

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **7<sup>TH</sup> JANUARY 2014**

**ADDRESS/LOCATION** : **PEEL CENTRE, ST ANN WAY**

**APPLICATION NO. & WARD** : **13/00559/FUL  
MORELAND**

**EXPIRY DATE** : **5<sup>TH</sup> SEPTEMBER 2013**

**APPLICANT** : **PEEL LAND & PROPERTY INVESTMENT  
PLC & GLOUCESTER QUAYS LLP**

**PROPOSAL** : **VARIATION OF CONDITION 1 OF PLANNING  
PERMISSION REF. 09/01311/FUL (TO  
ALTER THE RANGE OF GOODS THAT CAN  
BE SOLD FROM AMALGAMATED UNIT 3A  
AND 3B)**

**REPORT BY** : **ADAM SMITH**

**NO. OF APPENDICES/  
OBJECTIONS** : **SITE PLAN  
FOUR REPRESENTATIONS  
DPDS CONSULTING COMMENTS  
WYG RESPONSE LETTER  
DPDS CONSULTING FINAL COMMENTS**

**1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 The application relates to part of the Peel Centre retail and leisure complex to the south of St Ann Way. Bristol Road is to the east, the canal is to the west with the new Sainsburys foodstore beyond. The Gloucester Quays outlet centre is to the north beyond St Ann Way with the south west section of Bakers Quay remaining vacant. To the south is the Morelands industrial estate.
- 1.2 The complex comprises a range of brick faced units dating from the late 1980s and includes retailers Toys R Us, Hobbycraft, Bensons and Dreams, plus Gala Bingo, three restaurants/take-aways and a cinema (although the cinema at Gloucester Quays has now opened instead). Units 3a and 3b (formerly a furniture store and Stead & Simpson/Shoe Zone) and 4b (in front of Gala Bingo) are vacant. There is an extant permission to extend the cinema and convert for retail use that is subject to restrictions on the goods that can be sold.

1.3 The planning history of the Peel Centre is fairly complex. It was built pursuant to three planning permissions for different phases of the development as follows:

Permission ref. 11159/11a

1.4 Permission ref. 11159/11a granted full planning permission for 93,000 square feet of retail development, plus a drive-through restaurant and associated highway and car park. It appears that retail units 1, 2 and 3 (a and b) were built under this permission.

1.5 Permission was subsequently granted at unit 3a (also termed 3b in some applicant correspondence) to vary condition 6 of the above permission to allow Shop for Shoes Ltd to occupy the unit (permission ref. 53397/02 – personal to Shop for Shoes). An earlier application was refused permission.

1.6 Permission was subsequently granted at unit 2 (formerly Currys) to vary condition 6 of the above permission to allow 'Hobbycraft' to occupy the unit (permission ref. 96/00180/FUL – personal to Hobbycraft).

1.7 Permission was subsequently granted at unit 3a to vary condition 6 of the above permission to include the retail sale of sports equipment, sports goods, sports apparel, associated leisure wear and footwear (application ref. 98/00222/FUL). This was granted by an Inspector redetermining the appeal after the Authority refused permission and it was eventually referred to the High Court. The unit was occupied by JJB sports until March 2006.

Permission ref. 11159/11b - Associated application for cinema, etc.

1.8 An associated outline planning application 11159/11b was made at the same time as 11159/11a, with outline planning permission being granted for 16,000 square feet of retail development, plus a multiplex cinema, theme bar, restaurant and car park. Reserved matters approval was subsequently granted via applications 11159/11b(i) and (ii). It does not appear that the retail element of this permission was implemented. The applicant has previously agreed with this conclusion.

Permission ref. 11159/13

1.9 Permission ref. 11159/13 granted full planning permission for 41,000 square feet of retail development and a car park area. It appears that retail units 4 (a and b) and 5 (a and b) were built under this permission.

1.10 Subsequently planning permission was granted for the use of part of unit 4 as a bingo club with the retention of the remainder for retail (permission ref. 95/00079/COU).

1.11 Permission was subsequently refused at unit 4a to vary condition 6 of the above permission for the use of part of the unit for the retail sale of shoes (application ref. 95/00442/FUL).

1.12 Subsequently planning permission was granted for the change of use of unit 4a from retail to casino (permission ref. 96/00258/COU).

1.13 There is no subsequent history for Units 5a and 5b.

Original limitations on goods for sale

1.14 The retail elements of the Peel Centre are covered by conditions restricting the goods that can be sold, in the interests of protecting the city centre (primary shopping area) retail function. Each of the original permissions includes a condition restricting sales to – carpets, furniture, electrical goods, DIY maintenance and improvement products for the home, garden and car, with the exception of unit 1 which was permitted to sell toys (the Toys R Us unit).

Amended limitations on goods for sale

1.15 Subsequently, applications 09/01308/FUL and 09/01311/FUL were made to vary the goods restrictions on the Peel Centre.

1.16 Permission 09/01311/FUL prevents the sale of the following goods unless expressly provided for below and/or on a basis which is incidental and/or ancillary to the main goods sold:

1. Food and drink, other than for consumption on the premises;
2. Clothes and fashion accessories;
3. Footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009);
4. Sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009);
5. Toys excepting only the sale of toys from no more than 4,048 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009);
6. Books and stationery except where included as part of the range of a toy retailer;
7. Cameras, video equipment, mobile phones, audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc;
8. Pharmaceutical goods, perfume goods and toiletries;
9. Jewellery goods, clocks and watches; and
10. All uses within categories A1 (B to F) of Class A1.

1.17 This consolidated the various user-specific allowances and other later permissions for Hobbycraft, Toys R Us, etc and applies to units 3a and 3b that are specified in this application.

Applicants' proposals

1.18 Turning to the current application, the applicants amended their proposal during the course of the application and later updated their retail statement to reflect this. They have also submitted a third round of information in response

to the initial DPDS Consulting comments. The original proposal sought a variation of condition, and was noted to be to accommodate retailers B&M, Home Bargains and The Range.

- 1.19 The current amended proposal seeks to allow the sale of an expanded range of goods from a unit created by amalgamating the current units 3a and 3b (2,301 sq metres gross). This is noted to be for Home Bargains to take occupation. Units 3a and 3b are between what is currently Hobbycraft and Gala Bingo.
- 1.20 This change would involve the following further alterations to the amended restrictive goods condition (in italics and underlined):

“Notwithstanding the provisions of Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or any other Order revoking, amending or re-enacting that Order with or without modification, the retail units as defined in green on Plan XXXXX (received by the Local Planning Authority on XXXXX) in so far as the same form part of the development hereby approved shall not be used for the sale of the following goods unless expressly provided for below and/or on a basis which is incidental and/or ancillary to the main goods sold:

1. Food and drink, other than for consumption on the premises (*except from no more than 690 square metres of gross floorspace within amalgamated Units 3a and 3b*);
2. Clothes and fashion accessories;
3. Footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009);
4. Sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009);
5. Toys excepting only the sale of toys from no more than 4,048 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3<sup>rd</sup> December 2009) *and from no more than 230 square metres of gross floorspace within amalgamated Units 3a and 3b*;
6. Books and stationery except where included as part of the range of a toy retailer;
7. Cameras, video equipment, mobile phones, audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc;
8. Pharmaceutical goods, perfume goods and toiletries (*except from no more than 230sq m of gross floorspace within amalgamated Units 3a and 3b*);
9. Jewellery goods, clocks and watches; and
10. All uses within categories A1 (B to F) of Class A1.”

## **2.0 RELEVANT PLANNING HISTORY**

- 2.1 The planning history has already been set out in the introduction at section 1 above.
- 2.2 It is also of note to acknowledge a Report to the Highways and Planning Committee dating from October 1996, which recommended the City Council reaffirm its commitment to the existing 'bulky goods' condition as it applies to the retail units at the Peel Centre. Notwithstanding this, it was furthermore proposed that the owners of the Peel Centre be advised that the City Council is prepared to consider on their merits applications for changes of use to Assembly and Leisure Uses (Class D2) to a maximum of 3 of the 8 units existing at that time. The Committee resolved to endorse these recommendations.

### **3.0 PLANNING POLICIES**

- 3.1 The following planning guidance and policies are relevant to the consideration of this application:

#### Central Government Guidance - National Planning Policy Framework

The NPPF is a material consideration in determining this application.

##### *Decision-making*

The NPPF does not alter the requirement for applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

The NPPF is underpinned by a presumption in favour of sustainable development. It advises that authorities should approve development proposals that accord with statutory plans without delay, and also grant permission where the plan is absent, silent, indeterminate or out of date. This should be the case unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the framework as a whole, or specific policies in the NPPF indicate development should be restricted.

Authorities should seek to approve applications where possible, looking for solutions rather than problems.

##### *Building a strong, competitive economy*

The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth.

The NPPF retains a recognition of town centres as the heart of communities and encourages the pursuit of policies to support their vitality and viability.

The sequential and impact tests are maintained for planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up to date Local Plan.

Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more the 'impact' factors, it should be refused.

\* While Planning Policy Guidance notes and Planning Policy Statements have been deleted with the introduction of the National Planning Policy Framework, the technical guidance that accompanied PPS4 has not been cancelled and its status is unchanged as guidance supporting town centre policies in the NPPF.

#### *Promoting sustainable transport*

Seeks to ensure developments generating significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Decisions should take account of whether;

- The opportunities for sustainable transport modes have been taken up;
- Safe and suitable access to the site can be achieved for all people;
- Improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented on transport grounds whether the residual cumulative impacts of development are severe.

#### The Development Plan

3.2 Section 38 of the Planning and Compulsory Purchase Act 2004 has established that - "The development plan is  
(a) The regional spatial strategy for the region in which the area is situated, and

(b) The development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy that is contained in the last document to be adopted, approved or published (as the case may be). If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The Regional Spatial Strategy has been revoked.

3.3 Local Plan:

The statutory development plan for Gloucester remains the City of Gloucester Local Plan (Adopted 1983 and partially saved until the Local Development Framework is adopted).

- Subsequent to the 1983 plan there has also been the City of Gloucester (Pre-1991 Boundary Extension) Interim Adoption Copy October 1996), and City of Gloucester First Stage Deposit Local Plan (June 2001).
- Regard must also be had to the 2002 Revised Deposit Draft Local Plan. This has been subjected to two comprehensive periods of public and stakeholder consultation and adopted by the Council for development control purposes. This cannot be saved as it is not a formally adopted

plan, however with it being adopted for development control purposes it is still judged to be a material consideration. Appeal reference APP/U1620/A/07/2046996 dated 18<sup>th</sup> March 2008 confirms the degree of weight that may be afforded to the 2002 Revised Deposit Draft Local Plan. It is considered that particular weight may be afforded to those policies that attracted a limited number of, or no objections during the consultation stages. In his decision the Inspector stated the following;  
“Although the local plan is not part of the development plan it has been adopted for development control purposes and I give considerable weight to it having regard to the amount of public consultation that it underwent...”

#### 2002 Plan allocations

- 3.4 The site is within the Western Waterfront mixed use allocation.

#### 2002 Plan Policies

- 3.5 The aims of the following additional policies from the City of Gloucester Second Deposit Local Plan (2002) are relevant in considering this application:  
TR.31 – Road safety  
S.4a – New retail development outside designated centres

#### Emerging Plan

- 3.6 In terms of the emerging local plan, the Council is preparing a Joint Core Strategy with Cheltenham and Tewkesbury Councils and has recently published for consultation a Draft Joint Core Strategy. In addition to the Joint Core Strategy, the Council is preparing its local City Plan which is taking forward the policy framework contained within the City Council’s Local Development Framework Documents which reached Preferred Options stage in 2006.

#### Revised Draft Central Area Action Plan (2006)

- 3.7 This reached preferred options stage in August 2006. Of note for this application, it sets out the current policy position in relation to Priority Area 3 – Kings Square and the Bus Station. Policy CA20 allocates the wider area for major new comparison goods retail development as part of a mixed use scheme. It also provides general development control policies. The content of the plan will be taken forward through the emerging Gloucester City Plan.

#### Revised Draft Supplementary Planning Document Kings Square and Bus Station Planning Brief (2007)

- 3.8 This sets out the Council’s approach to the development of this area. It is not formally adopted by the Council but was prepared in accordance with the relevant planning regulations and subject to extensive public consultation.

#### Kings Quarter Planning Concept Statement

- 3.9 This statement carries forward previous policy objectives for the Kings Square and Bus Station area of the City. It sets out the opportunity and objective to deliver a redevelopment of Kings Quarter, creating a vibrant addition to the City’s shopping offer, including a new and improved bus station, improved linkages to the railway station, Northgate Street and the city centre, and public

realm improvements. Crucially, the redevelopment is to deliver a significant change in the City's retail performance by achieving a substantial quantum of new retail-led, mixed use development which will act as a catalyst for the continued regeneration of the wider city centre area and city as a whole.

#### The Portas Review

- 3.10 This is not a statutory planning document but considerable political weight has been attributed to the Portas review and is widely held to be an influence on government's approach. It was undertaken at the request of the Prime Minister and considered the health and performance of the high street and retail centres across the country, including the various threats to retail centres such as competition from out of centre developments.
- 3.11 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – [www.gloucester.gov.uk/planning](http://www.gloucester.gov.uk/planning); Gloucestershire Structure Plan policies – [www.gloucestershire.gov.uk/index.cfm?articleid=2112](http://www.gloucestershire.gov.uk/index.cfm?articleid=2112) and Department of Community and Local Government planning policies - [www.communities.gov.uk/planningandbuilding/planning/](http://www.communities.gov.uk/planningandbuilding/planning/).

#### **4.0 CONSULTATIONS**

- 4.1 DPDS Consulting has been employed to provide retail policy advice on the application. Two advice letters are appended and a summary is set out in the analysis below.
- 4.2 The City Centre Community Partnership has not commented.

#### **5.0 PUBLICITY AND REPRESENTATIONS**

- 5.1 6 interested parties were notified directly of the original and amended proposals. Press and site notices were also published, and again for the amended application. A further period of consultation expired on 17<sup>th</sup> December 2013.
- 5.2 Four representations have been received and are appended. They may be summarised as raising the following issues:

There would be direct competition with the city centre from allowing a broader range of goods to be sold;

The primary shopping area is already vulnerable with many vacant units;

Out of centre retail floorspace should remain restricted to non food bulky goods;

The additional range of goods should not be allowed due to impact on the city centre and planned private/public investment;

The Kings Quarter proposal is a committed, planned public and private investment with policy support and protection;



The Retail Study 2011 identifies that Kings Quarter will meet Gloucester's quantitative need of 12,557 sq m floorspace capacity for comparison goods (bulky and non-bulky) to 2016;

There is no expenditure growth predicted over and above that needed to support Kings Quarter that might mitigate the impact of out of centre development;

Cumulative effects along with other retail proposals will result in 'death by a thousand cuts' for the Kings Quarter scheme;

The sequential test submission is flawed as it is based on the assessment from a previous application and out of date;

Kings Quarter is a sequentially preferable site that is suitable, viable and available for the scale of floorspace proposed. As a planned investment that is important to the long term vitality and viability of the city centre it must be given priority over ad hoc out of centre retail development in order to remain viable and be delivered as soon as possible;

No genuine reason has been given why the former M&S unit at Northgate Street cannot be occupied by Home Bargains, and it can still be deemed to be available until contracts have been signed;

The operator requirements set out are irrelevant given that none of the additional goods sought are bulky – all are non-bulky and can be sold from centres;

Home Bargains itself operates a town centre format;

Permission should not be granted on the grounds that other out of centre development has been allowed through a 'personal permission';

The application is not for a personal consent for Home Bargains – other retailers could also take occupancy who would otherwise locate in the city centre;

Granting permission would set a precedent for other similar proposals. The Council must take a consistent and robust approach to such proposals as the cumulative effect of allowing these could cause real harm to City Centre vitality and viability.

5.3 The full content of all correspondence on this application can be inspected at Herbert Warehouse, The Docks, Gloucester, prior to the Committee meeting.

## 6.0 **OFFICER OPINION**

- 6.1 It is considered that the main issue with regard to this application is economic, particularly policy on retail matters. The change in the nature of goods is unlikely to have any severe impact on highway safety.

#### Economic Development

- 6.2 The application involves a retail proposal, and retail is a main town centre use. The location of the site is out of centre. Under these circumstances the National Planning Policy Framework sets out sequential and impact tests. These are also evident in the criteria of 2002 Second Deposit Local Plan Policy S.4a.

#### *Recent Home Bargains proposals*

- 6.3 The Council has recently considered two applications for sites elsewhere in the city, for Home Bargains to take occupation. Both were refused. The first was for unit 2b, 108 Eastern Avenue. This sought to expand the range of goods permitted to be sold from this 1115 sq metre unit. The application was refused on the basis that the applicant had failed to demonstrate that there were no sequentially preferable sites in Gloucester City Centre or on sites in a more accessible location. In this respect it was considered that the applicants had not thoroughly considered the former M&S unit 13-23 Northgate Street, Kings Quarter, vacant existing units at the Peel Centre, and the Cineworld site at the Peel Centre.

- 6.4 The second was for the amalgamation of two units adjacent to Lidl, Canada Wharf, Bristol Road, plus an extension, with a wider range of permitted goods to be sold from the resulting 1,061sq metre unit. The application was refused for the same reasons as the Eastern Avenue proposal above.

#### *Current proposal – amended condition*

- 6.5 The changes to the existing condition as set out earlier, involve three areas of alteration – allowing no more than 690sq m for food and drink, no more than 230sq m for toys, and no more than 230sq m for pharmaceutical goods, perfume goods and toiletries. This would leave 1151sq m at minimum of goods already allowed by the condition.

- 6.6 The applicant submitted a rebuttal to the initial advice letter of the Council's retail consultant and this is appended.

#### *Current proposal – policy context*

- 6.7 The NPPF sets out two key tests for retail proposals not in a designated centre nor in accordance with an up to date development plan. These are the sequential and impacts tests. Given the nature of such retail considerations and the detailed analysis that becomes necessary, the Council has commissioned a retail consultant, DPDS Consulting, to advise on the application.

#### Sequential test

- 6.8 The sequential test applies to applications for town centre uses that are not in an existing centre (this is not), and not in accordance with an up to date development plan (again this is not). Therefore the sequential test is

applicable to this application. It requires such town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. It follows that when considering edge and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

- 6.9 Applicants should demonstrate flexibility in terms of format, design and scale in considering alternative sites. Authorities should take into account any genuine difficulties that can be demonstrated.
- 6.10 The Peel Centre is approximately 870 metres from the Primary Shopping Area as defined in the 2002 Second Deposit Local Plan.
- 6.11 Home Bargains have apparently been considering whether its customer/business model requirements serving part of the Gloucester market could be met at a larger unit of 2,000 to 2,300 sq metres gross and have concluded that the combined 3a and 3b at the Peel Centre would meet their requirements.
- 6.12 The applicants consider that their complete product range is required to attract customers and is 'essential in providing the appropriate synergy within the retail unit and provides a commercially viable store', furthermore that it is not possible to disaggregate the product range as it would not provide the critical mass of products.

**Former M&S, 13-23 Northgate Street**  
**Applicants' assessment**

The applicants have commented on availability, suitability and viability.

*Availability*

- 6.13 The applicants originally noted that this unit was under offer to TK Maxx, and was not being actively marketed. They appear not to be continuing this in their latter response.

*Size and levels*

- 6.14 The size of this unit at 4066sq m gross is significantly larger than what Home Bargains require. It would not trade from this unit.
- 6.15 Home Bargains do have historic city/town centre stores, generally much smaller and offering a truncated retail offer. This offer has proven far less viable in recent years and they have broadened their offer, requiring larger stores.
- 6.16 Home Bargains' large format store requires a single floorplate. This is because customers buy more in bulk, more often than not using trolleys. Customers are put off by lifts and elevators from shopping on a second floor. Given the turnover of product, distribution over two levels would be impossible without compromising trading performance. The likelihood for shrinkage or theft is significantly increased on multi-levels and this poses a threat to

viability for retailers trading from limited margins. It cannot split its line over multiple levels with separate checkout areas.

- 6.17 The size of store is dictated by the forecast of critical mass required to create a viable trading proposition. It cannot be expected for a retailer to deviate from their business model where this would be unviable.

*Trolleys*

- 6.18 As above, the Home Bargains business model, particularly in recent years, is that the product range contains many bulky items and customers use trolleys. Trolleys are not conducive to multi-level retailing.

*Parking*

- 6.19 Home Bargains' large format store requires immediately adjacent at-grade parking primarily due to the shopping in bulk with trolleys.

*Rents*

- 6.20 The rents sought would not be commercially viable for Home Bargains. It is over 50% higher than the rent Home Bargains could afford. DPDS' comments on this are given without specialist agent/surveyor advice. As the unit is fundamentally unviable the retailer should not have to divulge commercial information in support of the proposal.

- 6.21 TK Maxx was being asked to pay the remediation costs for asbestos as well as the rent. If this is not viable for a fashion/variety retailer it cannot be for a discount retailer such as Home Bargains.

***DPDS assessment***

- 6.22 As an overarching point, as the proposal would not restrict occupation to Home Bargains (and no written support has been given), the weight that should be given to the particular difficulties of this operator should be limited. Much of the applicants' analysis is couched in terms of Home Bargains' particular circumstances. This point is relevant across the sequential analysis.

*Availability*

- 6.23 As a general principle units should not be regarded as unavailable until agreements are signed or the landlord has indicated that it would not enter into negotiations. There has been publicity to the landlord entertaining new tenants at the premises, and no evidence that the landlord is unwilling to receive approaches about occupying the unit. The unit is available.

*Size and levels*

- 6.24 The marketing details give the unit as 1854 sq m sales floorspace, the rest ancillary. The amalgamated units 3a and 3b would be 2300 sq metres. The M&S unit cannot be considered too large. Furthermore, the earlier Eastern Avenue and Canada Wharf applications would indicate some prospect of a deal being achieved with Home Bargains and thus would indicate that Home Bargains were willing to accept a floorspace of 1061sq m or 1115sq m as in those proposals.

6.25 The sales floor is in fact on a single level other than steps to a rear access to St Johns Lane. It is of note in any respect that the B&M store in Gloucester and Wilkinsons in Cheltenham operate over two storeys.

6.26 It is also of note that a major national retailer occupied the unit for a long period of time and managed to service it including with an extensive food offer.

#### *Trolleys*

6.27 Observations suggest that trolleys are not extensively used in Home Bargains and the product range is not bulky and sales of smaller products are not primarily multi-packs as claimed. DPDS commented that the weight to be attached to the use of trolleys would depend on how extensive their use was and the applicant has not provided convincing evidence on this. B&M operates on two storeys with trolleys, as does the new M&S. Other city centre retailers use trolleys.

#### *Parking*

6.28 An insistence on at-grade adjacent parking would rule out almost all town centre opportunities and the sequential test would have little meaning. There is no reason to need surface level car parking, especially as the proposed goods are not bulky. Neither B&M nor Wilkinsons have at-grade adjacent car parking and Wilkinsons arguably sells a higher proportion of large and heavy goods than Home Bargains.

#### *Rents*

6.29 Any retailer can claim rents are too high and this should be treated with caution. To accept it would create an unlevel playing field with other retailers.

6.30 The stated maximum rent that could be afforded would equate to £6 per sq ft, and it is unlikely Peel would be contemplating a lease on this basis either. Furthermore the agents for the recent Range application set out that Peel's rental aspirations for the cineworld site did not marry with what The Range could afford. This is a new scheme but on the same retail park.

6.31 The difference in rent does not appear to be so large as to be unbridgeable.

6.32 One cannot conclude from the events that the unit was unviable for TK Maxx, only that a deal was not done.

6.33 Insufficient evidence is submitted to support this claim regarding rents.

#### ***Kings Quarter***

##### *Applicants' assessment*

##### *Delivery and availability*

6.34 There have been continuous delays with the development. There is significant doubt whether a scheme could actually be delivered in the current economic climate. The majority of buildings are in other ownership. Compulsory Purchase Order powers are likely to be required. Units within the site are in

active use and generating income. There is no funding in place. The absence of funding for the bus station, which is a condition of the scheme, places further doubt on delivery. The Council cannot conclude that the scheme will be available within a reasonable period of time.

- 6.35 Home Bargains has an immediate/urgent need for a new store in Gloucester and have been seeking to secure this for 3 years. Kings Quarter cannot meet this requirement. It cannot be reasonable to make Home Bargains wait any longer.
- 6.36 The JCS Retail Study 2011 identifies a need for Gloucester to deliver 26,945sq m net comparison goods floorspace by 2016, and Kings Quarter will not deliver this. There is an urgent need for the Council to plan for comparison goods floorspace over and above Kings Quarter.
- 6.37 Where both developments are needed, the proper assessment has to be whether a proposal will impair the provision of retail floorspace on any sequentially preferable site, and the proposed variation would not.

#### *Suitability*

- 6.38 The Kings Quarter scheme seeks fashion retailers. If Tesco and B&M Bargains goods are unsuitable for Kings Quarter and have been granted planning permission, Home Bargains goods also cannot be suitable.
- 6.39 The operator would have to compromise its business model to accommodate high street format retailing floorspace – this would make it unviable and is both excessive and unreasonable.
- 6.40 Home Bargains has not been contacted by the Kings Quarter developer, who is seeking to attract leading fashion brand retailers. It is not suitable for this scheme.

#### *Rents*

- 6.41 Home Bargains would not be able to pay rents comparable to those commanded by fashion-led schemes. For Kings Quarter to be viable it would not be able to entertain rents affordable by discount retailers. The rents would not be viable for Home Bargains.

#### *DPDS assessment*

##### *Delivery and availability*

- 6.42 The practice guidance states that timescale should be determined on the merits of a particular case. It is considered that the Kings Quarter development is likely to take place within reasonable period of time and represents a sequentially preferable site.
- 6.43 Considerable progress has been made on the Kings Quarter scheme, including the acquisition of key landholdings, arranging a programme of archaeological trial trenching, and ongoing discussions with the Local

Enterprise Partnership and Local Transport Board to secure funding bids for the new bus station as well as procurement and design work for the station. A planning application is expected in early 2014 and preparation is underway. The applicant has previously published a timetable showing how the scheme is deliverable within a five-year period and it remains deliverable within five years on this basis.

6.44 The appended Savills representation includes a rebuttal to some of the applicants' comments regarding Kings Quarter, including noting that a high proportion of the existing units are vacant, that Stanhope is already in contact with most parties that are likely to be involved, is in active discussions with three anchor stores, and funding sources to deliver the redevelopment of the bus station.

6.45 No clarification is provided on what the urgency of need is for Home Bargains.

#### *Suitability*

6.46 Home Bargains do operate from town centres – such as Stroud and Evesham locally (although the applicant maintains that that the business model has evolved as a process of learning from these stores). However the applicants also indicate that some Home Bargains units in the pipeline are also in town centres.

6.47 This is not a predominantly bulky goods format being proposed. Up to half the floorspace could be used for food and drink, toys and pharmaceutical goods under the proposal.

6.48 An aspiration for a fashion offer for Kings Quarter does not mean the end scheme would be exclusively fashion or rule out other types of retailer, and the developer and landowner objections suggest a similar view. Kings Quarter developers not approaching Home Bargains would not necessarily mean that the developer would find such a retailer unsuitable.

6.49 The applicants claim that Home Bargains would have to compromise its business model to accommodate the high street format for Kings Quarter, but do not refer to any specific aspects of Kings Quarter on which it seeks to rely in this respect.

#### *Rents*

6.50 The Jones Lang Lasalle advice that is referred to is not submitted and cannot be relied upon. There is insufficient evidence to support the assertion that the rents could not be afforded by a discount operator.

#### **Other City Centre units**

6.51 The applicants have reviewed the available city centre units and only one is over 500sq m gross. This is the former Kwik Save site on Northgate Street, which has had two planning permissions for residential redevelopment. The unit is not on the market and not available. No other sites were identified as sequentially preferable for the earlier Eastern Avenue and Canada Wharf applications. No objection is raised in this respect.

***Overall assessment of applicant's sequential test submission***

- 6.52 The applicants have failed to demonstrate that there are no opportunities in the City Centre. In seeking to rule out sequentially-preferable sites they have not demonstrated sufficient flexibility. The submitted information falls short of the 'clear demonstration' described in the Practice Guidance that the development on a site would be unable to meet the retailer requirement the proposal is designed to serve. The applicants' comments relating to the connectivity of their site to the Primary Shopping Area have been taken into consideration.

***Impact test***

- 6.53 The impact test consists of two elements – the impact on existing, committed and planned public and private investment in a centre or centres within the catchment of the proposal and also the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from when the application is made.
- 6.54 The applicants contend whether the impact test is necessary given the 2500sq m default threshold for undertaking this (the amalgamated unit 3a/3b is 2301sq m), nevertheless they have undertaken an assessment.

***Impact on investment***

- 6.55 The first DPDS letter comments in detail on this. The key city centre investment proposal is Kings Quarter and its importance to the future vitality and viability of the city centre should not be underestimated.
- 6.56 The applicants' view that the proposal would not conflict with Kings Quarter because they are not competing for the same market or retailers, is flawed. There is no indication that the Kings Quarter scheme is to be exclusively for fashion retailers and it is unlikely that any scheme would comprise only small retail units. DPDS' view is that there would be a degree of competition, the question is whether the extent of this would threaten the viability of Kings Quarter.
- 6.57 In terms of viability, the applicants' doubts about delivery of Kings Quarter that they cite would point to the vulnerability of that development and the care that is needed in considering threats to it. Any actions that reduce the level of pre-lets is likely to threaten the development.
- 6.58 Overall, DPDS' conclusion is that the impact of the proposal would not be sufficient in itself to threaten the investment, primarily because it would relate to one amalgamated unit and therefore one possible pre-let. The amalgamation would involve a 2 to 1 reduction, clearly, of potentially attractive units. This is not considered sufficient to warrant refusal.

***Impact on vitality and viability of City Centre***

- 6.59 As can be seen from the first DPDS letter, there are some differences of opinion over the turnover of the vacant units and Home Bargains, in addition to which, as already noted, the proposal is not for Home Bargains specifically



– it would allow any tenant to occupy that would comply with the condition. The turnover of the existing units could, however, potentially be higher than with the variation of condition under certain circumstances.

6.60 DPDS' view, on balance, is that the increased turnover as a result of the proposed variation is likely, at worst, to be modest. Any adverse impact on the vitality and viability of the City Centre is likely to be very limited. As the test in the NPPF is whether it is 'likely to have a significant adverse impact', this would not be sufficient to warrant refusal on such grounds.

6.61 Potential impact on the Seymour Road local centre was raised by DPDS and responded to by the applicants, who contend that Home Bargains sells ambient convenience goods primarily in bulk/multi packs, as opposed to the top-up role of the Local Centre and that there is no trading overlap. As can be seen in DPDS' final comments, it is considered that it would be difficult to prove an adverse impact in this respect that could be sustained as a refusal.

*Cumulative impact and precedent*

6.62 There have been a number of planning permissions for new retail units and variations of conditions, which would all have minor adverse impacts on the City Centre. In the context of having allowed earlier schemes, the relative scale and certainty of the impact from the current application means that it would likely be unreasonable to resist the current application on such cumulative grounds when it would form such a small part.

6.63 The issue of precedent is always difficult to advise on, given that each application must be considered on its own merits. However, comparable cases should be reflected in consistent decision-making. Gloucester has a substantial amount of out-of-centre retail floorspace. The watering-down of bulky goods conditions across out of centre floorspace could undermine the vitality and viability of the City Centre by diluting retailer demand that could support City Centre retail development and by the general diversion of trade. The initial DPDS letter sets out some useful scenarios for this, and notes that there would be widespread demand for such varied conditions. The specific nature of the current proposal suggests that the precedent would be limited, provided the Council's general policy to such proposals is clear.

***Overall assessment of impact***

6.64 While there are some diverging opinions on some of the calculations and assessment, no overall objection is raised in impact terms.

***Other comments by the applicant***

6.65 The applicants propose that they have few, if any, alternative tenants and negligible prospect of letting, although it refers to the Cineworld site not units 3a and 3b, I assume the message is intended to be the same.

6.66 The applicants consider there are no other Gloucester retail parks better served by a choice of transport and which immediately adjoin the city centre boundary and have an attractive pedestrian route to it from the primary

shopping area. They note that there are linked trips between the Peel Centre and City Centre.

- 6.67 The applicants also wish to highlight that as toys are already permitted to be sold from the Peel Centre (currently Toys R Us), the proposal involves no more than a 6% increase in floorspace for toys. The applicants also propose that the additional amount of food and drink floorspace is insignificant in the context of the Tesco redevelopment, Asda and Morrisons proposals recently granted. Finally, that the pharmaceutical/perfume/toiletries element represents a maximum of 10% of the Home Bargains floorspace, while a wider range of goods are sold from foodstores.
- 6.68 The applicants propose that unlike the previous refused applications for Home Bargains at Eastern Avenue and Canada Wharf, the proposal is only a relatively minor alteration. It should be noted however that the applicant has already recently varied their goods condition (in addition to the multiple earlier variations, as shown in the history above) so a further variation to this is highly likely to be a more minor amendment than a variation to the historic conditions on other sites. It is not the same starting point.

#### **Job creation**

- 6.69 The stated 50-60 full and part time new jobs is not backed up with further explanation of what they are to be of that magnitude. Notwithstanding this, I consider the proposal could have a modest effect on job creation, although the floorspace already exists for a potential tenant to occupy at Units 3a/3b and so is not intrinsically linked to the current application. While employment is a consideration, more weight should be afforded in my view to the retail issues outlined above.

#### **Human Rights**

- 6.70 In compiling this recommendation we have given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (Right to respect for private and family life, home and correspondence) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 of adjacent occupiers. On assessing the issues raised by the application no particular matters, other than those referred to in this report, warrant any different action to that recommended.

## **7.0 CONCLUSION**

- 7.1 Retail issues are considered to be the decisive factors in determining this application, which seeks to amend a condition imposed to safeguard the vitality and viability of the City Centre. While no 'impact' objection is raised, it is considered that the applicant has failed to satisfy the sequential test.

## **8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER**

8.1 That planning permission is refused for the following reason:

The application fails to satisfy the sequential test and therefore in accordance with Paragraph 27 of the National Planning Policy Framework it should be refused, taking into account the Practice Guidance on need, impact and the sequential approach, and in the same terms it conflicts with Policy S.4a of the 2002 City of Gloucester Second Deposit Local Plan.

Decision: .....

Notes: .....

.....

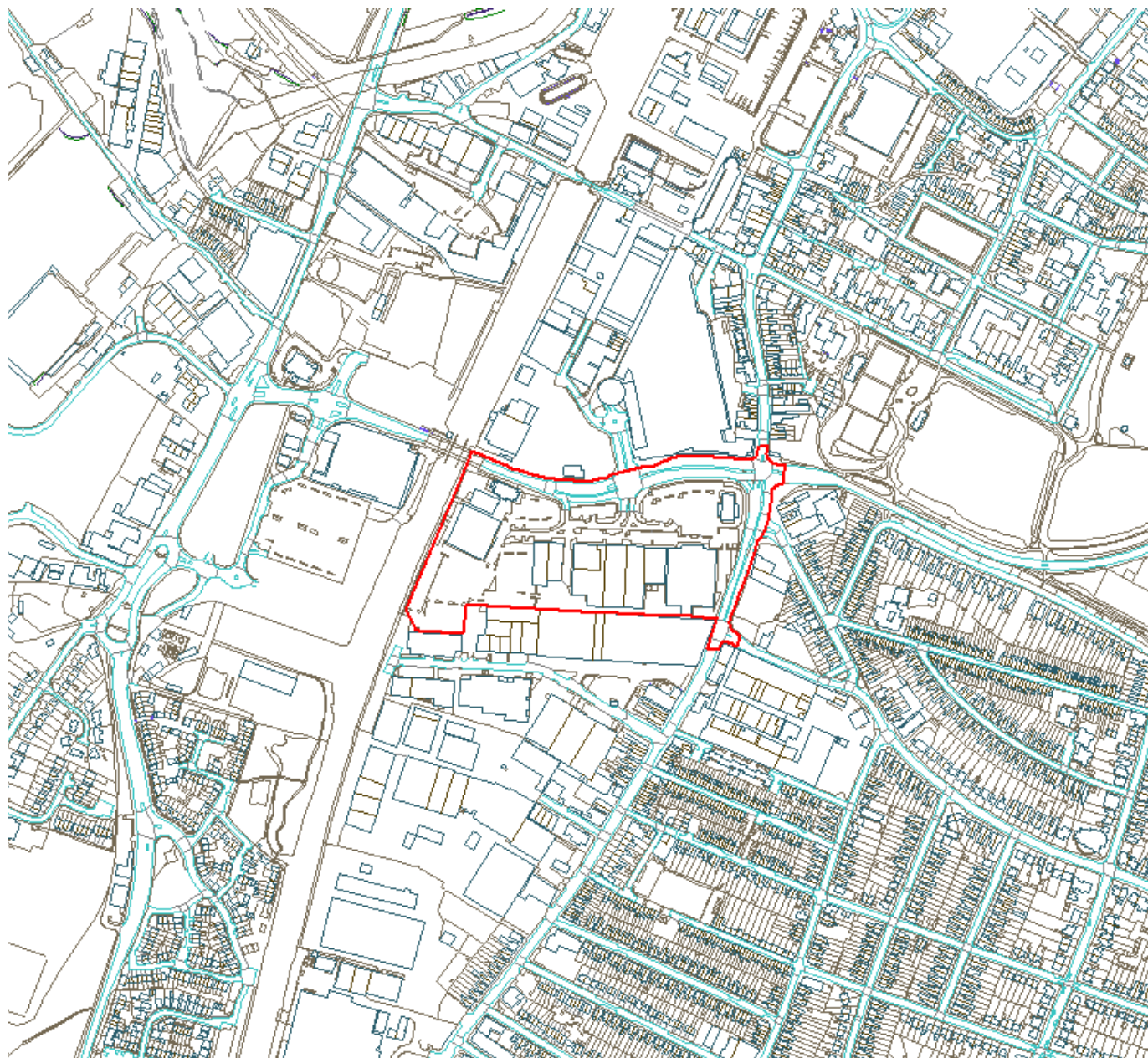
.....

Person to contact: Adam Smith  
(Tel: 396702)

**13/00559/FUL**

**Peel Centre  
St Ann Way  
Gloucester**

**Planning Committee 07.01.2014**



21 November 2013

Our Ref PW/SF/S/CS/069715/002

Adam Smith  
Principal Planning Officer  
Planning Services  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester  
GL1 2EQ

Dear Mr Smith

**Peel Centre, St Ann Way, Gloucester, Planning Application Ref: 13/00559/FUL Variation of Condition 1 of Planning Permission Ref: 09/01311/FUL (to alter the range of goods that can be sold from amalgamated Units 3a and 3b)**

We act on behalf of Rockspring and The Other Retail Group LLP who are leaseholders and asset managers respectively of the Eastgate Shopping Centre in Gloucester City Centre.

Our clients are concerned to ensure that out of centre retail developments in the Gloucester area do not have the capacity to draw trade away from the City Centre to the detriment of its vitality and viability and it is in light of these concerns that we object to the above application.

The application seeks to vary condition 1 of Planning permission 09/01311/FUL to allow the following additional items to be sold from the amalgamated units 3a and 3b:

- Food and drink (no more than 690 sqm of gross floorspace);
- Toys (no more than 230sqm of gross floorspace); and
- Pharmaceutical goods, perfume goods and toiletries (no more than 230sqm of gross floorspace).

The application is accompanied by an Updated Retail Planning Statement which indicates that the proposal is to allow Home Bargains to trade from the amalgamated units.

The proposed extended range of goods are 'non bulky' goods, which could be sold from town centre locations and as such the proposed amendment to the condition has the potential to draw trade away from the City Centre.

The application needs to be considered against national and local planning policy, which we describe below.

## Planning Policy

National planning policy is set down in the National Planning Policy Framework (NPPF) (March 2012). Section 2 sets out the government's policies to ensure the vitality of town centres. Paragraph 23 indicates that planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period.

## Property and infrastructure

75 Wells Street, London W1T 3QH

# CAPITA

Paragraph 24 indicates that local planning authorities should apply the sequential test to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to date local plan. It is noted that applications for main town centre uses should be located in the town centre, then edge of centre locations and only if suitable sites are not available, should out of centre sites be considered. The NPPF states that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

Paragraph 26 indicates that when assessing retail applications outside of town centres, which are not in accordance with an up to date development plan, local authorities should require an impact assessment if the development is over a proportionate, locally set threshold (or default threshold of 2,500 sqm). This should include an assessment of the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area; and the impact of the proposal on town centre vitality and viability.

The statutory development plan comprises that saved policies of The City of Gloucester Local Plan 1983. The Council is in the process of preparing a Joint Core Strategy in partnership with Cheltenham Borough Council and Tewkesbury Borough Council to set out a strategic planning framework for the three areas as well as a Gloucester City Plan which will sit under The Core Strategy. The draft Joint Core Strategy is currently the subject of public consultation running to 13 December. Policy E3 refers to ensuring the vitality and viability of centres and refers to certain principles in the determination of applications. Part C 1 indicates that new development that contributes to the vitality and viability of designated centres will be promoted and supported. Part C 2 states that proposals for retail and other main town centre uses that are not located in a designated centre, or are not in accordance with a policy in either the JCS or district plans, will be robustly assessed against the requirements of the sequential test and impact test, as set out in national planning policy guidance.

The City Plan Part 2 focuses on Places, Sites and City Centre Strategy and was the subject of public consultation from 13 May to 12 July 2013. The draft City Plan sets out an analysis of the City Centre at page 14 and notes that one the threats to the City Centre is inappropriate out-of-centre retail proposals adversely impacting on the vitality and viability of the City Centre and investment in key City Centre schemes.

The City Council's objectives as noted a page 15, include the need to strengthen Gloucester City Centre as a regional shopping destination and improve its retail ranking; and to maintain and improve the vitality and viability of the City Centre. Building on these objectives, it is noted that the Council's strategy for the City Centre includes inter alia applying the City Centre first approach to all proposals for main town centre uses in the context of the tests set out in national planning policy; focus future City Centre retail floorspace capacity at sites located within or adjacent to the Primary Shopping Area; and deliver a step change in the retail performance of the City Centre through the realisation of the major regeneration schemes in Kings Quarter. The Council's draft policy approach at page 16 reflects these objectives and strategy.

Whilst the draft Joint Core Strategy and City Plan have no statutory status as yet, they set out the clear policy objectives of the Council to promote the City Centre as the prime retail location in accordance with the NPPF.

## **Planning Considerations**

The applicant acknowledges within the application submission that the application site is located 870 metres from the Primary Shopping Area and is therefore an out of the centre site.

The key issues for consideration are therefore the extent to which the applicant has satisfied the sequential test as noted with the NPPF demonstrating flexibility on issues of format and scale; and impact on the City Centre.

We respect to the sequential test, we note that representations have been submitted by agents on behalf of Stanhope Plc which is the Council's selected developer for the Kings Quarter site and also Aviva Investors which has land interests at Kings Square.

# CAPITA

The Updated Retail Planning Statement submitted with the application only gives consideration to two sites within the City Centre namely the former M & S unit at 13-23 Northgate Street and the Kings Quarter redevelopment site. We note that this selection of sites is based on the Council's consideration of previously determined applications for a Home Bargains store at Eastern Avenue (12/00839/FULL) and Canada Wharf (12/00794/FULL). Both these applications were originally submitted in August 2012 and therefore in our view the submitted assessment is not up to date.

The Council refused the previous Home Bargains proposals at Eastern Avenue and Canada Wharf on the basis that the respective applicants had failed to satisfy the requirements of the sequential assessment in that they had not clearly demonstrated there are no other sites that are suitable, available or viable either within or on the edge of the City Centre. The City Council will need to satisfy itself that all potential sites either within or on the edge of the City Centre have been robustly assessed and that the sufficient further consideration has given to the former M & S site and Kings Quarter before giving consideration to this out of centre location.

With respect to the former M & S store, whilst the applicant indicates that the store is under offer to TK Maxx it can still be deemed to be available until such time that contracts have been signed.

With respect to the Kings Quarter redevelopment site, we note Savills' comments on behalf of Stanhope in their letter of 4<sup>th</sup> September that their client is in active discussions with three anchor stores and is actively pursuing the development opportunity. We also note that Stanhope have identified an alternative source of funding to deliver the redevelopment of the bus station. We further note that Stanhope and the Council are committed to the delivery of the Kings Quarter development and we agree with Savills comments that the long term vitality and viability of the City Centre must be given priority over and above out of centre retail development.

With respect to retail impact, whilst the trade associated with current application alone may not have a significant impact on the City Centre, it is important as a general principle to control conditions to restrict the goods that can be sold in out of centre locations so as to protect the vitality and viability of the City Centre and planned investment for sites such as Kings Quarter. This is why such conditions were added in the first place. Each application needs to be considered on its merits but the City Council must take a consistent and robust approach to the consideration of proposals to relax such restrictions as the cumulative impact of such proposals have the potential to cause real harm to the vitality and viability of the City Centre. This application therefore needs to be considered in the context of other recent out of centre proposals considered by the Council.

In summary, we consider that the applicant has not satisfied the sequential test and our clients are concerned about the cumulative impact of such proposals on the vitality and viability of the City Centre and planned investment as set out in the Council's emerging local plan strategy. Allowing this application without a robust assessment of the of the retail policy issues could set a precedent for other out of centre proposals and on this basis our clients strongly object and ask that the City Council refuses this application.

If you have any queries or wish to discuss any aspect of the above, please do not hesitate to contact me.

Yours sincerely

**Director, Town Planning**

cc John Wood - The Other Retail Group LLP

4 September 2013  
as040913:tjccob - re Peel Centre



Adam Smith  
Gloucester City Council  
Development Control  
Herbert Warehouse  
The Docks  
Gloucester  
GL1 2EQ

Craig O'Brien BA (Hons) BTP MRTPI  
E:  
DL:  
F:

Embassy House  
Queens Avenue  
Bristol BS8 1SB

T:  
savills.com

Dear Adam

**Planning Application Ref: 13/00559/FUL**  
**Peel Centre, St Ann Way, Gloucester**  
**Variation of Condition 4 of Planning Permission Ref. 09/01311/FUL (to alter the range of goods that can be sold from amalgamated Unit 3a and 3b) (Amended Proposals)**

We write on behalf of Stanhope Plc to lodge an objection to the above application. Stanhope Plc is the selected developer for the regeneration of land at The Kings Quarter site in Gloucester City Centre. Stanhope signed a development agreement with the Council in September 2012 which requires it to make progress with the Kings Quarter development. We set out our objection below.

There are two components to this planning application. The first being the amalgamation of Unit 3a and 3b to form one retail unit providing a gross retail floorspace of 2,301 sq m.

The second component is the proposed variation of Condition 1 of planning permission 09/01311/FUL to allow for additional goods to be sold from the unit. The proposed variation of Condition 1 is detailed below (proposed additions underlined):

*"Notwithstanding the provisions of Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or any other Order revoking, amending or re-enacting that Order with or without modification, the retail units as defined in green on Plan A (received by the Local Planning Authority on 3rd December 2009) in so far as the same form part of the development hereby approved shall not be used for the sale of the following goods unless expressly provided for below and/or on a basis which is incidental and/or ancillary to the main goods sold.*

- 1. Food and drink, other than for consumption on the premises (except from no more than 690 square metres of gross floorspace within amalgamated Units 3a and 3b);*
- 2. Clothes and fashion accessories;*
- 3. Footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*
- 4. Sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*
- 5. Toys excepting only the sale of toys from no more than 4,048 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009) and from no more than 230 square metres of gross floorspace within amalgamated Units 3a and 3b;*
- 6. Books and stationery except where included as part of the range of a toy retailer;*

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East.

Savills (UK) Limited: Chartered Surveyors. A subsidiary of Savills plc. Registered in England: Nr 2605138.  
Registered office: 33 Margaret Street, London, W1G 0JD





7. Cameras, video equipment, mobile phones, audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc;
8. Pharmaceutical goods, perfume goods and toiletries (except from no more than 230 sq m of gross floorspace within amalgamated Units 3a and 3b);
9. Jewellery goods, clocks and watches; and
10. All uses within categories A1 (B to F) of Class A1.

Therefore, the application seeks permission for the sale of several new goods including food and drink, toys, pharmaceutical goods, perfume goods and toiletries.

Since the application was originally submitted the applicants have:

- Amended the description of development;
- Revised the variation of goods requirement in response to recent decisions made on retail planning applications at Planning Committee; and
- Submitted an Update Retail Assessment.

The original application was submitted in order to accommodate interest from discount retail warehouse retailers, but following recent applications being granted permission at Eastern Avenue the retailer requirements have changed. The Updated Retail Assessment clarifies that the application has been amended to allow Home Bargains to trade from the amalgamated retail units 3a and 3b and as such the updated assessment address the relevant sequential and impact requirements set out in the NPPF.

We remain concerned that existing out of centre retail floorspace remains restricted to non food bulky goods. There should be no allowance for additional food, toys, pharmaceutical goods, perfume goods and toiletries due to the impact implications of the proposal on the city centre and planned public/private investment. I set out the reasons for our objection below.

### **Retail Planning Policy**

National planning policy for town centres is set out in Section 2 of the National Planning Policy Framework (NPPF). The NPPF recognises town centres as the heart of communities and local planning policies should support the vitality and viability of their town centres. The NPPF requires retail and leisure development outside of town centres to provide an impact assessment if the development is over a proportionate, locally set floorspace threshold (or default threshold of 2,500 sq m). The assessment should include assessment of the following:

- Impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- Impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made

Paragraph 24 of the NPPF requires the application of a sequential test to planning applications for main town centre uses not in an existing centre and not in accordance with an up-to-date Local Plan. Applications for main town centres uses should be located in the town centre, then in edge-of-centre locations and only if suitable sites are not available should out of centre sites be considered.

There are therefore two key tests for planning applications for out of centre retail development to address which are the impact test and the sequential test. As stated in paragraph 27 of the NPPF, *'where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors it should be refused.'*

### **Kings Quarter**

The Kings Quarter proposal is a committed, planned public and private investment. The Revised Deposit Local Plan 2002 allocates Kings Square for retail development for comparison goods (Policy S.3). The



Preferred Option Central Area Action Plan (AAP) was published in August 2006. Draft Policy CA20 of the AAP includes a draft allocation of the Kings Square and Bus Station for mixed use development, including up to 25,000 sq m of comparison retail floorspace and 500 sq m of convenience retail floorspace.

The most recent publication, the Joint Core Strategy (JCS) Developing the Preferred Option Consultation Paper (December 2011) identifies the Kings Quarter site as a key site which should be prioritised and protected for development.

The City Plan focuses on delivering major regeneration and growth in Gloucester and sits beneath the Joint Core Strategy. The current draft City Plan Part 1 identifies Kings Quarter as a key regeneration scheme for the City to protect and enhance its core shopping area and to raise Gloucester's retail position. As part of its approach to regeneration the plan adopts a City Centre first approach to development which will primarily be delivered through the Kings Quarter redevelopment. It is envisaged that this redevelopment will deliver a step change in Gloucester's retail performance and improve the City Centre environment.

In addition to the City Plan, the Council has also consulted on and prepared a Concept Statement for the Kings Quarter area at the same time as the City Plan in March 2012. The Kings Quarter area includes Kings Square, Bus Station, Market Parade, Spread Eagle Road and the immediate surrounding area. The Concept Statement provides guidance on the redevelopment of the Kings Quarter area sets out planning and urban design parameters and provides guidance on the masterplan for the area.

The Council approved the Concept Statement for development control purposes first at the Planning Policy Sub Committee on 13 December 2012 and then at Full Council in January 2013.

## **Impact**

As part of the evidence base for the JCS the three authorities of Gloucester City, Cheltenham Borough and Tewkesbury Borough commissioned DPDS Consulting to undertake a Retail Study to inform the emerging Joint Core Strategy. Phase 1 of the study, JCS Retail Study 2011-2031 Phase 1, was published in December 2011. The DPDS study in 2011 identifies that Kings Quarter will meet Gloucester's quantitative need of 12,557 sq m floorspace capacity for comparison goods (bulky and non bulky) to 2016.

While it is not necessary for an applicant to demonstrate that there is a need for a proposal it is relevant to consider in the context of assessing impact that there is no expenditure growth predicted over and above that needed to support the Kings Quarter development that might mitigate the impact of out of centre development.

We are concerned with the impact of the proposed development on the city centre and the committed planned investment involving the redevelopment of The Kings Quarter site. The planning policy requirements for impact have been outlined above. Taking into consideration the relevant planning policy requirements, guidance provided in the DCLG Practice Guidance and the applicants Retail Statement, I set out our comments below.

The relaxation of retail goods sold out of centre in this case together with other recent applications for similar proposals as well as additional floorspace will have a cumulative impact that will, in effect, result in "death by a thousand cuts" for the Kings Quarter scheme.

Paragraph 7.27 of the Practice Guidance on Need, Impact and the Sequential Approach, December 2009 provides guidance on the approach to take when competing proposals come forward on edge or out of centre sites. It requires the effects of both to be assessed and a judgement made as to which offers the most overall benefit in policy terms. In instances where there are several proposals coming forward, their cumulative impact on town centres will need to be considered as part of any assessment.

Appendix D of the Practice Guidance sets out the approach on quantifying impact. Step 2 examining a 'no development' scenario requires consideration of the relevant known commitments to consider cumulative impact of the proposals in question. Specifically paragraphs D7-D8 states:

"First, it is relevant to consider the effect of known commitments, and to consider the cumulative impact of the proposals in question. Conventionally, cumulative impact assessments take into account the effect of known commitments i.e. schemes with planning permission. However, it may be relevant, in policy terms, to judge the cumulative effect of other proposals, particularly where there is a choice between two competing proposals and the combined impact of both needs to be considered.

In this instance there has been a number of retail planning applications that have recently been decided by Planning Committee and has resulted in circa 3,500 sq m of retail floorspace being able to sell a wider range of goods from an out of centre location at Gloucester Retail Park. It is important that this application should not just be considered in isolation but cumulatively taking into account other recent planning applications in accordance with the Practice Guidance

### Sequential Assessment

Paragraph 24 of the NPPF requires the application of a sequential test to planning applications for main town centre uses not in an existing centre and not in accordance with an up-to-date development Local Plan. Applications for main town centres uses should be located in the town centre, then in edge-of-centres and only if suitable sites are not available should out of centre sites be considered. As stated in paragraph 27 of the NPPF, *'where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors it should be refused.'*

The applicants have provided a review of recent non-food discounter planning applications at Eastern Avenue and Canada. However, the review of these sequential sites fails to recognise that planning permission was granted for the following:

- Application Ref: 12/00794/FUL Unit 3 Gloucester Retail Park, Eastern Avenue for the occupation of the unit by B&M;
- Application Ref: 12/01173/FUL Unit 1 (formerly Focus) Gloucester Retail Park, Eastern Avenue for the occupation of the unit by The Range.

The planning officers report for Planning Committee on justifying Unit 3 (Former MFI) Gloucester Retail Park, Eastern Avenue considered sequential sites for the proposed variation of goods to be sold from the unit as part of their recommendation. When considering the Peel Centre it should be noted that the following conclusions were drawn:

*"Permission was secured for the provision of five units, three at 929 sq m within the existing cinema and two additional units of 929 and 1,541 sq m as an extension to the main building.*

*This is an out of centre location and the units would be delivered at the farthest point from the city centre. None of the units amount to 2,731sqm and therefore none are suitable and waiting for the re-development to occur is unrealistic and would fail to meet a need which exists now.*

*The former JJB store is too small and permission would be required for a mezzanine thereby adding to the total amount of floor space. B&M Homestore does not trade from a mezzanine given the predominantly bulky nature of the goods sold and the need for trolley access. Only in city centre locations involving their "Bargains" high street format would a second floor be considered – as in the Southgate Street store.*

*B&M had previously assessed the suitability of the Peel Centre as a possible location in 2011 and rejected it on grounds that it would not provide a viable trading location and would not provide a unit of the appropriate size and form.*

Furthermore the company state that locating a B&M Homestore at The Peel Centre would in effect mean that it would compete directly with, rather than complement the company's Bargains store. The Homestore is designed and operated in order to provide a complementary range of goods whilst still enabling the town centre Bargains store to maximise its full trading potential. Occupation of any of the units at The Peel Centre would seriously compromise the effectiveness and success of these complementary trading formats and this is a major consideration in the company's rejection of The Peel Centre as a suitable trading location for a Homestore."

(Source: Report to Planning Committee, 11 June 2013)

In considering the variation of condition application at Unit 1 (Former Focus store), Gloucester Retail Park the case officer concluded the following with regards to the Peel Centre:

"Unit 3a and 3b The Peel Centre – former Stead and Simpson and The Home Store

*The units are being actively marketed and are classified as out of centre and have a bulky goods restriction. Amalgamated the two units would comprise 2,377 sq m. The size of the units is too small, would require a variation to the restrictive condition and therefore they are not suitable or viable.*

Cineworld Cinemas and extension

*Furthermore this site is not viable for The Range as the rents commanded by The Peel Centre could not be afforded. The Peel centre is 0.85km from the Primary Shopping area and is defined as an out of centre location. Unit 1 Gloucester retail Park is also an out of centre site and approx 1.5 kms from the city centre. Therefore both sites are out of centre and therefore The Peel Centre is no more sequentially preferable to the application site however the accessibility of the two sites is a relevant consideration. It is considered that both sites cater for predominantly car borne shopping and neither site offers any substantial advantage in terms of accessibility and linkages to the city centre and for that reason the Cineworld site is not sequentially preferable."*

At paragraph 5.18 the officers report also considers cumulative impact of retail proposals against the scale of comparison floorspace in out-of-centre locations surrounding Gloucester including unimplemented floorspace at the Cineworld and The Peel Centre. It states:

*"In Gloucester there is some 62,500 net sq m of comparison goods retail floor space in out of centre locations in Gloucester. This figure excludes 17,000 net sq m at Gloucester Quays and 7,800 net sq m of unimplemented bulky goods floor space at St Oswalds Park at the Cineworld at The Peel Centre. Most of the existing floor space is subject to conditions which restrict the type of goods that can be sold and have been imposed to protect the vitality and viability of Gloucester's city centre. There is no doubt that the sale of unrestricted goods from this floor space would undermine the vitality and viability of the city centre both by diluting retailer demand and by the general diversion of trade. For example if a third of the existing out of centre floor space were freed from restrictive condition on the type of goods that could be sold, the turnover of these units could increase from £51.6m to £103m which could represent just under 20% of the city centre trade. This demonstrates the importance of carefully considering the potential impact of each application to vary conditions and also considering the cumulative impact of such applications."*

(Source: Report to Planning Committee, 9 June 2013)

Taking into account, the conclusions from the committee reports, referred to above, it is clear that the Peel Centre is not considered a suitable trading location for a B&M Homestore as it would be in direct competition with its in-centre Bargains store.

Given that both the B&M Homestore has been granted consent in other locations since the submission of this application, allowing additional out-of-centre floorspace to sell an increased range of goods, it is unclear why the variation of goods condition at the Peel Centre is proposed. Especially when considering the potential cumulative impact points raised above and the availability of the Kings Quarter site.



The Kings Quarter site was also identified by DPDS for further consideration for being able to accommodate. The Kings Quarter site is an allocated, planned and committed site capable of delivering additional convenience and comparison floorspace and is therefore clearly a sequentially preferable site that is suitable, viable and available for the scale of floorspace proposed.

Whilst the applicants updated Retail Statement provides a sequential site analysis for a number of sites including the Kings Quarter redevelopment site there are a number of points we would like to address. The applicant has stated that the "units within the site are currently in active beneficial use and generating rental income" This is not the case as a high proportion of the units are indeed vacant. Notwithstanding this, Stanhope are aware that CPO powers may be required and are already in contact with most parties who are likely to be involved.

In terms of anchor tenants, Stanhope are in active discussions with three anchor stores. Therefore, retailers should be re-assured that Stanhope is actively pursuing the redevelopment of the Kings Quarter. Although Stanhope was unsuccessful in receiving funding from the Department of Transport (DfT), Stanhope has since identified an alternative source of funding to deliver the redevelopment of the bus station.

The main concern from the applicant is with regard to timescale. In this respect, it is clear that Stanhope and the Council are committed to the delivery of the Kings Quarter redevelopment. It is acknowledged that it will take some time to deliver the Kings Quarter development but as a planned public and private sector investment which is important to the long term vitality and viability of the city centre it must be given priority over and above ad hoc out of centre retail development in order to remain viable and to be delivered as soon as possible. This approach is in accordance with the sequential assessment set out in national policy contained within the NPPF and reflected in the aspirations of the Concept Statement.

**Determination**

S38(6) of the Planning and Compulsory Purchase Act states that the 'development plan' is the principal consideration in determining applications and that '*determination must be made in accordance with the development plan unless material considerations indicate otherwise*'. In this instance, the NPPF should be attributed significantly more 'weight' as a material consideration in the decision-making process than the saved policies of the 1983 Local Plan. Planning permission should not be granted on the grounds that other out of centre development has been permitted or on the grounds of a 'personal' permission.

**Summary**

The identified capacity for the plan period is not sufficient to support out-of-centre development of the size proposed over and above the Kings Quarter committed, planned investment.

If permitted the proposed development would result in additional retail floorspace in an out-of-centre location which is anticipated to have a negative impact on vitality and viability of the city centre. The proposal will, in effect, expand out-of-centre development against the policies in the development plan which will consequently impact on city centre trade. We consider that this application should not just be considered in isolation but cumulatively taking into account other current planning applications and planning permissions in accordance with the governments Good Practice Guidance.

The variation proposed is, in any event, made wider than that required by the retailers identified by the applicant.

There is an allocated, planned and committed site capable of delivering additional retail floorspace in the form of the Kings Quarter site and there is therefore a sequentially preferable site that is suitable, viable and available for the proposed floorspace.

It is particularly vital that the planned opportunities for retail development in the city centre such as the Kings Quarter scheme are delivered as a first priority. Gloucester has an 'allocated, planned and committed' site



being pursued by the Council and its selected developer, Stanhope. This is especially significant so as to help sustain the fabric of the City as a whole and prevent it from harm which would arise from inappropriate out of centre development, of the scale and type proposed.

Should you have any queries or require any further information please do not hesitate to contact me.

Yours sincerely

**Craig O'Brien BA (Hons) BTP MRTPI**  
**Director**

Adam Smith  
Principle Planning Officer  
Planning Services  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester  
GL1 2EQ

Date 28 August 2013  
Our ref 30293/06/JC0/5091085v10  
Your ref 13/00559/FUL

BUSINESS SUPPORT  
SERVICES  
- 3 SEP 2013

Helmont House  
Churchill Way  
Cardiff CF10 2HE

[nlpplanning.com](http://nlpplanning.com)

Dear Mr Smith

**Variation of goods condition to allow discount retail warehouse retailer Home Bargains to trade from amalgamated Units 3a and 3b, Peel Centre, St Ann Way, Gloucester**

We write on behalf of our client Aviva Investors (Aviva) in objection to the above planning application, which is currently being considered by Gloucester City Council.

The full planning application seeks permission for:

*Variation of condition 1 of planning permission ref. 09/01311/FUL (to alter the range of goods that can be sold) (AMENDED PROPOSALS & NEW MATERIAL SUBMITTED), Peel Centre, St Ann Way, Gloucester;*

**Basis of objection**

Aviva has land interests at King's Square – a retail site located at the heart of the city centre – and is concerned about the growing number of planning applications that have been submitted to Gloucester City Council that seek to broaden the range of goods that can be sold from out of centre retail units.

Should this application (and other similar applications) be permitted, the vitality and viability of the primary shopping area will be undermined, which is contrary to the policies of the National Planning Policy Framework (NPPF).

Having reviewed the application documentation submitted by the applicant's agent, WYG, we set out our concerns in more detail below:-

**The Proposal**

The application seeks to vary condition 1 of planning permission 09/01311/FUL to allow the following additional items to be sold from the amalgamated unit:

- Food and drink (no more than 690 sq m of gross floorspace);



- Toys (no more than 230 sq m of gross floorspace);
- Pharmaceutical goods, perfume goods and toiletries (no more than 230 sq m of gross floorspace);

Whilst not specified within the planning application description of development, the applicant notes within the Updated Retail Planning Statement (URPS) (August 2013) and other supporting documents that the purpose of the application is to allow Home Bargains to take occupancy of the amalgamated unit.

The URPS also sets out the specific requirements that Home Bargains has in order to take occupation of the unit, including having a dedicated surface level car park, trolley bays and adequate HGV servicing arrangements (paragraphs 2.4.1 - 2.4.11).

However, the application is not for a personal consent for Home Bargains and, if approved, will have the effect of broadening the range of goods that can be sold by any retailer occupying this unit in the future. Further, given the goods for which planning permission is sought, all are non-bulky goods that could and indeed are sold from town centre locations. This proposal can only be approved if it satisfies the requirements of the Development Plan and the NPPF.

Whilst we understand that different retailers will have their own business models, we consider these points irrelevant given that none of the additional goods sought by the planning application are bulky; all are non-bulky in nature and can be sold from town centre locations.

Indeed, Home Bargains itself operates a town centre format store, although this is not considered by the current proposals. It is therefore necessary for the planning application to be determined having regard to the out of centre location of the site and the requirements of the NPPF, namely, the sequential test and impact considerations.

### **Sequential Approach**

The applicant acknowledges in paragraph 2.2.1 of their URPS that at 870 metres from the Primary Shopping Area the site is out of centre. The applicant must therefore demonstrate compliance with the sequential test and in doing so, should demonstrate flexibility on issues such as format and scale (NPPF Paragraph 24.)

Our first concern regarding the sequential assessment submitted with the planning application is that it cannot be considered an up to date assessment of potential sites as it is based on the assessment from previously determined planning applications (URPS paragraph 2.6.2). This is not an appropriate basis for assessment, particularly in light of the economic downturn that has seen a number of retailers cease trading in Gloucester City Centre which has left units vacant.

Furthermore, the availability of the number of units identified by WYG that may be suitable, have not been fully investigated. For example and as discussed below, no genuine reason has been given why the former M&S unit at 12-23 Northgate Street cannot be occupied by Home Bargains.

### **Availability**

The applicant states in paragraph 2.6.8 of the URPS that the former Marks & Spencer unit has been under offer to TK Maxx for some time and is not available. However, it is clear that units





cannot be treated as unavailable until contracts have been signed therefore this conclusion is flawed.

The applicant also states in paragraph 2.6.8 of the URPS that:

*"The unit is not currently being actively marketed so we would question its genuine availability"*

At Paragraph 24 the NPPF makes it clear that the onus is on the applicant to demonstrate that the unit is not available. In this instance the applicant has not given clear evidence to demonstrate that the unit is not available and therefore it should not be discounted.

### **Suitability & Viability**

#### **Size**

The applicant states in paragraph 2.6.9 of the URPS that the former M&S store is too big and that Home Bargains does not operate stores of this size. However, it is not uncommon for stores not to utilise upper floors for retail purposes and to instead use them for storage/ back of house/ office accommodation. The former M&S unit should therefore not be discounted for this reason.

#### **Layout**

The applicant states in paragraph 2.6.9 of the URPS that the configuration and layout of the former M&S unit is not suitable. However, various other retailers, including bulky goods retailers such as Homebase and Ikea have shown flexibility in this aspect by utilising escalators. Further, the layout of goods within the store can be arranged to take the configuration of the unit into account. This is therefore not a reason to discount the unit.

#### **No surface level parking**

Various other retailers have adapted their format to be able to relocate to town centres. There is no clear reason why having a surface level car park is necessary for this occupier, given that the purpose of the application is to allow additional goods (food and drink, toys and pharmaceutical products) to be sold. These goods do not require trolleys and/or separate parking.

### **Impact on Gloucester City Centre**

The Gloucester City Plan and the Joint Core Strategy focus on delivering major regeneration and growth in Gloucester, with the Context and Key Development Principles Consultation Document (February 2012) stating that Gloucester's main challenge is to:

*"Protect and enhance the core shopping area of the City Centre and raise its retail ranking".*

Whilst the City Plan has no statutory status as yet, it is clear that the aspiration of Gloucester Council is to promote the town centre as the prime retail location in accordance with the NPPF (Paragraph 23). The current planning application contradicts this long term goal of Gloucester City Council.

Gloucester's primary shopping area is already vulnerable with many vacant units. Our client is concerned that if this and similar applications are approved (i.e. at Eastern Avenue



(12/00397/FUL) and Canada Wharf (12/01210/FUL)), there will be an impact on the existing, committed and planned public and private investment in the city centre.

Whilst the current application seeks to allow Home Bargains to occupy an out of centre unit, it could provide a suitable planning permission for a range of retailers to take occupancy who could otherwise locate in the town centre. This could jeopardise future investment in the city centre and the ability for town centre regeneration policies to be realised.

### **Conclusion**

This is an out-of-centre location where the application submitted is seeking to extend the range of goods that can be sold. The justification put forward is that Home Bargains wishes to occupy the unit but a personal condition is not being sought.

Therefore the effect of this application, if approved, will allow a wider range of goods to be sold from the unit by any occupier. These goods include small, non-bulky goods that are traditionally sold in town centres.

As an out of centre location the application has to demonstrate compliance with the development plan and the NPPF. We do not consider that this has been done as it has not been shown that there is no sequentially preferable unit or site available. Nor has it been shown that there will not be a significant adverse impact on the city centre when the cumulative effect of proposals is considered.

On this basis our client strongly objects to the proposal and requests that the Council refuse the application.

It has become apparent that a number of retailer operators have identified a requirement for large format out of centre units within Gloucester and that the owners of vacant warehouse units are doing their utmost to attract the retailer(s) to their unit(s). Whilst there are vacant units outside of the city centre, unless personal planning permissions are granted there is a real danger that Gloucester town centre will be damaged as a result of the relaxation of goods that can be sold from out of centre units.

A precedent would also be set for other, similar applications.

We trust that the above is clear, however should you have any queries please do not hesitate to contact me.

Yours sincerely

**Arwel Evans**

Planner

Copy – Ms Shelagh Larard

Please Reply to: Swindon  
Our Ref: DAM/C10179  
Your Ref:  
Date: 20<sup>th</sup> November 2013



Town Planning  
Development  
Environment  
Architecture  
Urban Design  
Landscape Design  
Project Management

Adam Gooch  
Senior Planning Officer  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester GL1 2EQ

BY EMAIL

Dear Adam

**Planning Application 13/00559/FUL Peel Centre Gloucester**

Further to your instructions, we refer to the above planning application which seeks variation of condition 1 of planning permission 09/01311/FUL to vary the types of goods that can be sold from the existing units at the Peel Centre.

Application 13/00559/FUL originally sought to vary condition 1 of permission 09/01311/FUL to allow the sale of an extended range of goods from up to three of the existing retail warehouse units, subject to restrictions on floorspace and the product mix. However, the description of development has been amended by the letter of the 17/07/13 from WYG. At the same time a revised retail statement was submitted to reflect the changed condition. This letter considers the revised statement.

Objections to the application have been received from NLP on behalf of Aviva which has interests in Kings Quarter, and Savills on behalf of Stanhope, the selected developer for the Kings Quarter Redevelopment. The contents of these objections are also considered.-

A separate application, 13/00560/FUL, submitted at the same time as 13/00559/FUL, sought similar variations of condition 3 of planning permission 11/01292/FUL. This 2011 permission was for the alteration, change of use and extension of the existing cinema building at the Centre. The application to amend condition 3 has now been amended (by letter from WYG dated 17/07/13) to seek an open A1 use of the permitted building. The applicant has recognised that this requires a revised retail statement. As this further information has not yet been received, we have been asked assess the application 13/00559/FUL on the basis of the existing information.

**Background**

The Peel Centre is an existing out-of-centre retail and leisure development and planning permission was granted subject to a condition which restricts the sale of non-bulky goods from the units. Planning application 09/01308/FUL was granted to vary the conditions under which the retail use of Units 1- 5b of the retail park operated.

In addition, the condition allows for the sale of footwear, sports goods and toys - in each case limited to one unit and a specified floorspace. This allows existing traders to continue trading in accordance with earlier variations to the original condition.

Cont/d....

**Development Planning & Design Services Group Ltd**  
Group Managing Director:  
L.M. Dunant, F.R.C.S., Dip. TRAMPTP, MRSP  
Company Secretary:  
J. James, B.Sc. (Econ), F.R.A.  
Company Registration N° 1907209  
Registered in England and Wales

**Subsidiary Companies:**  
**Development Planning & Design Services Ltd**  
Directors:  
L.M. Dunant, F.R.C.S., Dip. TRAMPTP, MRSP  
N. Adson, BA (Hons), Dip. TRAMPTP  
D. Jones, BA (Hons), MSc, PGDipSUR, MRTP, MRCS  
Associate Director:  
S. Westfield, BA (Hons), Dip. TRAMPTP  
M. Ward, BA (Hons), M.Phil, MRTP  
Consultants:  
M. Crogan, B.Sc. (Hons), Dip. TRAMPTP  
T.A. Gwynne, BA (Hons), MSc, MRTP  
D. McCullough, BA (Hons), MPhil, MRTP  
J. Thomas, BA (Hons), OMS, MRTP  
Company Registration N° 2091708  
Registered in England and Wales

**DPDS Architecture Ltd**  
Directors:  
L.M. Dunant, F.R.C.S., Dip. TRAMPTP, MRSP  
N. Hendon, BA (Hons), Dip. Architecture, RIBA  
Consultant:  
P.H. Griffin, B.Sc. (Hons), CPAI  
Company Registration N° 2937191  
Registered in England and Wales

Registered Office of All Companies  
Old Bank House,  
5, Devizes Road, Old Town,  
Swindon, Wiltshire, SN1 4BJ  
[www.dpd.com](http://www.dpd.com)

Swindon  
Old Bank House  
5 Devizes Road  
Old Town Swindon  
Wiltshire SN1 4BJ  
Tel: 01793 - 610222  
Fax: 01793 - 512436  
[info@dpds.swindon](mailto:info@dpds.swindon) [www.dpd.com](http://www.dpd.com)

Derby  
3 Gleneagles House  
Vernon Gate  
Derby  
DE1 1UP  
Tel: 01332 - 206222  
Fax: 01332 - 206012  
[info@dpds.derby](mailto:info@dpds.derby) [www.dpd.com](http://www.dpd.com)



Gloucester City Council



More recently, Planning Application 11/01292/FUL was granted for the alteration and change of use and extension of the existing Cinema building at the Centre to retail use. This planning permission is subject to condition 3, which applied the same restrictions on the sale of goods as applied to the existing retail units.

The reason for the conditions was to safeguard the vitality and viability of the City Centre.

### **The Proposal**

The description of development as amended by the letter from WYG of 17/07/13 is:

*Variation of Condition 1 of Planning Permission 09/01311 (to alter the range of goods that can be sold from amalgamated Units 3a and 3b)".*

The suggested condition as revised would be

*"Notwithstanding the provisions of Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or any other Order revoking, amending or re-enacting that Order with or without modification, the retail units as defined in green on Plan A (received by the Local Planning Authority on 3rd December 2009) in so far as the same form part of the development hereby approved shall not be used for the sale of the following goods unless expressly provided for below and/or on a basis which is incidental and/or ancillary to the main goods sold:*

*1. Food and drink, other than for consumption on the premises (except from no more than 690 square metres of gross floorspace within amalgamated Units 3a and 3b);*

*2. Clothes and fashion accessories;*

*3. Footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*

*4. Sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*

*5. Toys excepting only the sale of toys from no more than 4,048 square metres of gross floorspace within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009) and from no more than 230 square metres of gross floorspace within amalgamated Units 3a and 3b;*

*6. Books and stationery except where included as part of the range of a toy retailer;*

*7. Cameras, video equipment, mobile phones, audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc;*

*8. Pharmaceutical goods, perfume goods and toiletries (except from no more than 230 square metres of gross floorspace within amalgamated Units 3a and 3b);*

Cont/d....

Gloucester City Council



9. *Jewellery goods, clocks and watches; and*

10. *All uses within categories A1 (B to F) of Class A1."*

The underlined wording indicates the changes proposed. It would therefore allow the following goods to be sold from a combined unit 3a and 3b

Food and drink – limited to not more than 690 sq m gross floorspace

Toys –up to an additional 230 sq m gross (Toys can already be sold from one of the units)

Pharmaceuticals – limited to up to 230 sq m gross

The purpose of the proposals is stated to be to accommodate known retailer interest in Gloucester from Home Bargains.

### **Planning Policy**

The statutory development plan is the 1983 City of Gloucester Local Plan. Policy S1 seeks to concentrate comparison goods shopping in the City Centre and S1a states that major comparison goods will not be permitted outside the main shopping area other than in accordance with specific provisions of other policies.

Regard also has to be had to the 2002 Revised Deposit Draft Local Plan. Policy 4a states that new retail development will only be permitted outside designated centres subject to six criteria. These include the sequential test and the impact on the vitality and viability of the designated centres. The others are the demonstration of a need for the development proposed, impact on the regeneration of the City Centre, accessibility by a choice of transport means and the impact on travel patterns and overall car use.

Significant weight has to be given to the NPPF. This reaffirms the policy to support the vitality and viability of town centres (as defined in the NPPF Glossary) and sets out two tests for applications for out of centre retail proposals which are not in accordance with an up-to-date development plan – the sequential and impact tests. If an application fails to satisfy either test, it should be refused.

The impact test has two elements – the impact on existing, committed and planned public and private investment in a centre or centres and the impact on town centre vitality and viability including consumer choice and trade in the town centre and wider area up to five years from the time the application is made.

The sequential test requires applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to town centre.

This last requirement has been relevant to the consideration of earlier applications in Gloucester. Its interpretation has given rise to dispute elsewhere. At a recent High Court decision concerning a site in Shropshire the Judge found that sites they could be

Cont/d....

Gloucester City Council

equal in terms of accessibility and links to the centre. He also found that the Inspector in that case could not be criticised for deciding not to attach great weight to the links of either of the competing sites to the centre as in the Inspector's view neither was well connected. The case will only be relevant in relation to this application, if it is found that there are no City Centre or edge-of-centre sites available.

The Practice Guidance on Need, Impact and the Sequential Approach (Practice Guidance) published with PPS4 in 2009 has not been cancelled yet, and continues to form a material consideration on retail planning policy.

Circular 11/95 requires that conditions should be necessary and no more onerous than required to achieve the planning purpose.

## **Impact**

### **Impact on Investment**

The key investment proposal for the City Centre is the Kings Quarter redevelopment and there should be no doubt of the importance of this proposal to the future vitality and viability of the City Centre. The scheme is well advanced with a development partner selected and an application expected in the near future.

WYG conclude that the amended conditions would not adversely affect the proposed redevelopment because *"they are not competing for the same market opportunity or key retailers/occupiers."* In support of this conclusion, WYG claims that the *"scheme aspirations are for smaller units for high street type fashion retailers"* (paras 3.2.7 and 3.2.8). According to WYG (para 2.6.16) *"Stanhope have confirmed in their tender document and subsequent press releases that they are seeking to progress a scheme on the basis of securing "fashion retailers that seek to create a particular brand ambience" and are "affordable premium brands"*.

This analysis is in our view flawed. There is no indication that the scheme is intended to be exclusively for fashion retailers and it is unlikely that any scheme would comprise only small retail units. We would expect a number of larger sized units in any scheme and the combined Units 3a and 3b are not of a size that could be ruled out in any City Centre redevelopment. Kings Quarter must also be expected to accommodate a mix of retailers (and retailer service uses) selling fashion and other goods. In our view, there would be a degree of competition for retailers between Kings Quarter and Peel Centre – the question is whether the variation of the condition as sought would increase this competition to the extent that it threatened the viability of the Kings Quarter development. Both Aviva and Stanhope have objected to the proposed variation of condition and we will examine their objections in this context

WYG also doubts the viability of the development. While that might be an issue for the sequential approach, in the context of impact, it points to the vulnerability of the development and the care that is needed in considering potential threats. A certain level of pre-lets will no doubt be a pre-condition of the start of any City Centre retail led development and any actions which reduce the level of pre-lets is likely threaten the development.

While we agree with Savill's objections on behalf of Stanhope on the importance of the Kings Quarter development to the City Centre and of maintaining controls of the range of goods that can be sold from out-of-centre locations, Savills do not address the issue  
Cont/d....

Gloucester City Council

of the impact on retailer demand and the Kings Quarter proposal directly. Nor do NLP on behalf of Aviva. NLP comments on the fact the variation of the condition would enable a number of occupiers who might otherwise locate to the City Centre to locate there, but do not tie this comment specifically to the Kings Quarter development.

Our own conclusions, bearing in mind the objections outlined above, are that the impact of the variation of condition would not be sufficient in itself to threaten the intended investment in Kings Quarter redevelopment. This is primarily because of the variation of the condition would affect only one unit and hence only one possible pre-let, and because the vacant units at the Peel Centre are already, to some extent, in competition for retailers with Kings Quarter. The variation of the condition would not, in itself, increase the degree of competition sufficiently to warrant a refusal on the basis the impact on intended investment in the City Centre. It is also arguable that the amalgamation of Units 3a and 3b would reduce competition for retailers from 2 to 1 potential retailers and that the smaller units at the Peel Centre currently on the market would be more attractive to potential tenants of Kings Quarter than the single large unit, even if it is able to sell a wider range of goods than it currently can. The more general point raised by objectors on the possible investment in the City Centre from the re-use of vacant units in the Centre is best considered in the context of the sequential test.

We therefore conclude on the basis of the information before us that any adverse impact on investment in the City Centre would not be sufficient to warrant the refusal to vary the condition. There is obviously an element of judgement about these conclusions and we would review this conclusion in the light of any further comments from the applicant or objectors

#### Impact on the Vitality and Viability of the City Centre

WYG assesses the potential turnover of the vacant units under the existing condition at £5.5m. This is based on a sales density of £2787 per sq m. Contrary to the footnote to Fig 3.1 of that WYG Statement, DPDS did not accept the average sales density in relation to planning application 11/01292/FUL for the permitted bulky goods shown in that table and expressed strong reservations about how it had been derived from the available data.

WYG assess the turnover trading as a Home Bargains outlet at £4.1m of which £2.6m would be attributable to the additional goods that would be permitted. This is based on a sales density of £2250/sq m supplied by Home Bargains, but it cannot be verified from published sources. It seems exceptionally low for the bulk/value ratio of the goods sold and particularly when bearing in mind that up to 30% of the floorspace is used for selling food. In addition, as noted by NLP, the variation of condition would not restrict the occupation to Home Bargains and a broader approach to estimating the turnover of the proposal would be preferable. The estimated turnover derived from the additional goods is estimated on the basis of the same sales density, but this is unlikely. Generally the sale of food achieves a significantly higher sales density than other goods and we would want considerably more supporting evidence before accepting these figures.

There is considerable uncertainty about the potential turnover of the existing vacant units and despite our reservations about the turnover as estimated by WYG, the turnover of the units under the existing conditions could be higher than with the  
Cont/d....

Gloucester City Council

variation proposed, most obviously, for instance, if one of units or both the units were used for the sale of electrical goods. On balance, the increased turnover as a result of varying the condition as sought is likely, at worst, to be modest. Although we do not necessarily accept WYG's estimate of trade draw for this proposal as shown in Fig 3.4, we agree that with significant sales of ambient food, a significant proportion of that turnover is more likely to be drawn from out-of-centre foodstores rather than the town centre. In this context it should also be noted that the City Centre supports a significant level of bulky goods sales.

It is therefore concluded that any adverse impact on the vitality and viability of the City Centre is likely to be very limited and would not indicate that the variation of the condition should be refused.

However, the site is quite close to the Seymour Road Local Centre and opposite the Clifton Road Triangle where a discount foodstore has been proposed. That proposal has given rise to a significant number of objections concerning its impact on the Local Centre and in that case we advised the Council to seek further explanation of the applicant's assessment of likely impact. The Home Bargains would have a significant food offer and the possible impact on the Seymour Road Local Centre should be examined. We cannot comment further on this because the WYG estimate of turnover does not distinguish between food and non-food sales.

#### Cumulative Impact

Given these considerations and the size of the City Centre, we conclude that the variation of the condition as sought would, at worst, have very minor impact on the vitality and viability of the City Centre and that it would not be possible to sustain a case for refusal for this reason at an appeal.

There is the question of cumulative impact raised by the objectors. There are two aspects of this – the impact together with the impact of previously permitted developments and a more general impact resulting from creating a precedent for out-of-centre retailing.

In relation to the former, there have been a number of planning permissions and variation of conditions permitted which will all have had minor adverse impacts on the City Centre. The largest of these are the redevelopment of the Tesco store at St Oswalds, the Morrisons on the Railway Triangle site and ASDA at Kingsway. The latter two are now constructed and trading.

The two most recent, which are referred to in the objections, are the variations of conditions which allow B & M and the Range to trade from premises on Eastern Avenue. The cumulative impact of all of these proposals has been considered by the Council and found not to justify refusal. Given that the scale of those likely impacts are significantly larger and more certain than the impact of the current application, it would, in our view, likely to be held to be unreasonable to resist the current application, with a less certain and a much smaller likely impact, based on a cumulative impact of which the current application would contribute such a small part. In short, any impact of the current proposal would not be large enough to indicate a refusal even bearing in mind the cumulative impact.

Cont/d...



In relation to the second, more general impact the Council should fully consider the wider implications of variation of condition applications (for product ranges) given the quantum of out of centre floorspace in Gloucester and the importance of conditions to control inappropriate development.

The majority of out of centre non-food retail floorspace throughout the country operates under conditions which restrict the sale of goods to bulky goods. The reasons generally are to protect the vitality and viability of centres and because special circumstances have been accepted in relation to the sequential approach to site selection. The conditions vary from place to place and have developed over time to take account of the different trading formats which have arisen from their operation so it is not unusual for different retail parks and units to operate under differently worded conditions.

In Gloucester, the adopted and emerging policies for retail development seek to protect the vitality viability of the City Centre and concentrate retail development in the centre. This is clear in both the adopted 1983 Local Plan and the 2002 draft plan which remains a material consideration. It is also true of the NPPF. In total, there is some 62,500 sq. m net of comparison goods retail floorspace in out of centre locations in Gloucester (excluding circa 17,000 sq. m net at Gloucester

Quays Outlet Centre and circa 7,800 sq. m net of unimplemented bulky goods floorspace at St Oswalds Park and the Cineworld, Peel Centre). Most of this is subject to conditions which seek to limit the type of goods sold and have been imposed to protect the vitality and viability of the City Centre.

We have no doubt that the sale of unrestricted goods from this floorspace on a substantial scale would undermine the City Centre's vitality and viability both by diluting the retailer demand which could support retail development in the City Centre, and by the general diversion of trade.

In terms of the latter, for instance, if it is assumed a third of the existing out-of-centre floorspace (i.e. 20,625 sq. m net) were freed from restrictive conditions on the type of goods sold, the turnover of these units would increase, in broad brush terms from £51.6m to £103m.

This is based on the difference between the sales density of about £2,500 per sq. m for bulky goods and of the floorspace as bulky goods floorspace and general comparison goods (circa £5,000/sq. m). The trade diversion would be predominantly from the City Centre since the new goods are currently not widely sold from the out-of-centre locations and this theoretically represents circa 19.7% of the City Centre trade (£261m comparison goods turnover of the City Centre identified in the JCS Retail Study).

In our opinion, such an unrestricted sale of goods from out of centre locations in Gloucester would be a threat to the vitality and viability of the City Centre. We have no doubt that there would be widespread demand from non-bulky goods from retail warehouses on a substantial scale and the number of applications the Council receives is clear evidence of this – in this context, the Council has recently determined four similar variation of condition applications, all at out of centre locations. There is clearly a matter of cumulative 'impact' and it further demonstrates why conditions are considered necessary to protect the vitality and viability of the City Centre.

Cont/d....

Gloucester City Council

Equally, the importance of consistency in determining planning applications needs to be recognised both in terms of fairness and expectations.

In determining applications to vary conditions, the Council needs to be careful not to make decisions which will set a precedent that will make other applications to vary conditions difficult to resist and there is no doubt that its decisions will be quoted in other applications. However, it must also treat each application on its merits and take into account the individual circumstances of the application. The weight that it gives to these considerations is a matter for the Council provided it acts reasonably, and circumstances will vary between applications, depending on the original condition, the variation sought, and the circumstances of the intended occupier. There are likely to be circumstances where the Council considers it is appropriate to vary the condition and, if it does so, it must be clear why it is agreeing to vary a condition in relation to a particular application.

While unrestricted out-of centre retail development would pose a clear risk to City Centre investment and vitality and viability, applications have to be treated on their merits. Although WYG has not identified the features of the application which would distinguish it from the generality of such applications, the limited expansion of the permitted range of goods and floorspace involved in this case suggests that the precedent set by permitting this variation in condition would be limited, provided that Council's general policy is clear.

To a considerable extent, the sequential test is designed to control the slow cumulative impacts of small retail applications of this sort and we will consider the risks to investment in relation to the sequential test.

### **The Sequential Test**

The sequential approach is well known to the Council and the NPPF requirements have been briefly described in the section on policy. The Peel Centre is an out-of-centre location and so it is necessary to consider City Centre and edge of centre opportunities together with any out-of-centre locations which are more accessible and with good links to the City Centre.

The Practice Guidance gives advice on how apply the test. Alternative sites are required to be suitable, viable and available in a reasonable period of time (Practice Guidance para 6.37). Applicants should demonstrate flexibility in their business models (Practice Guidance para 6.27). In this context WYG quote the Dundee case.

This was a judicial review brought by Tesco against Dundee City Council on the basis that it had misunderstood the sequential test in permitting a rival site to one promoted by Tesco. After careful analysis of the particular development plan policies and NPPG8 (the relevant national planning policy in Scotland) the Judges concluded that "suitable" in the sequential test in that case meant "suitable for the development proposed" with the qualification of the need for flexibility from the developer and retailers as well as planning authorities. The judgement noted the inbuilt difficulty in the test between the suitability of sites and the need for flexibility before referring to the factors identified in the guidance that should be used to resolve this tension. In para 29, of the judgement, it was concluded that

*"It follows from the foregoing that it would be an oversimplification to say that the characteristics of the development, such as scale, are necessarily definitive for the purposes of the sequential test".*

Cont/d....

Gloucester City Council

The judgement had earlier referred to the way the Courts had to approach planning policies. The primary interpretation of planning policy lay with the Planning Authority, and the Courts would only intervene if the interpretation was unreasonable. The Court found that Dundee City Council could not be said to have acted unreasonably in its interpretation of policy. The Dundee judgement therefore confirms that the LPA is the primary interpreter of flexibility within the sequential test but that it should not act unreasonably. It would be doing so if it considered ways in which the floorspace could be provided which bore no relationship to the application proposal, but the judgement very specifically notes the need for flexibility from applicants.

In this context WYG sets out the retailers requirements in para 2.5.10. These are

- The ability to sell the full range of goods including both bulky and non-bulky non-food goods as well as ancillary food and drink products;
- A demised customer car park of an appropriate size directly adjacent to the retail unit (with trolley bays) to allow the safe and direct transfer of goods from store to customer vehicle;
- Simple, safe and efficient servicing arrangements allowing HGV's to arrive, unload and leave the site without any disruption, conflict with the wider highway network or any negative impact on residential amenity;
- The provision of sales area on a single level. (Multi-level store formats do not provide a viable trading position for Home Bargains); and
- A customer base that is able to make purchases from various ranges, for example someone buying home furnishings may also want to purchase the other related household items and so on - the core element of the retail offer is the complementary nature of many of the products and the synergy that exists between the product ranges.

Para 2.6.4 states *"The assessment considers each site having due regard to the sequential test criteria outlined in paragraph 2.1.4 and Home Bargains business model requirements for a larger store of 2,300sq m..."*

We note that earlier applications aimed at securing Home Bargains as a tenant proposed floorspace of 1061 sq m (at Canada Wharf) and 1115 sq m at Eastern Avenue. It is reasonable for the Council to assume that to submit the applications, those applicants had, at the minimum, a reasonable expectation of a deal with Home Bargains if the applications were successful and that Home Bargains are therefore prepared to consider units of around this size. We also note from the report that the Home Bargains does operate from units of around this size. In the absence of supporting evidence for the minimum size of 2300 sq m we therefore conclude that applicant has not demonstrated sufficient flexibility.

We also note that Home Bargains does operate from town centre stores and para 2.5.14 confirms that some of the Home Bargains stores currently being developed are in town centres.

We agree with WYG (para 2.6.4) that the sequential approach should be considered by the Council in terms of the retailers requirement for a large modern unit. However,  
Cont/d....

Gloucester City Council

we conclude from the evidence outlined above that the assessment has adopted an unreasonably inflexible approach to the retailer's requirements. However, compliance with the sequential test in practice depends on how these requirements are interpreted in relation to the sites and opportunities considered

#### **The former M&S Unit Northgate Street**

WYG accept that the unit may be available to a retailer other than TK Maxx but concludes it is unsuitable for the following reasons

- The unit, measuring 4,066sq m gross, is too large
- The unit doesn't provide adjacent surface level customer parking
- The rents sought for the unit, which would include the additional 77% of floorspace not required, would not be commercially viable for Home Bargains.
- The configuration/layout of the unit over 3 floors is not suitable for trolley shopping.
- The potential requirement to remedy the asbestos problems also results in the unit not being viable for Home Bargains.

In our view, these claims are not supported by sufficient evidence. The marketing details for the unit prepared by letting agents CBRE give a retail sales floorspace of 1854 sq m on the ground floor with ancillary floorspace on upper storeys. The asking rent is given as £300,000 per annum which works out at £15 per sq ft of sales area. We are advised that rents in out-of-centre locations are likely to be about the same level.

In its July Statement WYG stated that "*Home Bargains generally pay rents of no more than £10 per sq ft.*" In the context of advice we have received on rents for out-of-centre floorspace, we would want more evidence to support this claim. Furthermore, the £15 per sq ft for the M&S unit is for the sales floorspace net of any ancillary space – the estimate of £10 per sq ft would include ancillary space. The £15 per sq ft is also the asking rent and subject to negotiation. Overall, the difference in rent is not so great that it would seem unbridgeable and certainly more information is required before we could rule out the unit as unviable.

The remediation of an asbestos problem, while a matter for negotiation, could only be passed on to an incoming tenant if there was sufficient competing demands for the floorspace to persuade the tenant that it was necessary to do so to secure the unit. Given the time the unit has been empty this seems unlikely and any incoming tenant would appear to be a good negotiating position.

We also note that the sales floor is on ground level and although there may be differences of level within this space, we would want more evidence that any changes of level were so great that the use of trolleys was unworkable. The shop in any case needs to comply with disabled access requirements. The weight to be attached to this matter would also depend on how extensive the use of trolleys is. From our experience, it is not extensive in Home Bargains stores.

WYG refer to our conclusions on the suitability of the unit for Wrens Kitchens. These reflect the bulky nature of the goods the occupier would sell.

Cont/d.....

Overall, we conclude that the evidence submitted is not sufficient to establish this. The analysis falls far short of the clear demonstration described in the Practice Guidance (para 6.45) that the development on a site would be unable to meet the retailer requirement the proposal is designed to serve and fails to demonstrate flexibility by failing to consider how any identified constraints might be overcome. As we commented before, the unit has been used by a major national retailer for many years.

### **Kings Quarter**

WYG questions the availability of units in the redevelopment in a reasonable period of time. The Council are in a better position to assess this than we are. However, we draw the Council's attention to the Practice Guidance on this matter. Para 6.39 comments that whether it is appropriate to assess the availability of a three to five year period or longer will depend on local circumstances. Para 6.40 notes the town centre schemes can take 10-15 years to deliver

WYG find the site unsuitable solely because of the aspiration for a fashion led offer in the scheme. We have already made our views clear on this – that such an aspiration does not mean the final scheme would be exclusively fashion led or rule out other types of retailer in the scheme and the objections to this application by the developer and landowner suggest that they share our view.

As a matter of accuracy, application 12/01173/FUL relates to the variation of conditions on the former Focus unit on the Gloucester Retail Park to accommodate The Range and not B&M. The main point is, however, that neither quote implies that we considered either the Tesco comparison goods offer or the Ranges offer as unsuitable for Kings Quarter as claimed in WYG para 2.6.17. The reasons for rejecting the Kings Quarter development as suitable for the Range were the scale of floorspace sought, the need for an outdoor sales area and the predominantly bulky nature of the goods sold by The Range.

Lastly, Kings Quarter is rejected as being unviable for a discount retailer. Although advice from Jones Lang LaSalle is referred to, it is not included in the report and we cannot therefore rely on it. Equally there is no evidence to support the assertion that the rents likely in the scheme would not be affordable by a discount operator.

I therefore conclude that the assessment has not demonstrated that the Kings Quarter development is either unsuitable or unviable, to accommodate the proposed retailer. The Council will have a better idea of the timescale for the development.

Other than the M&S unit, WYG do not address vacant units in the City Centre at all. It is common practice in sequential site analysis to identify the vacant units in a town centre even if this is only to demonstrate that there are no units of a suitable size.

We conclude therefore that the applicant has not demonstrated that there are no City Centre alternatives to the proposal and the sequential test is not complied with.

Cont/d....

Gloucester City Council



Overall we conclude that the proposed variation of condition would not have a significantly adverse impact on the City Centre but the impact of food sales on the Seymour Rd Local Centre should have been investigated. However, the applicant has not demonstrated that there are no suitable opportunities to accommodate Home Bargains or a similar retailer in the City Centre and the application therefore fails to comply with the sequential test. Para 27 of the NPPF indicates that the application should therefore be refused, unless there are other material considerations sufficient to outweigh this objection.

Yours sincerely



**Duncan McCallum**  
**Consultant**  
**Development Planning & Design Services Limited**



Ref: A070056/TH/th  
Date: 02 December 2013

**FAO: Adam Smith**

Head of Planning Services  
Planning Services  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester  
GL1 2EQ

Dear Mr Smith,

**PEEL LAND & PROPERTY INVESTMENTS PLC & GLOUCESTER QUAYS LLP  
PEEL CENTRE, ST ANN WAY, GLOUCESTER  
VARIATION OF GOODS CONDITIONS TO ALLOW DISCOUNT RETAIL WAREHOUSE  
RETAILER HOME BARGAINS TO TRADE FROM AMALGAMATED UNITS 3A & 3B**

**LPA REF: 13/00559/FUL**

---

**Introduction**

We write on behalf of our clients further to the review by the Council's retail consultants, DPDS Consulting, of the Updated Retail Statement (RS) submitted in support of the above proposals.

Before responding to the key matters raised by DPDS, for ease of reference, this letter firstly summarises DPDS's response. It does not seek to respond to every detailed minor matter raised by DPDS. We do however reserve the right to respond to these matters should the Council consider them material to the determination of the proposals.

The additional information/assessment provided in this letter should be read in conjunction with the original retail policy analysis provided in the RS.

**Summary of DPDS's Response**

DPDS's response can be summarised as follows:

***Sequential Approach***

- Home Bargains Business Model - sufficient flexibility of Home Bargains business model has not been demonstrated.
- Kings Quarter - It has not been demonstrated that the potential Kings Quarter development is either unsuitable or unviable to accommodate Home Bargains. In terms of availability, the Council are in a better position to assess this than we are.
- Former M&S Unit – Insufficient evidence has been submitted to demonstrate that the unit is unviable and unsuitable.



- Other vacant units in the city centre need to be assessed as part of the sequential approach.

### ***Retail Impact***

#### Impact on City Centre Investment

- The impact of the variation of condition would not be sufficient in itself to threaten the intended investment in Kings Quarter redevelopment.
- The variation of condition would not increase the degree of competition for retailers with Kings Quarter to warrant a refusal on the basis of impact on investment in Gloucester City Centre.

#### Impact on Vitality and Viability of the City Centre

- The variation of condition would, at worst, have a very minor impact on the vitality and viability of Gloucester City Centre.
- The impact of the proposed ancillary ambient convenience goods floorspace on Seymour Road Local Centre should be examined.

### ***Summary***

In responding to DPDS's audit this letter provides additional information / an assessment in relation to the following:

Sequential Approach - Home Bargains Business Model & Flexibility of Format  
- The former M&S unit, Northgate Street  
- Potential Kings Quarter redevelopment  
- Vacant units in the city centre

Retail Impact - Impact of proposed ancillary ambient convenience goods floorspace on Seymour Road Local Centre.

Each matter is considered in turn below.

### **Sequential Approach**

#### ***Home Bargains Business Model & Flexibility of Format***

DPDS suggest that because Home Bargains has in the past opened town/city centre high street stores flexibility in the retailers' business model has not been demonstrated. We provide below further information on Home Bargains business model requirements for Gloucester.

Firstly, it is important to note, like many retailers, Home Bargains business model has evolved over time in order for the company to continue to operate viably in a competitive and challenging retail environment. As noted in the supporting RS Home Bargains do have a number of historic stores within town/city centres. Such stores are generally much smaller units (c. 464-696sq m) offering a truncated and much softer retail offer focused on basket shoppers. This type of format has proven far less viable in recent years and partly in response to the economic downturn Home Bargains has broadened its retail offer in terms of the number of products and depth of range, meaning that much larger stores are required in which customers shop in bulk using trolleys. This larger format store requires immediately adjacent at grade customer parking and a single floorplate. The photo below illustrates the evolved trolley format business model store.





**Home Bargains store, Dundee**

The need for single level trading floorplate is a key requirement of the retailers' business model. Home Bargains do not, and will not, trade across multiple levels. There are four key reasons for this:

1. The nature of the retail offer means that customers buy in bulk more often than not using a shopping trolley. Trolleys are not conducive to multi-level retailing for obvious reasons. Those reasons are why supermarkets, except where from units large enough to accommodate travellers, DIY stores and other large format retailers do not trade from multi-level stores.
2. Research has shown that customers are far less likely to shop on a second floor, being put off by lifts and elevators. With the exception of department stores the trading intensity of second floor/mezzanine floorspace is significantly lower than ground floor. This is best evidenced by supermarkets and discount retailers all of whom sell from single level floorplates with very limited exception.
3. Home Bargains has a huge turnover of product receiving 60 to 80 cages per day. Distribution of this stock from the small back of house area to the shop floor would be impossible over two levels without compromising the trading performance of the store.
4. The likelihood for shrinkage or theft is significantly increased on multi-level retailing. Elevators and escalators provide blind spots where the propensity for shoplifting is heightened. With a retailer already trading from limited margins this shrinkage poses a threat to the viability of the retail model.

The product range also contains many bulky goods (home and garden furniture, gardening goods, car accessories etc), or bulk packs of other items, which further underscores the limitations posed by multiple floors. Home Bargains is not a department store that can split its product line over multiple levels with separate checkout areas.



An adjacent at grade customer car park is also one of the fundamental requirements for Home Bargains evolved business model. The requirement is primarily due to the fact that the majority of customers shop in bulk using trolleys. This is no different to bulky retail warehouse operators and indeed foodstore operators, some of which do not involve trolley purchases but still require adjacent car parking provision as part of their business model.

The need for the size of the Home Bargains store proposed in Gloucester is dictated by a number of variables that are used to forecast what critical mass is required to be able to create a viable trading proposition. A smaller store within the city centre without adjacent demised customer parking and over a single floorplate would simply not be viable. It cannot be expected for a retailer to deviate from their business model in circumstances where such a deviation results in an unviable store. Home Bargains business model requirements should not be considered any differently from other retailer's business model requirements, such as foodstore operators and other bulky goods retailers, which have similar needs including adjacent surface level car parking and a single footprint.

### ***Former M&S Unit, 13-23 Northgate Street***

DPDS suggest that insufficient evidence is provided in the RS to demonstrate that the former M&S unit is unsuitable for Home Bargains. We address DPDS's concerns below:

#### The former M&S unit is too large for Home Bargains

It is evidently clear that the size of the unit, 4,066sq m gross, is significantly larger than what Home Bargains require. The simple fact is that Home Bargains do not operate stores of this size and for this reason alone would not trade from this unit. To expect Home Bargains to operate from a unit which is 77% larger than the size of the unit currently being sought by the retailer cannot, by any measure, be considered within the parameters of demonstrating flexibility in a retailers business model. Home Bargains would have to significantly deviate from their business model.

DPDS imply that their conclusions on the suitability of the unit for Wrens Kitchens proposals on St Oswald's Retail Park are not relevant because of the bulky nature of the goods sold by the retailer. This ignores the fact people do not take away a kitchen they buy, whereas people do buy bulky items and other items in bulk quantities from Home Bargains and then take them away. The former M&S unit is 25% larger than Wren Kitchens business model unit size requirement for Gloucester and on this basis DPDS correctly considered that it was not suitable for the retailer. To suggest that the same unit, which is some 77% larger than a different retailer business model unit size requirement for Gloucester, would be suitable is wholly contradictory to DPDS's previous correct conclusions on this unit.

#### The configuration/layout of the unit is not suitable for Home Bargains

The former M&S unit is unable to meet two of the key fundamental requirements of Home Bargains business model described above. The unit is not on a single level and there is no adjacent at grade car park. Home Bargains would have to compromise its business model to operate from the unit. Accordingly, the unit would not be a suitable or viable unit for Home Bargains.

#### The rents sought for the former M&S unit would not be commercially viable for Home Bargains

It is noted that DPDS provide comments on matters pertaining to rental levels and tenant/owner negotiations without specialist advice from agents/surveyors. We have significant concerns that DPDS are advising the Council on matters outside their area of specialism.



On the basis that the unit is fundamentally unable to meet the operational needs of Home Bargains there is no requirement for the retailer to divulge any commercial information to support their proposed operation. Notwithstanding this, following discussions with Home Bargains and specialist agent/surveyor Jones Lang Laselle (JLL) we would make the following comments:

- DPDS have undertaken an exercise comparing the rent per sq ft sought for the former M&S unit and the potential rent Home Bargains are likely to pay. This exercise is wrong and misleading. Such an exercise should take into account the total 'global rent' sought for the unit and rent affordable for Home Bargains. The total asking rent for the former M&S unit is £300,000 per annum. This is over 50% higher than the level of rent Home Bargains would be able to afford to operate a viable store in Gloucester. The rent sought for this unit is therefore not viable for Home Bargains.
- DPDS suggest that given the time that the former M&S unit has been vacant any incoming tenant would appear to be in a good negotiating position to persuade the owner to remedy the asbestos problems and pay the associated costs. As the Council will be aware, the evidence is that TK Maxx had been in negotiation on this unit for some 18-24 months. TK Maxx has confirmed to JLL that whilst an agreement had been made on the asking rent of £300,000 per annum an agreement could not be reached on who would be responsible for costs associated with remedying the asbestos problems. As a potential tenant, TK Maxx were being asked by the owner to pay the remediation costs in addition to the asking rent. Despite TK Maxx seeking to negotiate on this the owner confirmed that it would not pay for the asbestos remediation costs. As a result of the viability issues associated with the unit TK Maxx pulled out of the deal and are now seeking to progress a new store potentially at Eastgate Market. JLL understand that the owners of the unit are still seeking the asking rent of £300,000 per annum plus the costs required to remedy the asbestos problems with the unit. If this is not a viable proposition for a fashion/variety retailer which is able to afford the asking rent, it cannot, by any reasonable or sensible measure, be considered a viable proposition for a discount retailer such as Home Bargains who cannot operate a viable store at the asking rent, let alone with the cost of asbestos remediation on top.

Accordingly, the former M&S unit, Northgate Street is unable to meet the operational needs of Home Bargains and even if it was the asking rent sought by the owner together with the costs associated with the remediation of the asbestos problems is not a viable proposition for Home Bargains.

### ***Potential Kings Quarter Redevelopment***

A detailed assessment on the likelihood of a potential Kings Quarter redevelopment scheme coming forward within a reasonable period of time is provided at paragraph 2.6.20-2.6.26 of the RS. DPDS do not comment on whether retail units in the potential Kings Quarter redevelopment scheme are likely to be available within a reasonable period of time. Instead they suggest that the Council will be able to advise on timescales. We have formally requested confirmation on the Council's latest timescale for the delivery of units in the Kings Quarter scheme. A response was not received at the time of writing. Informal discussions with planning officers suggest that a planning application has been further delayed and may be submitted in Spring/Summer 2014 but there is potential for this to be further delayed due to the complexities of the site.

The Council has been trying to secure redevelopment at Kings Quarter since at least 2001. Thornfield were appointed as the Council's development partners for the Kings Quarter scheme in 2007. Since Thornfield's appointment some 6 years ago there have been continuous delays. Most notably, since Stanhope was appointed as the Council's latest development partners in 2011 the potential submission of a planning application has been delayed several times. As noted above there is still some uncertainty on the



timescales for a planning application submission and there is significant doubt whether a scheme could actually be delivered in this current economic climate.

In the absence of any clear or firm timetable for a planning application submission, or indeed delivery, the Council cannot be in a position to conclude that the potential Kings Quarter redevelopment will be available within a reasonable period of time.

It is noted that DPDS draw the Council's attention to the Practice Guidance on what is appropriate to assess as a 'reasonable period of time'. Having regard to discussions with planning officers there appears to be some uncertainty with regard to what is defined as a reasonable period of time. The matter was recently subject to debate at an appeal by British Land Company Plc (APP/J4423/A/13/2189893) for a Next Home store in Sheffield. Like Home Bargains, Next had an immediate and pressing requirement for a store. The Inspector noted:

*"the question which needs to be asked is whether the site is available now, or is likely to become available for development within a reasonable period of time, determined on the merits of the particular case and having regard, amongst other matters, to the urgency of need."*

**(Paragraph 56)**

Home Bargains has an immediate/urgent need for a new store in Gloucester and they have actively been trying to secure suitable premises for 3 years. Kings Quarter has not and clearly still cannot meet this requirement. It should also not be forgotten that the redevelopment of Kings Quarter is not a recent aspiration. The Council has already been trying for in excess of a dozen years. It cannot be reasonable, particularly in light of the Government's growth agenda, to make Home Bargains wait any longer to open a store in addition to the dozen years that the Council has already been trying.

The urgency of need also applies to the fact that the Council need to plan for additional comparison goods floorspace in Gloucester. The NPPF (paragraph 23) is clear in that Council's need to ensure that main town centre uses such as retail are met in full and are not compromised by limited site availability. The JCS Retail Study (2011) identifies a need for Gloucester to deliver 26,945sq m net comparison goods floorspace by 2016 just to maintain its current comparison goods market share. Kings Quarter will not deliver any such floor space by 2016. We are not aware of any other planned retail development on sites located within/adjacent to the city centre boundary over and above Kings Quarter. Accordingly, there is also clearly an important urgent need for the Council to plan for comparison goods floorspace over and above a potential Kings Quarter redevelopment scheme, particularly if that redevelopment scheme continues to be delayed. Any other approach would be contrary to the NPPF and harmful and detrimental to Gloucester.

It should be noted that the sequential test does not imply that an alternative and sequentially preferable site must be developed first if both are needed. Nor should it mean that a sequentially preferable site must be shown to be incapable of accommodating development before a retail scheme can be permitted elsewhere. Such a test would simply indicate that the 'sequentially preferable site' was wrongly identified in the first place. Rather, what is required is that development at a sequentially preferable site should not be delayed, stalled, or otherwise impaired by development permitted at a less central location. Where both developments are needed, as they are in this case, the proper test has to be whether a proposal will impair the provision of retail floorspace on any sequentially preferable site. As already accepted by DPDS, the proposal will not prevent, delay or harm the delivery of retail provision within the potential Kings Quarter redevelopment scheme.

In terms of the suitability/viability of the retail floorspace within the potential Kings Quarter scheme for Home Bargains, we also make the following additional comments:



- The Kings Quarter scheme is simply not suitable for Home Bargains because retail floorspace is not available.
- Home Bargains would have to compromise its business model to accommodate the high street format retailing floorspace Kings Quarter is seeking to provide. The extent to which Home Bargains would have to compromise its business model to operate a store in Kings Quarter would render such a store unviable and is both excessive and unreasonable.
- We understand that Stanhope's retail agents (DTZ) are currently seeking/approaching retailers for potential space in the Kings Quarter scheme. It is noted that Stanhope objected to earlier planning applications seeking Home Bargains stores on less sequentially preferable retail parks/locations at Eastern Avenue and Canada Wharf. Despite submitting objections Home Bargains has not been approached by DTZ or Stanhope for potential space in Kings Quarter. This is not at all surprising as Stanhope is seeking to attract leading fashion brand retailers. Indeed the presence of discount retailers such as Home Bargains would not be considered appropriate by fashion occupiers. It is clearly evident by the fact that Home Bargains haven't been approached by Stanhope that the retailer is not considered suitable for a potential Kings Quarter scheme. In contrast, our clients, having themselves made representations on the Eastern Avenue and Canada Wharf applications, then approached Home Bargains and agreed terms, and this current application, in a sequentially preferable retail park, is the result.
- In order for a potential Kings Quarter scheme to be viable it would not be able to entertain rents affordable by discount retailers. A viable scheme would have to charge premium rents in excess of what Home Bargains could afford. Not only would rents not be viable for Home Bargains, Home Bargains would not be a viable retailer for a potential Kings Quarter scheme.

Accordingly, retail floorspace within a potential Kings Quarter redevelopment scheme is neither considered to be viable or suitable for Home Bargains.

### ***Vacant Units in the City Centre***

DPDS suggest that the supporting RS has not addressed vacant units in Gloucester City Centre. We would draw your attention to paragraphs 2.6.1-2.6.5 of the RS. As noted in these paragraphs, planning permission was recently refused for two smaller Home Bargains format stores at Eastern Avenue and Canada Wharf (June 2013). In reviewing the sequential approach assessment submitted in support of these planning application DPDS concluded, with the exception of the former M&S unit, Northgate Street, there were no other vacant units suitable, viable and available for a circa 1,115sq m gross smaller format Home Bargain store.

As noted in paragraph 2.6.5 we are not aware of any other units which have come available since the determination of these planning application that need to be considered as part of the sequential approach assessment. Indeed it is also noted that DPDS do not identify any which require consideration. Notwithstanding this, for completeness we review the size range of potentially available vacant units in further detail below.

Currently there are 73 vacant units (excluding former M&S unit, Northgate Street) within Gloucester City Centre (as defined by Experian Goad). Figure 1.1 below illustrates the size range of these vacant units.



**Figure 1.1: Size of Vacant Premises in City Centre**

Size (sq m)	No. of Units
< 100	30
101 – 200	24
201 – 300	6
301 – 400	9
401-500	3
>500	1

*Source: Experian and WYG Planning*

*Notes: Includes those lying vacant in anticipation of a potential Kings Quarter redevelopment*

Of the units that are vacant only one is larger than 500sq m gross: 101-111 Northgate street (former Kwik Save site) measuring 2,590sq m gross. Planning permission was granted in 2007 for residential development and subsequently renewed in 2010. We understand that the owners, Newland Homes, are currently in early stages of designing an alternative scheme comprising flats, cottages and mews. A planning application is anticipated to be submitted next year once the scheme has been finalised. Accordingly, the unit is not on the market and not available.

All the other remaining units are too small to accommodate the proposal, even through disaggregation. Accordingly, we can reconfirm that there are no available vacant units within the city centre capable of accommodating the proposals.

## **Retail Impact**

### ***Retail Impact on Seymour Road Local Centre***

In order to understand whether Home Bargains proposed ancillary ambient convenience goods floorspace is likely to have a significant adverse impact on convenience goods facilities in Seymour Road Local Centre it is important to understand whether there is any trading overlap between the two.

Existing convenience goods provision in Seymour Road Local Centre is limited to a Co-op store (circa 200sq m net) and one small newsagents, G&A Stores. These two small convenience facilities provide top-up shopping goods including fresh produce such as milk, bread, and eggs and other items such as newspapers, magazines and tobacco products. Convenience goods products are primarily sold individually (ie not as large multipacks).

In contrast to the top-up shopping role of convenience provision in Seymour Road Local Centre, Home Bargains only sell ambient convenience goods primarily in bulk/large multi-packs (similar to a cash and carry wholesaler). Such goods include boxes of crisps, chocolate bars in multiples of 30+, and 24+ can/bottles of drinks. Home Bargains do not sell top-up convenience goods such as fresh or frozen foods, milk, bread and cheese or items including newspapers and magazine.

Accordingly, the proposed Home Bargains store will not provide an alternative competing convenience goods top-up shopping facility for local residents. There is no convenience goods trading overlap between Seymour Road Local Centre and the Home Bargains store. In the absence of any trading overlap between convenience provision in Seymour Road Local Centre and the proposed Home Bargains store it is assessed that there is unlikely to be any impact on the centre.



As acknowledged by DPDS a significant proportion of the turnover derived from Home Bargains ambient convenience goods is likely to be drawn from out-of-centre foodstores. The impact assessment contained within the RS reflects this pattern of trade draw and also assumes that a proportion of trade will be drawn from discount foodstores and recently permitted out-of-centre discount retail warehouses at Eastern Avenue. Accordingly, our conclusions on retail impact contained in the RS remain applicable.

It is important to note that the level of proposed convenience goods floorspace (up to 690sq m gross) is required due to the bulk nature of the products sold by Home Bargains so they can be stacked and displayed appropriately and safely. This level of floorspace cannot be considered significant, as DPDS has suggested, when taking into account the bulky nature of the products sold. Furthermore, it cannot, by any measure, be considered significant when compared to the substantial amount of convenience goods floorspace recently granted planning permission in Gloucester.

### **Concluding Remarks**

This letter provides supplementary retail information in relation to a number of outstanding retail matters raised by the Council's retail planning consultants, DPDS. The letter, together with the submitted RS, demonstrates that the proposal is in accordance with retail planning policy tests. In particular, this letter demonstrates that:

- the former M&S unit, Northgate Street is neither suitable or viable for Home Bargains;
- the potential Kings Quarter redevelopment scheme is unviable and unsuitable for Home Bargains and in any event is unlikely to be available within a reasonable period of time;
- there are no other vacant units in the city centre which are suitable for Home Bargains; and
- The proposal will not result in any significant adverse impacts on Seymour Road Local Centre.

We trust officers are now in a position to make a positive recommendation on the proposals to planning committee for the meeting scheduled on the 7<sup>th</sup> January.

**Tristan Hutton**  
**Associate Director**

Enc

Please Reply to: Swindon  
Our Ref: DAM/C10179  
Your Ref: 17<sup>th</sup> December 2013

Date:

Adam Gooch  
Senior Planning Officer  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester GL1 2EQ



Town Planning  
Development  
Environment  
Architecture  
Urban Design  
Landscape Design  
Project Management

Dear Adam

### **Planning Application 13/00559/FUL Peel Centre Gloucester**

You have asked for further comments on this application in the context of WYG's letter of 2<sup>nd</sup> December.

Before commenting on the detail, it is worth reiterating the basic planning policy and objectives for retail development. The objective is at all levels foster the vitality and viability of town centres. Out-of-centre retail developments are seen as a threat to that objective. There are strong pressures for out-of-centre stores from retailers which offer them larger units capable of attracting sufficient custom on their own or in conjunction with a limited number of other large scale retailers, and adjacent parking. There have been long standing policies to limit out-of-centre retail development but there has been a recognition that an exception can be made for bulky goods retailers, where justified by their business model and where there would not be a significant adverse impact on designated centres.

Where this has happened, conditions have been applied to limit the sale of goods from out-of-centre stores to bulky goods. There is now, in Gloucester and in most towns, a considerable stock of out-of-centre floorspace subject to bulky goods conditions. This stock would cause considerable harm to the vitality and viability of city and town centres if not restricted to these conditions. In response to more limited demand for this floorspace in recent years there has been considerable pressure to relax the bulky goods conditions.

Within this context, although each application on its own would not harm the town centre, the cumulative impact of such relaxations would do so. The Council must beware that any decision it makes to relax these types of conditions may make it harder to resist the relaxation over the whole of the out-of-centre floorspace. Thus we have advised that while the Council should try to be flexible with regard to these applications, it must be very clear why it is relaxing the conditions if it considers it appropriate to do  
Cont/d...

Development Planning &  
Design Services Group Ltd  
Group Managing Director:  
L. M. Durrant, FRICS, Dip TP, MRTPI, MinstD  
Company Secretary:  
I. James, BSc (Econ), FCA  
Company Registration N° 1907209  
Registered in England and Wales

Subsidiary Companies:  
Development Planning &  
Design Services Ltd  
Directors:  
L. M. Durrant, FRICS, Dip TP, MRTPI, MinstD  
N. Arbon, BA (Hons), Dip TP, MRTPI  
Associate Directors:  
C. Lindley, BA (Hons), MSC, MRTPI  
K. Pileger, BSc, MSc, MRTPI  
M. Simpson, BPLAN, MNZPI  
S. Whitfield, BA (Hons), Dip TP, MRTPI  
Consultants:  
M. Craggs, BSc (Hons), Dip TP, MRTPI  
T. A. Gashe, BA (Hons), MA, MRTPI  
D. McCallum, BA (Hons), MPhil, MRTPI  
Company Registration N° 2091708  
Registered in England and Wales

DPDS Architecture Ltd  
Directors:  
L. M. Durrant, FRICS, Dip TP, MRTPI, MinstD  
N. Henham, BA (Hons), Dip Arch(dist), RIBA  
Consultant:  
P. M. Griffiths, BSc (Hons), CMLI  
Company Registration N° 2937191  
Registered in England and Wales

Registered Office of All Companies:  
Old Bank House,  
5, Devizes Road, Old Town,  
Swindon, Wiltshire, SN1 4BJ.

[www.dpds.co.uk](http://www.dpds.co.uk)

Swindon  
Old Bank House  
5 Devizes Road  
Old Town Swindon  
Wiltshire SN1 4BJ  
Tel: 01793 - 610222  
Fax: 01793 - 512436  
E: [dpds.swindon@dpds.co.uk](mailto:dpds.swindon@dpds.co.uk)

Derby  
3 Gleneagles House  
Vernon Gate  
Derby  
DE1 1UP  
Tel: 01332 - 206222  
Fax: 01332 - 206012  
E: [dpds.central@dpds.co.uk](mailto:dpds.central@dpds.co.uk)





Adam Gooch  
Gloucester City Council



so, and its decisions are subject to very close scrutiny from others. It follows that the evidence submitted in support of such applications should be strong. This is not always easy to achieve given the commercial sensitivity of some of the relevant information.

We therefore welcome the further information. We do note however, that although reference is made to information from other sources, it is not submitted. In particular Home Bargains itself has not contacted the Council directly on its requirements and interest in Gloucester or written in support of this application.

Furthermore, we note at the outset that although the case for the variation of condition is made in terms of Home Bargains, the urgency of its need and its business model, the condition would not restrict occupation to that retailer. This must reduce the weight given to any particular difficulties Home Bargains would have in considering sites in the city centre.

### **The Sequential Test**

#### **Former M&S Unit, Northgate Street**

I will take WYG's points under the same headings

*The former M&S unit is too large for Home Bargains*

WYG state that for this reason alone Home Bargains would not trade from this unit.

The CBRE marketing details for the unit give the sales floorspace as 1854 sq m – the rest is described as ancillary. The amalgamated Units 3a and 3b would provide 2300 sq m. It cannot be concluded that the unit is too large. The point we made about the rent in our letter of 20<sup>th</sup> November was partly to explore whether the cost of what might be excessive ancillary floorspace would rule the unit out.

*The configuration/layout of the unit is not suitable for Home Bargains*

WYG state that the premises are unsuitable because the unit is not on a single level and there is no at grade parking.

Our understanding is that the sales floor is on a single level. An insistence on at grade adjacent parking would by definition rule out nearly Cont/d...

Adam Gooch  
Gloucester City Council



all town centre opportunities and the sequential test would have little, if any meaning, if this was accepted as general point in relation to this business model.

WYG state in terms of the Home Bargains business model that the product range contains many bulky items and that customers shop in the larger stores using trolleys. We noted earlier the weight that should be attached to the use of trolleys would depend on how extensive their use is and that from our observations they were not extensively used in Home Bargains stores. WYG have not provided further information on the use of trolleys.

Having again assessed the extent of bulky goods sales, we do not think it would be reasonable to conclude that the range of goods sold by Home Bargains was bulky. About two thirds of the floorspace is devoted to the display of convenience goods, toiletries and cleaning products, but the sales are not primarily multi-packs as claimed by WYG.

We also note that the B&M store in Gloucester city centre operates on two storeys and has trolleys. From this it is clear that it is not difficult to lay the store out so that customers must pass the checkouts when leaving and security barriers are widely used in many town centre shops these days. The B&M store does not have adjacent at grade parking. Likewise, Wilkinson's also use multi-level outlets in town centres without adjacent parking and in my opinion Wilkinson's generally sells a higher proportion of large or heavy goods than Home Bargains.

There are of course other operators which provide shopper trolleys in the city centre, including the former M&S unit itself. The vacant unit had an extensive food offer and a service yard allowing HGVs to reverse into it and park off road at the rear of the building.

We conclude that WYG are being unreasonably inflexible in claiming that Home Bargains cannot operate without single level trading and adjacent at grade parking.

*The rents sought for the former M&S unit would not be commercially viable for Home Bargains*

You may wish to know that DPDS does have RICS experience within the company. But more importantly the basis of our comments was clear and available for people to comment on.

We would also comment that the Council should be cautious in accepting evidence on rent as a measure of viability – clearly any retailer can claim Cont/d....

Adam Gooch  
Gloucester City Council



that town centre rents are too high for its business model, particularly as a discount retailer. To give significant weight to this factor would create an unlevel playing field with regard to other retailers.

We also note that the Practice Guidance (paras 6.47 – 6.50) advice on viability is concerned with the viability of development and not of the business model.

Turning to their detailed comments, JLL, at second hand, apparently state that Home Bargains cannot afford more than a global rent of £150,000 pax. This would indicate that in relation to Units 3a and 3b, with a sales floorspace of 2301 sq m (taken from the WYG Retail Statement) it would pay a rental level of £6 per sq ft, and less once the ancillary floorspace is taken into account. It is unlikely that Peel is contemplating a lease on this basis.

In relation to the second point, the position with TK Maxx and the availability of the unit is noted. The question is not so much what the owners are seeking but what they would be prepared to accept. One cannot conclude from the events that the unit was unviable for TK Maxx – only that it was not prepared to do a deal – and we note that it has other opportunities in the City Centre to consider. Those are of course also available for Home Bargains to consider.

### **Kings Quarter**

The Council is aware of the programme for the development and we will not comment on this further here. We will comment on question of interpreting what is meant by a reasonable period of time in the sequential test the bullet points on page 7 of WYG's letter.

*A reasonable period of time.*

The Practice Guidance (PG) (para 6.37) states that a reasonable period of time is determined on the merits of a particular case having regard to, inter alia, the urgency of the need. No further advice on the urgency of the need is offered.

The quote from the Sheffield Appeal Decision Letter no more than repeats the PG. As a general point, appeal decisions reflect the circumstances of the case and are one Inspector's interpretation of policy in that context. The weight that they should be given in other cases is limited and will depend on the particular circumstances in that case.  
Cont/d....

Adam Gooch  
Gloucester City Council



In this case neither WYG, nor indeed Home Bargains, explain what the urgency for Home Bargains is. It is obvious that any retailer wanting premises in a town, would want to move quickly once the decision to look for representation in a town is made, but there must be more than that if it is to be taken into account.

WYG goes on to claim that the Council need to plan for additional comparison goods floorspace in Gloucester and quotes NPPF para 23 about meeting needs in full. This paragraph is about the preparation of local plans. The floorspace requirement in the Retail Study is the floorspace requirements that will emerge over the plan period and it cannot be considered that it is urgent that it is met now, although the local plan will have to address how it will be met over that period. Also it is not clear how the current application would meet a floorspace need – it would not create any new floorspace.

I set out below WYG's bullet points with our comments afterwards

*The Kings Quarter scheme is simply not suitable for Home Bargains because retail floorspace is not available.*

This does not add any thing to the case that has not been considered above or in previous commentary in relation to this planning application.

*Home Bargains would have to compromise its business model to accommodate the high street format retailing floorspace Kings Quarter is seeking to provide.*

WYG does not refer to any specific aspects of the Kings Quarter proposal on which it wishes to rely. We have commented on the more general points about operating within the City Centre already.

*The developer or its agents have not approached Home Bargains and that this is evidence that Home Bargains is not considered as a suitable occupant by the developer.*

It does not follow that the developer would find Home Bargains unsuitable. An objection to the application has been made on its behalf.

*In order for a potential Kings Quarter scheme to be viable it would not be able to entertain rents affordable by discount retailers.*

There is no evidence offered to support this statement. Although it is appreciated that that it would be difficult for the applicant to do so., little weight can be given to it. We have already commented on the weight which should be given to this argument.

Cont/d....

Adam Gooch  
Gloucester City Council



### **Other Vacant Units in the City Centre**

The additional information is in our view sufficient.

### **Impact on Seymour Road Local Centre**

WYG seeks to distinguish between the comparison goods sold in local facilities and in Home Bargains on the basis that Home Bargains sells goods primarily in bulk. As noted earlier, this is not correct and its offer cannot be regarded as "similar to a cash and carry wholesaler" as described by WYG. It is also not correct that Home Bargains does not sell fresh foods. Its offer is at present very limited, and may be experimental but the condition suggested would not prevent this. Furthermore, the condition would not limit occupation to Home Bargains and so the weight to be given to its particular trading format would be limited.

It is difficult to assess the impact because WYG have not indicated the likely level of turnover of Home Bargains from convenience goods. This may reflect its difficulty in obtaining information from Home Bargains and its sensitive commercial nature. In addition, there is a need to consider the likely impact of use of 690 sq m of floorspace for convenience goods sales. Finally, it should be noted that although the majority of trade would be drawn from out-of-centre locations, it is the case that a small amount of trade drawn from small local centres can have a significant adverse impact on their vitality and viability.

However, as noted in other contexts, it is difficult to assess the likely impact on Seymour Road centre because its turnover is unknown and, at best, very difficult to estimate from survey data. Given the more restricted floorspace that would be used for convenience goods than in the proposed Aldi store, the greater distance from the local centre and the greater inconvenience of getting to the Peel Centre for local people, we conclude that it would be difficult to prove an adverse impact on the Local Centre. The Council should also be aware that in our experience local centres tend not to receive a high level of protection at appeal.

### **Concluding Remarks**

We are sure that the Council would welcome both the occupation of vacant units in the Peel Centre, and the addition of Home Bargains to the City. However, the question is whether this could be achieved without undermining the policy to apply bulky goods conditions to out of centre retail development. The Council must take a flexible approach and  
Cont/d....

Page 7  
17<sup>th</sup> December 2013

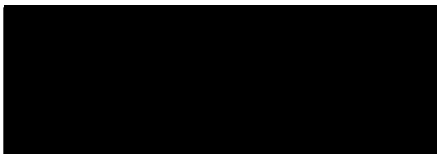
Adam Gooch  
Gloucester City Council



consider each application on its merits in the context of its long standing policy. It must also apply the policy consistency and be clear, if it decides not to apply in any particular case why it has not done so.

In our view, there is nothing in WYG's letter of the 2<sup>nd</sup> Dec which leads us to change our view, expressed in our letter of 20<sup>th</sup> November, that the applicant has not satisfied the sequential test and the Council's decision to allow the sale of non-bulky goods at the proposed scale from this location would undermine the policy to protect the city centre through the use of conditions. This conclusion is for the reasons set out in that letter.

Yours sincerely



**Duncan McCallum**  
**Consultant**  
**Development Planning & Design Services Ltd**

DPDS close for the Christmas holidays on Tuesday 24<sup>th</sup> December 2013 at 1pm and reopen at 8.45am on Thursday 2<sup>nd</sup> January 2014.