

# **Assessment of Retail and Leisure Planning Policy Kingsway Business Park, Gloucester**

February 2019

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# 1. Introduction

- 1.1 This advice report has been prepared by Avison Young ('AY') in relation to a planning application by Robert Hitchins Limited for the redevelopment of land at Kingsway Business Park for a retail and leisure development.
- 1.2 This document provides supplementary advice to Gloucester City Council ('GCC') on retail, leisure and main town centre use planning policy issues following the completion of our previous advice on this planning application in January 2019.
- 1.3 This supplementary advice responds to the contents of a document entitled 'Kingsway Business Park, Parcel I – Response to GVA Assessment dated January 2019' ('the Response Note') prepared by RPS on behalf of the application. It deals specifically with the additional information and analysis provided by RPS in relation to the sequential and impact planning policy tests.
- 1.4 Section 2 of this report provides our updated analysis of the relationship of the proposal to the sequential test, whilst Section 3 provides an update on our assessment of the likely impact of the proposal on defined 'town centres' in Gloucester.

## 2. The Sequential Test

2.1 Sections 2.1 and 2.2 of the Response Note provide further information and analysis from RPS on the sequential test. They focus on how, in RPS's opinion, the sequential test should be approached in relation to the assessment of alternative sites, the flexibility which has been employed by the applicant when considering alternative sites and also a further assessment of alternative sites in Quedgeley, the Peel Centre and Kingsway local centre.

2.2 Section 2.1 of the Response Note deals with the applicant's approach to the sequential test. Paragraph 2.1.1 notes that:

*"It is acknowledged that the sequential approach is an objective exercise based upon land use considerations and is not dependent upon the particular characteristics of the proposed occupier. As stated in the supporting Retail and Leisure Statement, it should be undertaken on a 'fascia blind' basis".*

2.3 This is generally the correct approach to the sequential test and is in conformity with the content of the *Mansfield* High Court judgement which has been quoted by both the applicant and ourselves. However, having made this comment at paragraph 2.1.1 RPS then go on to state that the assessment of alternative sites has indeed been influenced by the requirements of the two respective potential occupiers for the development, namely B&M and Pure Gym. This leads to a contradictory analysis.

2.4 This is further reinforced by the controls proposed by RPS. Whilst the proposed control over the Class D2 use to retain it as a gym is helpful, the proposed control over the range of retail goods in the Class A1 unit at paragraph 2.1.8 indicates a wide range of scenarios for that unit. The proposed control is as follows:

*"Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (and any subsequent amendment), the retail unit hereby approved (Unit 2) shall only be used as a Class A1 'variety store' with no more than 20% of the gross internal floorspace used for the display and sale of convenience goods. The associated garden centre shall only be used for the display and sale of garden products and related goods. The retail unit and garden centre shall only be operated as a single retail business and shall not be sub-divided without the prior approval of the local planning authority."*

2.5 In response, we make the following comments:

- Whilst the garden centre can only sell garden products and related goods, the retail floorspace within the Class A1 retail unit would be allowed to sell any type of comparison goods.
- A floorspace limit of 20% for convenience goods sales is proposed although this is not a fixed requirement and the retail unit could instead concentrate upon 100% comparison goods sales.
- In our opinion, the reference to a 'variety store' in the suggested condition does not control the use of the retail unit or limit the range of goods to be sold in any way.

2.6 As a consequence, whilst the proposed controls would allow B&M to occupy the Class A1 retail unit, they would also allow many other different retailers to occupy the unit as well. Therefore, continuing references to the B&M business model and 'operation requirements' may very well be correct but they are not the only potential scenario for the occupation of the proposed Class A1 retail unit.

- 2.7 Turning to the additional assessment of alternative sites, RPS note that, in relation to **Quedgeley district centre**:
- The amount of space in the former Brantano and Next units could amount to circa 3,330sq m whereas the total floorspace of the proposal is 4,331sq m including the outdoor garden centre.
  - In order to get to a total floorspace of circa 3,330sq m, mezzanine floors are required. A mezzanine is to be provided in the gym but not in the retail unit.
  - There is no apparent scope to provide a garden centre adjacent to the Brantano and Next units.
  - There is insufficient car parking at Quedgeley Retail Park to support the proposal as well as existing retailers.
  - the existence of other gyms in the local area should be a material consideration when considering the suitability of alternative sites.
- 2.8 In response to these comments, we would not that most of the difference between the potential floorspace in the Brantano and Next units is made up of the garden centre floorspace which we have previously noted is not a fixed feature of all B&M stores. Moreover, the 20% flexibility reduction applied by RPS would reduce the floorspace to a level which is very similar to the potential floorspace in the Brantano and Next units.
- 2.9 In addition, RPS note that there is no mezzanine floorspace in the proposed retail unit. This is true but given the wide flexibility in the comparison goods product range which could be sold from the unit, there is no reason in our opinion why part of the floorspace could not be accommodated on a mezzanine floor.
- 2.10 We also disagree with RPS that the presence of gyms in Quedgeley is a material consideration to suggest that Quedgeley cannot provide a suitable alternative to the application site. Whether or not there are gyms in Quedgeley is not relevant to the assessment of alternatives, particularly as a gym at Kingsway is likely to have a catchment which encompasses Quedgeley as well. In any event, RPS appear to contradict themselves later in the Response Note where they suggest (at paragraph 2.2.33) that Kingsway and Quedgeley are the same catchment.
- 2.11 In relation to the points made about car parking, GCC officers may wish to obtain the advice of the local highway authority on this point although it should be noted that Quedgeley Retail Park functions on the basis of a shared car park and the floorspace in the Brantano and Next units was able to operate successfully and attract customers using this shared car park alongside other units at the retail park.
- 2.12 As a consequence of the above, we consider that the additional information and analysis supplied by RPS has not changed our view regarding the suitability and availability of the Next and Brantano units at Quedgeley Retail Park.
- 2.13 In relation to the **Peel Centre**, some of the additional analysis provided by RPS continues to base the assessment of alternatives on the specific identity of one of the occupiers for the proposed development. RPS suggest that the Peel Centre is not a suitable or available alternative on the basis of the presence of a B&M store in Gloucester city centre and the lease for the Home Bargains unit which prevents other 'discount retailers' from occupying space at the Peel Centre. This is of course contrary to the content of the *Mansfield*

- High Court judgement and should be given no weight by GCC. Indeed, the controls proposed by the applicant for the Class A1 retail unit do not make it specific to B&M or a similar retailer and many different comparison goods retailers could occupy the unit.
- 2.14 RPS also make the point that the Peel Centre and Kingsway/Quedgeley have separate catchments and cite the decision by Next to relocate from Quedgeley to the Peel Centre. However, no evidence is provided by RPS to substantiate this suggestion and we consider that the Peel Centre will have a city-wide catchment.
- 2.15 RPS also complain that AY is promoting disaggregation by suggesting that the gym and retail units can be placed in different parts of the Peel Centre. Disaggregation is generally associated with separate sites although the Peel Centre is one single Retail Park. There is also no evidence to suggest, as RPS do, that by splitting the retail and gym units this would suddenly render them unviable. There is no evidence to suggest that retail and gym uses of the types proposed must always be in the same development.
- 2.16 The final area of RPS analysis deals with whether the Peel Centre is sequentially preferable to the application site with reference to Gloucester city centre and Kingsway local centre. RPS reiterate the point that the distance from the application site to Kingsway local centre is 500 metres whereas the Peel Centre lies 750 metres from the edge of Gloucester city centre. RPS fail to mention that in terms of the proposed leisure use, the Peel Centre is much closer to the city centre boundary given the different treatment of non-retail main town centre uses by the NPPF.
- 2.17 RPS make reference to the *Newport* High Court judgement and correctly make reference to the content of the judgement which notes that it is open to the decision maker to decide whether sites are sequentially equal or whether one is to be preferred. There must be material difference in our opinion and the characteristics of the relationship of the Peel Centre in relation to the city centre, along with the city centre's place at the top of the hierarchy indicate to us that it should be afforded a preference over the Kingsway application site and Kingsway local centre. There is nothing in the Response Note which changes our opinion in this regard.
- 2.18 The final centre is **Kingsway local centre**. RPS understandably point out the current care home planning application, as do we in our previous advice. Clearly, if the care home application succeeds then there would be insufficient remaining land to accommodate the proposal and our previous advice was careful to point out the likely factors which would stop the local centre becoming/remaining suitable for the proposal.
- 2.19 In light of the above, we remain of the view that the application has not demonstrated that this proposal complies with the sequential test and therefore is likely to be viewed as being contrary to the relevant parts of Policy SD2 of the JCS and paragraphs 86 and 87 of the NPPF.

### 3. Impact

3.1 Our January 2019 advice report for GCC raised the following points in relation to the applicant's assessment of the likely impact of the proposal:

- Lack of a comprehensive cumulative impact assessment, including the trading effects of the Ashchurch retail outlet/garden centre development;
- The need for further detail on the applicant's forecast pattern of trade diversion to the proposal; and
- The need for confirmation over the controls which will be placed over the proposed Class A1 retail floorspace to ensure that the forecast pattern of trade diversion (associated with a B&M store) reflect the actual situation when the retail unit is constructed and opened for trade.

3.2 In relation to the above, we consider a useful place to commence our latest assessment of the impact test are the controls proposed by the applicant for the retail and leisure floorspace. The proposed control to ensure that Class D2 floorspace can only be operated as a gym is to be welcomed and will ensure that the complexion of the development is in accordance with the purposes prescribed in the application and reflects the complexion of the proposals upon which the assessment of impact was based.

3.3 However, the proposed retail goods sales control for the retail floorspace would not, as stated earlier in this report, ensure that the proposal would be consistent with the applicant's impact assessment. For example, whilst the proposed control would allow B&M or one of their direct competitors to occupy the units, many other eventualities could occur. For example, the unit could, without any further permissions from GCC, be used as a clothing, footwear and fashion goods store, or a sports goods retailer, or the sale of household goods and furnishings, or as a toys and games store. Such scenarios could well attract a different set of trade diversion forecasts and some of these could result in much higher impacts for some defined 'town centres' such as Quedgeley and the city centre where there is a much larger level of trading overlap.

3.4 We go on to consider the applicant's updated impact assessment on a without prejudice basis below, although in light of the comments made in paragraph 5.4 of our January 2019 advice we recommend to GCC that the applicant's impact assessment is incomplete as the range of goods sought for the proposed retail unit could materially differ from the applicant's own assessment.

3.5 In relation the additional information supplied by RPS, the inclusion of the Ashchurch commitment is to be welcomed although we consider the financial impact of that scheme on the turnover of Gloucester city centre to be materially higher.

3.6 We consider that the changes made to the levels of likely trade diversion from the ASDA Kingsway and ALDI Bristol Road provide for a more realistic assessment.

3.7 We note that some amendments have also been made to the pre-impact turnover levels of certain stores, including the ALDI on Bristol Road, the ASDA at Kingsway, the Lidl stores on Bristol Road and Eastern Avenue and the inclusion of the Tesco Express store at Kingsway. These changes are apparently based upon amendments made by DPP in their impact assessment for the proposed Lidl store at Kingsway. We have not

- reviewed the Lidl impact assessment in detail although we do appreciate that the turnover of the ALDI store appears extremely high and the turnover of the ASDA very low and which is at odds with our experience of that store over the past 2-3 years.
- 3.8 Manual adjustments to market share and turnover levels do have their drawbacks as they rely on professional judgement unless there is another credible source of evidence to rely upon. When we review the DPP assessment for the Lidl proposal we will comment upon this aspect although it may be that a new survey of household shopping patterns (very recently completed) which has been commissioned for the Joint Core Strategy Retail and City/Town Centre Review can provide additional more up-to-date information to avoid the need to make manual adjustments to market share levels. Nevertheless, it should be noted that both of these stores lie in out of centre locations and therefore any irregularity regarding their actual market share levels may not prove to be a particularly significant issue here (unless these are a sign of further irregularities in the rest of the 2015 household survey).
- 3.9 We are grateful to RPS for providing additional information on the identity of out of centre retail park stores which forecast to contribute 70% of comparison goods turnover of the proposal. Having reviewed the data on page 14 and Table A of the Response Note, we consider these to be reasonable predictions so long as the proposed retail unit is occupied by a B&M Homestore.
- 3.10 RPS also helpfully provide an additional section on the potential impact of the proposed gym use. As previously noted, assessments of 'leisure impact' need to be qualitative in nature and be focused upon the location on directly competing facilities and how those in defined 'town centres' make a contribution to the overall health and attractiveness of that particular centre. Whilst we do not agree with RPS that the gyms in the city centre will have necessarily have separate catchments to the proposed facility on the application site, we do agree that gym facilities represent a small proportion of the overall range of uses and activities in the city centre and therefore any trade diverted away from the city centre is unlikely to have a material impact.
- 3.11 Overall, we are now reasonably comfortable with the applicant's impact assessment and whilst there will be small amount of trade diverted from Quedgeley district centre and Gloucester city centre, we do not consider a B&M Homestore and gym use on the application site is likely, on its own, to lead to a significant adverse impact upon the vitality and viability of defined 'town centres' in Gloucester. As noted in our previous advice report, there are a number of existing commitments in Gloucester and the surrounding area which, in our opinion, will have a harmful impact upon the health of Gloucester city centre. However, so long as the Kingsway proposal is suitably controlled to reflect the content of the applicant's impact assessment, we do not consider that this proposal should be resisted when the threat to the health of the city centre comes from other sources.
- 3.12 That conclusion therefore brings us back to the issue of the controls over the proposed Class A1 retail floorspace. RPS indicate that the intended occupier for this floorspace will be a B&M Homestore. We have no reason to doubt this intention although any planning permission granted by GCC to the applicant runs with the land and is not personal to a particular occupier. Therefore, in order to make the assessment of impact robust, and particularly where there are concerns over the impact of the proposal on the health of nearby 'town centres', it will be important to ensure that the complexion of the development is in accordance with the purposes prescribed in the application and also reflects the complexion of the

proposals upon which the assessment of impact was based. As a consequence, we recommend to GCC that the applicant's impact assessment is incomplete as the range of goods sought for the proposed retail unit could materially differ from the applicant's own assessment.

## 4. Summary and Conclusions

- 4.1 This advice report has been prepared by Avison Young in relation to a planning application by Robert Hitchins Limited for the redevelopment of land at Kingsway Business Park for a retail and leisure development. It provides supplementary advice to Gloucester City Council on retail, leisure and main town centre use planning policy issues and responds to the contents of a document entitled 'Kingsway Business Park, Parcel 1 – Response to GVA Assessment dated January 2019' prepared by RPS on behalf of the applicant.
- 4.2 The RPS document provides further information and analysis of the applicant's approach to the sequential test and the assessment of three alternative sites in Gloucester. Having considered the information and analysis provided, we remain of the view that the applicant has not demonstrated that this proposal complies with the sequential test and therefore is likely to be viewed as being contrary to the relevant parts of Policy SD2 of the JCS and paragraphs 86 and 87 of the NPPF. In particular, we continue to hold the view that the Peel Centre and Quedgeley district centre offer suitable and available sequentially preferable alternatives to the application site.
- 4.3 In response to the contents of our January 2019 advice report, the applicant has provided additional information and analysis in relation to the impact of the proposal on defined 'town centres'. The applicant has helpfully provided additional analysis in relation to cumulative impact matters and further detail on the forecast pattern of trade diversion from stores across the city. Overall, we are now reasonably comfortable with the applicant's impact assessment and whilst there will be small amount of trade diverted from Quedgeley district centre and Gloucester city centre, we do not consider a B&M Homestore and gym use on the application site is likely, on its own, to lead to a significant adverse impact upon the vitality and viability of defined 'town centres' in Gloucester. As noted in our previous advice report, there are a number of existing commitments in Gloucester and the surrounding area which, in our opinion, will have a harmful impact upon the health of Gloucester city centre. However, so long as the Kingsway proposal is suitably controlled to reflect the content of the applicant's impact assessment, we do not consider that this proposal should be resisted when the threat to the health of the city centre comes from other sources.
- 4.4 However, the applicant has offered a condition which would allow a wide variety of scenarios for the occupation of the proposed retail unit which would allow B&M to occupy the unit but alternatively allow the unit to be occupied by clothing/fashion, toys/games, household goods and home furnishing retailers. Whilst we have no reason to doubt the aspiration for B&M to occupy the proposed retail unit, any planning permission granted by GCC to the applicant runs with the land and is not personal to a particular occupier. Therefore, in order to make the assessment of impact robust, and particularly where there are concerns over the impact of the proposal on the health of nearby 'town centres', it will be important to ensure that the complexion of the development is in accordance with the purposes prescribed in the application and also reflects the complexion of the proposals upon which the assessment of impact was based.