

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **6TH DECEMBER 2016**

ADDRESS/LOCATION : **UNIT 1 MAGNET RETAIL PARK, EASTERN AVENUE.**

APPLICATION NO. & WARD : **16/00996/FUL AND 16/01011/FUL MORELAND**

EXPIRY DATE : **9TH DECEMBER 2016 (TIME EXTENSION AGREED)**

APPLICANT : **DIXONS CARPHONE PLC**

PROPOSAL : **APPLICATION 16/00996/FUL:
VARIATION OF CONDITION 9 ON PLANNING PERMISSION 98/00353/FUL TO ALLOW FOR THE SALE OF TOYS, CHILDREN'S SPORTS GOODS AND EQUIPMENT, BICYCLES AND ASSOCIATED EQUIPMENT, PLAY EQUIPMENT, BABY EQUIPMENT AND PRODUCTS, ELECTRONIC GAMES AND EQUIPMENT AND OTHER PRODUCTS ASSOCIATED WITH TOYS AND CHILDREN'S ENTERTAINMENT.**

**APPLICATION 16/01011/FUL:
EXTENSION OF EXISTING MEZANNINE FOR THE INSTALLATION OF 214.3 SQUARE METRES OF FLOORSPACE AT MEZZANINE LEVEL.**

REPORT BY : **CAROLINE TOWNLEY**

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

1.0 SITE DESCRIPTION AND PROPOSAL

1.1 The applications relates to Unit 1 Magnet Retail Park which is currently vacant but was formerly occupied by PC World. The unit is one of a pair sited to the west of Eastern Avenue between Northbrook Road and Southbrook Road. Vehicular access to the site is gained from Southbrook Road. The adjacent building is currently occupied by Magnet. The existing unit has a floorspace of

1464 square metres on the ground floor and a mezzanine of 232.3 square metres.

- 1.2 The units were originally granted planning permission in September 1998. The original permission included a condition restricting the range of goods that could be sold.
- 1.3 The first of the current applications seeks to vary condition 9 on the original planning permission for the existing retail units (ref. 98/00353/FUL) to amend the range of goods that can be sold from Unit 1 to allow its occupation by Smyths Toys UK Ltd (Smyths Toys). Condition 9 currently states:

Condition

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

Reason

To define the terms of the application and to retain control over the future use of the units to ensure that there is no adverse effect on the Local Plan retail policies.

- 1.4 The variation sought is to allow Smyth's Toys to operate from the unit and would otherwise retain the restrictions on the type of goods that could be sold to bulky goods. It is proposed that the wording of the condition be amended to read:

"The retail units hereby permitted shall be used only for the sale of carpets, furnishings, electrical goods, pet and pet supplies, office equipment, DIY products for the maintenance and improvement for the home, garden and motor vehicle, toys, children's sports goods and equipment, bicycles and associated equipment, play equipment, baby equipment and products, electronic games and equipment and other products associated with toys and children's entertainment and any goods ancillary to these permitted uses and for no other purpose without the prior permission of the City Council."

- 1.5 The second application (16/01011/FUL) seeks planning permission for an extension to the mezzanine floor by 214.3 square metres. It is intended that this additional floorspace would be used for storage purposes only.

2.0 RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted for the demolition of a building and erection of two non-food retail units and alterations to the existing access onto Sudbrook Road on 8th September 1998 (ref. 98/00353/FUL).

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 1983 and the 2002 Local Plan remain therefore a material consideration where they are consistent with the National Planning Policy Framework.
- 3.4 The 1983 Local Plan policy most relevant to the proposals is Policy S.1(a): 'Major comparison shopping facilities will not normally be permitted outside the main shopping area, defined on Plan 10, other than in accordance with the specific provisions of other policies.' This policy is, however, considered to be out of date and superseded by national planning policy.
- 3.5 From the Second Stage Deposit Plan the following policy is the most relevant:
- Policy S.4a (New Retail Developments outside of Designated Centres)
 - Policy FRP.1a (Development and Flood Risk)
 - Policy FRP.9 (Light Pollution)
 - Policy TR.9 (Parking Standards)
 - Policy TR.31 (Road Safety)
- 3.6 In terms of the emerging local plan, the Council has prepared a Joint Core Strategy with Cheltenham and Tewkesbury Councils which was submitted to the Planning Inspectorate on 20th November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and NPPG and are a material consideration. The weight to be attached to them is limited; the Plan has not yet been the subject of independent scrutiny and does not have development plan status. The Examination in Public has been ongoing since May 2015. 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.
- 3.7 On adoption, the Joint Core Strategy, City Plan and any Neighbourhood Plans 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

1. The stage of preparation of the emerging plan
2. The extent to which there are unresolved objections to relevant policies; and
3. The degree of consistency of the relevant policies in the emerging plan to the policies in the National Planning Policy Framework.

3.8 All policies can be viewed at the relevant website address: - Gloucester Local Plan policies – www.gloucester.gov.uk/planning; and Department of Community and Local Government planning policies - www.communities.gov.uk/planningandbuilding/planning/.

4.0 CONSULTATIONS

4.1 **Gloucestershire County Council (Highways)** – No highway objections have been made to either planning application.

4.2 **DPDS Consulting** – Provided retail policy advice to the Council on the application. This advice has informed the Officer's Opinion set out in Section 6 of this report.

5.0 PUBLICITY AND REPRESENTATIONS

5.1 The application has been publicised through a press notice and the display of a site notice. In addition 9 properties have been notified of the application in writing.

5.2 No representations have been received to the application. raises the following key issues that the Council should consider when determining the application:

5.4 The full content of all correspondence on this application can be inspected at Herbert Warehouse, The Docks, Gloucester, or via the following link, prior to the Committee meeting:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00996/FUL>

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/01011/FUL>

6.0 OFFICER OPINION

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where 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.

6.2 The main issue for consideration with the applications relate to retail policy.

Retail Assessment

- 6.3 Smyth's Toys is based in Ireland with 69 stores throughout the UK, and from the information on their website, operates from retail parks. The nearest store is in Cheltenham (Tewkesbury Road) and there are also stores at Cribbs Causeway and Kidderminster. Smyths sell a wide range of toys and games equipment, including computer games and consoles, bicycles and scooters, bouncy castles, swings and paddling pools. A number of the items are bulky in nature and Smyths offer a home delivery service. The Agent states that the stores stock about 13,000 lines. A very full description of the company's stores is provided in the supporting information.

Planning Policy

- 6.4 The statutorily adopted Local Plan dates from 1983 and is now clearly dated. Policy S1 defines the role of Gloucester as a sub-regional shopping centre. It states that this role will be maintained and that all comparison shopping facilities will be concentrated in the City Centre. Policy S1a states that major comparison shopping facilities will not normally be permitted outside the main shopping area except for the specific provisions in the plan. It is clear that the condition which the applicant seeks to amend is a reflection of this policy. The policies were saved and clearly were regarded as in conformity with the planning policy at that time. Although dated, there is nothing in them which conflicts with the NPPF.
- 6.5 The 2002 Local Plan (Second Stage Deposit) was adopted for development control purposes but is not part of the adopted development plan. The plan sets out a hierarchy of designated centres; the City Centre, followed by district centres and local centres. Policy S4a is of relevance, stating that new retail development outside of designated shopping centres will only be permitted where:
- there is need;
 - there are no suitable available sites in or on the edge of centres;
 - the development would not have an unacceptable impact on the local plan strategy for regeneration;
 - the development would not result in an unacceptable adverse impact on the vitality and viability of existing town centres; and
 - the location would be genuinely accessible by a choice of transport and not have an unacceptable impact on travel patterns.
- 6.6 With the exception of the demonstration for the need for the proposed development, the policy is broadly in line with the NPPF and establishes the key retail planning considerations as the impact and sequential tests.

The Sequential Test

- 6.7 The sequential test requires '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 (Section 2 – Ensuring the vitality of town centres, paragraphs 24-27 in the NPPF).

- 6.8 There is case law relating to the Sequential Test including the Dundee judgment of Supreme Court. This makes it clear that the suitability of alternative sites in the test means the suitability of sites for the application development and not alternative ways in which a hypothetical need or service could be provided. This is, crucially, subject to the need for applicants to show flexibility. The applicant also refers to the North Lincolnshire judgment. This does not significantly add to the clarification of the test.
- 6.9 The Rushden Lakes call-in decision may be relevant to the applications as an expression of the then Secretary of State's (SoS) approach to the interpretation of the Sequential Test. Since then a recent SoS decision in Exeter has made it clear that the Rushden Lakes decision is not a definitive ruling on how the sequential approach should be applied and indicates the degree of flexibility which the SoS considers an applicant can be expected to apply. There is also the Mansfield judgment, which establishes that the individual identity of the retailer is not generally material to the operation of the sequential test, which indicates the degree of flexibility which the SoS considers an applicant can be expected to apply.
- 6.10 In the context of the Dundee judgment, the main Appendix to the Agents report is a report by Firstplan which sets out the arguments that seek to demonstrate that Smyths toys is a bulky goods retailer. However, the City Council's retail consultant has indicated that he is not convinced that the size of bags establishes that the goods are bulky or that adjacent parking is required. A number of the items sold are large although many will come packaged for later assembly. Smyths also offers home delivery.
- 6.11 The submitted reports set out Smyths Toys requirements and indicate that *"the nature of the Smyths Toys business model is ideally suited to and requires out of centre retail warehouse premises. It is also important to note that there are marked differences between the Smyths Toys business model and traditional town centre toy retailers"*
- 6.12 The approach the Council is invited to adopt here is clearly based on the business model of Smyths Toys. As is clear from the Mansfield judgment this is not an appropriate approach. However, it is accepted that Smyths Toys do stock a wide variety of goods (some 13,000 according to Firstplan), and a number of these are bulky when assembled. It does follow from this that a relatively large building is required to stock and display the goods generally sold. The view of DPDS is that it would be unreasonable to expect Smyths Toys to operate from more than one unit in Gloucester and this would, in the case of a single operator, be contrary to the "Dundee approach". It is therefore concluded that the sequential approach should be based on the availability of large units capable of accommodating at least most of Smyth's usual range of goods. The applications would provide a unit of 1900 square metres. There is considerable scope for retailers to adapt their day to day operations and the reality is that they have to do so all the time. Allowing for a degree of flexibility, DPDS advise that the sequential test should be based, on the availability of units offering a minimum size of 1400 sq. m as a starting point.

- 6.13 DPDS also advise that it has become widespread since the Rushden Lakes decision to state that it establishes that available within the sequential test means “available now”. The term was not used by the inspector, who only commented that the former qualification of “available” by “in a reasonable period of time” had been omitted from the NPPF. This “available now” approach has also been regarded as rather restrictive by Inspectors. The NPPF requires alternative sites to be available without further qualification. In the view of DPDS, it is reasonable that available should be interpreted within the context of the application, and it clear that these applications could be implemented quickly and the unit open by spring 2017. Sites and units should therefore be available in the short term.
- 6.14 The applicant has examined a number of potential sequentially preferable sites including Kings Quarter, Greater Blackfriars, the former BHS store, vacant units, the Eastgate Centre, District Centres and other retail parks.
- 6.15 Following advice from DPDS that the originally submitted Planning and Retail Statement failed to adequately comply with the Sequential Test additional information was submitted by the Agents in relation to the Sequential Test specifically in relation to the former BHS store, Quedgeley District Centre and the Peel Centre.
- 6.16 In summary the information submitted by the Agents considered that:
- Kings Quarter, Greater Blackfriars, the Eastgate Street and the former BHS unit will not be available within the appropriate timescale.
 - There are no other vacant units of an appropriate size available in the City centre.
 - There are no suitable vacant units within the Abbeydale or Quedgeley District Centres.
 - There are no available units in either the St Oswald’s Retail Park or Westgate Retail Park, which while also considered to be out-of-centre are close to the City centre and are considered better connected than the application site.
 - The units in the former cinema redevelopment at the Peel Centre will not be available within sufficient time to be considered a reasonable alternative. It is agreed that Unit 4b, if available, is too small and other units are not available in the required timescale.
- 6.17 The Applicants have now addressed all the points raised in DPDS original letter and it is accepted that, within the timescale of the application proposals, there are no suitable available sequentially preferable sites.

Impact

- 6.18 The unit resulting from these applications if permitted would be about 1900 square metres which is significantly below the NPPF threshold for a retail impact study. This does not make the impact immaterial.
- 6.19 The applicant estimates the turnover of the proposal at about £2.34m. This is based a net sales floorspace of 1520 square metres and the sales density of

Toys R Us of £1537/square metre. Different operators selling similar goods can achieve significantly different sales densities so the “proxy sales” density is not very reliable. The sales density of Smyths Toys is not available from Mintel, but it indicates that sales per outlet are £4.03m. The applicant indicates that Smyths Toys operate from fairly uniform sized units. This unit would be a little below the average size indicated and the turnover is likely to be about £3.5m-£3.8m avoiding undue precision.

- 6.20 The applicant compares this with the unit operating as a Curry/PC World unit which would have a turnover of some £8m. This is achieved because electrical goods have a high value to bulk ratio. However, the move of Curry/PC World is not dependant on these permissions being granted, and the true effect of the variation of the condition on turnover would be a comparison with other bulky goods retailers. The turnover of the re-occupied unit could vary considerably according to the retailer. It is unlikely to be another electrical goods retailer because of the dominance of Curry/PC World in the sector. The alternative turnover is, in fact likely to be similar to Smyths Toys. With a net sales floorspace of 1520 square metres (80% of the gross floorspace of 1900 square metres) and a generalised bulky goods sales density of £2,500/square metre the turnover would in fact be £3.8m. There is therefore likely to be little difference in the unit’s turnover under the existing condition and if amended as sought and little overall impact on existing centres.
- 6.21 The Agent identifies the other toys and games retailers in the area. The most direct competitors are the Early Learning Centre and Toys R Us. These are both on out-of-centre retail parks and trade diversion from them would not harm the city centre. A number of less specialist retailers sell toys as part of their overall range including Argos, Debenhams, the large food stores, and the general merchandise discounters such as Home Bargains and B & M. Some are represented in the city centre, but most are not. Thus the trade diversion from the city centre is likely to be limited.
- 6.22 It needs to be borne in mind when considering the toys and game shops in the city centre that it is only in exceptional circumstances that the impact on individual traders or a particular goods sector, is likely to be material. DPDS has advised that they do not think that such a case could be made out in Gloucester.
- 6.23 The variation of conditions on single units is unlikely to have a significant adverse impact on the vitality of centres and the concern is usually more that the variation would set a precedent that would make it difficult for the Council to resist other applications. Given the level of out-of-centre floorspace in Gloucester conditions are considered necessary to protect the vitality and viability of the city centre. It is also considered that the widespread relaxation of conditions would have a significant cumulative impact. In this case however, the application seeks to retain the general restriction to bulky goods and to add only a further range of goods. The demand from out of centre toy retailers is limited and the variation of condition as sought would be unlikely to set a precedent which would undermine the widespread use of conditions in the city.

Retail Policy Conclusions

- 6.24 The Applicants have now addressed all the points raised in DPDS original letter and it is accepted that, within the timescale of the application proposals, there are no suitable available sites.
- 6.25 Conditions are in general necessary to restrict the range of goods sold from out-of-centre locations to protect the vitality and viability of the city centre. The proposal would retain restrictions on the goods sold but widen the range to include toys from one unit. This would not have a significant impact on any existing centre and is unlikely to create a precedent which would lead to a cumulative impact on the centre.

Parking and Highway Issues

- 6.27 The Highway Authority has confirmed that it is satisfied that the proposed 214.3 square metre mezzanine extension to the existing retail unit to provide additional storage and staff facilities would not result in any significant increase in trip generation to the site.
- 6.28 There have been no recorded collisions on Southbrook Road or the junction onto Eastern Avenue in the past 5 years. There is suitable existing visibility from Southbrook Road onto Eastern Avenue and the site access onto Southbrook Road to the left turn junction from Eastern Avenue and the end of Southbrook Road cul-de-sac.
- 6.29 The Highway Authority raises no highway objections to either planning application.

Flood Risk at the Site

- 6.30 The site is located in Flood Zone 3 on the Environment Agency's Flood Maps and is therefore at a high risk of flooding.
- 6.31 The applications seek to expand the types of goods that can be sold from unit 1 and create additional floorspace at mezzanine level. No changes are proposed to the footprint or external appearance of the building. The proposals will not increase the risk of flooding to people or property on site, nor increase the risk of flooding elsewhere.
- 6.32 Applications for minor development and changes of use are not subject to the Sequential or Exception Tests.

7.0 CONCLUSION

- 7.1 The site is an existing out-of-centre retail unit. The Applicants have addressed all the outstanding points raised and it is concluded that, within the timescale of the application proposals, there are no suitable available sites and the retail Sequential Test can therefore be considered to have been passed. It is also concluded that the proposal would not have a significant adverse impact on any centre and there are therefore no objections to the applications on retail planning policy grounds. The proposal to extend the mezzanine floorspace for the purpose of storage is also considered to be acceptable.

8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER

APPLICATION REFERENCE 16/00996/FUL

That planning permission is granted subject to the following conditions:

Condition 1

The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason

Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the approved drawing nos. 23800106/01 and 03 received by the Local Planning Authority on 13th August 2016 and any other conditions attached to this planning permission.

Reason

To ensure that the development is carried out in accordance with the approved plans and in accordance with policies contained within Second Deposit City of Gloucester Local Plan (2002).

Condition 3

The Retail Unit 1 as identified on drawing no. 23800106/01, received by the Local Planning Authority on 23rd November 2016 shall be used only for the sale of carpets, furnishings, electrical goods, pet and pet supplies, office equipment, DIY products for the maintenance and improvement for the home, garden and motor vehicle, toys, children's sports goods and equipment, bicycles and associated equipment, play equipment, baby equipment and products, electronic games and equipment and other products associated with toys and children's entertainment and any goods ancillary to these permitted uses and for no other purpose without the prior permission of the City Council.

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

Condition 4

The Retail Unit 2 shall be used only for the sale of carpets, furnishings, electrical goods, pet and pet supplies, office equipment, DIY products for the maintenance and improvement for the home, garden and motor vehicle, toys, children's sports goods and equipment, bicycles and associated equipment, play equipment, baby equipment and products, electronic games and

equipment and other products associated with toys and children's entertainment and any goods ancillary to these permitted uses and for no other purpose without the prior permission of the City Council.

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

Condition 5

The retail units shall not be sub-divided 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 the principles Policy S4a of the City of Gloucester Second Deposit Local Plan 2002 and the principles of the National Planning Policy Framework.

Condition 6

The vehicle parking and manoeuvring areas indicated on the submitted plans and the vehicular access as indicated on drawing no. 981038 (D) 4G shall be maintained for the duration of the development.

Reason

To ensure a satisfactory provision of parking and servicing facilities to serve the development in the interest of highway safety in accordance with Policy TR.31 of the Second Deposit City of Gloucester Local Plan (2002).

Statement of Positive and Proactive Engagement

In accordance with the requirements of the NPPF the Local Planning Authority has worked with the applicant in a positive and proactive manner in seeking solutions to secure sustainable development which will improve the economic, social and environmental wellbeing of the area. In particular, the Local Planning Authority has negotiated issues relating to retail policy.

APPLICATION 16/01011/FUL

Condition 1

The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

Reason

Required to be imposed by Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Condition 2

The development hereby permitted shall be carried out in accordance with the approved drawing nos. 23800106/01 and 16-190-P002-A received by the Local Planning Authority on 18th August 2016 and any other conditions attached to this planning permission.

Reason

To ensure that the development is carried out in accordance with the approved plans and in accordance with policies contained within Second Deposit City of Gloucester Local Plan (2002).

Condition 3

The proposed mezzanine floor to be installed within unit 1 as detailed on drawing no. 16-190-P002-A – proposed floor plans received by the Local Planning Authority on 18th August 2016 shall not be used for retail sales but shall be used solely for storage and ancillary accommodation.

Reason

To enable control over any future alterations and/or increased floor space to 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.

Statement of Positive and Proactive Engagement

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 offering pre-application advice, publishing guidance to assist 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: Caroline Townley
(Tel: 396780.)

16/00996/FUL & 16/01011/FUL

Unit 1 Magnet Retail Park
Eastern Avenue
Gloucester
GL4 3BU

Planning Committee 06.12.2016

