

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **4TH AUGUST 2015**

**ADDRESS/LOCATION** : **UNIT 2B (FORMER APOLLO 2000), 108 EASTERN AVENUE, GLOUCESTER**

**APPLICATION NO. & WARD** : **15/00227/FUL BARNWOOD**

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

**PROPOSAL** : **VARIATION OF CONDITION 9 ATTACHED TO PLANNING PERMISSION 98/00119/FUL TO ENABLE UNIT 2B (FORMER APOLLO STORE of 647SQM) TO BE OCCUPIED BY A RETAILER SELLING FOOD AND DRINK.**

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

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

**1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 This application relates to unit 2b at 108 Eastern Avenue and comprises 647sqm. It is currently vacant and has been vacant since March 2009 when Apollo 2000 ceased trading.
- 1.2 Unit 2 sits within a block, also including Maplins and Staples, that was 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.
- 1.3 This application proposes to restructure the restrictive 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. It also seeks to include food and drink as a category of goods that can be sold.
- 1.4 Supporting information states that Farmfoods are the intended occupier of the unit.

**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

13/00397/FUL

Variation of Condition 9 attached to planning permission: 98/00119/FUL.

Permitted 15<sup>th</sup> October 2014

### **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 was submitted to the Planning Inspectorate in November 2014. Policies in the submitted 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 full 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 Details of the application have been sent to neighbouring properties. No letters of representation have been received.
- 4.2 The full content of all correspondence on this application can be inspected online via the Councils website at the link below or at the reception, Herbert Warehouse, The Docks, Gloucester, prior to the Committee meeting.

<http://glcstrplnng12.co.uk/online-applications/applicationDetails.do?activeTab=externalDocuments&keyVal=NJXDAGHMC0000>

#### **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 and permission for the sale of food and drink, would have an unacceptable impact upon the city centre.
- 5.2 Supporting information submitted with the application states that Farmfoods is a frozen food specialist and an independent, family run business. It now has over 300 stores and is continuing to expand. The requirements for new stores are units around 6000-10,000sqft, with adjacent car parking and servicing to accommodate arctic delivery lorries. Farmfoods opened a new depot in Bristol last year and is seeking to expand its operations in the south and south-west of England. It is looking at various towns and cities to open new stores, including many second stores. This would be a second store in Gloucester, in addition to the Quedgeley store, and a lease for 15 years has been agreed.
- 5.3 The site has been the subject of a number of planning applications and these are important to understand the changes over the years. The building comprising the three units of Maplins, Staples and the former Apollo 2000 unit, are all subject to a condition that restricts 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.
- 5.4 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 units of comparable size. However there have been a number of changes to the original building since it was built, particularly in terms of the floor layouts.

- 5.5 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.
- 5.6 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.*

- 5.7 A subsequent application 13/00397/FUL was granted in October 2014 to physically re-configure units 2a and 2b to provide a larger unit for 2b (Apollo) and a smaller unit for 2a (Staples). This also included permission to restructure the original bulky goods condition to list the goods that could not be sold, as opposed to how the condition was originally worded, stating the goods that could be sold. The applicant has confirmed that this permission has not been implemented.

The permitted changes to the condition stated that the following goods could not be sold, and related only to the enlarged unit 2b.

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)

- 5.8 As part of this application, the applicant is again seeking to reconfigure the original bulky goods condition in accordance with the above condition, but to retain unit 2b in its current form of 647sqm and also to include the sale of food and drink.
- 5.9 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.
- 5.10 I consider that a condition restricting the goods that can/cannot 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.
- 5.11 There have been other cases where applications have been made for the rewording of conditions to stipulate the goods that can be sold rather than stating the goods that can not be sold, at other retail parks including The Peel Centre and Westgate Island. The amended condition (excluding the food and drink) 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 in some units. These include in particular toys, to allow occupation by Toys R Us and sporting goods, which allowed occupation by JJB Sports.
- 5.12 As with the previously approved application, 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.

- 5.13 However in addition to the re-wording of the condition, the applicant is also seeking to allow for the sale of food and drink and this requires additional consideration.
- 5.14 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.
- 5.15 **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.
- 5.16 Supporting information submitted with the application puts forward a number of reasons explaining why this unit is suitable for Farmfoods and how it meets their particular operational requirements.
- The store is of an appropriate size with adjacent car parking and suitable servicing arrangements.
  - It is sufficient distance from the existing stores at Quedgeley and Coronation Square, Cheltenham to prevent cannibalisation of trade or trade diversion.
  - It is suitably located to the east of Gloucester and accessible to the surrounding residential areas including Coney Hill, Barton, Tredworth and Saintbridge.
  - It benefits from the passing trade on Eastern Avenue to the adjacent Lidl store.
  - Alternative sites at the Peel Centre, St Oswalds Retail Park and the city centre would not be suitable or viable to us. Even if there were suitable premises available at a rent our business model could afford, they would address a different retail catchment.
- 5.17 In making my assessment of the application I have to consider local and national policy and guidelines and relevant case law relating to retail proposals. Of particular note is the Supreme Court decision of Tesco Stores v Dundee City Council. This judgement is particularly relevant in terms of considering the suitability of other sites and it is clear that the assessment of suitability of other sites/units, relates to the retailers particular requirements
- 5.18 The agent has stated that the primary catchment area (ie the area that the store will draw the majority of its trade from) to be within a 1km radius of the store but that further trade will be drawn from the wider area. Farmfoods have stated that the catchment area it intends to serve, is the eastern side of the city and particularly Coney Hill, Barton, Tredworth and Saintbridge. In my view, the primary catchment area of 1km does appear to be rather small and I

would have expected trade to be drawn from a wider area. However I do accept that the proposed store is relatively small and it appears reasonable that it would have a relatively small catchment area, with a neighbourhood focus and serving a more localised area, particularly given the presence of the existing store at Quedgeley. In this regard, other sequentially preferable options in other parts of the city would not be suitable for the locational requirements of Farmfoods.

5.19 My assessment has therefore given significant weight to the requirements of Farmfoods for a new store to be of sufficient distance from their Quedgeley store and their requirement to serve the residential areas to the east of the city. Therefore I conclude that it is acceptable to vary the condition and allow the sale of food and drink with a condition that restricts the occupation of the store to Farmfoods, given the particular reasons they have put forward as to the suitability of the location of this unit.

5.20 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.

5.21 Given the nature of the proposal and the small size of the store at 647sqm, 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. The variation of the condition would in effect maintain the bulky goods limitations but allow for the sale of food and drink in a relatively small store with a named occupier and therefore 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. The impact upon district and local centres would, in my view, be limited because of the units restricted size, its distance from the centres and the narrow range of food, concentrated on frozen goods, that it would offer.

Human Rights

5.22 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.



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

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

### Condition 1

Commencement within 3 years

### Condition 2

Notwithstanding the provisions of Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987, as amended, or any other Order revoking, amending or re-enacting that Order with or without modification, the retail unit 2b (as detailed on drawing number RSLP/2015/108/EA dated February 2015) 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. Clothes, fashion accessories and footwear;
2. Sporting goods and equipment , sporting clothes and footwear
3. Toys, books and stationery
4. Pharmaceutical/medical goods, perfume goods and toiletries;
5. Jewellery goods, clocks and watches.'
6. Cutlery, crockery and glassware
7. 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.

Condition 3

This variation of condition shall enure for the benefit of Farmfoods only and not for the benefit of the land and can only be implemented upon the occupation of unit 2b by Farmfoods and shall cease to have effect upon their vacation of the store, at which time condition 9 of the original planning permission 98/00119/FUL shall apply.

Reason

To define the terms of the permission, in accordance with the submitted details, and given the special circumstances in relation to the company's specific locational requirements, 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 guidance in the NPPF and Planning Practice Guidance.

Condition 4

The retail unit 2b shall not be subdivided at any time.

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 the principles Policy S4a of the City of Gloucester Second Deposit Local Plan 2002 and the principles of the National Planning Policy Framework and Planning Practice Guidance.

Note 1

In accordance with the requirements of the NPPF the Local Planning Authority has sought to determine the application in a positive and proactive manner by entering into discussions with the applicant and publishing to the council's website relevant information received during the consideration of the application thus enabling the applicant to be kept informed as to how the case was proceeding.

Decision: .....

Notes: .....

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Person to contact: Joann Meneaud  
(Tel: 396787)

15/00227/FUL

Unit 2B  
108 Eastern Avenue  
Gloucester  
GL4 4LP

Planning Committee 04.08.2015

