

**KEY INFORMATION**

Ward Maryfield

**Proposal**

Planning application under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) for the Variation of Condition 1 of Planning Permission 05/00815/FUL to allow additional time for development to commence

**Address**

Land to East of West Marketgait  
Overgate Lane  
Dundee

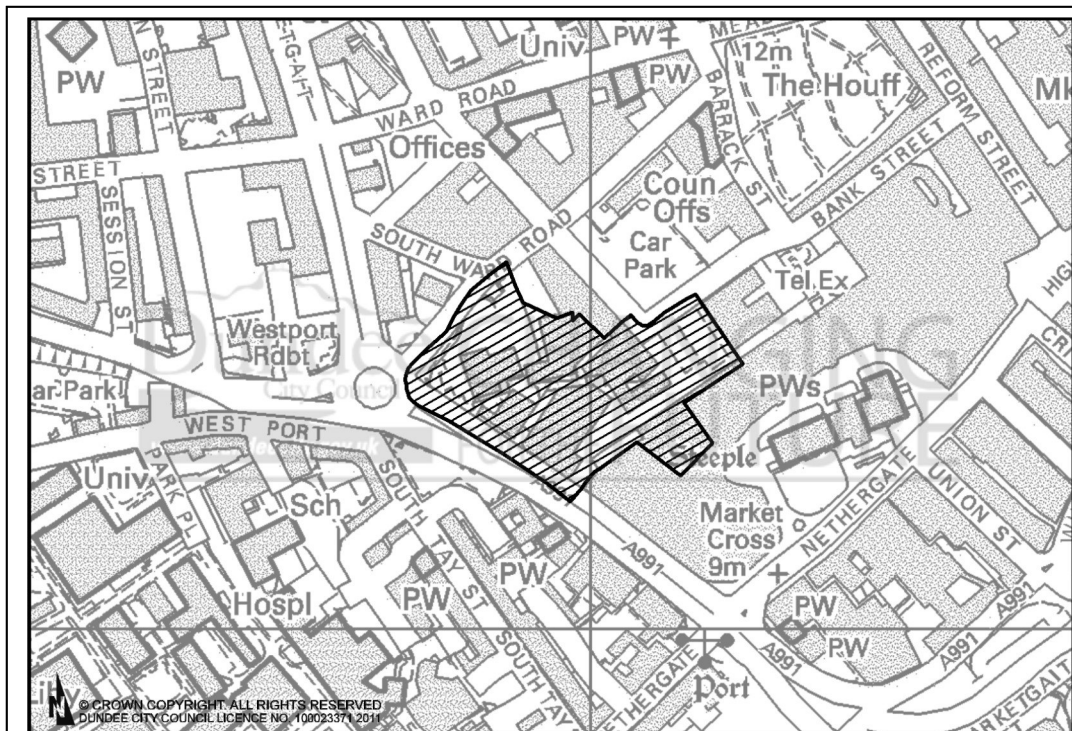
**Applicant**

GVA Grimley  
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Edinburgh  
EH3 9QG

**Agent**

Registered 18 Mar 2011

Case Officer Eve Young



## Additional Time Sought for Permission to Extend the Overgate Centre

The planning application under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) for the variation of Condition 1 of planning permission 05/00815/FUL to allow additional time for development to commence is **RECOMMENDED FOR APPROVAL subject to conditions**. Report by Director of City Development.

**RECOMMENDATION**

There are no material changes to the development plan, as it relates to this application, and no material considerations which would justify withholding planning permission for an extension of the time period within which this development should be commenced. The development will remain subject to the other conditions imposed on application ref 05/00815/FULL. The Supporting Planning Statement is accepted and the imposition of a condition to require the development to commence within 5 years is considered to be justified. The application is therefore recommended for **APPROVAL** subject to conditions.

**SUMMARY OF REPORT**

- Permission is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 to vary Condition 1 attached to planning application 05/00815/FUL to allow additional time for the consent to be implemented.
- The planning permission was for a 2-storey extension to the Overgate Shopping Centre to provide in excess of 40 new retail units with approximately 20,000m<sup>2</sup> gross retail floor area on two levels. The development included a new multi-storey car park. The site is bounded by the West Marketgait; South Ward Road; the new Dundee House complex; the BT Exchange building and the existing Overgate and Overgate Lane.
- Due to the size of the development, the proposals fall within the meaning of a Major Planning Application and must be reported to the Development Quality Committee for determination. Pre application consultation was carried out by the agent and 18 responses were given at a public exhibition in the Overgate Centre, of which 16 supported the extension of the timescale of the planning permission. Statutory Neighbour Notification was served on 55 properties and no objections or representations were received.
- The purpose of the time limit on planning permissions is to enable planning authorities to review unimplemented permissions in the light of changing circumstances and policies. The Committee can consider the other conditions if it so minded but there are no planning reasons for varying those conditions and therefore it is recommended that they should remain as per the original consent. There has been no material change in planning circumstances as detailed in the development plan. There is no indication that the development will not be implemented as the existing Overgate Centre has recently been bought and the new owners seek the additional time to progress the development.
- The Supporting Planning Statement is accepted and the imposition of a condition to require the development to commence within 5 years is considered to be justified for the reasons given.

## DESCRIPTION OF PROPOSAL

Permission is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 to vary Condition 1 attached to planning application 05/00815/FUL to allow additional time for the consent to be implemented.

Condition 1 of the planning permission, which was issued on 14 April 2006 stated:

"The development hereby permitted shall be commenced within five years from the date of this permission."

The planning permission was for a 2-storey extension to the Overgate Shopping Centre to provide in excess of 40 new retail units with approximately 20,000m<sup>2</sup> gross retail floor area on two levels. The development included a new multi-storey car park.

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 stipulates that major planning applications should be accompanied by a Design and Access Statement and Pre-application consultation Report. The applicant has complied with this requirement.

As the floor area of the building is greater than 5,000m<sup>2</sup> the proposals fall within the meaning of a Major Planning Application as defined by Regulation 2(1) of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008.

Accordingly the applicant was required to undertake statutory pre-application consultation with the local community and incorporate the findings into the proposed development. A Pre-application Consultation Report is submitted as part of this application. In accordance with the Mandatory Scheme of Delegation approved by Scottish Ministers, all Major Planning Applications must be reported to the Council's Development Quality Committee.

The application is not an application which is "significantly contrary to the development plan" which must be the subject of additional statutory procedures before being recommended to the Full Council for determination.

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, there are no planning reasons for varying those conditions and therefore it is recommended that they should remain as per the original consent. For this reason the report only concerns Condition 1.



## SITE DESCRIPTION

The application site extends to approximately 1.46 hectares. The site is bounded by the West Marketgait section of the Inner Ring Road to the west; South Ward Road to the north; the new Dundee House complex on South Ward Road and fronting North Lindsay Street to the east; the BT Exchange building to the south east; and the existing Overgate and Overgate Lane to the south.

Within the application site there are buildings of various styles, scale and types. They are undistinguished both in terms of their individual appearance, massing and grouping, largely as a consequence of the piecemeal development dating from the 1960's. The site levels generally falls from north to south.

## POLICY BACKGROUND

### Dundee and Angus Structure Plan 2001-2016

The following policies are of relevance:

Town Centres and Retailing Policy 3: Dundee Central Area.

Environmental Resources Policy 6: Design and Urban Renewal.

Transport Policy 4: Development Location:

### Dundee Local Plan Review 2005

The following policies are of relevance:

Policy 37: Extending and Upgrading Shopping Provision in the City Centre.

Policy 55: Urban Design.

Policy 56: Public Art.

Policy 65: Archaeological Sites.

Policy 79: Contaminated Land.

Policy 87: City Centre Car Parking.

### Scottish Planning Policies, Planning Advice Notes and Circulars

The following are of relevance:

SPP Scottish Planning Policy.

SHEP Scottish Historic Environment Policy.

### Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Dundee - The Urban Design Guide.

## SUSTAINABILITY ISSUES

Key Theme 7 is relevant to the consideration of this application and seeks to ensure that access to facilities, services, goods and people is not achieved at the expense of the environment and are accessible to all. It is considered that the approval of an extension of the time period to

commence the proposed development meets the aims of this Key Theme.

## SITE HISTORY

The most recent planning applications in respect of the Overgate Shopping Centre are summarised below:

D23080: Redevelopment of Overgate Centre involving partial demolition and construction of new enclosed shopping centre and construction of 6 level multi-storey car park. Approved on 28 January 1998.

D23539: Erection of 2 level mixed-use development, including retail, cinema, restaurants and multi-level car park. Approved 27 January 1999.

This was an outline planning application which related to development on the site of the current proposals and, as with the current proposals, represented a physical extension to the existing Overgate Centre. The proposals, although approved, were never implemented.

05/00815/FUL: Planning permission was granted for an extension to the existing Overgate to accommodate in excess of 40 new retail units with approximately 20,000m<sup>2</sup> gross retail floor area on two levels. The existing malls will extend through to provide full access to the new extension at both levels and the new retail and associated facilities will be finished to the same high standard as that of the existing Centre. The new double-sided mall will extend northwards from the existing Centre and terminate in an atrium. The atrium will pass through both mall levels and provide the main vertical link between the shopping area and the new decked car park above. The atrium will provide access to a new major shopping unit and include a welcome hall, escalators, lifts and will be top lit from a large rooflight.

A new entrance on the north edge of the site will provide pedestrian access into the new extension to help supplement the existing Centre's access and strengthen the links with the adjacent 'Cultural Quarter' to the west and the city to the north. In addition, a new entrance located on the northwest corner of the site at the junction between South Ward Road and West Marketgait will act as a marker to signify the new north edge of Overgate and provide direct access into new major shopping units at upper mall level.

The application was referred to the Development Quality Committee on 27 February 2006 when the Committee was minded to approve subject to 23 conditions covering a wide range of issues. Due to the size of the development, comprising an area of 10,000 square metres or more gross retail floor area, the application was required to be referred to Scottish Ministers for consideration. Planning permission was issued on 14 April 2006.

10/00738/PAN - an applicant must give formal notification of a proposal to make a planning application for a Major category of development. The PAN (Proposal of Application Notice) was validated on 6 December 2010. The PAN must be submitted at least 12 weeks before the planning application is lodged. The applicant has complied with the requirements.

11/00123/LBC is the equivalent listed building application to extend the time period for the commencement of application ref 05/00816/LBC which granted listed building consent for works associated with the extension to the Overgate shopping centre. This application is considered elsewhere on this agenda.

## PUBLIC PARTICIPATION

The applicant has demonstrated through the submitted Pre-application Consultation Report that the requirements of Section 7 Paragraph 2(B) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 have been met. The applicants have consulted with the public at a one day public exhibition held on Thursday 3 February 2011 from 12 noon to 6.00pm in the Overgate Centre. The exhibition comprised a number of display boards with a representative from the applicants' agent available to answer questions and encourage members of the public to submit their views on the proposal. 49 visitors to the exhibition were spoken to. 18 feedback statements were received and analysed. 16 were in favour of the proposals. There were other additional comments as follows:

- concern about the impact on the Salvation Army and their relocation problems;
- a need for a new convenience food store in the Overgate;

- parking problems with the existing shopping centre;
- the need for good design for the extension; and
- the need for greater variety of shopping provision in the City.

The nature of this application is such that the applicant seeks to extend the time period only and all of the approved details of the Overgate extension will remain unchanged. Accordingly, these comments on design, retail provision and car parking cannot be taken into account in the consideration of this application.

In addition to the consultation event organised and administered by the applicant, the Council has also followed the statutory neighbour notification procedures stipulated by Regulation 18 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. 55 notifications were sent to a wide range of properties from residential flats to shop units. The application was also advertised in the Dundee Evening Telegraph and a site notice was posted. No objections or representations were received.

## CONSULTATIONS

The Head of Environmental Health and Trading Standards requests that the same contaminated land condition be applied to this application as applied to application reference 05/00815/FUL.

## OBSERVATIONS

### Statutory Requirements

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. These are the same policies as were relevant in the determination of the original application and in respect of which there are no changes in as far as this application is concerned

This application requests permission to modify a condition attached to a previously approved planning application 05/00815/FUL under Section 42 of the Town and Country Planning (Scotland) Act 1997. As such, it is only the terms of this condition that are subject to consideration in this report.

Consultation has commenced on preparation of the Main Issues Report for the Dundee Local Development Plan which will replace the Dundee Local Plan Review 2005 in due course.

It is concluded that the statutory requirements have been met for the reasons given.

## Material Considerations

### Supporting Planning Statement

This has been submitted by the applicants' agent to support the planning application.

The main points are:

- 1 Planning permission is sought for a further 5 years.
- 2 Land Securities: the UK's largest commercial property company, acquired the Overgate Centre from the Lend Lease Overgate Partnership in mid December 2010.
- 3 The application is in respect of condition 01 of the planning permission to allow additional time for the development to commence, no other conditions are proposed to be changed by this application.

The comments on the Supporting Statement are as follows:

In respect of point 1, the duration of full planning permission contained within Section 58 of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006 is 3 years after the date of grant unless the development has started. However, a Council can direct that a longer or shorter period can apply. The applicant seeks planning permission for a further 5 years. Given the recent date of the acquisition of the existing shopping centre and the scale and nature of the proposed development, it is considered that 5 years is a reasonable time to allow Land Securities to negotiate with the various landowners involved,

comply with the conditions and commence the development.

In respect of point 2, the applicant only purchased the Overgate Shopping Centre late in 2010. The economic climate is anticipated to improve and the proposals comply with the development plan. It is in the best interests of the City Council to keep alive such opportunities for delivering investment in the city centre and assist in fulfilling the Development Plan strategy.

Accordingly, the supporting statement is accepted as a material consideration in support of the application.

SPP Scottish Planning Policy - paragraph 33 encourages planning authorities to use the planning system to create a supportive business environment which can encourage sustainable economic growth in future. It is considered that granting planning permission for an extension of time for the commencement of this development would meet this guidance.

SHEP Scottish Historic Environment Policy.

The SHEP notes that work which affects the character of a listed building will require listed building consent. Change should be managed to protect a building's special interest while enabling it to remain in active use.

As noted, listed building consent has been granted for the works to the listed buildings associated with this development and the application for the extension of time of this consent is considered elsewhere in this agenda. As this application does not propose any changes to development it is considered that requirements of the SHEP have been met.

### Design

There are no design issues as there are no proposed changes to the development.

### CONCLUSION

The purpose of the time limit on planning permissions is to enable planning authorities to review unimplemented permissions in the light of changing circumstances and policies. However, Circular 4/1998: The Use of Conditions in Planning Permissions suggests that, as a general

rule, applications for the "renewal" of permissions should only be refused where: (a) there has been some material change in planning circumstances since the original permission was granted; (b) there is likely to be continued failure to begin the development and this will contribute unacceptably to uncertainty about the future pattern of development in the area; and (c) the application is premature because the permission still has a reasonable time to run.

As demonstrated in this report, there has been no material change in planning circumstances. There is no indication that the development will not be implemented as the existing Overgate Centre has recently been bought and the new owners seek the additional time to progress the development. Reason (c) is not applicable in this case.

The Supporting Planning Statement is accepted and the imposition of a condition to require the development to commence within 5 years is considered to be justified for the reasons given.

There are no material considerations that would justify laying aside the provisions of the Development Plan to withhold planning permission for the proposed variation to Condition 1 of planning application ref: 05/00815/FUL.

Whilst all of the other conditions can be considered as noted above, there are no planning reasons for varying those conditions and therefore the development will remain subject to the other conditions imposed on application 05/00815/FUL, so far as they are still subsisting and capable of taking effect, and to the additional condition which is imposed by this planning permission.

### RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 The development hereby approved shall be commenced before 30 June 2016.

### Reason

- 1 To enable the planning authority to review the situation in the event of the permission

remaining unimplemented at the end of the period in the light of prevailing policies and circumstances at that time.