

Change of Use From Retail (class 1) to an Adventure Play and Activity Centre (Class 11) With Ancillary Café and Dining Area

KEY INFORMATION

Ward Lochee

Address

Unit A1
Kingsway West Retail Park
467 Clepington Road
Dundee

Applicant

Kingsway West SARL

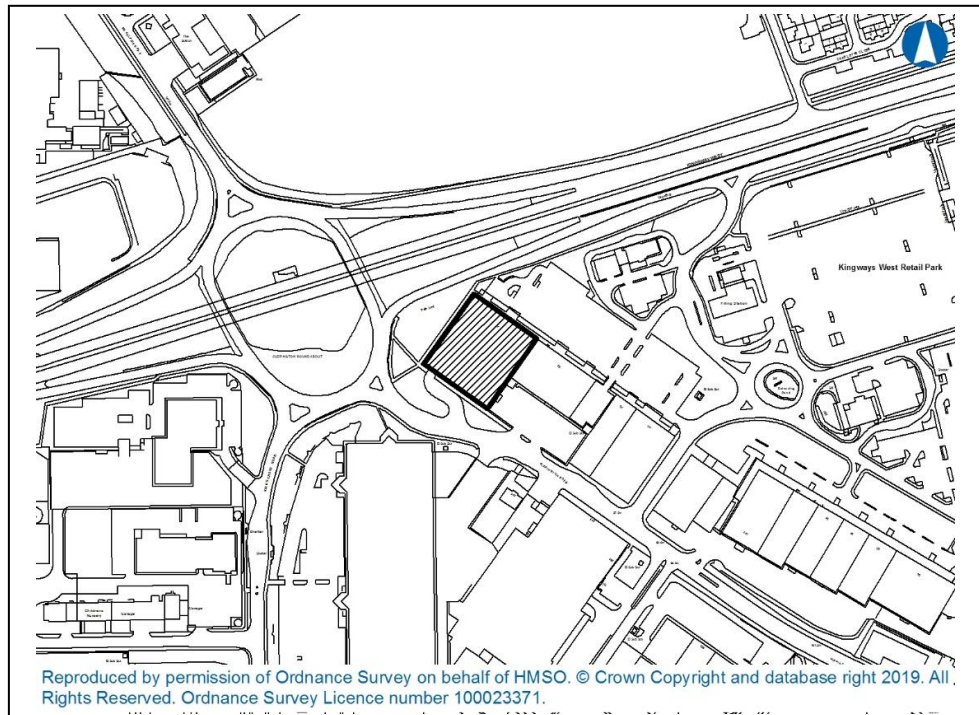
Agent

CBRE Ltd

Registered 29 Dec 2019

Report by Head of Planning & Economic Development

Contact: Claire Myles



SUMMARY OF REPORT

- Planning permission is sought for a change of use of Unit A1 in the Kingsway West Retail Park from retail (Class 1) to an adventure play and activity centre (Class 11) with an ancillary café and dining area.
- The application is in accordance with the Development Plan.
- The statutory neighbour notification process was undertaken and the application advertised in the local press. One invalid letter of objection has been received.
- In accordance with Dundee City Council's scheme of delegation, this application is to be determined by the Planning Committee at the request of the Head of Planning & Economic Development as there is an associated application to modify a Section 50 Agreement (20/00020/MDPO) which under the Council's Scheme of Delegation is required to be determined by the Planning Committee.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?keyVal=Q1IL00GCG6J00&activeTab=summary>

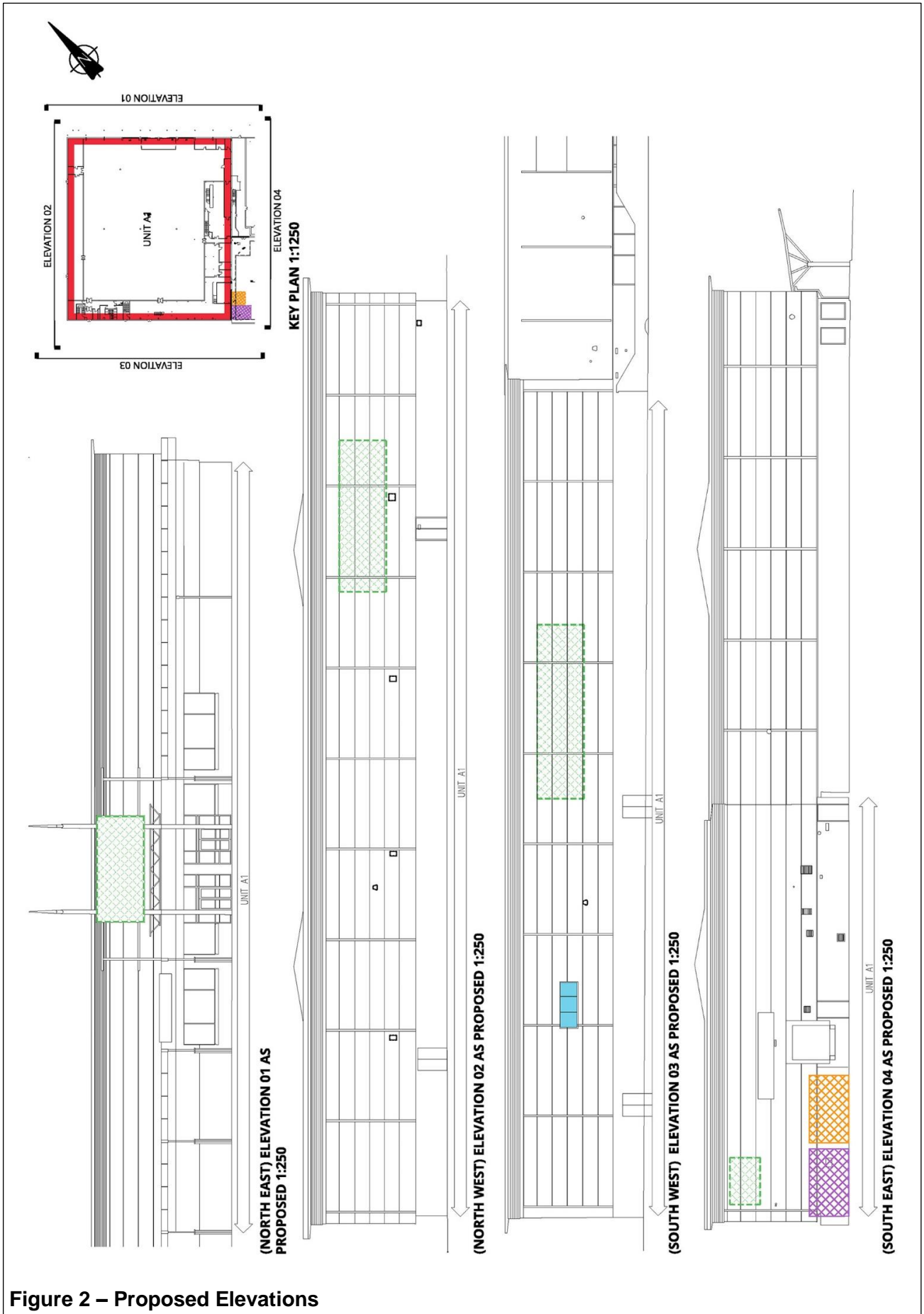
RECOMMENDATION

The proposal is in accordance with the Development Plan. There are no material considerations of sufficient weight to justify refusal of planning permission. It is therefore recommended that planning permission be **APPROVED** subject to conditions.

1 DESCRIPTION OF PROPOSAL

- 1.1 The application site, Unit A1, is located in the north-west corner of the Kingsway West Retail Park immediately adjacent to the A90 Kingsway West.
- 1.2 Planning permission is sought for a change of use of Unit A1 in the Kingsway West Retail Park from retail (Class 1) to an adventure play and activity centre (Class 11) with an ancillary cafe and dining area.
- 1.3 The proposal is for the building to accommodate a wide range of indoor family activities to suit a mix of ages and abilities under one roof. The proposed activities include a soft play area, bowling, trampolines, adventure golf, climbing wall, high ropes, sky rider indoor coaster track and spin zone bumper cars.
- 1.4 The supporting statement notes that the indoor layout and activities are indicative only to allow for flexibility and to adapt to customer demand.
- 1.5 The proposed operating hours are anticipated to be Monday to Saturday 0800-2200 hours and Sunday 1000-2000 hours. The Planning Statement notes this would be in line with other businesses in the retail park and also similar facilities in the city.
- 1.6 The applicant has submitted the following in support of the application:
 - Planning & Sequential Assessment; and
 - Transport Statement.





2 SITE DESCRIPTION

- 2.1 The application site, Unit A1, is located in the north-west corner of the Kingsway West Retail Park immediately adjacent to the A90 Kingsway West.
- 2.2 The footprint of Unit A1 is 3,852m² and this is split between the ground floor (3,223.2m²) and mezzanine level (628.8m²).
- 2.3 The unit was formerly occupied by Toys R Us and has been vacant since April 2018.
- 2.4 The Kingsway West Retail Park includes approximately 22 non-food retail units, restaurant and drive through outlets. A Tesco Extra is located in the north-east of the retail park.
- 2.5 The retail park is located to the immediate south of the A90 Kingsway West. To the west is Clepington Road and to the south and east of the wider retail park are residential properties.



Figure 3 – Photo of Existing Front Elevation

3 POLICY BACKGROUND

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

SCOTTISH PLANNING POLICY

Scottish Planning Policy (2014) states development plans should adopt a sequential town centre first approach when planning for uses which generate significant footfall, including retail and commercial leisure uses, offices, community and cultural facilities and, where appropriate, other public buildings such as libraries, and education and healthcare facilities.

This requires that locations are considered in the following order of preference:

- town centres (including city centres and local centres);
- edge of town centre;
- other commercial centres identified in the development plan; and
- out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.

Planning authorities, developers, owners and occupiers should be flexible and realistic in applying the sequential approach, to ensure that different uses are developed in the most appropriate locations. It is important that community, education and healthcare facilities are located where they are easily accessible to the communities that they are intended to serve.

Out-of-centre locations should only be considered for uses which generate significant footfall where:

- all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable;
- the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location;
- the proposal will help to meet qualitative or quantitative deficiencies; and
- there will be no significant adverse effect on the vitality and viability of existing town centres.

TAYPlan 2016-2036

Policy 5: Town Centres First

DUNDEE LOCAL DEVELOPMENT PLAN 2019

Policy 7: Tourism and Leisure Developments

Policy 24: Goods Range and Unit Size Restrictions

Policy 54: Safe and Sustainable Transport

Policy 56: Parking

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 D/12001 granted permission for the demolition of existing buildings and construction of non-food retail stores, fast food takeaway and parking. Planning permission was granted subject to the completion of a Section 50 Agreement. Upon completion of the Section 50 Agreement, permission was issued on 7 September 1987.
- 4.2 Advertisement Consent (04/00208/FUL) for the erection of an illuminated sign was allowed at appeal.
- 4.3 Advertisement Consent (10/00720/ADV) for the erection of signage was allowed at appeal.
- 4.4 Advertisement Consent (11/00682/ADV) for a fascia sign was dismissed at appeal.
- 4.5 Planning permission (13/00404/MDPO) for the proposed modification of Legal Agreement associated with planning application reference D/12001 to permit clothing and footwear to be sold from not more than 1,300m² of the sales area of Unit 3 was dismissed at appeal.
- 4.6 Planning Permission (20/00020/MDPO) for the modification of Section 50 Agreement to include additional use inserted under Schedule II of the Minute of Agreement (relating to planning application 19/00908/FULL) is with the Planning Committee for determination as per the Council's Scheme of Delegation.

5 PUBLIC PARTICIPATION

- 5.1 The statutory neighbour notification procedure has been undertaken and the application advertised in the local press.
- 5.2 No valid objections have been received.
- 5.3 One invalid letter of objection was received in relation to the commercial market and competition between businesses. However, this is not a valid material planning consideration.

6 CONSULTATIONS

- 6.1 **Transport Scotland** – has been consulted has no objection to the application.
- 6.2 **Head of Community Safety and Protection** – has been consulted on noise matters and has confirmed that there are no issues arising.

7 DETERMINING ISSUES

- 7.1 **Section 25 of the Town and Country Planning Act 1997 as amended 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.

TAYPLAN 2016 – 2036

- 7.2 **Policy 5: Town Centres First** - this policy requires Local Development Plans to identify a network of centres based on the sequential priority from Scottish Planning Policy. Planning decisions for land uses that generate significant footfall should be based on the Scottish Planning Policy sequential town centre first approach to protect and enhance the vitality, viability and vibrancy of city/town centres.
- 7.3 In accordance with Scottish Planning Policy and the Strategic Development Plan's "town centre first approach" the City Centre and District Centres are the preferred locations for uses that generate significant footfall, including retail and commercial leisure uses, offices, community and cultural facilities and, where appropriate, other public buildings such as libraries, and education and healthcare facilities.
- 7.4 Proposals for such uses in other locations will only be acceptable where it can be established that no site is available, in the first instance, within the City Centre or District Centres then, edge of town centre and then, Commercial Centres identified in the Local Development Plan, and then out-of-centre locations that are, or can be, made easily accessible by a choice of transport modes.
- 7.5 The proposal is for a commercial leisure use within the Kingsway West Retail Park, a commercial centre identified in the Dundee Local Development Plan 2019. As the proposal would generate significant footfall a sequential assessment has been undertaken by the applicant's agent. This has not identified any sequentially preferable opportunities in the City Centre or District Centres or the edge of town centre.
- 7.6 The location within the commercial centre is sequentially preferable to an out-of-centre location and the proposal is therefore in accordance with Policy 5.

DUNDEE LOCAL DEVELOPMENT PLAN 2019

- 7.7 **Policy 7: Tourism and Leisure Developments – b) Leisure Developments** – this states that proposals for major leisure uses will be directed firstly towards the City Centre and the District Centres followed by the existing leisure parks at Douglasfield and Camperdown and to The Stack to support its continued redevelopment. Proposals for leisure developments outwith these locations will only be acceptable where it can be established that:
- 1 no suitable site is available, within and thereafter on the edge of the City Centre or District Centre or within the existing leisure parks;
 - 2 individually or cumulatively it would not prejudice the vitality or viability of the City Centre or District Centres;

- 3 the site is readily accessible by modes of transport other than the car; and
- 4 activity-specific issues indicate that this is impractical.

7.8 The proposal is for a major leisure use. The supporting document states that the size of the unit and internal heights required are dictated by the proposed concept for a number of different leisure uses within a single unit. The 6m floor to ceiling height offered by a traditional retail warehouse is required for a high ropes adventure course, the indoor sky fly, the roller glider and the height required above the trampoline foam pits.

7.9 The prospective building must therefore fulfil a unique set of requirements which comprise:

- the building should be a minimum of 3,500m² and up to 4,000m²;
- the building should have a minimum eaves height of 6m;
- there should be good transport links to the site and parking facilities; and
- the site should provide a purpose-built warehouse.

In respect of the policy criteria above:

7.10 **Criteria 1** – the Supporting Planning Statement includes a sequential assessment for a building to meet the requirements outlined above. This concluded that there are no suitable buildings in the City Centre and District Centres or Leisure Parks. The sequential assessment considers the vacant sites and confirms that it is not feasible to build a purpose-built warehouse unit of the scale required. It notes that the intended occupier has explored other options including a consented proposal to convert the Dens Road Market (17/00391/FULL). However the costs for this project were far greater than envisaged due to the complexities of the structure for this type and height of building. The application site not only provides a suitable unit but also a location in which the associated infrastructure such as access, transport links and car parking are in place.

7.11 **Response** – the Local Development Plan (paragraph 7.20), in line with Scottish Planning Policy, recognises that a flexible and realistic approach is required in applying the sequential approach to ensure that different uses are developed in the most appropriate locations. As outlined in the supporting statement the scale of the building required is dictated by the unique nature of the proposal to house a wide range of activities in one unit. The sequential assessment confirms the limited availability of vacant units and sites for a new build unit of the scale required in the City Centre and District Centres and Leisure Parks. It is noted that the costs of new build would be prohibitive and render the project unviable. The outcome of the sequential assessment is accepted. The proposal would bring a large vacant unit back into use within a sequentially preferable location identified in the Local Development Plan and in line with Scottish Planning Policy's "Town Centre First Principle". The proposal meets the requirements of Criterion 1.

7.12 **Criteria 2** – the Supporting Planning Statement considers that the proposed use is not a competing retail use or a use you would typically find in a city centre or district centre and as such this would result in less impact on the vitality or viability of these sequentially preferable centres. Kingsway West is restricted to predominantly bulky goods through existing legal agreements and protective policies in the Local Development Plan. Any user of the activity centre who chooses to link their trip within the retail park is likely to be shopping for a category of goods which is not available in the City Centre or District Centres. Kingsway West is a commercial centre and a sequentially preferable location in the Local Development Plan after the City Centre and District Centres and the edge of town centre. The proposal would bring a

vacant unit back into use in a sequentially preferable location and create a complementary use for the wider site.

- 7.13 **Response** – the application site is in an established retail park. The proposed use is in a location and of a scale which would not significantly alter the existing pattern of footfall in the area. It would not therefore individually or cumulatively prejudice the vitality or viability of the City Centre or District Centres. The proposal meets the requirements of Criterion 2.
- 7.14 **Criteria 3** – the Transport Assessment highlights that the site is within an established retail park which is well connected to existing adopted footways, leading onto Clepington Road and King's Cross Road to the west; on and off-road cycle paths and is well served by public transport with bus stops located within 400 metres of the site.
- 7.15 **Response** – the Transport Assessment demonstrates that the application site is easily accessible by a choice of sustainable transport modes. This is an established retail park with good links to the surrounding area. The proposal meets the requirements of Criterion 3.
- 7.16 **Criteria 4** – the Supporting Planning Statement outlines the concept proposed for a number and type of different leisure uses in one building. The sequential search was based upon a search for a warehouse type unit which exceeds 3,500m² and has an eaves height of at least 6m, to accommodate the proposed occupiers' requirements. The activity-specific issues of the proposed occupier make any more sequentially preferable sites which are available, impractical. The supporting statement confirms that it is not feasible to build a purpose-built warehouse unit.
- 7.17 **Response** - the Supporting Planning Statement outlines the unique concept to accommodate a range of activities under one roof and create a safe environment for play for a wide range of ages and abilities. It sets out the requirements for a large warehouse type building. It has been demonstrated that activity-specific issues dictate the scale and type of building required and it would be impractical for this to be located in the City Centre and District Centres. The sequential assessment demonstrates that there are no sequentially preferable sites in the City Centre and District Centres or Leisure Parks. The proposal meets the requirements of Criterion 4.
- 7.18 **The proposal is in accordance with Policy 7.**
- 7.19 **Policy 24: Goods Ranges and Unit Sizes Restrictions - Commercial Centres** – states the Commercial Centres at Kingsway East Retail Park, Kingsway West Retail Park, Gallagher Retail Park and The Stack Leisure & Retail Park shall be subject to the goods range and unit size restrictions set out in Appendix 6 of the Local Development Plan.
- 7.20 In relation to the proposal, the goods range restrictions set out in Appendix 6 do not apply. Appendix 6 states that “No units with a gross floorspace of less than 1,000m² shall be created within any of the commercial centres through the development of new units; the subdivision of a unit; or the occupation by more than one retailer.”
- 7.21 In order to protect the established network of town centres it is recommended that should members be minded to approve the application a condition is attached to any planning permission granted to control the subdivision and occupiers of Unit A1 in line with Appendix 6 of the Local Development Plan.
- 7.22 **The proposal is in accordance with Policy 24, subject to condition.**
- 7.23 **Policy 54: Safe and Sustainable Transport** – states that all development proposals* that generate travel should be designed to be well served by all modes of transport. In particular

the sustainable modes of walking, cycling and public transport should be afforded priority and provide for easy access to local amenities, education facilities and other services.

Development proposals will be required to:

- 1 minimise the need to travel by private car;
- 2 provide facilities on-site (and/or off-site through developer contributions or by direct delivery) for walking, cycling and public transport networks, including road/junction improvements and cycle parking. Developments without high quality, safe and convenient links to adjacent walking and cycling networks will not be supported;
- 3 incorporate measures to permit access to public transport networks within a walking distance of no more than 400 metres from all parts of the development;
- 4 have no detrimental effect on the capacity or safe functioning of the existing road or rail networks;
- 5 ensure that safe and adequate provision is made for road freight and waste access, loading and unloading;
- 6 comply with the National Roads Development Guide and any local variations within Dundee City Council's roads design standards; and
- 7 be supported by a travel plan to mitigate transport impacts and improve the accessibility of developments where the council considers that the development will generate significant travel.

Walking and cycling routes should be fully useable prior to the first occupation of a new development.

*this includes the re-use of existing buildings.

- 7.24 A Transport Statement has been submitted. In respect of Criteria 1-3 above, the Transport Statement highlights that the site is within an established retail park which is well connected to existing adopted footways; on and off-road cycle paths and is well served by public transport with bus stops located within 400 metres of the site. The Local Development Plan highlights that the retail park is very accessible to Dundee residents and others by their location on the Kingsway trunk road (paragraph 7.38).
- 7.25 In respect of Criteria 4-7, the Transport Assessment demonstrates that the proposal would not have a detrimental impact on the surrounding road network and there is adequate provision for road freight and waste access, loading and unloading as this is an established retail park.
- 7.26 The findings of the Transport Assessment are accepted.
- 7.27 **The proposal is in accordance with Policy 54.**
- 7.28 **Policy 56: Parking - Developments Outwith City Centre - Vehicle Parking** - this states all new developments shall be required to comply with Dundee City Council's adopted guidance on road standards; with the national maximum parking standards; and the national minimum disabled parking standards. All parking facilities at commercial developments should include the provision of charging stations for electric vehicles.

- 7.29 The Supporting Planning Statement confirms that a number of electric vehicle charging points will be installed in proximity to the unit.
- 7.30 In order to secure the installation of a number of electric vehicle charging points as part of the development it is recommended that should members be minded to approve the application a condition is attached to any planning permission granted.
- 7.31 **The proposal is in accordance with Policy 56, subject to a condition.**
- 7.32 **It is concluded that the proposal is in accordance with the Development Plan.**

MATERIAL CONSIDERATIONS

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

A - SUPPORTING INFORMATION

- 7.34 The Supporting Planning Statement outlines the social and economic benefits of the proposed development. This includes £800,000 investment in both Kingsway West Retail Park and the wider City's leisure offer. The economic benefits to the area would also include increased footfall to Dundee and the retail park from surrounding areas as there is no other family orientated, multi-activity park in Scotland like this proposed.
- 7.35 The occupier has identified that the proposal will create 35-40 direct full-time jobs and 8-10 indirect jobs. The occupier has committed that all roles would be advertised and recruited locally. All staff working at the family activity centre will be paid a living wage. The occupier will seek the Living Wage employer mark given to Scottish employers as a symbol of responsible business practice.
- 7.36 The centre will be a unique collection of indoor activities and adventure attractions. The activity-based nature of the centre lends itself to promoting healthy, fun exercise at the same time as bringing families together.
- 7.37 It highlights that the uses would not compete with existing facilities, but simply complement the range and choice of activities available to both residents and visitors.
- 7.38 The development proposals would ensure that Kingsway West Retail Park remains competitive at a time when the retail market is facing considerable pressure and retail occupiers for such large units are limited. These proposals will ensure that the park continues to adapt to the existing market and economic climate.
- 7.39 The main problem with the unit from a marketing perspective is its large size which is only suitable for a limited selection of occupiers. The alternative to letting the whole unit, would be to reconfigure the unit, however, this would result in significant and prohibitive capital expenditure being required. Furthermore, this would only serve to create several smaller retail units, of which there are already four vacant units on the park which are currently being marketed.
- 7.40 The Planning Statement considers the proposals are fully policy compliant and have significant material considerations which support their approval.

Response

- 7.41 The application site was formerly occupied by Toys R Us and has been vacant since April 2018 with the loss of 20-25 full time jobs. As noted in the Planning Statement the proposal would offset the jobs lost from the closure of the retail unit.
- 7.42 The Local Development Plan (paragraph 7.19), considers that being within a commercial centre the application site is within a sequentially preferable location in line with Scottish Planning Policy's "Town Centre First Principle". New and expanded uses will only be permitted when the uses support the role and function of the Commercial Centre (paragraph 7.21). It is recognised that the proposed use would support the commercial centre to ensure it continues to provide a valuable and accessible service to residents.
- 7.43 In order to ensure commercial centres do not jeopardise the vitality and viability of the city Centre and District Centres they are subject to special goods range restrictions and related controls limit the amount of floor space that can be given to over to non-food goods and the size of the unit.
- 7.44 The Local Development Plan highlights that creating small units within a retail park environment could draw High Street retailers and other businesses away from the City Centre and District Centres with damaging effects on their footfall, vitality and viability (paragraph 7.42). Any proposed reconfiguration of the unit would be restricted by Policy 24 (Goods Range Restrictions) and Appendix 6.
- 7.45 As outlined previously in the report, in order to protect the network of established town centres, it is recommended that a condition is attached to any planning permission granted to ensure the application site, Unit A1 Kingsway West Retail Park, is not subdivided or occupied by any more than one occupier without the formal written approval of the Council.
- 7.46 The proposal would bring back into use a large, highly visible, vacant unit within an established retail park and create a complementary use for the wider site. The proposed use is in a location and of a scale which would not significantly alter the existing pattern of footfall in the area. It would not therefore individually or cumulatively prejudice the vitality or viability of the City Centre or District Centres.
- 7.47 A separate application has been submitted to modify a Section 50 agreement to restrict the proposed leisure use in Unit A1 of Kingsway West Retail Park only to an adventure and activity centre and no other Class 11 use (20/00020/MDPO) should members be minded to approve this application.
- 7.48 There are material considerations of sufficient weight to further justify approval of planning permission.
- 7.49 **It is concluded that there are no material considerations of sufficient weight in this case to justify refusal of planning permission.**

8 CONCLUSION

- 8.1 The application for a change of use from retail (Class 1) to an adventure play and activity centre (Class 11) with an ancillary café and dining area is in accordance with the Development Plan. There are no material considerations of sufficient weight that would justify refusal of planning permission. Therefore it is recommended that planning permission be granted subject to conditions.

9 RECOMMENDATION

9.1 It is recommended that planning permission be GRANTED subject to the following conditions:

- 1 **Condition** - Appendix 6 of the Local Development Plan 2019 states that no units with a gross floorspace of less than 1,000m² shall be created within any of the commercial centres through the development of new units; the subdivision of a unit; or the occupation by more than one retailer. This shall apply to the application site, Unit A1 of the Kingsway Retail Park, whereby the unit shall not be subdivided or have more than one occupier without the formal written approval of the Council.

Reason – to protect the established network of town centres in accordance with the Local Development Plan.

- 2 **Condition** - Electric vehicle charging points shall be provided at a location and number to be approved in writing by the Council prior to the opening of the development.

Reason - in the interests of securing sustainable transport measures as part of the development.