

Allerdale Borough Council
Planning Application VAR/2019/0008
Development Panel Report

Reference Number: VAR/2019/0008
Valid Date: 17/05/2019
Location: Derwent Drive, Workington
Applicant: LS Workington Limited
Proposal: Application for variation of condition 2 on planning approval 2/1993/0767 to enable food, drink and tobacco to be sold from Units B and C.

RECOMMENDATION

That the decision to grant permission subject to conditions be delegated to the Planning and Building Control Manager upon the securing of a section 106 agreement that surrenders the unrestricted retail floor area (unrestricted by the extant permission on land within the wider Derwent Drive retail site).

1.0 Summary

	Conclusion
Principle of the development	Subject to an agreement being in place, the application would have no conflict with development plan policies.
Town Centre Viability	<p>Although the sequential test indicates that the Central Road Car Park site is sequentially preferable in terms of new retail development, the applicant has been able to demonstrate that there would be no increase in floor space in this out of town centre location as they propose to surrender floor space which has extant permission on the Derwent Drive retail park; therefore, there is no increase in overall floor space for convenience goods.</p> <p>The impact on the vitality and viability of Workington Town Centre is not considered to be adversely affected subject to the securing of the section 106 agreement.</p>

2.0 Introduction

- 2.1 Members may recall that they considered this application at the meeting of the Development Panel in October 2019. It was resolved to delegate the granting of permission subject to conditions if the s106 agreement surrendering the unrestricted retail floor area was completed within 6 months. This has not occurred, albeit the agreement is close to being finalised. Therefore, as per the resolution, the matter is being brought back before the Panel.
- 2.2 Members are advised that the delay is not due to the unwillingness of either party to complete and sign a s106 but rather to other factors. This includes the Covid-19 pandemic and also a change in circumstances; the applicant has indicated that a new occupier has a reduced requirement for the sale of food, drink and tobacco. The original proposal sought approval of 1765m² of unrestricted retail floorspace in association with Units B and C, Derwent Drive Retail Park which is proposed to be amalgamated to a single unit (Unit B on the proposed plan); the applicant seeks to reduce the unrestricted retail element to 929m² (to be located within the amalgamated unit B) The reduction in required floor space for convenience space now only requires the relinquishing of floorspace associated with the extant permission from unit 7 only and therefore the extant floorspace associated with Units 4A/B, 5 and 6 would remain unchanged.
- 2.3 A further condition restricting the amount of floorspace within the amalgamated unit is considered appropriate to ensure the viability of the town centre would not be affected by any further increase in convenience floorspace approved without due consideration by the Local Planning Authority.
- 2.4 A copy of the draft s106 will be provided and officers are confident that the agreement can be completed expediently.

3.0 Proposal

- 3.1 The proposal is seeking permission to vary Condition 2 of planning permission 2/1993/0767 which approved 4 retail units on land at Derwent Drive, Workington for the sale of comparison goods only. The application documents do not state the end user but seek to enable food, drink and tobacco (convenience goods) to be sold from the amalgamated unit. The variation is sought for units B and C on the approved plan (B on the proposed plan).
- 3.2 The 1993 permission allowed “The erection of non-food retail stores, ancillary parking, service areas and landscaping, as shown on the application forms, plans and drawings, etc, dated 10 August 1993, as amended by the letter and plans received on 26 August 1993, Site 14 Derwent Drive, Workington”

4.0 Site

- 4.1 The existing permission has approval for 4 units A-D which consist of a larger unit currently occupied by Dunelm (Unit A) and three smaller units (B-D). Unit B was lastly occupied by Comet but has been vacant since 2012, the other two of the smaller units are occupied by Carpet Right in Unit C and Bensons for Beds in Unit D.
- 4.2 It is proposed that units B and C are amalgamated into a single unit with a ground floor area of 1,486M²; total internal gross floor area of 1,765m² which includes an existing mezzanine floor area. The existing access, car parking and landscaping of Derwent Howe retail park would remain unchanged by the proposal.

5.0 Relevant Planning History

5.1 The following are considered relevant:-

- a) **2/1993/0767** – Approval of 4 retail units for comparison goods only.
- b) **2/2004/1522** – Outline application for extension to existing Halfords retail unit to create 3 retail units (use class A1), extension to Morrison's food store and construction of new retail unit (use class A1) with associated service yard and modifications to the car park, landscape and service yard. Approved.
- c) **2/2008/0487** - Reserved matters for extension to existing retail unit to create three units (Use Class A1), extension to second retail unit and construction of new retail unit (Use Class A1) with associated service yard and modifications to the car park and landscaping. Approved.

5.2 The applicant confirms that works to implement the permissions specified were undertaken in October 2010, as validated by the Building Regulations Approval for the commencement of works (FP 2010/1345). As such, the planning permission for 'Unit 7' and 929sqm of retail floor space remains extant.

5.3 There is extensive planning history relating to the wider retail park.

6.0 Representations

Town Council

6.1 No objections

Cumbria County Council Highways

- 6.2 The amalgamation of the two units will not have any impact on the existing highway conditions, there will be little intensification to the unit as a result of the merger. The Highway Authority have no objection to this proposal.

Other representations

- 6.3 The application has been advertised on site and within the press and by letter to nearby properties. No representations have been received to date.

7.0 Environmental Impact Assessment Regulations

- 7.1 With regards to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 the development does not within Schedule 1 nor 2 and, as such, is not EIA development.

8.0 Development Plan Policies

8.1 Introduction

- 8.1 Members are advised that this section of this report was prepared prior to the meeting of the Full Council on 22nd July 2020. The Allerdale Local Plan Part 2 is due for consideration at that meeting with a recommendation for its adoption. If the Plan is adopted it will supersede the saved provisions of the 1999 Local Plan and become part of the Development Plan. Officers will advise members of these likely changes and their impact on the application of section 38(6) of the Planning & Compulsory Purchase Act 2004 (development plan primacy and other material considerations) either in the late list or within their introduction to this item. Importantly, whether the plan is adopted or not, it has no material bearing on the overall balance of considerations for this application.

Allerdale Local Plan (2014) Part 1

- 8.2 The following policies apply:-

- Policy DM8 - Protecting Town Centre Vitality and Viability
- Policy S1 - Presumption in favour of sustainable development
- Policy S16 - Town centres and retail
- Policy S2 - Sustainable development principles
- Policy S3 - Spatial Strategy and Growth
- Policy S32 - Safeguarding amenity
- Policy S5 - Development Principles
- Policy S6a - Workington

9.0 Other material considerations

Allerdale Borough Local Plan (Part 2) Submission Draft

9.1 The following policies apply:-

Policy SA46 – Retail and Town Centres

Policy SA47 – Central Car PARK

Policy SA48 – Royal British Legion

Policy SA49 – Lower Derwent Valley

National Planning Policy Framework (NPPF) (2019)

9.2 Section 7 of the NPPF is titled 'Ensuring the vitality of town centres'. Paragraph 85 states that planning policies and decisions should support the role that town centres play at the heart of local communities

9.3 Paragraph 80 advises that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

9.4 Paragraph 86 states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

9.5 Paragraph 87 says that, when considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities are urged to demonstrate flexibility on issues such as format and scale.

9.6 Paragraph 90 of the NPPF states that, where an application fails to satisfy the sequential test or is likely to have significant adverse impacts in terms of the considerations set out at paragraph 89, then planning permission should be refused.

10.0 Policy weighting

10.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if 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. This means that the Allerdale Local Plan 1999 saved settlement limits and the Allerdale Borough Local Plan (Part 1) 2014 policies have primacy.

- 10.2 A material consideration is the provisions of the revised NPPF. Paragraph 213 of the revised NPPF (2019) advises that the weight afforded to development plan policies can vary according to their degree of consistency with the framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 10.3 The Allerdale Local Plan (Part 1) policies pre-date the revised NPPF and therefore full weight can only be afforded to those policies that are considered consistent with the revised NPPF. In this instance, the relevant policies are afforded full weight.
- 10.4 Paragraph 48 of the revised NPPF specifies that weight can be given to emerging plans according to their stage of preparation, the extent to which there are unresolved objections and the degree of consistency with the Framework. The Allerdale Local Plan Part 2 is due for adoption on 22nd July having been found sound by the government's inspector. Given its advanced stage of preparation, no unresolved objections and consistency with the NPPF it is afforded substantial weight as a material consideration ahead of adoption. If adopted, it will become part of the development plan alongside Part 1. In that instance, it will assume primacy with Part 1 and afforded full weight.

11.0 Assessment

Introduction

- 11.1 Section 73(2) of the 1990 Act states that "the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted."

The options open to this Authority are:-

- A. If it is decided that permission should be granted subject to different conditions to those previously imposed or it should be granted unconditionally, then permission should be granted accordingly.
- B. If it is decided that permission should be granted subject to the same conditions as previously imposed, then the s73 application should be refused.

The principle of the development itself is not in question

- 11.2 Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. Given that a new permission is being considered, then the determination must be made in the context of current development plan policies and material considerations.

Principle of the development

- 11.3 Workington is identified as the Principal Centre in the settlement hierarchy under Policy S3 of the Local Plan Part 1 and should therefore be the focus for major new development. This position, and the town's vitality and viability, is to be

protected under Policies S2 and S6a. Subject to certain criteria, policy S5 indicates that new development will be concentrated within the physical limits of such centres, providing that the scale of the development proposed is commensurate to the size of the settlement and reflects its position within the hierarchy. Where available, and if appropriate, the Council will also encourage and prioritise the effective reuse of previously used land and buildings or vacant and underused land, as identified by Policy S30.

- 11.4 Re-development of this site for the scale of development proposed is considered to be commensurate to the size of the settlement and the role of Workington as the Principal Centre within the hierarchy, in accordance with Policy S5. The use of this site is therefore in accordance with policies S5, S30 and DM16 of the Allerdale Local Plan.
- 11.5 Whether the impact of the retail development is considered to be appropriate for Workington in terms of protecting the vitality and viability of the town centre will be assessed below.

Town Centre Vitality and Viability

- 11.6 Policy S16 requires retail development to be located within existing centres and to be of a scale commensurate to the settlements role and function, so as to not undermine the settlement hierarchy. Further, policy S16 requires that proposals for main town centre uses outside of defined centres will be refused where the applicant has not demonstrated compliance with the sequential approach to site selection, or where there is clear evidence that the proposal would have a significant adverse impact on the vitality and viability of a nearby centre. Policy DM8 stipulates a threshold of 500m² for Workington for retail development requiring an impact assessment.
- 11.7 The application site does not lie within or adjacent to Workington town centre, but remains within the urban area and therefore falls to be assessed as an 'out of centre' site for the purposes of section 2 of the NPPF and policies S16 and DM8 of the Allerdale Local Plan.

Retail Impact Assessment

- 11.8 In order to protect the vitality and viability of the town centre it is important that any retail applications are in line with Policies S16 and DM8. As the proposal is for a retail use outside the defined centre and it is over 500m², the applicant has submitted a Retail Impact Assessment as required by Policy DM8.
- 11.9 Members are reminded that the site is approved and in use as retail floorspace. The former Comet unit has been vacant for a number of years with no interest in occupation as a comparison goods unit (comparison goods are those that consumers buy at infrequent intervals and normally would compare prices before buying). Currently there is a further application which is being considered for a mixed use A3 food, A5 hot food takeaway and A1 retail use on land at Derwent Drive, the retail floor space is proposed for convenience or comparison goods. Convenience goods are essential items for every day e.g. food and toiletries.

- 11.10 The retail assessment has examined the potential trade diversion from the proposed development and its impacts on Workington town centre, Cockermouth and Maryport. It is anticipated that trade would be drawn from existing stores with approximately 95% from Tesco at New Bridge Road, Morrison's at Derwent Drive, Aldi at Derwent Drive and Asda at Dunmail Park. These stores are all out of centre and closest to the proposed development and also those that offer a similar food range. It is anticipated that 1% of the trade would be drawn from Workington town centre given the limited range of convenience goods retailers.
- 11.11 The Council instructed a peer review of the Assessment to be undertaken. The reviewer notes that Allerdale Retail Study found that the town centre had a moderate level of vitality and viability, with its comparison goods offer and accessibility being particular strengths. However, the Retail Study also noted that the town centre had a number of weaknesses, including the quality and range of its convenience retail offer, the quality of its built environment and some prominent vacant units. The Retail Study found that there was capacity for 1,720 sq. m of convenience retail floorspace and 8,460 sq. m of comparison retail floorspace in the period to 2029. The impact on Workington Town Centre is not considered to be significantly adverse, having regard to relevant policies and advice contained within the NPPF.

Sequential Test for town centre uses

- 11.12 The application is supported by a sequential assessment of other sites within Workington. Vacant units within the town centre are considered to be too small for the proposed development.
- 11.13 Further sites are then considered by the applicant and the findings are summarised here:
- a) The Lower Derwent Valley

This area is mainly out of the defined centre for Workington with a small section being considered as edge of centre. The area accommodates the leisure centre, Workington AFC grounds, Derwent Park Stadium, Tesco superstore, the Council offices, car parks and undeveloped greenfield land. The assessment focuses on the undeveloped sections of the area identified in the local plan within Policy SA49 of the emerging Part 2 of the Local Plan. These areas include land to the north of Tesco, land to the east of Allerdale House and land to the west of car park at Allerdale House. The site to the east of Allerdale house is discounted as this area is currently being developed for a Travelodge and a drive through Costa coffee. The site to the north of Tesco has a permission for a Lidl and a previous approval for a Marston's Pub. The Cloffocks is deemed to be unsuitable due to the size and is being considered for use to house the new stadium. It is considered that this site is unavailable
 - b) Central Station Car Park Policy SA47

The site is located within close proximity to the main shopping area within the town centre and accessed off Oxford Street and is owned by Allerdale Borough Council. The site has been discounted by the applicant indicating that the site is not in a suitable position as it is situated on a no-through road and does not have any passing vehicular traffic and lacks visibility given its location below the road level and behind the Church. The report also highlights that the shape of the site restricts the developable area. The report indicates that the site is unsuitable and unavailable.

c) Royal British Legion Policy SA48

This site is currently in beneficial use and is considered to be too small and therefore is unavailable and unsuitable.

11.14 The peer review undertaken on behalf of the Council concurs with the assessment that the land within the Lower Derwent Valley, the land to the east and west of Allerdale house and the British Legion site would be unsuitable/unavailable for development. However, upon assessment of the Central Station Car Park site which was discounted by the applicant, the peer review considers that this site is both suitable and available for development of a retail unit for convenience goods.

11.15 As such, officers consider that the sequential test has not been satisfied as the Central Car Park site is put forward as an allocation for retail use under Part 2. In terms of visibility mentioned within the applicant's report, the road is well used by shoppers accessing the multi-storey car park, it is also a route to a further car park and frequently used to access the leisure centre, the site has pedestrian connectivity with only a short walk to the main shopping area within Workington. Appropriate signage could be made visible to users of the highway to increase the prominence of the site. Allerdale Borough Council estates' department have indicated that the Central Car Park site, even in the short term, could be made available.

Option for overcoming abovementioned issues

11.16 Alternative options have been reviewed in relation to the extant permissions within the wider Derwent Drive site. Officers have reviewed the existing permissions and are satisfied that they remain extant. Discussions with the applicant have resulted in a proposed surrender of unrestricted retail floor areas from the extant planning on the wider Derwent Drive site, to allow approval of the current amalgamation of units B and C for the sale of convenience goods. Units A and D of the existing permission (Unit A and C of the proposed arrangement) would retain the restriction to comparison goods only and would be conditioned accordingly.

11.17 Officers consider that, although not sequentially preferable in terms of new a convenience store, with such an agreement, the convenience floorspace would not be over and above what is already approved on the site and would bring the vacant unit back into beneficial use. The applicant has agreed that this is a

viable option and a s106 has been drafted to surrender the convenience element from the extant permissions to reflect the proposed floor space of the proposed amalgamated unit.

Residential Amenity

- 11.18 Amongst other matters, Policy S32 seeks to ensure that the residential amenity of communities is maintained to an appropriate level. The proposal is not within close proximity to any residential properties and therefore there are no amenity concerns in this respect.

Access and Parking

- 11.19 The site lies on an existing retail park, located within the Principal Service Centre of Workington and is considered to be accessible by public transport, with pedestrian and cycling facilities all within the desirable distances of the site. The car parking and access within the site at present is significantly under-utilised and is considered to be adequate for any additional traffic generated from the convenience goods use. The parking assessment shows that there is adequate parking for the proposed use.
- 11.20 The highways authority have examined the proposal and have not raised any concerns in relation to the small potential to increase traffic flows to the site.

Economic Benefits of the Proposal

- 11.21 The NPPF at Paragraph 19 states that the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth and that significant weight should be placed on the need to support economic growth through the planning system. In terms of achieving the economic role of the planning system of contributing to building a strong, responsive and competitive economy, it is recognised that the proposal would have economic benefits subject to the agreement detailed in paragraph 11.14 of this report. The proposal would create further employment and support the economic growth of the area. In accordance with Paragraph 19 of the NPPF, the economic benefits of the proposal and the resulting support to economic growth carries 'significant weight'. The proposals would make a positive and contribution in terms of further investment within Workington and the creation of further employment opportunities and bring a long term vacant building back into beneficial use.

Local Financial Considerations

- 11.22 Having regard to S70 (2) of the Town and Country Planning Act, the proposal has financial implications relating to Business Rates Revenue.

Review of other conditions

- 11.23 The existing permission is subject to 3 conditions. The first was commencement within 5 years and the third related to implementation of landscaping. Neither are relevant and are proposed to be omitted. However, a condition relating to the

new plans is required, amongst other reasons, to avoid confusion following the change in the alphabetic store identifiers.

12.0 Balance and Conclusions

- 12.1 Although the sequential test indicates that the Central Road Car Park site is sequentially preferable in terms of new retail development, the applicant has been able to demonstrate that there would be no increase in floor space as they propose to surrender floor space which has extant permission on the Derwent Drive retail park; therefore, there is no increase in overall floor space for convenience goods. The impact on Workington Town Centre is not considered to be significantly adverse, having regard to relevant policies and advice contained within the NPPF. This is subject to the legal agreement detailed in paragraph 11.14 and the recommendation to members is worded accordingly.
- 12.2 The proposal accords with all other relevant development plan policies.

RECOMMENDATION

That the decision to grant permission subject to conditions be delegated to the Planning and Building Control Manager upon the securing of a section 106 agreement that surrenders the unrestricted retail floor area (unrestricted by the extant permission on land within the wider Derwent Drive retail site).

Annex 1

Conditions

1. **The development hereby permitted shall be carried out solely in accordance with the following plans:**

2817 110 G – Elevations - Amended plan received 17 August 1995

**2817 20 - Landscape plan – Amended plan received 26 August 1993
(landscaping only)**

10313 P L05 Rev B - Proposed site layout – Amended plan received 30 April 2019

10313 P L01 - Location Plan

Reason: In order to ensure that the development is carried out in complete accordance with the approved plans and any material and non-material alterations to the scheme are properly considered.

2. **The retail units A and C (formerly A and D) hereby permitted on plan 10313 P L05 Rev B - Proposed site layout – Amended plan received 30 April 2019 shall not be used for the sale of food, drink or tobacco without the prior express consent of the Local Planning Authority.**

Reason: In the interests of maintaining the vitality and viability of Working Town Centre in accordance with the Policy S16 of the Allerdale Local Plan.

3. **Within retail unit B (formerly B and C) hereby permitted on plan 10313 P L05 Rev B - Proposed site layout – Amended plan received 30 April 2019, only 929m² shall be used for the sale of food, drink or tobacco unless otherwise agreed in writing with the Local Planning Authority.**

Reason: In the interests of maintaining the vitality and viability of Working Town Centre in accordance with the Policy S16 of the Allerdale Local Plan.



