

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **7TH OCTOBER 2014**

ADDRESS/LOCATION : **EASTERN AVENUE, GLOUCESTER**

APPLICATION NO. & WARD : **14/00316/FUL
BARNWOOD**

APPLICANT : **THREADNEEDLEPROPERTY
INVESTMENTS**

PROPOSAL : **HYBRID PLANNING APPLICATION FOR THE
VARIATION OF CONDITIONS 7 AND 8 OF
PLANNING PERMISSION 53102/01/OUT TO
ENABLE THE RECONFIGURATION OF UNIT
3 (1279SQM) AND UNIT 4 (459SQM),
REMOVAL OF MEZZANINE WITHIN UNIT 4
AND TO EXTEND THE GOODS TO BE SOLD
FROM THE RESULTANT UNITS, TOGETHER
WITH THE PROVISION OF A NEW 57.6 SQM
MEZZANINE FLOOR FOR NON TRADING
PURPOSES WITHIN RECONFIGURED UNIT
4 (TOTAL OF 516SQM)**

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 3, currently vacant but formerly occupied by Allied Carpets and unit 4 currently occupied by Harveys. The units are set between Currys and Carpetright.
- 1.2 This block of units were originally granted permission in September 1994 following determination at appeal. The permission included restrictive conditions limiting the size of the units and restricting the range of goods that could be sold to “bulky goods”.
- 1.3 This application seeks to reconfigure and alter the internal floor areas of the two units, the provision of a replacement mezzanine floor within unit 4 and also to apply conditions relating to the range of goods that can be sold from the units.

2.0 RELEVANT PLANNING HISTORY

- 2.1 53102/01/OUT Outline permission for Class A.1 (non-food) retail development comprising 5713 square metres [61,500 sq,ft gross] with all matters reserved.
Non determination appeal submitted and appeal allowed on 16.09.1994
This permission was implemented.

94/05211/REM Approval of Reserved Matters for the erection of building comprising 4 no. Class A1 (non-food) retail units
Granted 16.02.1995 (Permission was not implemented).

95/00016/REM Approval of Reserved Matters for Erection of building comprising of 5 no. Class A1 (non-food) retail units.
Granted 16.02.1995

11/00774/FUL Amalgamation of Units 3 & 4 including external works and alteration to car parking. Permitted 28.7.2011.

11/01324/LAW Units 3 and 4 Certificate of lawfulness for unrestricted retail sale of goods within Class A1. Non determination appeal submitted but withdrawn

12/00672/LAW Use of units 3 and 4 for unrestricted retail sales. Lawful Development Certificate granted 27th July 2012

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; Gloucestershire Structure Plan policies – www.gloucestershire.gov.uk/index.cfm?articleid=2112 and Department of Community and Local Government planning policies - 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. No comments have been received.
- 4.2 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 proposal would have an adverse impact upon the vitality and viability of the city centre.

- 5.2 The original permission for the retail units granted in 1994 included restrictive conditions limiting the size of the units and restricting the range of goods that could be sold to “bulky goods” as follows.

Condition 7

No retail units shall be created or altered so as to provide individual units of occupation of less than 929sqm gross floor area, unless permitted in writing by the Local Planning Authority.

Condition 8

The retail units hereby permitted shall be used only for the sale of carpets, furniture, electrical goods and DIY maintenance and improvement products for the home, garden and car, and for no other purpose.

- 5.3 However permission was granted for a lawful development certificate for unrestricted retail sales in July 2012. This certificate therefore allows all retail goods to be sold from the units and not just those set down within the original permission. The certificate was subject to the implementation of the previous permission for the amalgamation of the two units and external works granted in July 2011 under reference 11/00774/FUL. The applicant has now provided evidence to demonstrate that that permission has now been implemented.
- 5.4 In making decision on planning applications local planning authorities have to consider what the alternative for any site may be, including any permitted development rights or permissions that may be in place. This is referred to as the fall back position. In this case the lawful development certificate and the open A1 sales that it allows, amounts to the fall back position and therefore is a material consideration to be given weight in the consideration of the application.
- 5.5 The foot print of the two units are currently both the same size comprising 929sqm thereby providing a total floor space of 1,858 sqm at ground floor level. Additionally unit 4 has a mezzanine floor that accommodates Bensons for Beds.
- 5.6 It is proposed to reconfigure the units so that Unit 3 is increased from 929 to 1279 (a difference of 350sqm) and unit 4 is reduced from 929 to 579 at ground floor with 459 sqm used for retail floor sales area. The existing mezzanine in unit 4 will be removed and a new mezzanine of 57 square metres will be installed. The new mezzanine would not be used for trading purposes solely for storage and staff related purposes.
- 5.7 It is proposed that Unit 4 would be occupied by Iceland and the applicant has suggested that a condition based around the wording of the condition 8, with the addition of food sales, would be appropriate. The applicants are also seeking to widen the range of goods that can be sold under condition 8 from the enlarged unit 3.

Condition 8 allows the following range of goods:

- Carpets
- Furniture
- Electrical goods
- DIY maintenance and improvement for the home, garden and car.

The applicant is also seeking to include food sales within unit 4 and the following goods within unit 3:

- Household goods
- Home furnishings
- Health and beauty products
- Toys and games
- Baby products
- Seasonal products (including Christmas decorations)
- Ancillary ambient food and drink products (up to 30% of floor area)

- 5.8 It is proposed that Iceland would occupy a smaller and re-configured unit 4. Iceland has a requirement for a second store and have identified the eastern part of the city as a suitable location to complement their existing store in The Oxbode.
- 5.9 A sequential assessment has been undertaken but this does not include sites within the city centre, the Peel Centre or St Oswalds. The reason for this being that Iceland require sufficient distance (referred to as a 5-10 minute drive) from their existing store to any new proposed store. This is considered to be a reasonable approach and we accepted a similar position in relation to B&M with a store in Southgate Street, seeking a second store in Eastern Avenue.
- 5.10 Sites considered in the sequential assessment include the Abbeydale and Quedgeley District Centres, Barnwood Road at Hucclecote, Tuffley local centre, Cheltenham Road at Longlevens and Barton Street. The assessment concludes that there are limited vacancies within these shopping areas and none have available units of sufficient size to accommodate the floor space requirements of Iceland and are therefore not considered to be suitable. I concur with these conclusions however DPDS do comment that the applicant could have also looked at the Brockworth centre and other sites on the edge of Quedgeley District Centre.
- 5.11 In relation to unit 4 it is important to consider the long term vacancy of the units, the results of the sequential test and the lawful development certificate that would allow unrestricted retail sales. In fact if Iceland wanted to occupy the whole of unit 4, they could occupy the unit now, without any further recourse to the planning authority (excepting of course any external alterations to facilitate alterations to the entrance or any new signage) given the lawful development certificate. It is only the requirement for the re-configuration of the unit to reduce its size, that planning permission is required. The applicant

has also stated that he would accept a condition that re-instated the bulky goods condition but that also included food sales. This would obviously further control the range of goods that could be sold in the future. I have to give this considerable weight in the assessment of the proposal as occupation by a non bulky goods operator would potentially have a greater impact upon the vitality and viability of the city centre.

- 5.13 There is no definitive occupier for unit 3 at the moment, however it will be increased in size given the works to reduce the size of unit 4. The applicant is applying to extend the range of goods that can be sold over and above those allowed under the previously applied bulky goods condition. These include household goods and furnishings, health and beauty products, toys and games etc. as detailed at paragraph 5.7.
- 5.14 Across the city we have a number of differently worded bulky goods conditions with different categories of goods that are restricted. These differences are due to a number of factors including the time period at which the condition was applied, the nationally agreed format for conditions at that time and also to accommodate specific retailers in certain locations, where justified. However in all these cases the reasons for applying the conditions are the same, which is to restrict the items that would normally be sold from the city centre.
- 5.15 In looking at any proposals to vary conditions the Council has to ensure that the revised condition is still fit for purpose and that it does still operate within its intended purpose which is to protect the vitality and viability of the city centre. Members will be aware that we have received a number of applications to vary conditions across the retail parks in Gloucester with recent applications to accommodate new retailers including Home Bargains, The Range and B&M. In all these cases a sequential assessment had been undertaken to consider the unit and trading requirements of the particular retailer.
- 5.16 In this case the applicant has not undertaken a sequential assessment and in policy terms this is contrary to the National Planning Policy Framework which states:

“Local Planning Authorities should apply a sequential test to 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. They should require applications for main town centre uses to be located in town centre, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered..”

- 5.17 The NPPF is also clear in stating “where an application fails to satisfy the sequential test or where it is likely to have significant adverse impact on town centres it should be refused”. Policy S4a of the Second Stage Deposit Plan 2002 also sets criteria requiring the consideration of sites in or on the edge of designated shopping centres for retail proposals outside such areas.

- 5.18 The applicant states that there is not currently an intended occupier but that allowing additional goods to be sold should generate interest from additional retailers. They also state in terms of the sequential test, that as the owner of the site there will be no other sites more suitable than this site. I do not consider that this is a robust argument and note that the Planning Practice Guidance requires that robust justification is provided where locational specificity is claimed and that land ownership does not provide such a justification. In this respect the applicant has not complied with the requirements of the NPPF and policy S4a of the Second Stage Deposit Plan and this factor on its own would be a reason to refuse the application.
- 5.19 Notwithstanding this I also have to consider the lawful development certificate that allows unrestricted A1 use and the fact that a non bulky goods operator could occupy both units 3 and 4 now. As discussed in relation to unit 4 earlier in the report, this unrestricted retail could potentially have a greater impact upon the vitality and viability of the city centre, than if the originally applied bulky goods condition with the variation as now sought by the applicant, was in place.
- 5.20 The submission of the application gives the council the opportunity to assess the proposal and impose “*such conditions as they think fit*” as set down within S.70(1)(a) of the Town and Country Planning Act, subject to the normal tests.
- 5.21 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.
- 5.22 As the main consideration with this application is the protection of the vitality and viability of the city centre I have to consider whether this proposal for alterations to the floor areas of the units and proposed imposition of restrictive conditions, has less or more of an impact than the “fall back position” which is an unrestricted A1 use. The NPPF sets down the requirement to assess the impact of the proposal upon the vitality and viability of the centre and also upon existing and planned investment. I can only conclude that the applicants offer to re-instate the previously applied bulky goods condition with the widened range of goods for unit 3 and with specific reference to food sales for unit 4, as proposed, would be less harmful to the city centre than an unrestricted A1 use.

Conclusions

- 5.23 In considering applications for retail proposals including the variation of bulky goods conditions there has to be a balance in promoting economic growth, encouraging new retailers, increasing the shopping offer of the city, finding uses for vacant units and protecting the vitality and viability of the city centre. The NPPF is clear in setting down the requirements for the assessment of

retail proposals outside of centres and in particular the application of a sequential test and consideration of impact upon the vitality and viability of the centre.

- 5.24 However in the circumstances of this particular case I have also given weight to the lawful development certificate for open and unrestricted A1 sales that applies to these units. This is a material consideration that has to be taken into account in the assessment of the application and which warrants a slightly different approach to other applications seeking to vary bulky goods conditions on other sites.
- 5.25 It is my view that the conclusions reached upon this application should not create a precedent in the assessment of any subsequent applications to vary bulky goods conditions across the city, given the particular circumstances and planning history of this site.

Human Rights

- 5.26 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

The development hereby permitted shall be carried out strictly in accordance with the submitted details and drawings: drawing 8969 01 revision c site location plan and drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 and any other conditions attached to this permission.

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

Condition 2

The retail unit 3 as detailed on drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 shall be used only for the sale of

- Carpets
- Furniture
- Electrical goods
- DIY maintenance and improvement for the home, garden and car.
- Household goods
- Home furnishings
- Health and beauty products
- Toys and games
- Baby products
- Seasonal products (including Christmas decorations)
- Ancillary ambient food and drink products (up to 30% of floor area)

and any other goods ancillary to those 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 3

The retail unit 4 as detailed on drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 shall be used only for the sale of

- Carpets
- Furniture
- Electrical goods
- DIY maintenance and improvement for the home, garden and car.
- Food for the consumption off the premises

and any other goods ancillary to those 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

With the exception of the works hereby granted to unit 4 as detailed on the submitted plan drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 no works shall be undertaken to the units as detailed on the submitted plan (drawing 8969 01 revision c site location plan dated June 11) to provide

subdivision or create further 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 5

The proposed mezzanine floor to be installed within unit 4 as detailed on drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 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.

Condition 6

No mezzanine floors shall be created within the buildings as shown on drawing 8969 01 revision c site location plan dated June 11, other than the mezzanine floor as detailed on the submitted plan drawing 8969 06 Units 2/3 - proposed plan dated 11.11.13 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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