaven case seems to raise two relevant points for this inquiry. The first is that a Lidl food store would extend consumer choice and aid competition. This point is expressly made in paragraph 12 of the decision letter. The second point is that the Secretary of State was concerned about how the store, if permitted, would remain as a store that sold goods at a discount. This second point will be addressed when the s.106 Unilateral Undertaking is addressed.

*Sequential approach*

146. The proper sequential approach is set out in paragraphs 2.44-2.47 and 3.13-3.19 of PPS6. OLP policy CP3(b) is also relevant. Paragraph 2.44 of PPS6 explains that appropriate sites for allocation should be considered in order of first, locations in appropriate existing centres; second, edge-of-centre locations; and third, out-of-centre sites well served by a choice of means of transport. Paragraph 2.44 and 2.45 both say sites should be identified that are or are likely to become available for development during the development plan period. Paragraph 3.19 states that sites should be “available for development within a reasonable period of time”.

147. Lidl’s statement in the inquiry that the minimum site size is about 0.48ha, the ideal site size is about 06.ha and the minimum gross sales store size is 1,063m<sup>2</sup> is reasonable for the purposes of the sequential assessment.

148. At the start of the inquiry 7 sequentially preferable sites were mentioned. After careful examination during the inquiry, this list was reduced to 4 locations: Crowell Road car park, Diamond Place, Summertown, Blackbird Leys sites and the former BMW garage, Summertown. The 7 original sites were examined in detail during the inquiry. Site inspections to each site were carried out. In closing submissions, the Council only proposed the Crowell Road site as a sequentially preferable site to the appeal site. Consequently I will carefully consider this site in more detail than the other 3 sites just mentioned.

149. With the Crowell Road multi-storey car park, there is no compelling evidence that any proposed redevelopment would take place in a reasonable period of time. Evidence of recent discussions or correspondence does not demonstrate this site is available, suitable and viable as a sequentially preferable site. This multi-storey car park site is clearly not an easy site to redevelop. The previous owners – Fairacre – decided that redevelopment was not worth pursuing. There is insufficient evidence that Lidl could be accommodated on the site in any redevelopment. There are serious unknowns or uncertainties about this site in terms of viability. Lidl’s feasibility study questions the viability of redeveloping the site. While criticisms were made of this study by the Council, these were not entirely convincing and no alternative study was submitted to refute the Lidl study. The OLP identified this centre for improvement – DS15 – and so the previous and current site owners would have known for some years that the Council were encouraging development of the site. No obvious progress has been made in pursuit of redevelopment. Recent interest in the site in the form of correspondence and meetings may have been stimulated by the appeal proposals and this inquiry. In short, there do seem to be genuine difficulties in hoping to operate a Lidl store from some undefined redevelopment of this multi-storey car park site. Insufficiently convincing evidence was submitted on the availability of the site in a reasonable time and its viability. It cannot be right to prevent the Lidl proposal on the grounds that maybe in some time in the future, there might be a redevelopment of the multi-storey car park and there might be a possibility of accommodating the Lidl store in that

unknown scheme. It cannot be right to wait until 2011 – 5 years time – as the Council suggest, to see if the site might be developed. This approach would be unreasonable. For all these reasons, the Crowell Road car park cannot be considered as a sequentially preferable site. This site is not a practical alternative to the appeal site.

150. Diamond Place, Summertown is owned by the Council, the University and other parties. Evidence on its availability and likely development was not compelling. While there have been recent meetings and discussions between the Council and the University and a food retailer, there is no clear evidence that all the parties intend to co-operate to achieve a viable development in any reasonable time period. Whether the frontage users and retailers, including a Co-op supermarket, would help a rival food store to locate on the car park to the rear was also not clear. The effect of the proximity of the recent M&S food store was not assessed. The long period this site has been allocated for development [DS20 in current OLP – where it is suggested comparison floorspace should be provided] and the absence of any clear development proposals is a further indication of this site not being a practicable alternative site to the appeal site.
151. Blackbird Leys has no sites currently available of a suitable size to accommodate the Lidl store. The OLP identifies no sites for a new food store in DS7D. This location has no sites that would clearly be made available within a reasonable period of time. There is no compelling evidence about the Blackbird Leys Youth and Community Centre being relocated or demolished. There is no clear evidence that the garages would be made available for a retail scheme. A possibility that sites might become available in 3-5 years time is not convincing in this location. There is insufficient evidence to show this location could provide any sequentially preferable sites. Given this conclusion – the absence of suitable and available sites in Blackbird Leys – the fact that the Lidl store is just outside this residential area has much less weight than the Council suggest.
152. The Phoenix, the former BMW garage in Summertown would be too small for the proposed Lidl store. It is not suitable or viable. Again there are no clear plans or proposals for this site. It is DS8 in the OLP, where small retail units are proposed.
153. In conclusion, there is insufficient evidence to clearly show that there are sequentially preferable sites which are available, suitable and viable. It would be wrong to conclude that sequentially preferable sites at Crowell Road car park and Blackbird Leys Regeneration Zone would be satisfactory merely on grounds of recent discussions of possible intentions at Crowell Road, or relocating a community centre or garages at Blackbird Leys. There is insufficient reason to suppose that meetings between developers, retailers and the Council and intentions to pursue development constitute firm availability, suitability and viability. None of the sites examined in the inquiry had the benefit of completed feasibility studies or planning permissions. None of the sites examined were practical sequential alternatives in the terms of the relevant advice in PPS6.

*Impact on existing centres*

154. Retail impact on Cowley Centre [Templars Square] is not implied in either set of refusal reasons. The only reference to the effect of the Lidl proposals on existing shopping centres is in relation the refusal of appeal B. Here there is a reference to directing investment away from existing centres.

155. The evidence of RPS/Lidl is preferred on this issue. This shows a low impact on stores in Cowley Centre. As for the argument about divergence of trade away from Cowley Centre, there was insufficiently compelling evidence to show that the Lidl proposal would cause any adverse impact on this District Centre. For example, there was no compelling evidence to show that the Lidl store would prevent investment in Cowley Centre, or more particularly, in any scheme that might emerge on the Crowell Road multi storey car park site.

*Accessibility – Choice of means of transport*

156. PPS6 says in paragraph 3.25 that developments should be accessible by a choice of means of transport, including public transport, cycling, walking and the car. It adds that full account should be taken of customers' likely travel patterns. Paragraph 3.26 of PPG13 adds that development should offer a realistic choice of access by public transport, walking and cycling. OLP policy CP3(c) calls for sites to be realistically accessible.

157. There is no dispute that the appeal site is not as well related to existing public transport as the nearest shopping centres in Cowley and Blackbird Leys. Routes 5A, 5B and 101 would serve the food store. This would give 3 buses in an hour. Also workers returning from the City Centre by bus could call at Lidl on their way home. This level of service is not as frequent or convenient as the 5 minute service to the Cowley Centre. However a bus is not a particularly convenient form of transport for food shopping. On the basis of evidence only about 9% of people use public transport for shopping. It therefore could be construed that the Lidl store would be realistically accessible by public transport. The limited bus service provision would not change or prejudice this expected or "realistic" low proportion of people choosing public transport for food shopping.

158. As for walking, the nearest Blackbird Leys houses are about 120m away. The Blackbird Leys Neighbourhood Centre, with its Community Centre, is about 13 minutes away on foot. The maximum walking distance for shopping is likely to be about 1,200m. This would include people from Blackbird Leys and Cowley. However a walking distance for shopping of about 800m is more likely to be an acceptable choice than 1,200m, if a number of shopping bags were to be carried. The Council is right to doubt that a serious number of people would choose to walk from the northern area of Cowley to the store. On the basis of the evidence about normal travel patterns for Lidl stores, it could be assumed that about 15% of people might be expected to walk to the Lidl store.

159. As for cycling, this mode of transport has limited attraction for most shopping trips. It seems likely that between 1.2-3% may cycle to Lidl, based on experience of other Lidl stores and cycling in Oxford. The fact that more people cycle in Oxford than in the UK generally is a point in favour of cycling. It seems to be reasonable to conclude that the store would be realistically accessible for the small proportion of cyclists who might choose to cycle to carry out food shopping trips.

160. There is no doubt that the Lidl food store is not ideally located in relation to Government transport objectives in PPG13, or the guidance on location in PPS6. It is clear that with retail developments, the preferred order of locations is first, existing centres, second, edge-of-centre, and third, out-of-centre. And for out-of-centre locations, preference should be given to sites which are well served by a choice of means of transport and which are close to the centre.

161. This particular location is quite well served by a wide choice of means of transport. It is not close to any existing centre. However it must be noted that for much bulk food shopping, it is inevitable that the majority of people will use cars, rather than take buses, cycle or walk. Thus it can be concluded that the Lidl proposal does offer a realistic choice of access. The location in Watlington Road would be well served by a choice of means of transport, including public transport, walking, cycling, and the car – when account is taken of customers likely travel patterns.
162. As for changes in travel patterns caused by the proposed store, the Council do not submit evidence on this matter, other than a general statement that “the location would not meet the ambitions of PPG13” and the comment “that most customers would drive to the store” [paragraph 10.1 P Staley proof]. As there is no detailed evidence on travel pattern changes, it would be inappropriate to reach any conclusions on this matter.
163. It is also worth noting that the site is allocated as a part of a key employment site under policy EC2. The first criterion for identifying such sites is “good accessibility by walking, cycling or public transport for the majority of the workforce.” This OLP statement implies that the site is realistically accessible by walking, cycling and public transport, although it must be accepted that a walk or cycle to work may well be slightly longer than a walk or cycle to carry out food shopping.

### **Employment**

164. There is no dispute that the appeal site is within a protected employment site under OLP policy EC2. There is also no dispute that there is an existing 2003 planning permission for a drive through restaurant and car dealership.
165. The extant planning permission is a material consideration in assessing the effect of the appeal proposals on policy EC2 [CD9]. This part of the site’s planning history remains important. The “fall-back” position – what the landowner could do without a fresh planning permission – is relevant to both appeals. In this case the landowner has stated that he intends to implement that 2003 permission if the appeals are dismissed [Mr Krassowski Appendices Document 18]. The evidence submitted suggests that the prospect of implementation of the 2003 consent is high.
166. Thus if this consent is implemented it would lead to the partial loss of a key protected employment site. The drive through restaurant would not be an accepted use on this site in the terms of EC2. The 2003 consent is a mixed use scheme with a sui generis use and a Class A3 use. If appeal B is allowed, this too would lead to the partial loss of a key protected employment site. Appeal B is a mixed use scheme with 1,871m<sup>2</sup> Class A1 retail floorspace and 840m<sup>2</sup> Class B1 office floorspace. There is clearly a difference in floorspace between the 2 non-conforming uses – the A3 restaurant in the 2003 consent would be smaller than the A1 retail in appeal B. However when the actual jobs involved are considered the position is reversed. The 2003 consent would provide 15 full time equivalent jobs in the sui generis use compared with 40 full time equivalent jobs in the offices. It follows that appeal B provides significantly more employment than the 2003 consent. This is important in relation to Oxford’s OLP’s aims to maximise employment opportunities for local people and provide a diverse range of jobs across the City.
167. The arguments for both appeals are reasonably finely balanced on the retail issues. The evidence on retail issues is insufficient to justify refusal of either appeal. On employment

the situation is different. For appeal A there is no benefit from a mixed use scheme offering a significant number of jobs. Appeal A is not a mixed use scheme and therefore does not provide any jobs in Class B1, B2, B8 and sui generis uses. This means it does conflict with EC2. This employment policy conflict is enough to tip the scale against appeal A. By contrast, appeal B would provide a clear and significant benefit to employment opportunities in Oxford when compared to either the existing use or the 2003 consent. Consequently appeal B does not conflict with policy EC2 in a material way. Additionally, appeal B would not have an adverse impact on employment and regeneration in Oxford.

### **Other matters**

168. The Council suggestion, that the 1994 Sunday Trading Act should be used to define “large shop”, is novel. The 280m<sup>2</sup> floor area defined there has not been used before in any planning sense to my knowledge. I would have thought a more reasonable definition would come from the OLP. However large is not defined. Major is given as 2,000m<sup>2</sup>. This is a more popular definition, and is used in many development plans. In any event the precise need to adopt a definition for large was not made out.

### **Conditions and Obligations**

169. Most of the draft conditions in Document 13a are generally reasonable. The only condition in dispute - Condition 6 – was not supported by sufficient evidence. During the inquiry no detailed and compelling evidence was submitted about alleged dangers from turning right into the site and turning right out of the site. Condition 6 should not be imposed.

170. Conditions should be imposed in relation to external materials and landscaping in the interest of visual amenity. Conditions should be imposed in relation to vehicular access to the store, provision of sightlines, highway works and traffic light improvements in the interests of highway safety. A condition on loading/unloading should be imposed to ensure adequate space is available for these activities. A condition dealing with car and cycle parking should be imposed to ensure these facilities are provided. A condition should be imposed to ensure the local planning authority can control any alternative use of the premises. A condition should be imposed to ensure that possible contamination and its treatment is properly addressed. Conditions should be imposed to control noise from mechanical plant and design of such plant, ventilation equipment and ducting in order to protect residential amenity. The draft condition in relation to a public work of art is questionable, as is a precise interpretation of the meaning of policy CP14 – and the direct relevance to planning and a particular development of public art is not entirely clear from the OLP. A condition will however be imposed on public art provision, as there were no objections to the draft condition and this inquiry is not the forum for revisiting unusual OLP policies, not the subject of debate at the inquiry. A condition about CCTV provision should be imposed to address safety and security. A condition addressing resource efficiency and renewable energy should be imposed.

171. The Unilateral Undertaking addresses the continued operation of the limited range discount food store, the submission of a Travel Plan and a financial contribution to the County Council’s Transport Strategy. There is no dispute about the 2<sup>nd</sup> and 3<sup>rd</sup> matters.

172. The continued operation of the food store as a limited range discount food store is ensured by measures set down in Schedule 1. In short, Schedule 1 aims to ensure that Lidl, or another limited range discount food store occupies the appeal site and offers reduced prices

to customers. The disputed aspects of Schedule 1 are within restriction no 5. This concerns a PCCE to be undertaken by an independent assessor. The PCCE would ensure that Lidl, or some other store, offered a selected shopping basket of 20 product lines which were at least 15% cheaper in total price than any other non limited range discount food store within a 3 mile radius. As the independent assessor would be selected by the Council, this would resolve concerns expressed by the Council about the impartiality of this person. Although the Council said the PCCE and other matters would present insurmountable practical difficulties, these concerns were not made out in the inquiry by sufficient evidence.

173. As to whether a s.106 Unilateral Undertaking should control the pricing policy of a shop, it would seem to be reasonable in this case. First, the obligation requires the covenantor or successors in title to do a specified thing in, on, or under or over the land. This accords with s.106 of the 1990 Act. Second the obligation would make acceptable a development which would otherwise be unacceptable in planning terms. Without the obligation the Lidl limited range discount food store could change to another form of food retailing. Third, the obligation meets all the tests in B5 of ODPM Circular 05/2005.

174. The Unilateral Undertaking is reasonable. It should ensure that the appeal site is only occupied by Lidl, or a similar limited range discount food store.

### **Conclusions**

175. The arguments for both appeals were finely balanced. On the first issue there was insufficient conflict with development plan location or retail policies for either appeal A or appeal B to justify dismissal. As for employment policies, appeal A does conflict with policy EC2, whereas appeal B does not.

176. On the second issue, there is a quantitative and qualitative need for the proposed retail development. Turning to the sequential approach, insufficient evidence was submitted to clearly demonstrate that sequentially preferable sites would be available in a reasonable time period, and would be suitable and viable. The trading impact of the proposed store would be acceptable. The proposed store would be realistically accessible by walking, cycling, public transport and the car.

177. As for the third issue, appeal A would conflict with employment policies, appeal B would not materially conflict with the same policies and would not have an adverse impact on employment and regeneration in Oxford.

178. For the reasons given above and having regard to all other matters raised, I conclude that appeal A should be dismissed and appeal B should be allowed.

### **Formal Decision**

**File Ref: APP/G3110//A/04/1171310**

179. I dismiss appeal A.

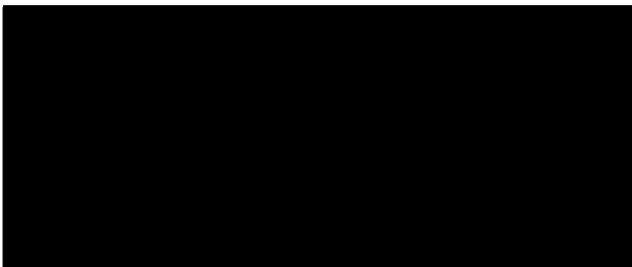
**File Ref: APP/G3110//A/05/1195688**

180. I allow appeal B, and grant planning permission for the demolition of existing buildings, and erection of 2 storey building for use as Class A1 discount food store (1,871m<sup>2</sup>) at ground floor level and Class B1 offices (840m<sup>2</sup>) at first floor plus provision of 102 car

parking spaces, cycle store (36 spaces), cycle stands (9 spaces) revised vehicular access, compactor, public art and landscaping at the former Hartwells, Watlington Road, Cowley, Oxford in accordance with the terms of the application, Ref 05/01551/FUL, dated 26/7/05, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; and the work of public art.
- 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
- 5) Deliveries to the retail store shall only be made via the access from Watlington Road and the access shall only be used outside the premises opening hours for deliveries.
- 6) Customers to the store and employees of the offices shall use both the Watlington Road access and the Transport Way access.
- 7) The area shown on the approved plans for loading and unloading for the retail store shall be marked out and kept clear at all times, and shall not be used for storage, car parking or any other purpose.
- 8) The building shall not be occupied until the areas and facilities shown on the approved plans have been drained and surfaced in accordance with details submitted to and approved by the local planning authority, and these areas and facilities shall not thereafter be used for any purpose other than the parking of cars and cycles. The car parking to the rear of the building shall be retained solely for use by the offices, except at weekends.
- 9) Details of sightlines shall be provided for both access junctions to Watlington Road and Transport Way and shall be implemented and maintained thereafter free of obstructions which exceed the height of the carriageway by more than 0.6m.
- 10) The ground floor of the building shall be used only for A1 retail use and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class revoking or enacting that Order). No more than 20% of the permitted retail floor area shall be used for the sale of comparison goods. The first floor shall be used for B1 office use only and for no other purpose (including any other purpose in Class B1 respectively of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class revoking or enacting that Order).

- 11) The development shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public, the building and the environment when the site is developed.
- 12) Development shall not begin until the measures approved in the scheme have been implemented.
- 13) The level of noise emitted from mechanical plant on the premises shall not exceed 45 dB(A) between 0800 and 2300 and 40 dB(A) at any other time, when measured at the boundary of the site.
- 14) Prior to commencement of the development, details of the work of public art to be provided on the site shall be submitted to, and approved in writing by, the local planning authority, and the public work of art shall be built in accordance with the details approved.
- 15) Prior to commencement of the development, details of all plant, machinery, mechanical ventilation, equipment and ducting, shall be submitted to, and approved by the local planning authority. No other plant, machinery, mechanical ventilation equipment, flues or ducting shall be placed on the outside of the building without the written permission of the local planning authority.
- 16) Prior to commencement of the development, details of improvement works to the highway, including phasing of the pedestrian Watlington Road/Transport Way traffic lights and yellow box markings on Watlington Road, shall be submitted to, and approved in writing by the local planning authority. These highway works shall be implemented in accordance with the approved details prior to the opening of the retail premises for trading.
- 17) Prior to the development being brought into use, details of the exterior/interior system of CCTV shall be submitted to and approved in writing by the local planning authority. These facilities shall be implemented in accordance with the approved details prior to the opening of the retail premises for trading.
- 18) The development shall be constructed in accordance with the details set out in the submitted and approved Natural Resource Impact Analysis, unless otherwise agreed in writing by the local planning authority.





## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Robert McCracken QC

He called

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### CORE DOCUMENTS

- |          |            |                                                                        |
|----------|------------|------------------------------------------------------------------------|
| Document | 1          | Statement of Common Ground on Planning                                 |
| Document | 2          | Statement of Common Ground on Transport                                |
| Document | 3          | Extracts from sections 2 & 7 of Competition Commission Report 2000     |
| Document | 4          | Extract from Encyclopaedia of Planning Law – page 2-3285               |
| Document | 5          | RPS Planning and Retail Statement – May 2004                           |
| Document | 6          | RPS Planning and Retail Statement – July 2005                          |
| Document | 7          | Adopted Oxford Local Plan                                              |
| Document | 8          | Extract for IHT report: “Providing for journeys on foot”               |
| Document | 9          | Pre-application reserved matters site plan                             |
| Document | 10         | Draft NLP Oxford Employment Sites Study                                |
| Document | 11         | Plan of Blackbird Leys Regeneration Zone                               |
| Document | 12/<br>12a | Second Draft Unilateral Undertaking/Final Draft Unilateral Undertaking |

Document	13/ 13a	Draft Conditions/Revised Draft Conditions
Document	14	Oxford Local Plan: Inspector's Report Section 8 Economy
Document	15	Oxford Retail Needs Study February 2004
Document	16	Sequential site location plans
Document	17	Locations of 400 UK Lidl stores
Document	18	Lidl stores of 1063m <sup>2</sup> or less opened since November 2003
Document	19	Community Centres Assessment - November 2005
Document	20	Lidl till receipts for prices in PCCE
Document	21	Council till receipts for prices in PCCE
Document	22	Competition Commission Report – extract page 147
Document	23	Lidl [Colin McKay] comments on conditions 5 & 6
Document	24	Council [Paul Staley] justification for conditions 5 & 6
Document	25	Lidl [Colin McKay] response to Document 24
Document	26	List of all Lidl stores opened since November 2003
Document	27	Inquiry attendance sheets
Document	28	Inquiry notification