

**REPORT TO:** DEVELOPMENT MANAGEMENT COMMITTEE – 12 MAY 2014

**REPORT ON:** KINGSWAY WEST RETAIL PARK, 467 CLEPINGTON ROAD, DUNDEE –  
MODIFICATION OF PLANNING OBLIGATIONS RECORDED ON  
26 JUNE 1987 AND 2 APRIL 1997 AND DISCHARGE OF PLANNING  
OBLIGATION RECORDED ON 12 OCTOBER 1997

**REPORT BY:** DIRECTOR OF CITY DEVELOPMENT

**REPORT NO:** 223-2014

## **1 PURPOSE OF REPORT**

- 1.1 The purpose of the 3 applications that are the subject of this report is to transfer the existing allowance for an undersized (660m<sup>2</sup> gross floor area) electrical retail warehouse unit, currently occupied by Maplin electronics within Phase 1 of Kingsway West Retail Park to a new unit to be built on the site of the existing Pagazzi warehouse unit.
- 1.2 Planning application ref: 13/00405/FULL which was approved by the Development Management Committee on 21 October 2013 involves the erection of two new retail units on the site of the existing Pagazzi unit of Kingsway West Retail Park. One of these new units will accommodate the provision for the undersized electrical retail warehouse unit being transferred from Phase 1.
- 1.3 To facilitate the transfer of the undersized unit modifications to 2 existing planning obligations and a discharge to a variation to one of the obligations are required. These are:
- a application ref: 14/00217/MDPO seeks consent to discharge the Planning Obligation recorded on 12 November 1990 to remove the allowance for an undersized electrical retail warehouse unit within Phase 1 of the retail park;
  - b application ref: 14/00216/MDPO seeks consent to modify the Planning Obligation recorded on 26 June 1987 to reduce the level of gross floor space for an electrical warehouse unit from 1,500m<sup>2</sup> to no more than 1,000m<sup>2</sup> within Phase 1 of Kingsway West Retail Park; and
  - c application ref: 14/00218/MDPO seeks consent to modify the planning obligation recorded 2 April 1997 to allow for the creation of one undersized retail warehouse unit with a gross floor space of no less than 660m<sup>2</sup> and no greater than 1,000m<sup>2</sup> on the Pagazzi site which also encompasses the application site for planning application ref: 13/00405/FULL.
- 1.4 The Planning Obligation recorded on 12 November 1990 amends the floor space restrictions imposed by the 1987 Legal Agreement (that is the subject of application ref: 14/00216/MDPO), as they apply to the existing Maplin unit so as to permit an electrical retail warehouse of less than 1,000m<sup>2</sup> gross floor space (but not less than 660m<sup>2</sup> gross floor space) to trade from Phase 1 of the retail park.
- 1.5 Appendix 1 to this report highlights the area of Kingsway West Retail Park that the 1987, 1990 and 1997 Obligations relate to.
- 1.6 In accordance with the Council's Scheme of Delegation, all applications under Section 75A of the Town and Country Planning (Scotland) Act 1997 as amended must be reported to the Council's Development Management Committee.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:

a Recommendation 1

It is recommended that the Committee **APPROVES** the request to discharge the planning obligation recorded on 12 October 1990 to remove the allowance for an undersized electrical warehouse unit at Phase 1 of Kingsway West Retail Park.

b Recommendation 2

It is recommended that the Committee **APPROVES** the request to modify the planning obligation recorded on 26 June 1987 to allow an electrical warehouse unit of only 1,000m<sup>2</sup> gross floor space at Phase 1 of the Kingsway West Retail Park.

c Recommendation 3

It is recommended that Committee **APPROVES** the request to modify the planning obligation recorded on 2 April 1997 to create an allowance for an undersized unit on the site of the existing Pagazzi warehouse unit.

d Recommendation 4

It is recommended that the Committee **APPROVES** the phasing of the proposed modifications and discharge of planning obligations so that the discharge of the 1990 Obligation and consequent registration with the General Register of Sasines occurs prior to the registration of the modifications to the 1987 and 1997 Obligations.

### 3 FINANCIAL IMPLICATIONS

3.1 There are no financial implications associated with this report.

### 4 BACKGROUND – PLANNING HISTORY

4.1 Kingsway West Retail Park is subject to several planning obligations, reflecting its phased development. Section 75A of the Town and Country Planning (Scotland) Act 1997 as amended does not allow the Council as Planning Authority to determine a single application to modify and discharge multiple planning obligations. Therefore, the applicant has submitted 3 separate but related applications to modify and discharge planning obligations.

4.2 The overall effect of these 3 applications for modification and discharge of planning obligations, if approved by the Development Management Committee, will permit an undersized electrical retail warehouse unit (with a gross floor space of no less than 660m<sup>2</sup> and no greater than 1,000m<sup>2</sup>) to trade from one of the new units to be constructed under planning application ref: 13/00405/FULL. The allowance for an undersized electrical warehouse unit on the 1997 Planning Obligation land will be compensated by the removal of the existing undersized retail warehouse unit (Maplin) and an allowance for an electrical warehouse unit with a gross floor space of 1,000m<sup>2</sup> on the land that is the subject of the 1987 Planning Obligation.

### 5 CHANGES TO LEGISLATION

5.1 On 1 February 2011 new legislative provisions came into force whereby the Planning etc (Scotland) Act 2006 amended the 1997 Act by replacing the existing Section 75 with a new Section 75 and added new sections including Sections 75A, 75B and 75C which deal with Planning Obligations (the replaced version of Section 75 provided for "Planning Agreements"). Section 75A establishes a formal process whereby a person against whom a planning obligation is enforceable can apply to the planning authority to have that obligation either modified or discharged. S75B provides for a right of appeal to Scottish Ministers where a planning authority either refuses the application or fails to determine it within 2 months. The

Council considers that the new legislation is not retrospectively applicable and therefore only relates to S75 Planning Obligations concluded after 1 February 2011.

- 5.2 On 14 November 2011, a further Statutory Instrument came into force which attempted to clarify the legal position by providing that a pre 1 February 2011 agreement is to have effect as if made under Section 75, as it existed after that date. However, it is considered appropriate that, given the doubts regarding how the courts may interpret or treat the legislation, the Committee gives its views on the merits of this application without prejudice to any arguments on the legality of the legislation.

## 6 OBSERVATIONS

- 6.1 Proposals to discharge, modify or enter into Planning Obligations should comply with the following 5 tests in Circular 3/2012: Planning Obligations and Good Neighbour Agreements - necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.

- 6.2 The Council's assessment of these applications with regard to the tests required by Circular 3/2012 is as follows.

### Necessity

- 6.3 The Circular is written for the benefit of planning authorities that are considering whether, in order for planning permission to be granted, a planning obligation is required.
- 6.4 The 1987 Planning Obligation restricts the range of goods that can be sold from the 1987 Planning Obligation land and makes provision for an electrical retail warehouse unit with a gross floor space of 1,500m<sup>2</sup>.
- 6.5 The 1990 Planning Obligation amends the 1987 Planning Obligation to allow for the creation of an undersized warehouse unit (with a gross floor space no less than 660m<sup>2</sup> and no greater than 1,000m<sup>2</sup>) on the 1987 Planning Obligation land.
- 6.6 The 1997 Obligation imposes a restriction on the range of goods that may be sold from retail units on the site of the existing Pagazzi warehouse unit; prohibits the sale of specified electrical goods, requires that washing machines, cookers, refrigerators and freezers may only be sold as built-in appliances; and requires that no single retail unit will be less than 1,000m<sup>2</sup> gross floor space.
- 6.7 Application ref: 14/00216/MDPO seeks consent to modify the 1987 Planning Obligation to reduce the level of gross floor space for an electrical warehouse unit to no more than 1,000m<sup>2</sup>.
- 6.8 Application ref: 14/00217/MDPO seeks consent to discharge the 1990 Planning Obligation to remove the allowance for an undersized retail warehouse unit on the 1987 Planning Obligation land.
- 6.9 Application ref: 14/00218/MDPO seeks consent to modify the planning obligation recorded 2 April 1997 to allow for the creation of one undersized retail warehouse unit with a gross floor space of no less than 660m<sup>2</sup> and no greater than 1,000m<sup>2</sup> on the land that is the subject of planning application ref: 13/00405/FULL.
- 6.10 To maintain the balance between City Centre and Out of Centre retailing within Dundee it is necessary to modify the 1987 and 1997 Planning Obligations and discharge the 1990 Planning Obligation as proposed. This will ensure that the implementation of planning application ref: 13/00405/FULL does not result in the creation of two undersized units within Kingsway West Retail Park and consequently the attraction of City Centre retailers to out of

centre locations. Accordingly, planning obligations remain necessary to control the gross floor space of retail units at Kingsway West Retail Park and the range of goods that may be sold from them.

- 6.11 It is concluded that the necessity test is satisfied by the proposals.

#### Purpose

- 6.12 The Obligation should serve a planning purpose. The Dundee Local Development Plan contains specific policies to both encourage a wide range of appropriate retailing and to protect the vitality and viability of Town Centres and District Centres in the delivery of retailing and other services. This approach is supported at a regional level by Tayplan Strategic Development Plan and at national level by the Scottish Planning Policy 2010 and the Draft Scottish Planning Policy as well as the National Review of Town Centres External Advisory Group Report: Community and Enterprise in Scotland's Town Centres. Where retail units have been permitted in Retail Parks or outwith the retail centres, restrictions have been placed on the range of goods which can be sold and the percentage of floor space which can be used for the display and sale of such goods along with restrictions on the minimum size of such units. Accordingly, planning permissions have been the subject of specific conditions or Planning Obligations to enforce such restrictions. It is concluded that the planning purpose test is satisfied.

- 6.13 The proposals that are the subject of applications ref: 14/00216/MDPO, 14/00217/MDPO and 14/00218/MDPO align with the aims of the national and local retail strategy outlined above. In this instance the proposals satisfy the planning purpose test.

#### Relationship

- 6.14 The Circular requires that Obligations should "relate directly to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area". The effect of the existing obligations is to restrict the manner in which Kingsway West Retail Park may be operated and an unrestricted consent, allowing comparison retailing and/or retail units under 1,000m<sup>2</sup> in floor area was perceived by the planning authority to be a barrier to planning permission being granted.
- 6.15 The main aim of the goods restrictions and size of retail warehouse units imposed by the 1987, 1990 and 1997 Obligations was to avoid a potentially damaging diversion of expenditure away from the City Centre and District Centres and to ensure that they continue to provide a valuable and accessible service for shoppers.
- 6.16 The proposals do not seek to abandon the existing controls in place but rather through all 3 applications that are before the Committee, redistribute the gross retail floor space for electrical warehouse units within Kingsway West Retail Park to allow for the implementation of planning permissions ref: 13/00405/FULL and consequently the redevelopment of the retail park.

- 6.17 In this instance it is concluded that the relationship test is satisfied.

#### Scale and Kind

- 6.18 The Council concurs that the test is not relevant to this application.

#### Reasonableness

- 6.19 The Circular requires that the obligation should be reasonable in the particular circumstances of the case.

- 6.20 As demonstrated in the assessment of the proposals against the four tests above, the proposals will not prejudice the function or role of the City Centre and District Centres. In this instance and having taken into account all the relevant matters, the approval of applications ref: 14/00216/MDPO, 14/00217/MDPO and 14/00218/MDPO would be reasonable.

## **7 CONCLUSION**

- 7.1 The Council has operated a policy of maintaining a balance between the City Centre/District Centres and the out of centre retail parks for the past 20 years. This has been achieved through the imposition of Planning Obligations restricting the goods that could be sold at the retail parks to those of a more bulky nature. This policy approach has seen the Retail Parks operate at almost 100% capacity without having a significant detrimental affect on the City or District Centres.
- 7.2 The proposed amendments to the Planning Obligations would not result in a significant shift in the Policy approach to the retail parks. The support of these proposals will not result in significant trade being drawn from the City Centre and District Centres.
- 7.3 It is considered that taking into account all the relevant issues above, the City Council's stated aims of maintaining the vitality and viability of the City Centre and District Centres would continue to be served by the approval of applications ref: 14/00216/MDPO, 14/00217/MDPO and 14/00218/MDPO.

## **8 POLICY IMPLICATIONS**

- 8.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

## **9 CONSULTATIONS**

- 9.1 The Chief Executive, the Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

## **10 BACKGROUND PAPERS**

- 10.1 Planning Obligation Registered 26 June 1987.
- 10.2 Planning Obligation Registered 2 April 1997.
- 10.3 Planning Obligation Registered 12 October 1990.
- 10.4 Dundee Local Development Plan.
- 10.5 Circular 3/2012 Planning Obligations and Good Neighbour Agreements.
- 10.6 Town and Country Planning (Scotland) Act 1997 as amended.

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2 May 2014

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**APPENDIX 1 - KINGSWAY WEST RETAIL PARK**

