

Perth and Kinross Council
Development Management Committee – 21 August 2013
Report of Handling by Development Quality Manager

Modification of planning obligation to allow 426sqm of Unit 4 to be used for the sale of convenience goods including food at St Catherine's Retail Park, Perth

Ref: No: 13/01192/MPO
Ward No: 11 – Perth City North

Summary

This report recommends approval of the modification of an existing Planning Obligation to permit 426sqm of Unit 4 of St Catherine's Retail Park to be used for the sale of convenience goods, including food.

BACKGROUND AND DESCRIPTION

- 1 This application relates to Unit 4 of St Catherine's Retail Park (North), a 1980s retail park comprising of a number large retail units ranging from 929 m² to 3400 m² with associated customer car parking and service yards. The design of the units is typical of that era but the appearance of the retail park has since become somewhat dated and the movement through the car park for both traffic and pedestrians is particularly poor. Unit 4 is located on the western side of the complex adjacent to the railway line.
- 2 Detailed planning permission (11/00092/FLM) was granted by the Council in 2011 for a scheme to regenerate this area of the retail park. The proposals involve the extensive refurbishment of the existing front elevations of the retail units, significant alterations to the car park and road layout and proposals for the subdivision of some of the units.
- 3 There are a number of historic planning obligations relative to this site with some also being applicable to the wider St Catherine's Retail Park site which date back to the time of the original planning permission being granted. This application seeks the modification of one of the existing planning obligations to allow for up to 426sqm of the gross retail space of Unit 4 to be used for convenience goods including food. In addition to this, the application seeks to define the Unit 4 to 1,421sq m of floor space.
- 4 The existing agreement allows for some convenience goods to be traded within existing units, providing it is ancillary to the main use. Whilst there is no industrial standard as to what constitutes an ancillary use, it is generally considered that 30% (of the main use) is at the upper limit of what is generally considered to be within the realms of ancillary.
- 5 It must be highlighted that this is not a planning application, but an application seeking permission to amend the terms of the existing planning obligation which controls unit sizes and the type of goods that can be sold in the northern part of the retail park.

NATIONAL POLICY AND GUIDANCE

Scottish Planning Policy (February 2010)

- 6 This SPP is a statement of Scottish Government policy on land use planning and contains:
- the Scottish Government's view of the purpose of planning,
 - the core principles for the operation of the system and the objectives for key parts of the system,
 - statutory guidance on sustainable development and planning under Section 3E of the Planning etc. (Scotland) Act 2006,
 - concise subject planning policies, including the implications for development planning and development management and,
 - the Scottish Government's expectations of the intended outcomes of the planning system.

Of relevance to this application are:

- Paragraphs 45 – 51: Economic development.
- Paragraphs 52 – 65: Town centres and retailing.

DEVELOPMENT PLAN

- 7 The Development Plan for the area comprises the Approved TAYplan 2012 and the Adopted Perth Area Local Plan 1995. The principal relevant policies are in summary: -

TAYPlan 2012

Under the Plan, the principal relevant policy is:-

Policy 7: Town Centres

- 8 This policy outlines that strategies, plans, programmes and development proposals should focus comparison retail development within the town and commercial centres specified in the retail hierarchy (table 2), with the largest scale of activity in the largest town centres, to protect and enhance their vitality and viability.

Perth Area Local Plan 1995

- 9 Under the Local Plan the site lies within the settlement boundary of Perth and within an area identified as a retail park, where the principal relevant policy is:-

General Shopping: Policy 46

- 10 This policy identifies both major retail areas and neighbourhood shopping centres. Retail development of more than 1000m² gross outwith these areas

will not be in accordance with the Local Plan. An Article 4 Direction relating to retail use applies in Dunkeld Road and planning permission is required for a change of use from car showroom to shop in this area.

Perth and Kinross Council Local Development Plan – Proposed Plan (January 2012)

- 11 On 30 January 2012 the Proposed Plan was published. The adopted Local Plan will eventually be replaced by the Proposed Local Development Plan. The Council's Development Plan Scheme sets out the timescale and stages leading up to adoption. It has recently undergone a period of representation; the Proposed Local Development Plan may be modified and will be subject to examination prior to adoption. This means that it is not expected that the Council will be in a position to adopt the Local Development Plan before December 2014. It is therefore a material consideration in the determination of this application, reflecting a more up to date view of the Council.

The principal relevant policies are in summary:

Policy RC3: Commercial Centres

- 12 Proposals for retail units will be promoted in the commercial centres shown on the proposals map. However, certain uses will be restricted in some of the commercial centres based on their planning consents and legal agreements for planning obligations. The Council supports improvements to the commercial centres including increased floor space provided parking provision and landscaping is not compromised.

Policy RC4: Retail and Commercial Leisure Proposals

- 13 Retail and commercial leisure facilities will be expected to locate in town and neighbourhood centres or other commercial centres. Proposals for any retail and leisure development of 1,500 square metres or more gross floor space outwith a defined town centre boundary, and not in accordance with the development plan, will require a transport, retail or leisure impact assessment. Any detrimental effects identified in such an assessment will require mitigation. For smaller developments, the requirement for an impact assessment will be at the discretion of the Council.
- 14 Proposals on edge of centre or out of centre locations will only be acceptable where:
- (a) It can be demonstrated that a proposal helps meet quantitative and qualitative deficiencies in existing provision.
 - (b) It is supported by a favourable sequential assessment.
 - (c) It is of an appropriate scale.
 - (d) It provides improved distribution and accessibility of shopping provision.
 - (e) It provides for accessibility to public transport and non car modes of transport.
 - (f) Any detrimental effects identified in the transport assessment are mitigated.

- (g) It has been demonstrated that there will be no significant impact (individual or cumulative) on any of the centres within the network of centres.

SITE HISTORY

- 15 Detailed planning permission (11/00092/FLM) was granted by the Council in 2011 for a scheme to regenerate this area of the retail park. The proposals involve the extensive refurbishment of the existing front elevations of the retail units, significant alterations to the car park and road layout within the retail park and proposals for the subdivision of some of the units.
- 16 In addition to this a proposed modification to the original planning obligation was approved in 2011 which effectively allowed the implementation of a full scale foodstore within the northern section of the retail park.

CONSULTATIONS

- 17 No external consultations have been undertaken, however 18 'interested parties' were notified of the application

REPRESENTATIONS

- 18 One letter of representation has been received in respect of this application which raises concerns regarding the potential impact of the proposed revisions on the city centre core retail area.

ADDITIONAL STATEMENTS

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| 19 | Environment Statement | Not required |
| | Screening Opinion | Not required |
| | Environmental Impact Assessment | Not required |
| | Appropriate Assessment | Not required |
| | Design Statement / Design and Access Statement | Not required |
| | Report on Impact or Potential Impact: | Not required |

APPRAISAL

Legislation

- 20 Section 75A(1) of the Town and Country Planning (Scotland) Act 1997 (as amended) sets out that, where a person against whom a planning obligation is enforceable wishes to modify or discharge the obligation, they have to apply (under section 75A(2)) to the planning authority seeking their agreement for the modification or discharge.
- 21 In determining an application submitted under Section 75A(2) the planning authority may, depending on whether the application is for the modification or discharge of the obligation, determine that the obligation be discharged or that

the proposed modification to the obligation be made. The authority may also determine that the obligation should continue in its current form. The legislation does not permit the planning authority to determine that the obligation should be subject to any modification other than the modification, or modifications, as set out in the application.

Policy

- 22 Although this application is not an application for planning permission, Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 are still applicable to this application insofar as this decision must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for this area comprises the approved TAYplan 2012 and the adopted Perth Area Local Plan 1995 (Incorporating Alteration No1, Housing Land 2000) with the approved Proposed Local Development Plan 2012 is a significant, material consideration. In terms of the TAYplan, Policy 7 'Town Centres' is directly applicable as are Policy 46 'General Shopping' of the adopted Local Plan and Policies RC3 'Commercial Centres' and RC4 'Retail and Commercial Proposal' of the proposed Local Development Plan.
- 23 To this end, the key determining issue for this application is ultimately whether or not the change in the terms of the planning obligation will result in an acceptable land use and whether or not it will adversely affect the vitality and viability of Perth City Centre. For reasons stated elsewhere in this report, I consider the proposal acceptable on both counts.

Draft Head of Terms

- 24 The numerous legal obligations which relate to the current application site were originally required in order to restrict the types of goods available for sale in addition to the minimum and maximum sizes of units used for specific purposes. The current modification request seeks to vary those elements to a degree.

Impact on City Centre

- 25 The Council preference for the location of new retail investment in Perth is that it should be directed to the city centre. This position is fundamentally ingrained into the Councils planning frameworks contained in the current Local Plan, the Proposed LDP and the Perth City Plan. The Council's commitment to this approach is evident as it is actively working with the owners of the St John's Shopping Centre to assist their current investment projects in St Johns.
- 26 With regard to the relationship with the core retail area of the city centre, due to its edge of centre location, it is considered that St Catherine's Retail Park plays a significant role in the vitality and viability of Perth city centre. It is accepted that the introduction of additional retail floorspace on sites that are outwith the city centre could potentially directly impact on the retail operation

of the core retail area. However St Catherine's Retail Park is considered to be an edge of centre site due to close proximity to the city centre. Furthermore, not only does the adopted local plan seek to direct all retail developments of more than 1000 m² into major retail areas (Policy 46), but the Proposed Local Development Plan also seeks that proposals for retail units should be promoted within the commercial centres (Policy RC3), such as St Catherine's Retail Park.

- 27 Changes to the range of goods already granted planning permission and previous unrestricted retail permissions are relevant in considering the current proposal and the arguments in relation to potential loss of trade. To date, these have not resulted in movement from the central retail core, particularly in relation to smaller units. The argument suggested within the letter of representation that a framework agreed for one part of the retail park should not hold for the remainder given the similarity and proximity of the retail operations is unrealistic and not supportable.
- 28 The applicant is pursuing a retail operator for Unit 4 whose primary stock is based on non-food goods, which would be entirely consistent with the terms of the extant planning obligations attached to the site. However, it is envisaged that the potential operator will also seek to stock a range of convenience goods (including food and drink in tins, bottles, cans and packets) and it is expected at the floorspace accommodating this element would not exceed 426 sq m, which would be approx 30% of the total unit.
- 29 As stated previously, the existing agreement allows for some convenience goods to be traded within existing units, providing it is ancillary to the main use. Whilst there is no industrial standard as to what constitutes an ancillary use, it is generally considered that 30% (of the main use) is at the upper limit of what is generally considered to be within the realms of ancillary. To this end, a proposed area of 426sq m (approx 30%) of the total floor space of Unit 4 is considered acceptable and inline with the original aims of the planning obligation which sought to ensure that convenience goods remained an ancillary use within the individual units.

Potential for Food Store

- 30 The applicant has already secured a modification to the original planning obligation to allow for a full scale foodstore (3,350sqm) to be located within the retail park (within one unit) the Council would not be supportive of another foodstore in this area as Perth is presently operating at capacity in relation to foodstore consents. It is considered that an area of 426sq m would not allow for another full scale foodstore to open within Unit 4.

LEGAL AGREEMENTS REQUIRED

- 31 This application relates to the modification of the existing Section 75 Agreement that controls the unit sizes and the range of goods that can be sold within the Retail Park. If this request to modify the existing Section 75 is agreed then the existing legal obligation will need to be amended to accommodate the modification.

DIRECTION BY SCOTTISH MINISTERS

- 32 Under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, regulations 30 – 32 there have been no directions by the Scottish Government in respect of an Environmental Impact Assessment screening opinion, call in or notification relating to this application.

CONCLUSION AND REASONS FOR RECOMMENDATION

- 33 On the basis of the above, the proposal does not undermine the TAYplan's retail hierarchy, the 2011 Retail Review, the Proposed LDP or the current Local Plan. As a result of the proposed modification, the resultant end user will be one which is suitable in both the city centre and commercial centre locations and opposing this modification would in my mind be extremely difficult to defend – even if the Council had an appetite to do so.
- 34 It is therefore concluded that the proposed modification to allow the variation of types of goods for sale will assist in the much needed regeneration of the retail park and improve the future economic competitiveness of Perth. On that basis the current request to vary the terms of the legal agreement should be approved.

RECOMMENDATION

- A** Approve the proposed Modification of existing Planning Obligation to allow the sale of a revised range of goods

B JUSTIFICATION

The requested modification is considered to be in accordance with the Development Plan.

C PROCEDURAL NOTES

None.

D INFORMATIVES

None.

Background Papers: One letter
Contact Officer: Andy Baxter – Ext (4)75359
Date: 8 May 2013

Nick Brian
Development Quality Manager

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