

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **2<sup>ND</sup> SEPTEMBER 2014**

**ADDRESS/LOCATION** : **UNIT 2B (FORMER APOLLO 2000) AND PART OF UNIT 2A (STAPLES), 108 EASTERN AVENUE, GLOUCESTER**

**APPLICATION NO. & WARD** : **13/00397/FUL BARNWOOD**

**APPLICANT** : **THE PENSIONS TRUST**

**PROPOSAL** : **VARIATION OF CONDITION 9 ATTACHED TO PLANNING PERMISSION: 98/00119/FUL**

**REPORT BY** : **JOANN MENEAUD**

**NO. OF APPENDICES/ OBJECTIONS** : **1. SITE LOCATION PLAN**

**1.0 SITE DESCRIPTION AND PROPOSAL**

1.1 This application relates to two units on the Eastern Avenue Retail Park – unit 2b currently vacant but formerly occupied by Aplollo and part of unit 2a currently occupied by Staples. It is intended to reconfigure the units by enlarging the former Apollo store and reducing the size of the current Staples store. The Apollo unit would increase from 647 to 1115sqm and Staples would reduce to 1396sqm.

1.2 This block of units comprising Maplins, Staples and the former Apollo were originally granted permission in 1998 as one building providing two units and permission was then granted to create three units. All three units are subject to a restrictive condition that limits the range of goods that can be sold as follows:

*The retail units hereby permitted shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicle, and any other goods ancillary to those permitted uses and for no other purpose without the prior permission of the City Council.*

1.3 The application has been amended since originally submitted and now seeks to vary the original bulky goods condition (as detailed above) but is seeking to restructure the condition so as to propose listing the goods that cannot be sold

as opposed to how the condition is currently worded stating goods that can be sold. The variation is proposed solely in relation to the enlarged unit 2b, incorporating the former Apollo 2000 and part of Staples.

- 1.4 Supporting information submitted by the applicant states that unit 2b has been vacant since March 2009 when the retailer Apollo 2000 Ltd ceased trading, and that despite extensive marketing a suitable tenant has still not been found.

## **2.0 RELEVANT PLANNING HISTORY**

- 2.1 Planning permission for the erection of these retail units was granted in July 1998 by the Planning Inspectorate. The permission included a restrictive condition that limited the range of goods that could be sold from the units as follows:

*The retail units hereby permitted shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicle, and any other goods ancillary to those permitted uses and for no other purpose without the prior permission of the City Council.*

An additional condition was applied stating that the units could not be subdivided to create units of less than 929sqm without the benefit of planning permission.

10/00381/FUL

Variation of condition on planning permission ref. 98/00119/FUL to allow for the sub-division of Unit 2 into two units.

Granted July 2010

10/01051/NMA

Minor amendments to planning permission ref. 10/00381/FUL comprising the re-positioning of internal sub-dividing wall, adjustments to approved mezzanine floor and re-positioning of internal stairs.

Agreed 3<sup>rd</sup> November 2010.

10/01062/FUL

External alterations to existing retail unit comprising the formation of a new opening and the insertion of additional glazing in the front elevation and anti ram bollards.

Permitted 22<sup>nd</sup> November 2010.

12/00839/FUL

Variation of condition 9 attached to planning permission: 98/00119/ful to allow for a wider range of goods (including food and drink) to be sold from the site in order to enable Home Bargains to trade:

a. furniture

- b. toys and games
  - c. travel goods
  - d. children and infants goods
  - e. sports and leisure goods
  - f. bicycle and bicycle accessories
  - g. toiletries and health and beauty products
  - h. household goods
  - i. food and drink (up to 30%)
- Refused June 2013

### **3.0 PLANNING POLICIES**

- 3.1 The statutory development plan for Gloucester remains the 1983 City of Gloucester Local Plan. Regard is also had to the policies contained within the 2002 Revised Deposit Draft Local Plan which was subject to two comprehensive periods of public consultation and adopted by the Council for development control purposes. The National Planning Policy Framework has been published and is also a material consideration.
- 3.2 For the purposes of making decisions, the National Planning Policy Framework sets out that policies in a Local Plan should not be considered out of date where they were adopted prior to the publication of the National Planning Policy Framework. In these circumstances due weight should be given to relevant policies in existing plans according to their degree of consistency with the National Planning Policy Framework.
- 3.3 The policies within the 2002 Local Plan remain therefore a material consideration where they are consistent with the National Planning Policy Framework.
- 3.4 From the Second Stage Deposit Plan the following policies are relevant:
- Policy BE21 – Safeguarding of amenity
  - Policy TR31 – Road safety
  - Policy S4a – new retail development outside designated centres
- 3.5 In terms of the emerging local plan, the Council has prepared a Joint Core Strategy with Cheltenham and Tewkesbury Councils and published its Pre-Submission Document which will be submitted to the Planning Inspectorate in autumn 2014. Policies in the Pre-Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration. The weight to be attached to them is limited by the fact that the Plan has not yet been the subject of independent scrutiny and do not have development plan status. 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.

- 3.6 On adoption, the Joint Core Strategy and City Plan will provide a revised planning policy framework for the Council. In the interim period, weight can be attached to relevant policies in the emerging plans according to
- The stage of preparation of the emerging plan
  - The extent to which there are unresolved objections to relevant policies; and
  - The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework
- 3.7 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 PUBLICITY AND REPRESENTATIONS**

- 4.1 The application has been advertised with a site notice and individual letters have been sent to neighbouring properties and interested parties. The application has been amended since the original submission and all parties were re-notified of the amended proposal – no comments upon the amended details have been submitted.
- 4.2 Highway Authority – The proposal is not considered to result in a significant impact upon the local highway network and therefore no highway objection is raised.
- 4.3 The full content of all correspondence on this application can be inspected online via the Councils website or at the reception, Herbert Warehouse, The Docks, Gloucester, prior to the Committee meeting.

#### **5.0 OFFICER OPINION**

- 5.1 The main issue for consideration with this application relates to retail policy and whether the rewording of the condition would have an unacceptable impact upon the city centre.
- 5.2 The three units comprising Maplins, Staples and the former Apollo 2000 unit which is now vacant, are all subject to a condition that restrict the goods that can be sold. This condition was applied at the time of the original grant of planning permission for the building back in 1998.
- 5.3 The building is also subject to a condition that restricts the units to a minimum floor space of 929 sqm. The reason for this being to ensure that the building is not split into smaller units that would directly compete with city centre sites of comparable size. There have been a number of changes to the building since it was built particularly in terms of the floor layouts.

- 5.4 In July 2010 planning permission (10/00381/FUL) was granted to allow for the sub division of Unit 2 to form units 2a and 2b comprising 461sqm and 687sqm A subsequent approval (10/01051/NMA) was then granted in November 2010 for amendments to the above permission creating units comprising 461sqm and 650 sqm of floor space.
- 5.5 A subsequent application (12/00839/FUL) was then submitted to vary the original bulky goods condition in relation to unit 2b, the former Apollo unit, to allow for occupation by Home Bargains and for the following goods to be sold.
- a. furniture
  - b. toys and games
  - c. travel goods
  - d. children and infants goods
  - e. sports and leisure goods
  - f. bicycle and bicycle accessories
  - g. toiletries and health and beauty products
  - h. household goods
  - i. food and drink (up to 30%)

This application was refused by Planning Committee in June 2013 for the following reason:

*The applicant has failed to satisfy the requirements of the sequential assessment set down within the NPPF and national retail policy guidance by failing to demonstrate that there are no other sites that are available in the centre or in sites that are in a more accessible location to the city centre, than the application site. The application is therefore contrary to the provisions of the NPPF, Planning for Town Centres Practice Guide and Policy S4a of the City of Gloucester Local Plan Second Deposit 2002.*

- 5.6 This application also seeks to vary the original bulky goods condition but is seeking to restructure the condition to propose listing the goods that cannot be sold as opposed to how the condition is currently worded, stating the goods that can be sold.

It is proposed that the amended condition would read as follows:

- A. *The retail units shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicle, and any other goods ancillary to those permitted uses and for no other purpose without the prior permission of the City Council.*
- B. *Other than up to 1,115 sq. m (12,000 sq. ft) from Unit 2b as shown on drawing reference 02 – ‘Proposed Floor Plan’, where:*

*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 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,*
- 2. Clothes, fashion accessories and footwear;*
- 3. Sporting goods and equipment , sporting clothes and footwear*
- 4. Toys, books and stationery*
- 5. Pharmaceutical/medical goods, perfume goods and toiletries;*
- 6. Jewellery goods, clocks and watches.'*
- 7. Cutlery, crockery and glassware*
- 8. Audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs etc.*

And all other uses within categories A1 (b,c,e,f,g,h,i)

*(b)as a post office,*

*(c)for the sale of tickets or as a travel agency,*

*(e)for hairdressing,*

*(f)for the direction of funerals,*

*(g)for the display of goods for sale,*

*(h)for the hiring out of domestic or personal goods or articles,*

*(i)for the reception of goods to be washed, cleaned or repaired,*

5.7 The NPPF sets out two key tests for retail proposals that are not located in a designated centre and not in accordance with an up-to-date development plan; the sequential test and the impact test.

#### 5.8 Sequential Test

The NPPF requires Planning Authorities to apply a sequential test to applications for town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan. It states that authorities should require 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. It continues that when

considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

Given the nature of this proposal the application of the sequential test in this particular case is of less relevance. The application is not intended to widen the range of goods that can be sold and its focus is still on only allowing bulky goods. The goods that you would normally expect to be sold within a city centre such as clothes, shoes, books, etc would still be restricted.

#### 5.9 Impact Test

The NPPF also requires an assessment on impact and this comprises 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. This full assessment is only required on schemes over 2,500 square metres.

Given the nature of the proposal it is considered that it would not on its own adversely impact upon investment in the city centre and would not threaten operator demand and investor confidence and ultimately would not represent a risk to planned investment. As the variation of the condition would in effect maintain the bulky goods limitations, it should not create a precedent which could undermine the purpose of imposing bulky goods conditions in relation to out of centre retail floor space.

#### Assessment

The Government guidance is clear in terms of the application of conditions. The National Planning Policy Framework states that local authorities should consider whether unacceptable development could be made acceptable through the use of conditions. It also reiterates that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted. Additionally conditions should be enforceable, precise and reasonable in all other respects.

I consider that a condition restricting the goods that can/can not be sold is still necessary but that there is some scope to allow for a variation of the condition, providing that the revised condition is still fit for purpose and does still operate within its intended purpose, which is to protect the vitality and viability of the city centre.

There have been other cases where applications have been made for the rewording of the condition to restrict the goods that can/can not be sold at other retail parks including The Peel Centre and Westgate Island. The amended condition as proposed here is very similar to the condition now in place at The Peel Centre. However the Peel Centre condition does include some other specific categories within defined floor areas. These include in particular toys, to allow occupation by Toys R Us and sporting goods, which permitted occupation by JJB Sports. No such exceptions have been proposed

by the applicant in this case. In effect the condition proposed in this case, is therefore more restrictive than the condition in place at The Peel Centre

In principle, I consider that the condition proposed to be applied does appropriately restrict the items that would normally be sold within the city centre and therefore is an appropriate mechanism to prevent adverse effects upon the vitality and viability of the city centre. Notwithstanding this, it is always difficult to predict what future retail products and formats may entail.

I consider that the re-organisation of two of the three units and the increased size of unit 2b from 647 to 1115sqm is also a benefit and the resulting unit may appeal more to the larger stores operating under a “bulky goods format”. The original permission did restrict the units to no less than 929sqm so as to be able to control, and prevent where necessary, the creation of smaller units, with these being more akin to the size of units within the city centre. This condition needs to be re-applied in an amended form to take account of the permitted and implemented sub-division of unit 2, granted in 2010, to allow occupation by Maplins.

#### Human Rights

- 6.13 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 and use land buildings 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 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER**

- 7.1 That planning permission is granted with the following conditions to be applied:

#### Condition 1

A The retail units shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicle, and any other goods ancillary to those permitted uses and for no other purpose without the prior permission of the City Council.

B Other than up to 1,115 sq. m (12,000 sq. ft) from an enlarged Unit 2b as shown on drawing reference 02 – ‘Proposed Floor Plan’, where:

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 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,
2. Clothes, fashion accessories and footwear;
3. Sporting goods and equipment , sporting clothes and footwear
4. Toys, books and stationery
5. Pharmaceutical/medical goods, perfume goods and toiletries;
6. Jewellery goods, clocks and watches.'
7. Cutlery, crockery and glassware
8. Audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs etc

And not for all other uses within categories A1 (b,c,e,f,g,h,i)

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(e) for hairdressing,

(f) for the direction of funerals,

(g) for the display of goods for sale,

(h) for the hiring out of domestic or personal goods or articles,

(i) for the reception of goods to be washed, cleaned or repaired,

#### Reason

To define the terms of the permission, in accordance with the submitted details, and to protect the vitality and viability of the City Centre in accordance with Policy S4a of the City of Gloucester Second Deposit Local Plan 2002 and the principles of the National Planning Policy Framework.

#### Condition 2

Notwithstanding the works previously undertaken to unit 1 the retail units within the building as detailed on the submitted plan (drawing number to be inserted) shall not be subdivided to provide individual units of less than 929 square metres gross floor area without the prior permission of the Local Planning Authority.

Reason

To enable control over any future sub-division of the units in order to protect the vitality and viability of the City Centre in accordance with Policy S4a of the City of Gloucester Second Deposit Local Plan 2002 and the principles of the National Planning Policy Framework.

Condition 3

No mezzanine floors shall be created within the buildings as shown on the submitted plan (drawing number to be inserted) without the without the prior permission of the Local Planning Authority.

Reason

To enable control over any potential increase in floor area in order to protect the vitality and viability of the City Centre in accordance with Policy S4a of the City of Gloucester Second Deposit Local Plan 2002 and the principles of the National Planning Policy Framework.

Decision: .....

Notes: .....

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Person to contact: Joann Meneaud  
(Tel: 396787)



**13/00397/FUL**

**Unit 2B**  
**108 Eastern Avenue**  
**Gloucester**  
**GL4 4LP**

**Planning Committee 02.09.2014**

