

Removal of Restriction on Food Sales at Kingsway East Store

KEY INFORMATION

Ward East End

Address

Milton of Craigie Retail Park,
Milton of Craigie Road North,
Dundee

Applicant

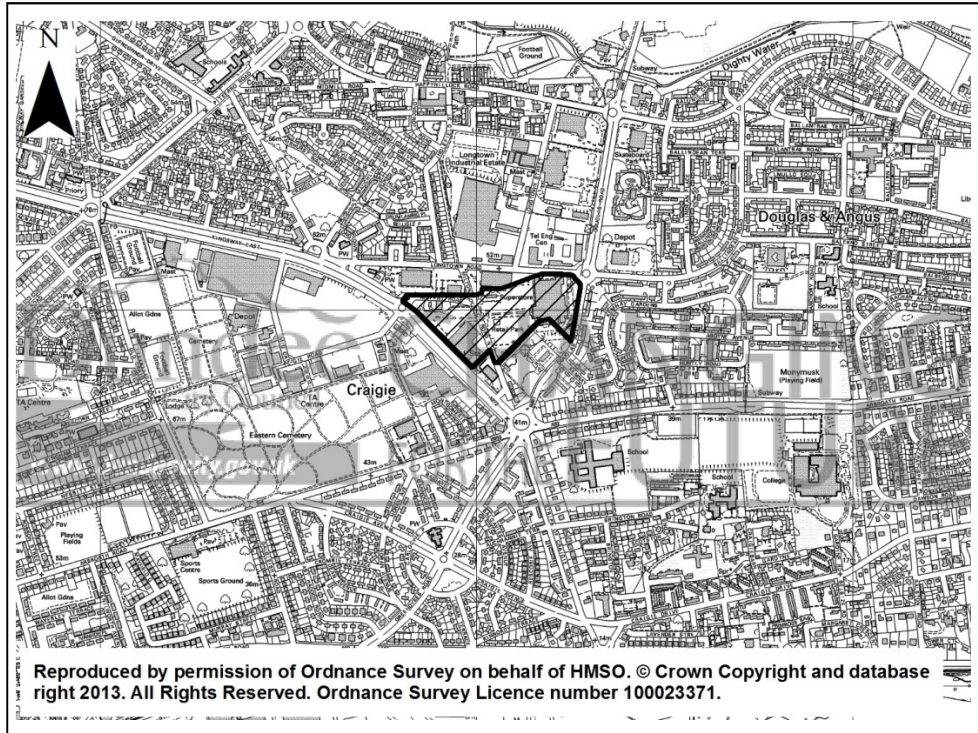
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Registered 23 May 2013

Case Officer Paul Macari



SUMMARY OF REPORT

- Application under section 42 of Town and Country Planning (Scotland) Act 1997 as amended to vary Condition 2 of Planning Application Ref: D13779 to allow for the sale of both food and non-food retail (Class1) from Unit 1 and the supermarket.
- Policy 7 of TAYplan Strategic Development Plan and Policies 45 and 47 of the Dundee Local Plan Review 2005 are relevant to the outcome of this application.
- One letter of objection has been received from Asda.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=MN7D6QGC06600>.

RECOMMENDATION

The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be REFUSED.

1 DESCRIPTION OF PROPOSAL

1.1 Application under section 42 of Town and Country Planning (Scotland) Act 1997 as amended to vary Condition 2 of Planning Application Ref: D13779 to allow for the sale of both food and non-food retail (Class 1) from Unit 1.

1.2 Condition 2 of the planning permission, which was issued on 7 February 1989, states that: "the premises with the exception of one unit shall be used for non-food retail warehouses and for no other purpose (including any other purpose in Class 1 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1973, or in any provision equivalent to that Class in any statutory instruments revoking and re-enacting that Order)."



Figure 1 – Photo of Existing B&Q

1.3 They seek to replace this with a condition stating "the premises with the exception of the supermarket and Unit 1 shall be used for non-food retail warehouses and for no other purpose (including any other purpose in Class 1 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1973, or in any provision equivalent to that Class in any statutory instruments revoking and re-enacting that Order)." This would effectively remove the restrictions on retailing in the planning permission for Unit 1.

1.4 An application under Section 42 opens up all of the conditions to consideration, not simply the condition that the applicant is seeking to have varied. The Committee can consider the other conditions if it so minded. Whilst all of the other conditions can be considered, this report concerns Condition 2 of planning application ref: D13779 only.

1.5 This application is being reported to the Council's Development Management Committee at the request of the Director of City Development.

2 SITE DESCRIPTION

2.1 The application site is located on the eastern side of Kingsway and occupies the southern and eastern sectors of the Milton of Craigie Retail Park. The application site takes the form of the current B&Q DIY store, Harry Corry home furnishing store and Asda as well as the associated access roads, car park and service yards serving these properties.

3 POLICY BACKGROUND

3.1 The following plans and policies are considered to be of direct relevance:

TAYPLAN STRATEGIC DEVELOPMENT PLAN 2012-2032

Policy 7: Town Centres

DUNDEE LOCAL PLAN REVIEW 2005

Policy 45: Location of New Retail Developments

Policy 47: Retail Parks – Goods Range Restrictions

PROPOSED DUNDEE LOCAL DEVELOPMENT PLAN

Policy 23: Goods Range Restrictions

Policy 24: Location of New Retail Developments

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS

Scottish Planning Policy 2010

Draft Scottish Planning Policy 2013

NON STATUTORY STATEMENTS OF COUNCIL POLICY

Other plans, policies and non-statutory statements are not considered to be of direct relevance.

- 3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

4 SITE HISTORY

- 4.1 Planning application ref: 87/12345/D sought planning permission in principle for a retail park with ancillary parking and service areas on the site of the former Timex Factory on Kingsway East. This application was approved by Tayside Regional Council on 9 July 1987 subject to the completion of a planning obligation restricting the range of goods that could be sold from the proposed retail park.
- 4.2 Planning application ref: 88/13779/D sought detailed planning permission for the erection of a retail park with shopper's restaurant and ancillary car parking and service areas at Milton of Craigie Retail Park. Planning permission was granted subject to the completion of a planning obligation restricting the range of goods that could be sold from the proposed retail park.
- 4.3 The application that is the subject of this report was accompanied by application ref: 13/00309/MDPO which sought permission to modify the planning obligation associated with planning application ref: 88/13779/D. The purpose of that application was to allow a proportion of the floor space of the proposed B&M Homestore to be used to retail items restricted by that agreement. That application was deemed to be invalid and was returned to the applicants.
- 4.4 B&M initially established a presence in the city in a unit at the Kingsway West Retail Park in contravention of planning and legal restrictions. Following the threat of enforcement action they relocated from that unit to the unit they currently occupy in the Wellgate Centre.

5 PUBLIC PARTICIPATION

- 5.1 The Council has followed the statutory neighbouring notification procedure. The application has been advertised in the Dundee Evening Telegraph as a Development Plan Departure.
- 5.2 One letter of objection has been received from Asda. The concerns raised include:
- the development is contrary to the requirements of the adopted Local Plan;
 - the proposal will undermine the vitality and viability of the city centre;
 - there is no identified deficiency in shopping provision in the identified commercial centres; and

- there is no evidence that the B & Q Unit has been marketed by the applicants.

5.3 Members will already have access to the letters of objection and the issues raised are considered in the Observations section below.

6 CONSULTATIONS

6.1 No comments have been received from consultees.

7 DETERMINING ISSUES

7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

THE DEVELOPMENT PLAN

The provisions of the development plan relevant to the determination of this application are specified in the Policy Background section above.

7.2 The application seeks a variation of Condition 2 of Planning Consent D13779.

7.3 Condition 2 requires that: "the premises with the exception of one unit shall be used for non-food retail warehouses and for no other purpose (including any other purpose in Class 1 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1973, or in any provision equivalent to that Class in any statutory instruments revoking and re-enacting that Order)."

7.4 The purpose of this condition was to limit the two retail warehouses (B&Q and Harry Corry) to the sale of non-food goods only whilst allowing the Asda Food Store to sell both food and non-food goods. This was to ensure that the proposal was in accordance with the policies of the development plan.

7.5 The current application proposes to vary Condition 2 of planning application D13779 in order to allow the sale of all goods (food and non-food) under Class 1 (Retail) of the Town and Country Planning (Use Classes)(Scotland) Order 1997 within Unit 1 in addition to that already allowed for the Asda Foodstore.

7.6 The applicant states in their planning statement that this variation is required to allow them to operate the B&M Homestores trading model which includes an element of food goods. They advise that the trading model focuses on 75% of the floor space of each unit being used for the sale and display of bulky comparison goods such as indoor and outdoor furniture, gardening products, home textiles, household goods including small electrical goods, home adornment, seasonal items such as Christmas and garden centre items, paint wallpaper and DIY products. The remaining 25% is used for the sale and display of food, confectionary, drinks, cleaning products, clothes and toys.

7.7 The variation of this condition raises issues for consideration in terms of the retailing policies of the development plan and in particular the policy approach to controlling the goods to be sold from the retail parks in the city. The result of the variation to the condition would be to allow food to be sold from Unit 1 in addition to non-food which can already be sold under the terms of the existing condition.

- 7.8 In addition, to the restrictions imposed by condition 2, the range of goods for unit 1, the adjoining unit and the Asda Foodstore are subject to restrictions through Planning Obligations. These set out the range of goods that are restricted at the non-food retail warehouses and the range of goods and floorspace breakdown for the Asda Foodstore. The applicants have submitted an application to modify the range of goods restrictions that apply to Unit 1 to allow for their full range of goods to be sold. That application was considered to be invalid and has been returned to the applicants. The majority of the retail supporting information relates to the justification of that particular application rather than the proposal considered in terms of this report.
- 7.9 The current policy approach to out of centre retailing has been implemented within Dundee in a consistent manner for over 20 years through policies in the relevant Structure Plan and Local Plan. This has sought to restrict out of centre retailing to bulky comparison goods (non-food) in the form of larger scale retail warehouses in identified retail parks. This has protected the city and district centres from the loss of retailers which are the mainstay of these centres to out of centres locations which would have undermined their vitality and viability. The result of this Policy approach has been to maintain the health and vibrancy of the city centre even through the current economic downturn and help to maintain the vitality and viability of the district centres. At the same time it has allowed the retail parks to develop as complementary shopping locations and for the most part to be fully occupied. The Proposed Local Development Plan also seeks to maintain the approach with policies setting out the range of goods for the retail parks. This policy approach has been in line with National Planning Policy and is reflected in the current draft of Scottish Planning Policy.
- 7.10 The proposal is assessed against the relevant development plan policies.

TAYPLAN STRATEGIC DEVELOPMENT PLAN

- 7.11 **Policy 7: Town Centres** – outlines the hierarchy of comparison retail centres in the Strategic Development Plan Area. Policy 7 stipulates that in order to protect the vitality and viability of Town and Local Centres, planning decisions should be based on the justification of planning proposals in combination with the sequential approach in the Scottish Planning Policy and other local considerations as appropriate. In this instance as the application site forms part of Kingsway East Retail Park which is an established commercial centre there is no requirements for the applicant to follow the sequential approach to site selection as detailed within the Scottish Planning Policy. However, the proposal must satisfy the requirements of the adopted Local Plan to comply with the requirements of Policy 7.

DUNDEE LOCAL PLAN REVIEW 2005

- 7.12 **Policy 47: Retail Parks – Goods Range Restrictions** – reaffirms the Local Plan strategy to safeguard the vitality and viability of Dundee City Centre and associated District Centres by restricting the sale of certain goods ranges from Kingsway East, Kingsway West and Dock Street Retail Parks through legal agreements and planning conditions. The following range of goods is currently restricted from sale within Kingsway East and West Retail Parks:
- a food and groceries;
 - b clothing and footwear;
 - c jewellery, silverware, watches and clocks;
 - d toys and sports goods; and
 - e electrical goods.

- 7.13 Policy 47 states that new proposals involving the sale of any of the restricted goods ranges at Kingsway East Retail Park will only be supported where it can be established that:
- a they will not affect, either on their own or in association with other built or approved developments, the Local Plan Strategy in support of the city centre and the district centres;
 - b they will be capable of co-existing with the city centre and the district centres without individually or cumulatively undermining their vitality and viability; and
 - c they will tackle deficiencies in qualitative or quantitative terms which cannot be met in or at the edge of the city centre and the district centres.
- 7.14 The preamble to Policy 47 highlights that in order to ensure that retail parks and out of centre shopping destinations do not jeopardise the viability of the City and District Centres, the retail parks and other modern out of centre retail units are subject to special goods range and related controls. The aim of these controls is to avoid a potentially damaging diversion of expenditure away from these centres and to ensure that they continue to provide a valuable and accessible service for shoppers. The preamble goes on to state that the main aims for the Kingsway East and West Retail Parks are to maintain their current predominantly household goods roles and to consider means of improving their accessibility for the community as a whole, including those without a car.
- 7.15 The following assesses this against the criteria of Policy 47:
- a they will not affect, either on their own or in association with other built or approved developments, the Local Plan Strategy in support of the city centre and the district centres;

The proposed variation would introduce the ability to sell food goods from Unit 1 (currently occupied by B&Q). This could take place within the entire unit unless the floor area given over to food goods was to be restricted by a planning obligation. If unrestricted this could allow a foodstore to occupy the entire unit at the Retail Park. The Local Plan strategy has been to seek to maintain the retail parks as centres for household goods. An allowance for food retailing was built into the retail parks with the provision of one major foodstore in each retail park. It is considered that the potential loss of a non-food retail warehouse unit to a food store or a unit with the ability to sell a significant level of food goods would not be in line with the Local Plan Strategy for retailing within the City. In addition, as there is no justification as to why this unit should be treated differently from any other of the existing units at Kingsway East or Kingsway West Retail Park then it could set a detrimental precedent. If other units wished the same variations to be applied to them then this could undermine the Policy approach of retail parks as main centres for household goods. It is considered that the removal of the condition would set an unwelcomed precedent and undermine the Local Plan Strategy.
 - b they will be capable of co-existing with the city centre and the district centres without individually or cumulatively undermining their vitality and viability; and

Given the size of the proposed unit it is unlikely that the sale of food goods from part or all of the floor area would undermine the viability of the City Centre. However, it could draw trade away from existing food retailers in the district centres and local centres to their detriment. If the precedent issue is taken into consideration there could be the potential for a significant level of floor space to be developed for food retail. This could have a significant impact onto the vitality and viability of the district centres and local centres.

- c they will tackle deficiencies in qualitative or quantitative terms which cannot be met in or at the edge of the city centre and the district centres.

There has been no justification from the applicants to demonstrate that there is a deficiency in qualitative or quantitative terms for additional floor area for food shopping in this area. In addition, there is no examination of a lack of opportunities to accommodate any potential deficiency within or on the edge of the City Centre or district centre. The only justification provided is that the variation to allow for food is required to accommodate the particular format of the proposed store.

- 7.16 It is considered that the policy approach to the retail parks should not be altered and potentially undermined to accommodate the particular format of an individual retailer. No justification has been given by the applicant that would warrant a change to the policy approach and to the restrictions imposed through planning conditions or planning obligations.

- 7.17 **The proposal contravenes Policy 47.**

- 7.18 **Policy 45 – Location of New Retail Developments** – is also relevant to the consideration of the application as it would potentially allow for a new foodstore unit at Kingsway East Retail Park. Whilst this would be within an existing retail centre it would be for a use not supported by the Local Plan which identifies the Retail Park for bulky non-food comparison retailing. In terms of the criteria in Policy 45 it is considered that the proposal would not meet the requirements of criterion (a) as it has not been demonstrated that there are no suitable sites available within or on the edge of the City Centre or District Centres that could accommodate this proposal. It is considered that for the reasons outlined in the consideration of the proposal against Policy 47 it would fail to meet the requirements of criteria (b) and (c). Given that the proposal is considered not to be in accordance with Policy 47 of the Local Plan it would also fail to meet criterion (e).

- 7.19 **The proposal contravenes Policy 45.**

- 7.20 By failing to satisfy the requirements of Policies 45 and 47 of the adopted Local Plan the proposal also contravenes Policy 7 of the Strategic Development Plan.

- 7.21 **It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.**

OTHER MATERIAL CONSIDERATIONS

- 7.22 The other material considerations to be taken into account are as follows:

(A) PROPOSED DUNDEE LOCAL DEVELOPMENT PLAN

- 7.23 Policies 23 (Goods Range Restrictions) and 24 (Location of New Retail Developments) of the proposed Plan are broadly similar to the criteria of Policies 45 and 47 of the adopted Local Plan.

- 7.24 **Therefore, the current proposal is also contrary to the requirements of Policies 23 and 24 of the Proposed Dundee Local Development Plan.**

(B) SCOTTISH PLANNING POLICY 2010/DRAFT SCOTTISH PLANNING POLICY 2013

- 7.25 It is considered that the retailing strategy and policies of the Dundee Local Plan Review 2005 and the proposed Dundee Local Development Plan 2012 are in accordance with the guidance in both the current Scottish Planning Policy and the draft Scottish Planning Policy.
- 7.26 It is noted in the draft Scottish Planning Policy that authorities are advised (para 61-62) that “Plans should identify as commercial centres those centres which have a more specific focus on retailing and/or leisure uses, such as shopping centres, commercial leisure developments, mixed retail and leisure developments, retail parks and factory outlet centres” and
- 7.27 “Where necessary to protect the role of town centres, plans should specify the function of other centres, for example where retail activity may be restricted to the sale of bulky goods. Plans should indicate whether this type of retailing may be appropriate outwith existing centres and, if so, identify appropriate locations.”
- 7.28 The SPP also advises (para59) that “Development Plans should address any significant changes in the roles and functions of centres over time, where change is supported by the results of a health check.”
- 7.29 It is considered that the maintenance of the role of the retail parks restricted to the sale of bulky goods is supported by the current SPP and in the proposed guidance set in the draft SPP.

(C) SUPPORTING INFORMATION

- 7.30 The applicant has submitted a planning statement and retail statement in support of their proposal. They argue that the current proposal broadly aligns with the requirements of Policy 47. This argument is based on the predominant use of the proposed B&M Homestore for the sale of bulky household goods (which they state is 88% of the floor space). The applicant considers that the remaining floor space (12%) to be used for the sale of unrestricted goods is ancillary to the main use of the unit and therefore, of little or no impact on the vitality and viability of the City Centre and surrounding district centres. However, these arguments are not relevant to this application to vary the terms of Condition 2 as they relate primarily to the range of goods restrictions set by the planning obligations that relate to this location.
- 7.31 While the supporting statements highlight the role of the existing City Centre branch of B&M in preventing the proposed B&M Homestore from drawing trade away from the City Centre it is not possible to guarantee that should the Committee be minded to grant planning permission that B&M will retain their City Centre branch. Therefore, should B&M choose to close their City Centre branch, if planning permission is granted for the current proposal, the creation of new jobs highlighted by the supporting statement will be limited if any. In any event the supporting statements indicate that the proposed new store will draw trade from existing stores. This could result in job losses at these stores equal to or even greater than the number of jobs created at the new store.
- 7.32 The supporting statement concentrates much of the argument in support of the proposals on the current status of Kingsway East Retail Park. However, in the absence of any marketing information there is no evidence to demonstrate when B&Q's lease of the application site is coming to an end or that the DIY chain will be vacating Unit 1 of Kingsway East Retail Park. In addition and contrary to the applicants assertions no evidence is contained within the supporting planning statement or retail statement which demonstrates that should the application site become vacant it is likely to remain vacant for a prolonged period of time given the current goods restrictions at Kingsway East Retail Park. Members should note

that no evidence has been provided that the application site is being actively marketed by the site owners and that there is no evidence on site that Unit 1 is available to lease/ buy (no marketing signs or closing down sales at B&Q).

(D) VIEWS OF OBJECTORS

- 7.33 One letter of objection has been received from Asda. The concerns raised are summarised in Section 5 Public Participation of this report and are considered in Section 7 Determining Issues above. The concerns of the Objector are supported in this instance as it has been concluded that the proposal is contrary to the Development Plan, will adversely impact on the vibrancy and vitality of the City and District Centres and that there is no identified deficiency in shopping provision.
- 7.34 The concerns of the objectors are supported.
- 7.35 **It is concluded from the foregoing that the material considerations are not of sufficient strength to support the approval of planning permission.**

8 CONCLUSION

- 8.1 The proposal fails to satisfy the requirements of the Development Plan. There are no material considerations that would justify approval of planning permission. Therefore, it is recommended that this application be refused.

9 RECOMMENDATION

- 9.1 It is recommended that consent be REFUSED for the following reason:

REASONS

- 1 The proposal fails to demonstrate that the introduction of food retail sales floor space into Kingsway East Retail Park will not undermine the Local Plan retail strategy or adversely impact on the vitality or viability of the city centre and district centres. In addition, the proposal fails to demonstrate that there is a qualitative or quantitative deficiency in food retailing in the area surrounding the application site. The proposals are therefore contrary to the requirements of Policy 7 of Tayplan Strategic Development Plan, Policies 45 and 47 of the Dundee Local Plan Review 2005 and Policies 23 and 24 of the Proposed Dundee Local Development Plan. There are no material considerations that would justify laying aside the provisions of the Local Plan to grant planning permission.