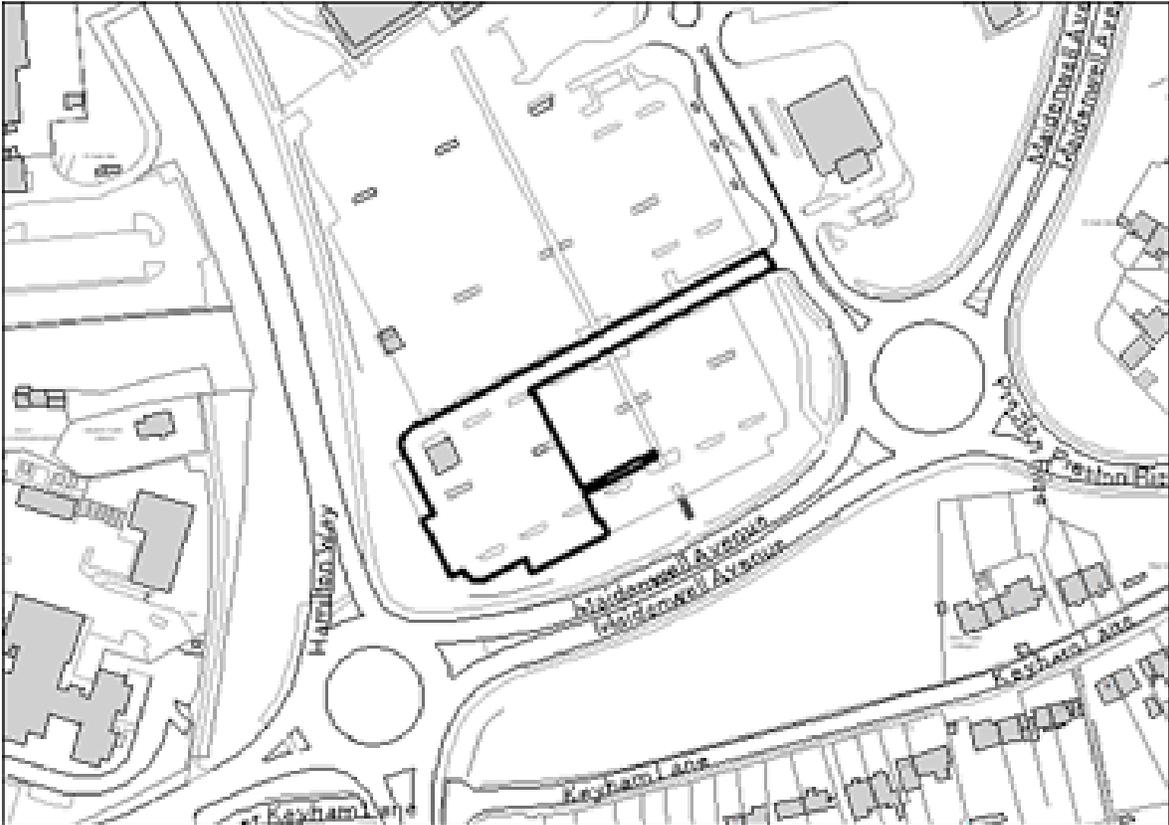


# COMMITTEE REPORT

<b>20230514</b>	<b>2 Maidenwell Avenue, Land at Tesco Extra</b>	
Proposal:	Construction of drive-thru restaurant including hot food takeaway (Class E & Sui Generis) to south of supermarket and carpark; associated landscaping; access (Amendments received 17th April 2023)	
Applicant:	Boparan Restaurant Group	
App type:	Operational development - full application	
Status:	Minor development	
Expiry Date:	5 October 2023	
CY1	TEAM: PD	WARD: Humberstone & Hamilton



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## Summary

- Application deferred at 21<sup>st</sup> June Committee

- Brought to committee due to level of objections.
- 7 objections and 1 comment received from 8 City addresses with main concerns regarding litter, anti-social behaviour, traffic congestion, number of similar uses in the area and sustainability
- 1 representation was also received from Councillor Bonham regarding the relationship between the proposal and the local Park and Stride initiative.
- Main issues are acceptability in principle, amenity, design, archaeology, highways, and waste
- The application is recommended for approval

## The Site

The application relates to the southernmost part of a supermarket carpark that borders Maidenwell Avenue. The site is above a Romano-British Field system wherein 1997 an evaluation revealed iron age features.

The site is set around 3m higher than Maidenwell Avenue dual carriageway and pavement. It is somewhat screened by hedging and trees.

## Background

Outline planning permission was granted condition approval in 2014 for the relocation of the supermarket recycling centre and click and collect canopy a public house and family restaurant, restaurant with ancillary take away, and drive through restaurant including hot food take away. (application 20140838)

The reserved matters application was granted conditional approval in 2017. Within this application, details of 9 of the conditions in 20140838 were approved. This permission however was never implemented.

## The Proposal

The application is for the construction of a drive-thru restaurant and hot food takeaway to the southern part of the supermarket carpark. The building would have a footprint of approximately 126m<sup>2</sup> and a maximum height of 6.8m with the majority height being around 4.2m. The property would have a flat roof. Materials are proposed to be a mix of cladding and paint which are shown in detail on drawing F100.

The site would have an integrated bin storage area and have an external ramp each for the main entrance and the back of house.

The works would propose access and landscaping alterations to the carpark. There is a proposed loss of 80 parking spaces, along with a circular one-way route for customers, and a separate delivery bay for goods. A new pedestrian crossing is proposed from east to west along with a hedge running north to south.

The application was to be taken to the Planning and Development Committee on 21<sup>st</sup> June 2023, but deferred for more consideration regarding the highways impact and parking in relation to the Park and Stride initiative.

Amendments were submitted on the 5<sup>th</sup> September including:

- Confirmation from Tesco that the Park and Stride arrangement has been relocated to elsewhere within the car park as agreed with the school.
- Updated Transport assessment to confirm the parking capacity would still be adequate given the park and stride scheme.

## Policy Considerations

### National Planning Policy Framework (NPPF) 2023

Paragraph 2 (Application determined in accordance with development plan and material considerations)

Paragraph 11 (Presumption in favour of Sustainable Development)

Paragraphs 39 and 40 (Pre-applications)

Paragraph 43 (Sufficient information for good decision making)

Paragraph 56 (Six tests for planning conditions)

Paragraph 81 (Creating conditions for economic and business growth)

Paragraphs 86 to 91 (Ensuring the Vitality of Town Centres)

Paragraphs 111 and 112 (Highways impacts)

Paragraphs 126, 130, 132 and 134 (Good design and ensuring high standard of amenity)

Paragraph 131 (Trees)

Paragraphs 154 and 157 (Climate Change)

Paragraphs 185 to 188 (Noise Pollution)

### Development Plan policies

Development plan policies relevant to this application are listed at the end of this report.

### Supplementary Planning Documents (SPD)

Residential Amenity SPD (2008)

Appendix 01 Parking Standards – City of Leicester Local Plan (2006)

Leicester Street Design Guide (2020)

Climate Change SPD (2011)

## Consultations

Pollution (Noise) – no objections

Local Highways Authority – no objections subject to conditions

## Representations

7 objections and 1 comment have been received from 8 addresses within the local authority boundary with the following concerns based on the concerns they have regarding the existing 'drive thru's' in the area:

- Increase in litter in the area and increased vermin issues.
- Increase in loitering and anti-social behaviour.
- Increase in traffic and congestion.
- Overprovision of drive thru's in area.
- Increase in noise, air, and odour pollution.
- No benefit to local community.
- Increase in non-local traffic and footfall.
- Obesity inducing development.
- Recommend a family pub or community facility.
- Recommend this is built beside the Aldi/Porsche garage on Fletton Road away from residential dwellings.
- Have detrimental impact upon park and stride initiative.
- Need more park and water space including flood reduction schemes not more buildings.
- Will not help with climate change and increase in urban heat island effect.

5 comments have been received supporting the application as it would support the local area, utilise underutilised space in the carpark, and bring more life to the area.

A representation was also received from Councillor Bonham querying the relationship between the proposal and the local Park and Stride initiative. As a result, further information has now been provided on this and is within the "Highways and Parking" section of this report.

## Consideration

Drive-thru restaurants and hot food takeaway are both identified as main town centre uses according to the National Planning Policy Framework. Core Strategy Policy 11 outlines the retail hierarchy for Leicester:

- City Centre
- Town Centre (Beaumont Leys)
- District Centres (5 including Hamilton)
- Local Centres
- Neighbourhood parades

The site lies within Hamilton District Centre, which is identified within the retail hierarchy for Leicester. Commercial uses such as these are expected in district centres in the first instance. As such I consider the scheme complies with CS11 and paragraph 87 of the National Planning Policy Framework.

Concerns have been raised regarding the overprovision of drive thru's in area. It is noted by the objectors that there are two additional Drive thru's in the area. One is sited north of the site at 10 Waterside Road sited around 1.2km away from the application site, and the other is sited around 0.4km to the south of the site on Netherhall Road. Planning does not manage competition nor specify levels of appropriate provision so I do not consider this to be an unacceptable concentration of drive thru's in the area.

Recommendations were made by objections for a family pub or community facility instead, or the use being built out in a different location. A restaurant/takeaway is acceptable in principle in this location under planning terms. It would be unreasonable to request that the proposal is moved to a different location that the applicant may not own, or request that a different use is proposed. Further requests have been raised for the area to be used as a park or water space. Again, it would be unreasonable to request that a different use is proposed given the drive thru is acceptable in principle.

#### Residential amenity (neighbouring properties)

Policy CS03 of the Leicester Core Strategy (2014) states that development must respond positively to the surroundings and be appropriate to the local setting and context. Saved Policy PS10 of the Local Plan (2006) sets out a number of amenity factors to be taken into account when determining planning applications, including the visual quality of the area, privacy and overshadowing, noise, and the ability of the area to assimilate development.

Saved policy R05 of the 2006 Local Plan states proposals for the use of food and drink premises within the district centres will not be permitted where the development either individually or cumulatively with other food and drink uses would be likely to prove significantly detrimental to the amenities of the occupiers of nearby residential properties, would not cause problems of noise and fumes for the occupiers of nearby properties, and would not be detrimental to visual amenity.

Concerns have been raised regarding an increase in noise, air, and odour pollution generated from new use. Due to the location and distance from the nearest residential

property (approximately 145m away), and taking into account the sites existing use and hours, I do not consider that the application would be harmful to neighbouring occupiers. Hours of opening are proposed as 11:00 while 23:00 Monday through Sunday. I consider these opening hours acceptable and attached as a condition should the application be approved.

I note that the land directly south of the site across Maidenwell Road is allocated as residential under the next local plan. No application has been received for housing on this land as of yet, and I still consider the dwellings would be sited far enough away to not be harmed by the proposal.

I conclude that the proposal would comply with policy CS03 of the Core Strategy (2014) and would not conflict with saved policy PS10 of the Local Plan (2006), and is acceptable in terms of the privacy and amenity of the neighbouring occupiers.

### Character and Design

Policy CS03 of the Leicester Core Strategy (2014) states that high quality, well designed developments that contribute positively to the character and appearance of the local built environment are expected. It goes on to require development to respond positively to the surroundings and to be appropriate to the local setting and context and, at paragraph 1 (first bullet point), to contribute positively to an area's character and appearance in terms of *inter alia* urban form and high-quality architecture. Saved Policy PS10 of the Local Plan (2006) sets out a number of amenity factors to be taken into account when determining planning applications including the visual quality of the area and the ability of the area to assimilate development.

Saved policy R03 of the 2006 Local Plan states that proposals for new retail development within district centres, whose scale is consistent with the size and function of the centre concerned, will be required to demonstrate that the scale and design is sympathetic to the character of the area.

The development would be sited higher than the streetscene however due to the gradient and vegetation it would not appear dominant when viewed from the public realm. The building would be quite compact in size and set in substantially from the highway. Materials are proposed are considered acceptable and can be conditioned should the application be approved.

Advertisements are indicated on the visuals. These would be assessed under an advertisement consent application. I recommend a note to applicant is attached to the decision stating that no permission is granted or implied for advertisements should this application be approved.

I conclude that the proposal would comply with policy CS03 of the Core Strategy (2014) and would not conflict with saved policy PS10 of the Local Plan (2006), and is acceptable in terms of the character and appearance of the area.

## Archaeology

The proposal is located in an area with known and significant archaeological features and deposits, notably Iron Age settlement activity.

The archaeological desk-based assessment has placed known archaeology with the local and regional context, highlighting significant Iron Age settlement evidence and artefacts recovered within 200m of the site's boundary. Archaeological Evaluation trenching in 1997 within the site itself further identified the presence of Iron Age features and artefacts. Roman and medieval activity is also attested in the wider landscape, including evidence of a Roman period corn-dryer and kiln.

The City Archaeologist broadly agrees with the conclusions outlined in the assessment, with the potential for archaeological remains being disturbed as a result of the development proposal considered to be high.

It is recommended that a pre-commencement condition is attached to this application to ensure that a written scheme of investigation is submitted to and agreed by the LPA, that a programme of archaeological investigation is carried out in accordance with this scheme, and that a post investigation assessment is then submitted to the LPA. The agent was sent a draft of the condition on the 21<sup>st</sup> April 2023 and given the mandatory 10-working day period under the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 to object or comment on this condition. The condition was agreed to on the 27<sup>th</sup> April 2023.

With this condition attached I consider that the application would comply with policy CS18 of the Core Strategy (2014) and is acceptable in terms of the archaeology.

## Highways and Parking

Core Strategy Policy CS14 states development should be easily accessible to all future users, including those with limited mobility, both from within the City and the wider sub region. It should be accessible by alternative means of travel to the car, promoting sustainable modes of transport such as public transport, cycling and walking and be located to minimise the need to travel.

Saved policy R03 of the 2006 Local Plan states that proposals for new retail development within district centres, whose scale is consistent with the size and function of the centre concerned, will be required to demonstrate that the traffic generated by the development and the arrangements for loading, unloading and servicing will not have a significant detrimental impact on parking and traffic problems and pedestrian and highway safety.

Saved policy R05 of the 2006 Local Plan states proposals for the use of food and drink premises within the district centres will not be permitted where the development either

individually or cumulatively with other food and drink uses would be likely to prove significantly detrimental to parking and traffic problems which could not reasonably be controlled by way of condition.

Saved Policy AM11 states level of parking for non-residential development shall be determined in accordance with Appendix 01 referenced above.

#### Parking –

Currently the car park contains 905 car parking spaces. The location of the proposed drive-through is on an underused section of the car park and will result in a loss of 80 spaces, reducing the overall parking provision to 825 spaces. As part of the application a Transport Statement has been submitted, which was revised in September to take into account details of the new 'Park and Stride' initiative between Tesco and Kestrel Mead Primary Academy. The revised Park and Stride would allow parents to use an area of the carpark to drop off children in order to reduce congestion around the school. The location has been revised for the 'Park and Stride' scheme so it no longer overlaps with the application site, and is located in the parking area north of application site in a fairly under-utilised part of the carpark.

The initial Transport Statement includes a parking accumulation study of the existing car park, taken over a weekend in January 2023. The parking accumulation survey revealed that at peak times, the car park operated at 41% of capacity. Based on these results, the loss of 80 parking spaces required to accommodate the proposed drive-through, the car park would operate at around 51%, and therefore the proposal should not lead to any parking difficulties.

A further assessment has been undertaken on a weekday (outside of the summer holidays) when the 'Park and Stride' would be in effect to which shows that the proposal should not lead to any parking difficulties when the initiative is in effect.

#### Access –

The proposed drive-through arrangement includes a one-way system and the Transport Statement suggests that there will be space for up to 15 cars to be queuing at any one time. However, the 15 spaces suggested have not been demonstrated on the submitted plans, and it is perhaps likely that in practice that slightly less than 15 spaces would be available. Nevertheless, the distance from the building back to the public highway is over 100 metres and therefore it is highly unlikely that even at busy times, that the proposal would lead to queuing that would have an adverse impact on traffic entering the Tesco site or impact on movements at the roundabout junction on Maidenwell Road.

The proposal also includes staff parking as well as parking for food couriers, such as Deliveroo, Just Eat for example. As such there would be no need for vehicles associated with either staff or couriers to have to join a queue of customer vehicles.

The Transport Statement includes a likely trip generation based on TRICS data, which suggests that the level of traffic likely to be generated at peak times, would not result in any highway capacity issue and the 15 spaces provided in the drive-through lane, would be sufficient to cater for the likely use. Whilst it is perhaps unlikely that 15 cars could be accommodated within the queue, as cars are unlikely to drive bumper to bumper in the queue, as stated previously, it is unlikely that the length of queue would extend so far back that it would result in vehicles blocking access into the main car park.

It is noted that some objections have referred to queuing problems associated with drive through establishments close by, however this site would be different to those sites, in that not only would there be far more parking spaces available, but there would be a much greater distance from the premises to the public highway and therefore vehicles queuing for the proposed drive-through is most likely to be contained within the limits of the site and extremely unlikely to extend out on to the public highway.

With the other sites, it is likely that vehicles that are visiting those sites and wishing to park to use the restaurant facility rather than use the drive-through facility would get caught up with any queuing that takes place for the drive-through. However, at this location, vehicles looking to park would not need to join the queue for the drive-through and if necessary use other internal accesses within the main car park, to access the parking spaces and therefore would be no need to add to the queue. In which case I would view this proposal differently from the other establishments and am not concerned about the potential for queuing vehicles to cause the same issues as referred to at the other sites.

Given the 'Park and Stride' initiative would result in a larger proportion of more children close to the vicinity of the site. I recommend a Construction Method Statement and Delivery Management Plan are added as conditions, to ensure construction activities and deliveries avoid times when the 'Park and Stride' are operating to avoid large vehicle movements when there would be more children on site and more vehicle movements at the access.

I conclude that the proposal would comply with policy CS14 of the Core Strategy (2014) and would not conflict with saved policy AM11 of the Local Plan (2006), and is acceptable in terms of highway impact and parking.

### Waste

Saved Policy PS10 of the Local Plan (2006) sets out a number of amenity factors to be taken into account when determining planning applications, including the visual quality of the area including potential litter problems.

Waste storage created by the use is proposed to be embedded within the building. Concerns have been raised about increased littering by customers from the drive thru. In

amended plans bins are provided on site, near the Tesco entrance, and there are also bins in the in the public realm.

Concerns were also raised regarding possibility of increased vermin issues and increased littering. This is outside the remit of the planning authority. However, there are agencies that can investigate this matter. The wider site may already have measures in place to manage this that could be extended by agreement. If any issues arise, they can be reported to 'Love Clean Streets' phone app, or website.

I conclude that the proposal would comply with policy CS03 of the Core Strategy (2014) and would not conflict with saved policy PS10 of the Local Plan (2006), and is acceptable in terms of waste storage and management.

### Other matters

Concerns have also been raised regarding the increase in loitering and anti-social behaviour, the application bringing no benefit to local community, and the development being obesity inducing. These are not material planning considerations. Matters of anti-social behaviour and loitering would be a matter for the premises to manage. In addition, the main premises may have security measures that could be utilised through an agreement.

Lastly, concerns have been raised regarding climate change, urban heat island effect, and the need for more flood reduction schemes in the city. The development is located on land without any flooding constraints and the proposal is of a size where it would be onerous to request flood risk mitigation and drainage reduction on the site. With regards to climate change and urban heat island effect, I consider that the proposal would have a negligible impact on the urban heat island effect. The proposal includes cycle parking and additional landscaping, which would be an improvement to the existing site. The site is well positioned to allow sustainable modes of travel should customers choose that option, and the proposal is considered to comply with saved 2006 Local PPlan Policy AM01, 2014 policy CS14 of the Core Strategy, and the Climate Change SPD which require all development should be accessible by alternative means of travel and should address issues around walking, cycling and public transport. It also complies with policy CS02 which states 'All development must mitigate and adapt to climate change and reduce greenhouse gas emissions' and 'Development will be located where it is accessible by sustainable transport to support the use of public transport, walking and cycling as an alternative to the car'.

I consider any further sustainability measures such would be onerous for a development of this size in planning terms, but I am mindful that further opportunities to address climate change mitigation could also be taken at building regulation stage in terms of thermal performance, through avoiding using fossil fuels for heating/hot water, or the use of PVs on the roof. On balance, I find that the resulting impact on climate change is unlikely to be significant or adverse, and so this would not warrant a reason for refusal.

## Conclusion

I therefore recommend that the application be APPROVED subject to the following conditions:

### CONDITIONS

1. The development shall be begun within three years from the date of this permission. (To comply with Section 91 of the Town & Country Planning Act 1990.)
2. The use shall not be carried on outside the hours of 11:00 while 23:00 daily. (In the interests of the amenities of nearby occupiers, and in accordance with policy PS10 of the City of Leicester Local Plan.)
3. The external elevations shall be constructed in materials indicated in the approved plans. (In the interests of visual amenity, and in accordance with Core Strategy policy CS03.)
4. A. No groundworks or new development shall take place or commence until a programme of archaeological investigation has been agreed in accordance with a prepared Written Scheme of Investigation submitted to and approved in writing by the local planning authority. The scheme shall include:
  - (1) an assessment of significance and how this applies to the regional research framework;
  - (2) the programme and methodology of site investigation and recording;
  - (3) the programme for post-investigation assessment;
  - (4) provision to be made for analysis of the site investigation and recording;
  - (5) provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - (6) provision to be made for archive deposition of the analysis and records of the site investigation;
  - (7) nomination of a competent person or persons or organization to undertake the works set out within the Written Scheme of Investigation.
- B. No new development shall take place other than in accordance with the Written Scheme of Investigation approved under (A) above.
- C. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under (A) above, and the

provision made for analysis, publication and dissemination of results and archive deposition has been secured. (To ensure that the details are agreed in time to be incorporated into the development, this is a PRE-COMMENCEMENT condition)

5. No part of the development shall be occupied until secure and covered cycle parking has been provided and retained thereafter, in accordance with the approved site plan. (In the interests of the satisfactory development of the site and in accordance with policy AM02 of the City of Leicester Local Plan).
6. The parking and service area shall be provided before the occupation of any part of the development and shall be retained and kept available for that use. (To ensure that parking and servicing can take place in a satisfactory manner; and in accordance with policies AM01, AM02, AM11, R03, and R05 of the City of Leicester Local Plan and Core Strategy policy CS03)
7. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the City Council as local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for: (i) the parking of vehicles of site operatives and visitors; (ii) the loading and unloading of plant and materials; (iii) the storage of plant and materials used in constructing the development; (iv) the erection and maintenance of security hoarding; (v) wheel washing facilities and/or measures to control debris being deposited on the highway during construction. (To ensure the satisfactory development of the site, and in accordance with policies AM01, UD06 of the City of Leicester Local Plan and Core Strategy policy CS3. To ensure that the details are agreed in time to be incorporated into the development, this is a PRE-COMMENCEMENT condition).
8. Prior to the occupation of the development a Delivery Management Plan, indicating all scheduled times for delivery and waste collection to and from the site, shall be submitted to and approved in writing by the City Council as local planning authority. The Delivery Management Plan shall be adhered to for the lifetime of the development. (To ensure the satisfactory development of the site, and in accordance with saved policy AM01 of the City of Leicester Local Plan.)
9. Development shall be carried out in accordance with the following approved plans:
  - Issue Sheet, ISS, revision F, received 27th April 2023
  - Existing Site Plan, L100, revision F, received 27th April 2023
  - Existing Site Plan, E100, revision F, received 27th April 2023
  - Existing Site Section AA, E101, revision F, received 27th April 2023
  - Existing Site Section BB, E102, revision F, received 27th April 2023
  - Proposed Site Plan, S100, revision F, received 27th April 2023
  - Proposed Floor Plan & Roof Plan, G100, revision F, received 27th April 2023

- Proposed 1000sqft Pod Elevations A & B, C100, revision F, received 27th April 2023
- Proposed 1000sqft Pod Elevations C & D, C101, revision F, received 27th April 2023
- Visualization A, V100, revision F, received 27th April 2023
- Finishes Schedule, F100, revision F, received 27th April 2023
- Bin Store Detail, D100, revision F, received 27th April 2023
- (For the avoidance of doubt).

## NOTES FOR APPLICANT

1. No consent is granted or implied for the advertisement shown on the submitted plans, for which a separate application may be necessary.
2. The City Council, as local planning authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received. This planning application has been the subject of positive and proactive discussions with the applicant during the process (and/or pre-application).

The decision to grant planning permission with appropriate conditions taking account of those material considerations in accordance with the presumption in favour of sustainable development as set out in the NPPF 2023 is considered to be a positive outcome of these discussions.

## Policies relating to this recommendation

2006_AM01	Planning permission will only be granted where the needs of pedestrians and people with disabilities are incorporated into the design and routes are as direct as possible to key destinations.
2006_AM02	Planning permission will only be granted where the needs of cyclists have been incorporated into the design and new or improved cycling routes should link directly and safely to key destinations.
2006_AM11	Proposals for parking provision for non-residential development should not exceed the maximum standards specified in Appendix 01.
2006_BE10	In developments involving a new shopfront, the design should be an integral part of the whole building and should be in proportion to the lines of the facade of which it forms a part.
2006_BE22	Planning permission for development that consists of, or includes, external lighting will be permitted where the City Council is satisfied that it meets certain criteria.
2006_PS10	Criteria will be used to assess planning applications which concern the amenity of existing or proposed residents.

- 2006\_PS11 Control over proposals which have the potential to pollute, and over proposals which are sensitive to pollution near existing polluting uses; support for alternative fuels etc.
- 2006\_R03 Retail development outside the Central Shopping Core will be confined to the existing and proposed shopping centres.
- 2006\_R05 Proposals for the use of premises within existing shopping centres for food and drink purposes (Use Classes A3, A4 and A5) will be permitted subject to criteria.
- 2014\_CS02 Development must mitigate and adapt to climate change and reduce greenhouse gas emissions. The policy sets out principles which provide the climate change policy context for the City.
- 2014\_CS03 The Council will require high quality, well designed developments that contribute positively to the character and appearance of the local natural and built environment. The policy sets out design objectives for urban form, connections and access, public spaces, the historic environment, and 'Building for Life'.
- 2014\_CS11 The Council supports a hierarchy of retail centres in Leicester. The policy sets out measures to protect and enhance retail centres as the most sustainable location for retail development.
- 2014\_CS14 The Council will seek to ensure that new development is easily accessible to all future users including by alternative means of travel to the car; and will aim to develop and maintain a Transport Network that will maximise accessibility, manage congestion and air quality, and accommodate the impacts of new development.
- 2014\_CS15 To meet the key aim of reducing Leicester's contribution to climate change, the policy sets out measures to help manage congestion on the City roads.
- 2014\_CS18 The Council will protect and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets.