

3 PLANNING APPEAL DECISIONS (AN187-2014)

- (a) B&Q, MILTON OF CRAIGIE RETAIL PARK, KINGSWAY EAST, DUNDEE - VARIATION OF A PLANNING CONDITION AND MODIFICATION OF LEGAL AGREEMENTS TO PERMIT THE SALE OF FOOD, CLOTHING, FOOTWEAR AND TOYS FROM THE B&Q UNIT

Reference is made to Article II(b) of the minute of meeting of the Development Management Committee of 12th August, 2013, wherein the Council refused the planning application and Article III of the minute of meeting of the Development Management Committee of 21st November, 2013, wherein the Council purported to refuse to modify the planning obligations to permit the sale of restricted goods from the premises.

The Committee refused both the applications on the grounds that the proposals failed to demonstrate that the introduction of restricted goods sales would not undermine the Local Plan retail strategy which could result in an adverse impact on the vitality and viability of the city centre and district centres. In terms of the application to modify the legal obligations, the Committee noted that an appeal had just been lodged but agreed to determine this application as submitted, having noted that, in the event that the appeal was considered valid, then the decision taken by the Committee at its meeting would represent the views of the Council on the appeal and not an actual decision on the application.

The decisions were appealed by the applicants and the appeals were determined by written representations. The appeal decisions were received by the Council on 9th July, 2014. Copies of the Reporter's decision letters have already been circulated to members by e-mail.

The Reporter **ALLOWED** the appeals and granted consent to vary the condition and to modify the planning obligations. He noted that the decision on each appeal was material to the other one and so made the decisions at the same time.

In reaching his decision on the planning appeal, the Reporter considered that the determining issue was the impact on the vitality and viability of the city centre and district centres.

In terms of the impact on the development plan strategy he summarised the relevant policies including Policy 23 of the Local Development Plan which sets out three tests for an application that sought to sell restricted goods from the retail parks.

He noted that the Council accepted that the proposal in itself would not the vitality and viability of the city centre and district centres but had concerns about precedent.

He concluded that given the size of the unit, if the condition to be amended was not associated with restrictive legal agreements, the proposal would breach policy 23 of the LDP.

However in looking a material considerations he considered the associated application to modify the legal agreements, in which the appellants sought only limited changes to permit 3.7% food sales, 3.3% clothes and 3.3% toys (coupled with an undertaking to keep an existing city centre store open for five years) was of such a scale that there would be no serious impact on the city centre and district centres. He also considered that there would be no issue with precedent as there were exceptional circumstances in the trading pattern of the B&M Homestore model which would complement the existing city centre store coupled with the fact that its primary trade was in bulky comparison goods and the modest area of floorspace involved. He concluded on this basis that an approval would not create a precedent which would undermine the Council's long standing shopping policies.

He also concluded that approval of the proposal would result in economic benefits for the city and that in terms of SPP, that with the planning obligation appeals taken together there would be (a) no significant impact on the city centre or the district centres and (b) no irresistible precedent created, and therefore that there would be no significant change in the role and function of the centres in Dundee.

He imposed a condition on the planning application to prevent the relaxations applying to Unit 2.

The reporter accepted the planning obligations appeal as a valid appeal due to the non determination of the application by the Council. He considered the determining issue was the impact on the vitality and viability of the city centre and district centres.

For the same reasons as for the planning appeal he concluded that if the appeal were allowed there would be no significant impact on the city centre or the district centres and that no precedent would be set due to the exceptional circumstances involved. He therefore modified the two existing agreements so as to allow limited areas of floorspace to be used for the sale of food, clothing, footwear and toys, specified small domestic electrical and included the 5-year undertaking to retain the city centre B&M store.

Finally the appellants sought a claim of expenses against the Council on a number of grounds relating to both applications. All of these grounds were dismissed with the exception of a single claim in connection with the planning obligations appeal. The reporter agreed that it was unreasonable for the Council to maintain that the new legislation which permitted legal obligations to be challenged was not retrospectively applicable and he made an award of costs on this ground alone.

- (b) UNITS A1-A4, KINGSWAY WEST RETAIL PARK, DUNDEE - MODIFICATION OF LEGAL AGREEMENT TO PERMIT CLOTHING AND FOOTWEAR TO BE SOLD FROM NOT MORE THAN 1300SQM OF THE SALES AREA OF UNIT 3

Reference is made to Article II of the minute of meeting of the Development Management Committee of 21st October, 2013, wherein the Council refused to modify this planning obligation.

The Council agreed with the report of the Director of City Development that to permit the proposed modification to allow the sale of clothes and footwear from the retail park would represent a significant shift from the Councils long established policy approach, would lead to pressure for similar proposals elsewhere and could lead to significant trade draw from the city centre and district centres. The report concluded that the Councils stated aims of maintaining the vitality and viability of the City Centre and District Centres would not be served by the approval of the application.

The decision was appealed by the applicant under the provisions of Section 75B of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 9th July, 2014. Copies of the Reporter's decision letter have already been circulated to members by e-mail.

The Reporter **DISMISSED** the appeal and refused to modify the planning obligation.

In reaching his decision the Reporter considered that the determining issues in the appeal were (a) the impact on the development plan strategy designed to protect and promote the city and district centres and (b) the economic impact.

In terms of the impact on the development plan strategy he summarised the relevant policies including Policy 23 of the Local Development Plan which sets out three tests for an application that sought to sell restricted goods from the retail parks:-

- (1) it must not affect, either on their own or cumulatively, the LDP strategy in support of the city centre and the district centres.
- (2) it must be capable of co-existing with those centres without individually or cumulatively undermining their vitality and viability.
- (3) it must tackle deficiencies in qualitative or quantitative terms which cannot be met in or at the edge of the city centre and the district centres.

He noted that the appellant's retail impact assessment was not challenged by the planning authority, because it was concerned rather with matters of precedent.

Because of the difference in role and with Gallagher Retail Park complementing the City Centre, he did not agree with the appellants that the reduction of floorspace at Gallagher should be set against the 1,300 square metres of proposed new clothing and footwear floorspace at Kingsway West.

He considered that had the extent of the proposed modification been minor there would be no significant precedent or cumulative effect. However he was of the opinion that an area of up to 1,300 square metres sales area is suggestive of a sizeable shop which suggests that the proposal would create a damaging precedent on account of its size. He did not agree with the appellants that two examples of stores that didn't appear to conform to policy compromised the established strategy for Dundee's retail parks.

Finally he concluded that the appellant had failed to demonstrate that qualitative deficiencies which could not be met in or at the edge of the city centre and the district centres would be tackled if this proposal was approved.

He therefore concluded that the proposal failed to meet all three tests set out in Policy 23 of the Local Development Plan.

Furthermore he concluded that SPP did not lend support to the proposal and that although SPP suggests that significant changes to retail strategy are best resolved through the Development Plan, in this case the Local Development Plan was up to date.

He also concluded that the existing planning obligation met all the tests set out in Circular 3/2012.

In terms of the economic aspects of the proposal, the Reporter considered that although the economic advantages weighed heavily they were outweighed by the damage that would be done to the strategy protecting Dundee's City and District centres. He therefore dismissed the appeal.