

<b><u>No:</u></b>	<b>BH2021/00282</b>	<b><u>Ward:</u></b>	<b>Hove Park Ward</b>
<b><u>App Type:</u></b>	<b>Variation of Condition</b>		
<b><u>Address:</u></b>	<b>Unit 3 Goldstone Retail Park Newtown Road Hove BN3 7PN</b>		
<b><u>Proposal:</u></b>	<b>Variation of Condition 13 of application BH2020/00549 (External alterations to front and rear elevations including installation of new plant. Alterations to part of customer car park to provide trolley storage, covered cycle parking and car parking for disabled and parents. Use of Unit 3 for retail (A1)) to change the servicing hours to 07:00-21:00 Monday to Saturday and 08:00-18:00 on Sunday.</b>		
<b><u>Officer:</u></b>	Russell Brown, tel: 293817	<b><u>Valid Date:</u></b>	26.01.2021
<b><u>Con Area:</u></b>	N/A	<b><u>Expiry Date:</u></b>	27.04.2021
<b><u>Listed Building Grade:</u></b>	N/A	<b><u>EOT:</u></b>	
<b><u>Agent:</u></b>	RPS Planning & Development Mrs Emma Fortune 2 Callaghan Square Cardiff CF10 5AZ		
<b><u>Applicant:</u></b>	Lidl Great Britain Ltd Mr Robert Stubbings Northfleet Property Office Crete Hall Road Gravesend DA11 9BU		

## 1. RECOMMENDATION

- 1.1. That the Committee has taken into consideration and agrees with the reasons for the recommendation set out below and resolves to **GRANT** planning permission subject to the following Conditions and Informatives:

### Conditions:

1. The development hereby permitted shall be carried out in accordance with the approved drawings listed below.

**Reason:** For the avoidance of doubt and in the interests of proper planning.

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Report/Statement	Technical Note: Retail Impact	v1	30 July 2020
Proposed Drawing	AD_112	A	7 May 2020
Proposed Drawing	AD_105		20 February 2020
Proposed Drawing	AD_110	A	23 June 2020
Proposed Drawing	AD_111	A	7 May 2020
Location Plan	AD_100	A	23 June 2020
Report/Statement	Air Quality Assessment	Rev 2	20 February 2020
Report/Statement	Noise Impact Assessment	7.0	04 March 2021

2. The development hereby permitted shall be commenced before 08.09.2023.  
**Reason:** To ensure that the Local Planning Authority retains the right to review unimplemented permissions.

3. The works of making good and infilling of openings hereby permitted to the external facade of the building shall match in material, colour, style and texture those of the existing building.  
**Reason:** To ensure a satisfactory appearance to the development in the interests of the visual amenities of the area and to comply with Policy CP12 of the Brighton & Hove City Plan Part One.
4. The external lighting shall be installed, operated and maintained in accordance with the details approved by BH2020/03561 and thereafter retained.  
**Reason:** To safeguard the amenities of the occupiers of adjoining properties, those accessing the site and to comply with Policies QD25 and QD27 of the Brighton & Hove Local Plan.
5. No customers shall be on the premises outside the hours of 08:00 to 22:00 Monday to Saturdays, plus Bank and Public Holidays, and 11:00 to 17:00 on Sundays.  
**Reason:** To safeguard the amenities of neighbouring occupiers, reduce traffic on the local highways and to comply with Policies TR7, SU10 and QD27 of the Brighton & Hove Local Plan.
6. Four electric vehicle charging spaces served by charging points with a minimum power output of 7.5kW shall be provided in accordance with approved drawing no. AD\_110\_REV A and Transport Assessment Addendum 2 (Mayer Brown, June 2020). These facilities shall be fully implemented and made available for use prior to the occupation of the development hereby permitted and shall thereafter be retained for use at all times.  
**Reason:** To encourage travel by more sustainable means and seek measures which reduce fuel use and greenhouse gas emissions and to comply with Policy CP9 of the Brighton & Hove City Plan Part One and SPD14.
7. The secure and covered cycle parking for customers and two Sheffield style stands for staff shall be installed, made available for use prior to the first occupation of the development and maintained in accordance with the details approved by BH2020/03561 and approved drawing no. AD\_111\_REV A, and thereafter retained.  
**Reason:** To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private motor vehicles and to comply with Policy TR14 of the Brighton & Hove Local Plan and SPD14.
8. The pedestrian pathway to the northern side of the Newtown Road access to the Goldstone Retail Park shall be widened to a minimum of 2m prior to the first occupation of the development hereby permitted and at no time shall it be obstructed by any temporary or fixed street furniture.  
**Reason:** In order to ensure that safe and suitable pedestrian access continues to be provided into the site in compliance with Policies CP9 of the Brighton & Hove City Plan Part One and TR7 of the Local Plan.
9. The development hereby permitted shall not be occupied until the new disabled and parent & child car parking spaces, the trolley bay and pedestrian / zebra

crossings have been made available for use and they shall be retained in perpetuity thereafter.

**Reason:** To ensure the development provides for the needs of all staff and visitors to the site, in the interests of highway safety and to comply with Policy TR7 of the Brighton & Hove Local Plan and SPD14.

10. Within three months of the date of first occupation a Travel Plan for the development has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall thereafter be fully implemented in accordance with the approved details.

**Reason:** To ensure the promotion of safe, active and sustainable forms of travel and comply with Policies CP9 of the Brighton & Hove City Plan Part One and TR4 of the Local Plan.

11. Prior to the first occupation of the development hereby approved a Delivery & Service Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of:

- the types of vehicles undertaking movements to and from the site for different purposes;
- how, when and to where movements will take place and packages/receptacles will be stored and transferred on site;
- swept path analysis to demonstrate that vehicles can safely obtain access to and from loading/unloading points;
- the number; and frequency of those movements over the course of different days;
- related management measures.

All deliveries shall thereafter be carried out in accordance with the approved plan.

**Reason:** In order to ensure that the safe operation of the development and to protection of the amenities of nearby residents, in accordance with Policies SU10, QD27 and TR7 of the Brighton & Hove Local Plan.

12. Unless otherwise agreed in writing by the Local Planning Authority, the net sales area of the proposed retail food store in Unit 3 of Goldstone Retail Park shall be no more than 1,727m<sup>2</sup>, of which a maximum of 1382m<sup>2</sup> may be given over to the sale of convenience goods.

**Reason:** The Local Planning Authority wishes to retain control over any subsequent change to the net sales area in the interests of mitigating any potential impact on defined centres within the city in compliance with Policy CP4 of Brighton & Hove City Plan Part One.

13. No servicing (i.e. deliveries to or from the premises) shall occur except between the hours of 07:00-21:00 Monday to Saturday and 08:00-18:00 on Sunday.

**Reason:** To safeguard the amenities of the occupiers of neighbouring properties and to comply with Policies SU10 and QD27 of the Brighton & Hove Local Plan.

14. The premises hereby permitted shall be used for food retail (Planning Use Class A1 / USO Class E) only and for no other purpose (including any other purpose in Class E of the Use Classes Order 2020 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or

without modification). No change of use shall occur without planning permission obtained from the Local Planning Authority.

**Reason:** The Local Planning Authority would wish to retain control over any subsequent change of use of these premises in the interests of the impact on Brighton & Hove's defined shopping centres, on highways and to safeguard the amenities of the area in compliance with Policies TR7, SU10 and QD27 of the Brighton & Hove Local Plan and CP4 and CP9 of City Plan Part One.

Informatives:

1. In accordance with the National Planning Policy Framework and Policy SS1 of the Brighton & Hove City Plan Part One the approach to making a decision on this planning application has been to apply the presumption in favour of sustainable development. The Local Planning Authority seeks to approve planning applications which are for sustainable development where possible.
2. The applicant should be aware that whilst the requisite planning permission is granted, this does not preclude the Environmental Protection department from carrying out an investigation under the Environmental Protection Act 1990, should any complaints be received.

## 2. SITE LOCATION

- 2.1. The application relates to Unit 3 within Goldstone Retail Park on Newtown Road, one of five units over ground and mezzanine floor levels. The retail park also comprises two other buildings of single storey in height containing A3/A5 uses to the western edge adjacent to Goldstone Lane. To the north of the large 302-space car park associated with the buildings is the Old Shoreham Road (A270) and beyond that, the locally listed Hove Park. The unit the subject of this application was most recently in use as Toys R Us until its closure on 19 April 2018, although conversion works associated with the recent planning permission are under way on site.
- 2.2. The building is not within a Conservation Area, nor is it a listed building or in the vicinity of one. The site is also outside Controlled Parking Zone (CPZ), but CPZ T runs along Goldstone Lane to the west, and is within Source Protection Zone 1 and partially within an Archaeological Notification Area.

## 3. RELEVANT HISTORY

- 3.1. **BH2021/00317:** Approval of Details reserved by Condition 11 (Delivery & Service Management Plan) of application BH2020/00549. Under consideration
- 3.2. **BH2021/00574:** Non-Material Amendment to Condition 5 of application BH2020/00549 to change customer opening hours to 11:00 to 17:00 on Sunday. Approved 11 March 2021
- 3.3. **BH2020/03711:** Approval of Details reserved by Condition 7 (Cycle Parking) of application BH2020/00549. Approved 27 January 2021

- 3.4. **BH2020/03561:** Approval of Details reserved by Condition 4 (External Lighting) of application BH2020/00549. Approved 14 January 2021
- 3.5. **BH2020/03559:** Removal of Condition 13 of BH2020/00549 which restricts the hours of deliveries to the store. Withdrawn 27 January 2021
- 3.6. **BH2020/00549:** External alterations to front and rear elevations including installation of new plant. Alterations to part of customer car park to provide trolley storage, covered cycle parking and car parking for disabled and parents. Use of Unit 3 for retail (A1). Approved 8 September 2020
- 3.7. **3/96/0634 (RM)9/PA:** Reserved matters for siting, surfacing and landscaping, design and external appearance of the proposed building, means of access and arrangements for the disposal of surface water. Approved 20 January 1997
- 3.8. **95/0748(OL):** The demolition of the Goldstone football ground and ancillary buildings and construction of non-food retail units with associated car parking, servicing and landscaping. Approved April 1996
- Kap Ltd, Newtown Road
- 3.9. **BH2018/03356:** Demolition of existing buildings in association with car dealership (sui generis) to facilitate the erection of a mixed use redevelopment to provide 148 dwellings (Class C3), 954sqm of office floorspace (Class B1), within a scheme of 3no Blocks ranging from 4 to 11 storeys in height with associated underground car parking, cycle parking and landscaping and 22 sqm of cafe floorspace (Class A3). Approved 29 September 2020

#### **4. APPLICATION DESCRIPTION**

- 4.1. The current application seeks the variation of Condition 13 of application BH2020/00549 to change the servicing hours to 07:00-21:00 Monday to Saturday and 08:00-18:00 on Sunday from 07:00-18:00 Monday to Saturday.
- 4.2. Changes were made during the course of the application to the Noise Impact Assessment (NIA) following comments from Officers on the delivery hours applied for and more information on the impact on the approved Kap development.

#### **5. REPRESENTATIONS**

- 5.1. **Thirty one (31) objections** were received (nine of which were received outside the consultation period), raising the following concerns:
- The proposal would definitely disturb sleep and bedtimes for children.
  - The only respite from the noise and comings and goings in the retail park is on Sundays.
  - This would create a precedent for Sunday deliveries.

- Lidl would have considerably more deliveries than any of the non-food retailers.
- The existing noises are very loud even with the double-glazed windows of the new build dwellings closed.
- Lidl should be able to plan their two deliveries within the hours approved.
- Convenience to the applicant at the expense of noise pollution to the local residents is not a good enough reason to approve this application.
- The hours proposed are anti-social.
- The additional delivery times would have a detrimental effect on mental health and wellbeing.
- The new 148 flats to be built on the site of the former Kap-Peugeot car showroom will be very near to the rear of the Lidl store and would be severely affected by deliveries.
- The proposal would increase the heavy goods traffic and pollution in the area.

5.2. **Two** objections have been received from **Councillors Allcock and Ebel**. Copies of their objection are attached to this report.

## 6. CONSULTATIONS

### External

6.1. **Designing Out Crime Officer (Sussex Police)**: To protect the amenity of the occupiers of neighbouring properties and to comply with Local Plan Policies SU10 and QD27 of the Brighton & Hove whilst providing flexibility to the application, a compromise in the opening hours to be conditioned is suggested of Monday to Saturday 07:00-19:30 and Sunday 10:00-13:00. The application would be supported from a crime prevention perspective subject to that recommendation.

### Internal

6.2. **Environmental Health**: No comment received.

6.3. **Transport**: Following the submission of information as to whether the total number of deliveries are expected to increase with the extension of delivery hours, it has been confirmed that there will be a maximum of 2 deliveries by day and that the extended delivery hours are to allow for greater flexibility in delivery timings and will not result in an increase in deliveries. The extension of hours are outside of normal peak traffic conditions and therefore they are not expected to have an impact on the local highway network. Therefore, approval is recommended.

## 7. MATERIAL CONSIDERATIONS

7.1. In accordance with Section 38 (6) of the Planning and Compulsory Purchase Act 2004, this decision has been taken having regard to the policies and proposals in the National Planning Policy Framework, the Development Plan, and all other

material planning considerations identified in the "Considerations and Assessment" section of the report.

- 7.2. The development plan is:
- Brighton & Hove City Plan Part One (adopted March 2016)
  - Brighton & Hove Local Plan 2005 (retained policies March 2016);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Plan (adopted February 2013);
  - East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan (adopted February 2017);
  - Shoreham Harbour JAAP (adopted October 2019).
- 7.3. Due weight has been given to the relevant retained policies in the Brighton & Hove Local Plan 2005 according to their degree of consistency with the NPPF.

## 8. POLICIES

### The National Planning Policy Framework (NPPF)

#### Brighton & Hove City Plan Part One:

SS1	Presumption in Favour of Sustainable Development
CP9	Sustainable transport

#### Brighton and Hove Local Plan (retained policies March 2016):

SU9	Pollution and nuisance control
SU10	Noise nuisance
QD27	Protection of amenity

#### Brighton & Hove City Plan Part 2:

Policies in the Proposed Submission City Plan Part 2 do not carry full statutory weight but are gathering weight as the Plan proceeds through its stages. They provide an indication of the direction of future policy. Since 23 April 2020, when the Plan was agreed for submission to the Secretary of State, it has gained weight for the determination of planning applications. The weight given to the relevant CPP2 policies considered in determining this application is set out in the Considerations and Assessment section below where applicable.

DM20 -	Protection of Amenity
DM40 -	Protection of the Environment and Health – Pollution and Nuisance

## 9. CONSIDERATIONS & ASSESSMENT

- 9.1. The main considerations in the determination of this application relate to the impact on neighbouring amenity and on highways.
- 9.2. Due to COVID restrictions, Officers did not undertake a site visit in relation to the present application, but it is considered that the context of the development and

the planning considerations relating to this are well understood from the information that is available.

### **Impact on Neighbouring Amenity**

- 9.3. Paragraph 127 of the NPPF outlines that planning decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for existing and future users.
- 9.4. The closest existing residential properties are those within the new terrace on Goldstone Lane, nos. 4-14, of which the latter is the nearest at just over 35m from the delivery bay to the rear in a south easterly direction. However, new dwellings are proposed directly to the rear of the site as part of the 'Kap' development just over 16m away.
- 9.5. Version 7.0 of the Noise Impact Assessment (NIA) provides a noise assessment of activities associated with the food store, specifically noise from deliveries. It is noted that the NIA submitted with the original application did not consider the impact upon the approved dwellings directly to the rear, which was why the delivery hours were retained as existing, but the latest version of the NIA does take them into consideration.
- 9.6. The variation of the condition is sought in order that the applicant's logistics department is provided with maximum flexibility given that the approved food store will be trading seven days a week and their requirement to keep it properly stocked with fresh produce.
- 9.7. The National Planning Policy Guidance (NPPG) on noise identifies that there are three observed effect levels:
  - Significant observed adverse effect level (SOAEL): where noise causes a material change in health, quality of life and behaviour e.g. keeping windows closed for most of the time or avoiding certain activities during periods when the noise occurs. The planning process should be used to avoid this effect occurring e.g. altering the design and layout of the development or site.
  - Lowest observed adverse effect level (LOAEL): where noise starts to cause small changes in behaviour and attitude e.g. having to turn up the volume on the tv. It therefore starts to have an adverse effect on health and quality of life and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits from the activity causing the noise).
  - No observed effect level (NOEL): where noise has no adverse effect so long as it does not cause any change in behaviour or attitude of those affected by it. The noise may slightly affect the acoustic character of an area, but not to the extent there is a change in quality of life. No mitigation measures are required if noise is at this level.
- 9.8. The typical background sound levels for the site during daytime hours (07:00-23:00) are 48 dB Monday to Saturday and 47 dB on Sundays, which are accepted as being lower. There is no need to consider night-time hours.



9.9. In terms of the noise emanating from the deliveries to the proposed food store, the entire duration of the vehicles arriving (5 minutes), unloading (60 minutes) and departing (2 minutes) would take 1 hour seven minutes in total.

9.10. The predicted delivery noise caused by unloading and vehicle movement has been shown on a 'noise map' in the NIA, which shows the proposed KAP development and 4-14 Goldstone Lane as well as 1-15 (odds) Goldstone Lane, which are not considered to be materially affected given the distance involved. The results are as follows:

	4-14 Goldstone Lane	Rear part of KAP	Front part of KAP
HGV Arriving	28 dB	36 dB	40 dB
HGV Unloading	27 dB	51 dB	51 dB
HGV Departing	29 dB	36 dB	41 dB

9.11. As the highest noise levels would be at the front part of the proposed KAP development, this is used as the worst case scenario to determine the noise produced by the sound source over a given reference time interval (in this case, one hour as is standard). The loudest noise (51 dB) would be created by unloading deliveries. Given that delivery noise is normally impulsive in nature, a character correction of 5 dB has been added. This should be added if the noise produced by the sound source exhibits any tonality, impulsivity, other sound characteristics and / or intermittency at the assessment location. Therefore, this equals 56 dB, which is 8 dB above the background sound level.

9.12. Officers usually advise that noise should be below and / or should not exceed background sound level at 1m from the nearest noise sensitive premises during the times it occurs. 8 dB above would therefore be considered unacceptable. However, taking into consideration that the nearest dwelling within the proposed KAP development would be 16m away, the Predicted External Level would be 33 dB, which is 15 dB below the background sound level. Moreover, an Open Window Correction of 15 dB(A) must be subtracted from the Predicted External Level figure to give the Predicted Internal Level. As such, the Predicted Internal Level would be 18 dB. This is less than the British Standard (BS)8233:2014 Internal Noise Criteria for resting (35 dB), dining (40 dB) and sleeping (35 dB), as indicated in Table 3 of the NIA.

9.13. BS4142 correlates the amount of dB difference between the background sound level and the predicted level with the observed effect levels, as provided for in Table 2 of the NIA. Given that both the Predicted External and Internal Levels would be 10 dB less than the background sound level, this corresponds to NOEL. As such, it is considered that the noise predicted to be created would have no adverse effect on the behaviour or attitude of those affected by it, and that no mitigation would be necessary.

9.14. For reference, the nearest existing dwelling is 14 Goldstone Lane at 35m away, and although the Predicted External and Internal Levels for this dwelling have not been calculated, they would be much less than the nearest dwelling within the proposed KAP development.

- 9.15. It is noted that noise mitigation measures are proposed as part of the approved Kap development (as secured by Condition 24 of BH2018/03356 of the Kap approval). For the reasons explained within this report, this application is considered acceptable and it is not reliant on the mitigation measures to be implemented with the Kap development in order for the extended delivery hours not to have an adverse impact on future neighbouring residents. Nevertheless, it is worth noting that the proposed delivery hours fall within the daytime (0700 – 2300) no greater mitigation would need to be applied to the approved development (Kap) than has been secured by condition and it is worth noting that these measures would also cover the additional delivery hours sought by Lidl.
- 9.16. As such, the proposal is considered to be compliant with Local Plan Policies SU9, SU10 and QD27.

### **Impact on Highways**

- 9.17. This application proposes an additional 13 hours per week of delivery hours. However, the food store would have a maximum of 2 deliveries per day apart from busier seasonal periods, such as Christmas, where there would be approx. 1 additional delivery per day on average. There would never be more than one delivery vehicle onsite at any one time.
- 9.18. The rationale behind the extended delivery hours is to allow for greater flexibility in delivery timings, although it is noted that the report for the original report considered that up to three deliveries per day would not have a severe impact on the highway and surrounding transport network. This is still considered to be the case even with the extension of the delivery hours, especially as deliveries will take place outside of the busiest local highway peak periods.
- 9.19. A delivery & service management plan is required by Condition 11 of the planning permission and an application has been submitted to discharge that condition. It is currently under consideration, but the Local Highways Authority consider it acceptable.
- 9.20. In summary, the extension of hours are not anticipated to have an impact on the local highway network. Therefore, the application is acceptable on highways grounds.

## **10. CONCLUSION**

- 10.1. This application is considered acceptable since it has been demonstrated that Condition 13 of BH2020/00549 regarding delivery hours would not have an adverse impact on the residential amenity of neighbouring occupiers in terms of noise and disturbance, or on the local highways network. As such, it is recommended that Condition 13 is varied.

## **11. EQUALITIES**

None identified