



## Report to Buckinghamshire Council – Central Area Planning Committee

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<b>Application Number:</b>	24/02590/VRC
<b>Proposal:</b>	Variation of condition 5 (sale of food) relating to application 93/01756/AOP (retail warehousing).
<b>Site Location:</b>	Units 1, 2 and 3 - Vale Retail Park, Vale Park Drive, Aylesbury, Buckinghamshire, HP20 1DH
<b>Applicant:</b>	B&M Retail Ltd
<b>Case Officer:</b>	Bibi Motuel
<b>Ward(s) affected:</b>	Aylesbury North
<b>Parish-Town Council:</b>	Aylesbury
<b>Date valid application received:</b>	03.09.2024
<b>Statutory determination date:</b>	29.10.2024 (eot agreed until 23/12/2024)
<b>Recommendation</b>	<b>Approval subject to conditions.</b>

### 1.0 Summary & Recommendation

- 1.1 This application is made under S73 of the Town and Country Planning Act 1990 (as amended) to vary condition 5 attached to outline planning permission ref 93/1756/AOP to allow a retailer to sell a limited range of food and drink in Units 1, 2 and 3.
- 1.2 The application is referred to the Planning Committee due to Vale Retail Park being owned and maintained by Buckinghamshire Council and in accordance with the Council's Scheme of Delegation, such planning applications must be determined at the relevant Area Planning Committee to ensure openness and transparency.
- 1.3 Taking all the relevant factors into account and having regard to all relevant policies of the Vale of Aylesbury Local Plan and National Planning Policy Framework, it is considered that proposal would accord with an up to date development plan and is therefore recommended for approval subject to conditions.

### 2.0 Description of Proposed Development

#### *Site*

- 2.1 The site relates to Units 1, 2 and 3 within the Vale Retail Park which is located off of Vale Park Drive in Aylesbury. Units 1, 2 and 3 are all currently vacant but were

previously occupied by Mothercare, Furniture Republic and The Original Factory Shop. Unit 4 is currently occupied by Pets at Home and Unit 5 is occupied by Benson for Beds. In 2023, planning permission was secured under 22/03371/VRC for a variation of condition of 93/01756/AOP to allow occupation of Units 1, 2 and 3 by a food store (Lidl) and allow the retail sale of food goods of up to 1954 sqm, the combined floorspace of Units 1, 2 and 3 amounts to 3,045 sqm. The main access to the retail park is Vale Park Drive but there is a secondary access from Park Street. To the south lies Aqua Vale Swimming and Fitness Centre. The site is surrounded by a mix of uses including retail, commercial and residential uses. The car park area adjacent to Units 1, 2 and 3 comprises 92 car parking spaces with approximately 100 further car parking spaces to the west of the Park servicing Units 4 and 5.

### Proposal

2.2 The application is made under S73 to vary the wording of Condition 5 imposed on outline planning permission ref 93/1756/AOP to enable B&M Retail Ltd to sell a limited range of food and drink. The outline planning permission was granted on 29<sup>th</sup> December 1993 for "Retail Warehousing".

2.3 The current condition that is proposed to be amended is as follows:

**Condition 5** – *"The premises shall not be used for the sale of food other than confectionery, or consumption on the premises, ancillary to the overall use of the site for retail warehousing".*

*Reason: For the avoidance of doubt and to ensure that the details of the development are acceptable to the Local Planning Authority."*

2.4 The new proposed condition would read as follows:

**New Condition 5:** "The premises shall not be used for the sale of food other than confectionery or for the consumption on the premises ancillary to the overall use of the site for retail warehousing, with the exception of Units 1, 2 and 3 where up to 574 sqm can be used for the sale of food and drink goods for consumption off the premises."

2.5 The current application is made under Section 73 of the Planning Act. Although often referred to as an application to vary or remove a condition an application under this section of the Act actually has no effect on the original permission it is not an amendment to the earlier permission. It is a separate freestanding permission that the applicant is entitled to implement or ignore. This application must therefore be capable of being implemented in its own right and therefore all appropriate conditions and obligations must be imposed.

2.6 The merits of the condition(s) must be assessed against an up-to-date development plan. As any permission granted would in effect be a free-standing planning permission all conditions to which the planning permission should adhere must be

reattached. Section 73 of the Town and Country Planning Act 1990 (as amended) states:

“Determination of applications to develop land without compliance with conditions previously attached.

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subjects to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.”

2.7 The variation of condition application (S73) is accompanied by:

- 1 Application Form received on 03.09.2024.
- 2 Planning and Retail Statement dated August 2024 prepared by MWA received on 03.09.2024.
- 3 Drawing No. RB-1727-03 Rev B – Proposed Tracking Drawing received on 07.10.2024.
- 4 Amended Drawing No. 55.010 Rev 1 – Site Plan Proposed received on 28.11.2024

### **3.0 Relevant Planning History**

- 3.1 93/01756/AOP - Retail Warehousing – Approved on 29<sup>th</sup> December 1993
- 3.2 94/00604/ADP - Siting Design Landscaping External Appearance of and the Means of Access to Retail Warehousing
- 3.3 94/01843/AOP – Non-food retail warehousing and associated car parking -Outline permission refused – allowed on appeal in 1995.
- 3.4 95/00338/APP - Retail Warehousing and Associated Car Parking - Approved
- 3.5 96/00883/AAD - 2 No. Illuminated totem signs – Approved.
- 3.6 09/00116/APP - Alteration to enable subdivision of unit into No. 2 units including alterations to front elevations, to provide two new gabled entrance and reconfiguration of existing mezzanine floor, insertion of roof lights, formation of rear extension and alteration to parking and servicing areas - Approved

- 3.7 12/00553/AAD - Non-illuminated car park signage comprising 9 wall mounted signs and 10 pole mounted signs (retrospective) – Approved.
- 3.8 12/00554/APP - Installation of two 6m column for Automatic Number Plate Recognition Camera System to car park with associated base cabinet (retrospective) – Approved.
- 3.9 22/02771/VRC - Variation of condition 2 to allow occupation of a foodstore in Unit 1, Unit 2 and part Unit 3 relating to 13/02178/APP – Withdrawn.
- 3.10 22/02846/APP - Changes to the external appearance, car park alterations, and associated landscaping works – Approved.
- 3.11 22/03371/VRC - Variation of condition 5 relating to 93/01756/AOP (Retail Warehousing) to allow the occupation of a foodstore in Units 1, 2 and part of 3. -The premises shall not be used for the sale of food other than confectionery or for the consumption on the premises ancillary to the overall use of the site for retail warehousing, with the exception of Units 1, 2 and 3 where up to 1,954 sqm can be used for the retail sale of food goods. – Approved on 20.2.2023.
- 3.12 24/02612/APP - Erection of 4.8 metre high fence to provide external garden centre including external lighting and pedestrian access from the store, provision of storage compound in rear service yard, external alterations to the building and reconfiguration of customer car parking spaces including the provision of 3No. electric vehicle charging spaces together with associated charging infrastructure and the provision of a cycle shelter - Pending consideration.

#### **4.0 Ward Cllr(s) and Parish Council comments (*Verbatim*)**

- 4.1 Ward Councillor(s) for Aylesbury North comments (verbatim)
- None received at the time of writing report.
- 4.2 Aylesbury Town Council comments (verbatim):
- Aylesbury Town Council has no objection to this application. Received on 25.09.2024.

#### **5.0 Consultees:**

- See Appendix A.

#### **6.0 Representations**

- 6.1 No comments received at the time of writing report.

#### **7.0 Policy Considerations and Evaluation**

- 7.1 The Vale of Aylesbury District Local Plan (VALP) was adopted on 15/9/2021 and therefore full weight can now be afforded to it.
- 7.2 There is no Neighbourhood Plan either 'made' or in preparation for Aylesbury.

- 7.3 Aylesbury Garden Town Masterplan
- 7.4 National Planning Policy Framework (NPPF) December 2023
- 7.5 National Planning Practice Guidance (NPPG)
- 7.6 Buckinghamshire Minerals and Waste Local Plan (July 2019) - Policy 1: Safeguarding Mineral Resources – Not within a Mineral Safeguarding Area.
- 7.7 Supplementary Planning and other Guidance
  - Recycling and Waste: Advice note for developers 2019
  - Copies of these documents and a copy of the adopted VALP are available at [www.buckinghamshire.gov.uk](http://www.buckinghamshire.gov.uk)

**Principle of Development, including impact on vitality of the town centre**

- 7.8 The retail park was established in 1993 from a former highway's depot. It is only the changes now being applied for that need to be assessed.
- 7.9 Application 93/01756/AOP was subject to a condition (5) that sought to restrict food sales, other than confectionary, ancillary to the use of the site for retail warehousing.
- 7.10 A subsequent application, 13/02178/APP, sought to vary condition 5 to allow the retail sale of 175 sqm of food from the premises but this only related to Unit 3.A variation of condition application was submitted under 22/03371/VRC in order to allow the retail sale of food goods of up to 1,954 sqm within Units 1, 2 and 3. This was approved in February 2023 and has not yet been implemented but remains extant.
- 7.11 Vale Retail Park lies within the defined boundary of Aylesbury Town Centre within the VALP, prior to the VALP it is understood that the site fell outside the designated centre. Vale Retail Park comprises five retail units, along with associated car parking and landscaping.
- 7.12 The agent has explained in the Planning and Retail Statement that the combination of Units 1, 2 and 3 will provide a B&M Store with a gross internal area of 2,642 sq.m. (excluding the proposed external garden centre, subject of a separate planning application – also on the Committee Agenda for this meeting). The net sales area within the store is planned to extend to 2,294 sq.m. Therefore, the sale of up to 574 sq.m. within the store for the sale of food and drink equates to 25% of the total sales area. It represents less than 30% of the area permitted under App. No. 22/03371/VRC. The scheme would deliver 48 part time and 11 full time jobs (FTE = 39).
- 7.13 Paragraph 90 of the NPPF states that planning decisions should take a positive approach to the growth, management and adaptation of town centres. Paragraph 91 states that Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in

accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

- 7.14 Paragraph 92 adds that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 7.15 Turning to the VALP, policy D8 supports qualitative redevelopment in the town centre. Policy D9 supports development for retail and other town centre uses within the Town Centre to reflect Aylesbury's status as a Garden Town.
- 7.16 The Council's Economic Development Officer was and welcomed the creation of 11 full-time and 48 part – time jobs proposed by this application. During the application the agent confirmed that there were no plans to close the existing B&M Store at Cambridge Close.
- 7.17 The application site lies within Aylesbury Town Centre, about 250 metres from the Primary Shopping Area (PSA). Consequently, the application site is edge of centre having regard to Annex 2 of the NPPF.
- 7.18 The applicant has completed the required sequential assessment in the context of a bulky goods retail unit with a minimum floor area of 2,000 sq.m. gross on one or two floors. Officers agree with the conclusions reached, it is concluded that there are no suitable, available and sequentially preferable alternative sites in the town centre that can accommodate the development proposal.
- 7.19 As such, it is concluded that the use of Units 1, 2 and part of 3 for the sale of food is acceptable in principle and there would be no impact upon the vitality and viability of the town centre. It would also avoid the units standing empty. It has been demonstrated that there are no sequentially available sites and given the location within the town centre, a retail impact assessment is not required. The proposal is therefore considered to be acceptable and complies with policies D8 and D9 of VALP and also accords with the NPPF.
- 7.20 The current proposal does not have any implications in terms of visual amenity and character of the area, design, flooding and drainage, residential amenity or biodiversity. The only matter that needs to be considered is impact on transport and parking.

### **Transport Matters**

VALP policies T1 (Delivering the sustainable transport vision), T5 (Delivering transport in new development), T6 (Vehicle parking), T8 (Electric Vehicle Parking) and Appendix B (Parking Standards).

- 7.21 It is necessary to consider whether the proposed development is located where the need to travel will be minimised, the use of sustainable transport modes can be maximised, and that safe and suitable access can be achieved.
- 7.22 The Highways Authority were consulted on the current application. The Highways Officer initially stated that under this new application only 574sqm of floor space will be used for the sale of food and drink and therefore any increase in vehicular movements will be substantially less than what has been assessed and deemed acceptable under the previous application (22/03371/VRC). Therefore, given what has already been permitted, the Highways Officer has no concerns with the trip generation or traffic impact on the local highway network.
- 7.23 The site is located 0.3 miles away from the nearest bus stop and regular bus services connect to Broughton Village, Milton Keynes and Leighton Buzzard. There is a plethora of footways in the vicinity of the site providing good pedestrian access. There is a cycle route along the eastbound carriageway of the A418 in front of B&Q and there are many roads around the town that would facilitate cycling to and from work / home. The site is in close proximity to many nearby facilities and services. Overall, the site is considered sustainable in transport terms in the context of the requirements of the NPPF and would not be reliant on the use of the private motor vehicle.
- 7.24 With regards to access arrangements, the site will use the two existing accesses from Vale Park Drive and Park Street. These accesses need to comply with the visibility requirements stated by Manual for Streets of 2.4m x 43m from both directions to the near side carriageway. After assessing the site, the Highways Officer is satisfied that this level of visibility can be achieved and that the internal access roads are wide enough to support two-way vehicular flow and for vehicles to pull clear of the highway. The internal layout and road markings are staying the same with an identical one-way system through the northern car park. The Highways Officer is satisfied with these arrangements.
- 7.25 Policy T6 of VALP sets out what the parking requirements will be for each development, and this is supplemented by Parking Standards in Appendix B.
- 7.26 The Planning and Retail Statement states that access will be achieved from the rear service yard. There will be no change in the number of shared customer car parking spaces within the retail park associated with the proposed variation.
- 7.27 Table 2 in Appendix B of VALP states that Retail (non-food) use = 1 space per 38sqm but Retail (food) use = 1 space per 17sqm, so 45 parking spaces would be required for the non-food element and 34 parking spaces are required for the food element, totalling 79 parking spaces. The Highways Officer sought the resubmission of a previous parking layout with an upgraded 82 spaces including blue badge spaces along with 3 dedicated EV bays (3m x 6m). With regards to cycle parking.

- 7.28 Through negotiation and submission of an amended proposed site plan, the Highways Officer confirmed that he is now satisfied with the number and size of parking spaces in the car park (88 spaces that are 2.5m x 5m) as well as 3 EV and 4 Blue Badge spaces. It is recognised that the spaces are shy of current standard, but weight is given to the fact that they are already on site and well used. While the location of the EV spaces is not considered ideal, the Highways Officer does not consider that objection on this reason could be sustained. He is also now content with the number of cycle spaces (24).
- 7.29 With regards to refuse collection/deliveries, the agent has set out that the existing service yard was designed to serve 3 units and even with the addition of the small external storage yard, that the occupation by B&M would not make any difference of the ability of vehicle to track in a forward gear within this area. Nevertheless, a drawing was submitted showing tracking of 16.5 tonne artic. The agent added that deliveries by articulated vehicles would typically be 3-4 per week and there would be no overlap with deliveries and no realistic prospect of having more than one delivery vehicle in the service yard at any one time. The Highways Officer confirmed that he is satisfied with this arrangement. In terms of refuse collection, recycling will be loaded onto delivery vehicles after they have been unloaded and the Highways Officer is satisfied with this arrangement.
- 7.30 Therefore, the proposal is considered to comply with policies T1, T5 and T8 of the VALP, and the NPPF in this regard.

### **Biodiversity Matters**

- 7.31 The proposal is considered exempt from the need to provide a net gain of 10%. The proposal is considered de-minimus and does not impact more than 25sqm of on site habitat.

### **Consideration of Previously Imposed Conditions**

Condition 1 – This sought details of the design and external appearance of the buildings. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 2 – This required matters in condition 1 to be approved within three years, so this has been complied with.

Condition 3 – This requires development to be begun within 5 years or 2 years from matters in condition 1. Complied with.

Condition 4 – Layout drawing and landscaping principles– given the time that has passed since 1993, this condition is no longer relevant.

Condition 5 – Restriction of food sales – To be amended.



Condition 6 – Scheme of landscaping details to be submitted. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 7 – Failed landscaping to be replaced within 5 years. Complied with.

Condition 8 – Means of enclosure. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 9 – Car parking details to be provided. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 10 – Details of lighting to be submitted. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 11 – Design and external appearance. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 12 – Programme of highway improvement works to be approved. These matters were approved on 23 June 1994 (ref: 94/00604/ADP) so this has been complied with.

Condition 13 – Means of access to be laid out. Complied with.

Condition 14 – New access to Park Street laid out. Complied with.

Condition 15 – Other accesses to be stopped up – complied with.

Condition 16 – turning area to be laid out and retained. Complied with and no longer relevant.

Condition 17 – Scheme for parking to be provided and retained. Complied with and no longer relevant.

Condition 18 – Visibility splays to be provided. Complied with.

Condition 19 – New pedestrian access to be constructed. Complied with.

Condition 20 – New highway boundary to be defined by fencing. Complied with.

## **8.0 Weighing and balancing of issues / Overall Assessment**

8.1 This section brings together the assessment that has so far been set out in order to weigh and balance relevant planning considerations in order to reach a conclusion on the application.

8.2 The principle of the development was established by 93/01756/AOP and only those matters that are affected by the changes to the conditions have been assessed. It has been concluded that the proposal would not be substantially different from that originally granted planning permission and the revisions now proposed, namely the amendments to condition 5 to allow the retail sale of food and drink goods of up to 574 sqm within Units 1, 2 and 3, would be acceptable.

8.3 The scheme has also been considered acceptable in terms of its impact on transport matters.

- 8.4 Taking all the relevant factors into account and having regard to all relevant policies of the VALP, and NPPF, it is considered that proposal would accord with an up-to-date development plan and is therefore recommended for approval.

## 9.0 Working with the applicant / agent

- 9.1 In accordance with paragraph 38 of the NPPF (December 2023) the Council approach decision-taking in a positive and creative way taking a proactive approach to development proposals focused on solutions and work proactively with applicants to secure developments.
- 9.2 The Council work with the applicants/agents in a positive and proactive manner by offering a pre-application advice service, and as appropriate updating applications/agents of any issues that may arise in the processing of their application.
- 9.3 In this instance the applicant was provided the opportunity to submit further information to the scheme to address issues. The agent responded by submitting additional information which were found to be acceptable, so permission was granted.

## 10.0 Recommendation

- 10.1 The officer recommendation is that the application be **APPROVED** subject to the following conditions:

1. The premises shall not be used for the sale of food other than confectionery or for the consumption on the premises ancillary to the overall use of the site for retail warehousing, with the exception of Units 1, 2 and 3 where up to 574 sqm can be used for the sale of food and drink goods for consumption off the premises.

**Reason:** To ensure that the details are acceptable to the local planning authority and comply with policies E5, D8 and D9 of Aylesbury Local Plan and also accords with the National Planning Policy Framework.

2. The development hereby permitted shall only be carried out in accordance with drawing numbers RB-1727-03 Rev B – Proposed Tracking Drawing received by the Local Planning Authority on 07.10.2024 and 55.010 Rev 1 Proposed Site Plan received on 28.11.2024, and in accordance with any other conditions imposed by this planning permission.

**Reason:** For the avoidance of doubt and to ensure that the details of the development are acceptable to the Local Planning Authority and to comply with the National Planning Policy Framework.

3. The scheme for parking and manoeuvring (including EV and Blue Badge bays) indicated on the approved plans shall be laid out prior to the first use of the development hereby permitted and that area shall not thereafter be used for any other purpose.

**Reason:** To enable vehicles to draw off, park and turn clear of the highway to minimise danger, obstruction and inconvenience to users of the adjoining highway and to accord

with the National Planning Policy Framework and policies T6 and T8 of the Vale of Aylesbury Local Plan.

4. Prior to the commencement of any works on the site, a construction traffic management plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall provide for the following:
  - The routing of construction vehicles.
  - Construction access details, temporary or otherwise.
  - The parking of vehicles of site operatives and visitors.
  - Loading and unloading of plant and materials storage of plant and materials used in constructing the development.
  - Operating hours.
  - The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
  - Wheel washing facilities.
  - Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused.

The approved CTMP shall be adhered to throughout the construction period.

**Reason:** In order to mitigate any unacceptable transport impacts arising during construction and comply with Policy T5 of the Vale of Aylesbury Local Plan, and National and Local Transport Policy.

Informatives:

1. No vehicles associated with the building operations on the development site shall be parked on the public highway so as to cause an obstruction. Any such wilful obstruction is an offence under S137 of the Highways Act 1980.
2. It is an offence under S151 of the Highways Act 1980 for vehicles leaving the development site to carry mud onto the public highway. Facilities should therefore be provided and used on the development site for cleaning the wheels of vehicles before they leave the site.

# **APPENDIX A: Consultation Responses and Representations**

## Councillor Comments

- None received

## Parish/Town Council Comments

- Aylesbury Town Council has no objection to this application. Received on 25.09.2024.

## Consultation Responses

- Highway Officer – Further information is required to address the following concerns:
  - First comments. Requests provision of parking layout as agreed under application no 22/03371/VRC including 82 upgraded spaces, 26 cycle spaces, vehicle tracking showing that a 16.5m long HGV can safely enter, manoeuvre in the service area and leave the site in a forward gear. Also request clarification regarding the refuse collection strategy for the site. Received on 27.09.2024.
  - Second comments received on 21.10.2024 requested additional information.
  - Third comments received on 29.10.2024 requested additional information.
  - Fourth and final comments received on 2.12.2024 that the information submitted is acceptable subject to condition and informatives.
- Environmental Health Officer – No comments to make or conditions to include on any planning consent. Received on 11.09.2024.
- Economic Development Officer
  - ED does not have any comments to make on this application other than to welcome the creation of 11 full-time and 48 part – time jobs proposed by this application. ED would like to know if this would result in the relocation of the store from Cambridge Close Retail Park. Received on 05.09.2024.
  - 2nd and final comments (following response from agent stating that the company does not have any plans currently to close its existing store at Cambridge Close). ED is satisfied with this explanation. Received on 06.06.2024.

## Representations

- None received.

