

COMMITTEE REPORT

Committee: Planning Committee **Ward:** Guildhall
Date: 17 December 2009 **Parish:** Guildhall Planning Panel

Reference: 09/02071/LEGAL
Application at: M F I Furniture Centre Ltd Foss Islands Road York YO31 7UL
For: Variation of legal agreement to allow food retail to be traded from the premises
By: CB Richard Ellis Limited
Application Type: Legal Agreement
Target Date: 30 November 2009

1.0 PROPOSAL

1.1 The application site is situated beyond the edge of York's Central Historic Core to the east of Foss Islands Road. Directly opposite the site, further to the west and across Foss Islands Road, lies the remains of York's ancient City walls. Foss Islands Retail Park, which includes the likes of Kwik Fit, Homebase, Morrison's and fast food outlets with associated car park lies to the north. To the east lies a series of single storey warehouses, and to the south is a car garage/workshop.

1.2 In pursuance of Section 106A "Modification and Discharge of planning obligations" of the Town and Country Planning Act 1990 (as amended) this application seeks consent to vary the legal agreement imposed when it was occupied by B&Q Plc in 1994, and the original legal agreement imposed in 1986 (known at that time as Section 52 Agreement).

1.3 Paragraph 4, part 1 of the 1994 legal agreement restricts the site to be used for the retail sale of non-food goods and ancillary snack bar, sale of fuel for motor vehicles, and the sale or display of motor vehicles. In addition paragraph 3 of the 1986 Section 52 Agreement restricts the site to be used only for the sale of furniture, decorating materials, building products, floor coverings, do-it-yourself and related out of door products, leisure goods and maintenance products. It is proposed to vary the above stipulations to allow a food retailer to trade from the premises.

1.4 In addition to this Legal Agreement application 3 separate planning applications have been submitted to:

- i. introduce new traffic lights and pedestrian refuge;
- ii. alter the existing car park layout; and
- iii. alter the existing building to include new entrance, shop front and ancillary facilities.

1.5 These applications are of a relatively minor nature and are likely to be dealt with under delegated powers.

2.0 POLICY CONTEXT

2.1 Development Plan Allocation:
Contaminated Land GMS Constraints:

City Boundary GMS Constraints: York City Boundary 0001

DC Area Teams GMS Constraints: Central Area 0002

DC Area Teams GMS Constraints: East Area (1) 0003

Floodland GMS Constraints: Flood Zone 2

Floodland GMS Constraints: Flood Zone 3

Floodzone 2 GMS Constraints: Flood Zone 2 CONF

Floodzone 3 GMS Constraints: Flood Zone 3

2.2 Policies:

CYS2

Out of centre retail warehouse criteria

CYSP7A

The sequential approach to development

CYGP4B

Air Quality

CYT13A

Travel Plans and Contributions

3.0 CONSULTATIONS

3.1 Neighbours notified, site notice posted and press advert, expires on 16 December 2009 - no response received to date.

3.2 Guildhall Planning Panel. Consultation expires on 10 December 2009 - no response received to date.

3.3 City Development team - Response received on 24 November 2009:

- The proposed store would be on an existing unit which has an unrestricted retail consent so could therefore be used for any comparison goods such as clothing and footwear which could have a significant impact on the city centre.

- In terms of the convenience retail proposal, although in quantitative terms there is no immediate capacity, the Assessment completed by CBRE, CB Richard Ellis has established that the impact on the city centre is relatively small and it is in an accessible location which is centrally located.

- In addition if the store is considered in how it relates to the Foss Islands development which is restricted to bulky goods and food retail the team would look positively at a convenience goods retail application in this location.

- The team would thus not wish to raise a policy objection.

3.4 Highway Network Management team consulted - response received on 26 November 2009:

- the team would like to see a draft of the proposed S106 and from a highways viewpoint it should contain the following:

- i. A financial contribution towards the Foss Basin Masterplan of £90.5k
 - (a) 50% (£45.25k) to be paid prior to the implementation of the consents associated with the legal agreement.
 - (b) 50% (£45.25k) to be paid within 1 month of the store opening having a clawback if funds remain unspent of 10 years.
- ii. A requirement that traffic count surveys are undertaken 12 and 24 months from the date of the store opening with the approved food retail use. The dates, locations and nature of the surveys are to be agreed in writing with the authority prior to the surveys being carried out. The full count survey results shall be provided to the authority and agreed in writing within 1 month of the date of the surveys being carried out.

Should the level of vehicular trips associated with the store during the weekday PM peak be greater than a net increase of 90 vehicular trips, then the developer shall pay £914.46 per additional vehicular trip. Such additional funding should be agreed in writing by the authority and the sum received from the developer within 3 months of agreement of the figure. The funds shall be spent within 10 years of receipt or otherwise returned to the developer.

iii. A financial contribution of £5k towards the amendment/creation/extinguishment of Traffic Regulation Orders in the vicinity of the site. The scheme is to be paid upon completion of the agreement having a clawback if funds remain unspent of 10 years.

iv. Travel Plan requirement

3.5 Environmental Protection Unit (Air Quality) - response received on 18 November 2009:

- In January 2002 City of York Council declared an Air Quality Management Area (AQMA) based on predicted surpass of the annual average nitrogen dioxide objective in five areas of the city.
- The declaration of the AQMA placed a legal duty on the council to improve air quality in the city and to demonstrate that it is actively pursuing the 40ug/m³ annual objective.
- In order to demonstrate a commitment to improving air quality the council was required to prepare an Air Quality Action Plan (AQAP).
- The AQAP identifies measures the council intends to take to improve air quality in the city following the declaration of the AQMA.
- The proposed development site is adjacent to City of York Council's AQMA and Lawrence St (which is in close proximity to the site) and forms one of the five areas of 'technical breach', where excessiveness of the annual average nitrogen dioxide objective have been monitored.
- The Environmental Protection Unit (EPU) undertakes monitoring of nitrogen dioxide at a number of sites along Lawrence Street.
- Concentrations of nitrogen dioxide monitored at these sites have indicated extensive breaches of the health based annual average nitrogen dioxide objective in recent years.

- Based on national air quality guidance, air quality may be a significant consideration where changes in Annual Average Daily Traffic Flow (AADT) are shown to increase by more than 5%, on roads with existing flows of 10,000 vehicles or more.
- The change in proportion of HGVs entering and leaving the site can also be a consideration when considering whether an air quality assessment is required for a development proposal.
- The traffic assessment for the site provides turning movements in terms of Passenger Car Units.
- In order to assess this proposal in terms of air quality, further information is required from the applicants.
- For all links covered in the traffic assessment, and for all scenarios, the following is required :

- i. Annual Average Daily Traffic Flows (AADTs)
- ii. % HGV / % LGV
- iii. Average speed for each link
- iv. % change in AADT between the base case and the 'with-development' scenarios.

- Ideally this information will be tabulated to allow an easy comparison between the base case traffic movements and those with the development in place.

4.0 APPRAISAL

4.1 The main planning issues to be considered are:

- i. Vitality and viability of York City and District Centres;
- ii. Highway considerations; and
- iii. Air Quality

VITALITY AND VIABILITY OF YORK'S CITY AND DISTRICT CENTRES

4.2 In accordance with Planning Policy Statement (PPS) no.6 "Planning for Town Centres", Policy E2 "Town centre and major facilities" of the Regional Spatial Strategy for Yorkshire and Humber (2008), and Policies SP6 "Location Strategy" and S2 "Out of Centre Retail Warehouses" of the City of York Draft Local Plan retail developments must have regard to the followings:

- i. That there are no unacceptable impacts on existing centres
- ii. That there are no more central sites for the development
- iii. That the development is of an appropriate scale
- iv. That the locations are accessible.
- v. The need for development

i. Impact

4.3 In relation to impact, results from a telephone survey from York's Retail Study showed that 80% of the local expenditure on main food shopping was going to out of town shops including 35% to Asda at Monks Cross and 29% to Tesco at Clifton Moor. Only 9% were using Sainsbury's at Foss Bank. The new Morrison's store was not trading at the time of the survey. The impact analysis table given by the report submitted with the application shows that the main impact would be on the out of

centre and out of town supermarkets such as Morrison's, Foss Islands (8.4%), Sainsbury's Foss Bank (5.2%), Sainsbury's Monks Cross (6%), Asda, Monks Cross (4.3%), Tesco, Clifton Moor (4.3%) rather than on York City Centre which has an expected impact of 2.6%. These figures indicate that the main impact of the new store would be on out of centre food stores. The retail study also indicated those stores which are trading above company averages.

ii. Sequential Test

4.4 In addition to the issue of impact it is also important to consider whether there are any sequentially preferable sites available. The applicants have assessed allocated sites within the Local Plan and other sites currently known. This has been done in a satisfactory manner in relation to 'availability, suitability and viability'. The result shows that there is no available, suitable and viable site within the sites identified by the City Development team.

iii. Scale

4.5 An existing purpose built building for retail currently stands on this site, at an appropriate scale for the nature of the proposed food store.

iv. Accessibility

4.6 The store is located 900m from the Central Shopping Area. This is classed as being out-of-centre in PPS6 terms but the site is adjacent to the city centre inset boundary in an accessible location which is well related to residential areas. In policy terms, this site is sequentially preferable to other retail concentrations elsewhere in the City of York urban area, notably free standing food stores and Monks Cross and Clifton Moor retail parks, which are located in out of town locations.

v. Need

4.7 The York's Retail Study recommends that York should seek to re-address the balance between the over concentration of existing out of centre food stores which are trading above company averages towards the city centre and neighbourhood centres. The city centre is constrained by its historic environment which means that it is difficult to provide a site of a larger food store in York city centre, and therefore sites such as Foss Islands is the next best option for a large food store.

4.8 In terms of 'need', York's Retail Study (2008) indicates that there are some capacity issues for convenience goods across York which need to be taken into account as part of this application. It concludes that by 2012 there is capacity for 3,146 sq m net convenience floorspace, growing to 5,034 sq m net by 2017.

4.9 Taking into account recent commitments which need to be deducted from this forecast including the extension to Morrison's at Acomb (760 sq.m), the Aldi Store at Monks Cross (1,125 sq m), the Change of Use of a retail unit at Foss Islands (1,115 sq m) and the extension to the Sainsbury's Store at Monks Cross (302 sq m) the retail capacity would stand at -153sq.m net to 2012 and 1732sq.m net to 2017. Whilst in quantitative terms there is no immediate capacity the above analysis shows the impact on the city centre from the food store is relatively small and it is in an accessible

location which is centrally located. In addition the adjacent Foss Islands development is restricted to bulky goods and food retail. Therefore the sale of convenience goods such as food in this location is considered to be acceptable.

4.10 Another food retail store 'Morrison's' which is also located at Foss Islands has a condition restricting ancillary non-food goods to 15% of the net floorspace. It is considered that a similar requirement should be imposed as part of this Section 106 variation application. The applicants have accepted this.

HIGHWAY CONSIDERATIONS

4.11 The Transport Assessment submitted with the application shows the level of traffic from a non-food to food retail store will increase. For instance according to the assessment carried out by the applicants' highway consultant the daily vehicular trips on Saturdays would increase by 2777, and on weekdays there would be an additional 3084 trips added to the daily vehicular trips. The following financial contributions have been requested by Highway Network Management:

- i. £90.5k towards Foss Basin Masterplan;
- ii. traffic count surveys to be undertaken 12 and 24 months from the date of the store opening, with £914.46 to be paid per additional vehicular trip after deducting the net increase of 99 vehicle trips; and

iii. Travel Plan

4.12 In addition, as part of the scheme it is proposed to introduce new traffic lights and pedestrian refuge on Foss Islands Road at the applicant's own cost. A financial contribution of £5k has therefore been requested towards the amendment/creation/extinguishment of the Traffic Regulation Orders.

4.13 Upon further negotiation the applicants are prepared to pay £90K towards the Foss Basin Masterplan, £5k towards Traffic Regulation Order and prepare a travel plan. However the open-ended contribution arising from the 12 month and 24 month traffic count surveys are not considered to be appropriate largely because the scale of the financial contribution is not fully known until 12 and 24 months after the store opens. Such a requirement is not considered to be reasonable, since the application must be assessed for its likely impact at the time of submission. Any expected future increase in traffic levels should be anticipated and accommodated for in the measures proposed at the time of consideration of the application. The Council's Legal Services Section confirms this position. In addition, to expect further contributions generated from as yet unknown possible increases in traffic levels would add considerable risk for any future occupier who will be responsible for paying this open-ended contribution.

AIR QUALITY

4.14 According to the Air Quality officer, where changes in Annual Average Daily Traffic Flow (AADT) are shown to increase by more than 5% on roads with existing flows of 10,000 vehicles or more air quality may be a significant consideration. Therefore in order to assess this proposal in terms of air quality further information is required from the applicants to determine whether air quality assessment is required.

4.15 At the time of writing the applicants' traffic consultants are in the process of preparing the requested details. Whilst the annual average daily traffic flow is likely to increase as a result of the proposed food store the application site is situated outside the Air Quality Management Area (AQMA). In addition, Lawrence Street, an area where nitrogen dioxide exceeds the annual average is over 140m away from the store. Whether there is a need to conduct air quality assessment will be updated at the committee meeting.

5.0 CONCLUSION

Subject to a new Section 106 Agreement requiring:

- i. 15% restriction on ancillary non-food goods by net floorspace;
- ii. £90.5k towards Foss Basin Masterplan;
- iii. Travel Plan; and
- iv. £5k towards the Traffic Regulation Orders

The proposed variation to the existing Section 52 Agreement is regarded as acceptable.

6.0 RECOMMENDATION: Approve

1 Authorise variation of the legal agreements to allow for the sale of food subject to the additional obligations outlined in section 5.0.

REASON FOR APPROVAL:

In the opinion of the Local Planning Authority the proposal, subject to the new Section 106 Agreement requirements listed above, would not cause undue harm to interests of acknowledged importance, with particular reference to the vitality and viability of York's city and district centres, highway considerations and air quality. As such the proposal complies with national and local planning policy, in particular with most relevant Policies S2, SP7a, GP4b and T13a of the City of York Development Control Local Plan.

7.0 INFORMATIVES:

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