

**Tonbridge**  
Medway

**26 July 2021**

**TM/21/02064/FL**

Proposal: Section 73 Application: Variation of condition 1 of planning permission TM/16/00818/FL to allow the sale of convenience goods from Unit 1C

Location: Unit 1C Cannon Lane Retail Park Cannon Lane Tonbridge Kent

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## **1. Description:**

- 1.1 This application was originally reported to the Area 1 Planning Committee on 25 November 2021. At that meeting, Members deferred determination of the application to allow officers to obtain further evidence regarding potential highway impacts arising from the proposal. In part, this was due to traffic counts forming part of the applicant's evidence base being undertaken in July 2021, during which some pandemic related restrictions were still in force. For the avoidance of any doubt, it is understood such restrictions only related to the continued closure of nightclubs meaning that it is not likely that this would materially affect the level of traffic entering and exiting the retail park.
- 1.2 The November committee report and associated supplementary report are both attached in full at Appendix 1 for ease of information.
- 1.3 Nevertheless, the applicant has since taken the opportunity to carry out further traffic counts in support of their evidence base. The retail park already has traffic counting cameras installed so the applicant was able to download the required data to compare with the counts undertaken in July 2021. During November there was no lockdown restrictions in place.
- 1.4 The technical note in this respect is attached as Appendix 2 to this report and is discussed in the assessment that follows.
- 1.5 For Members' information, since the application was deferred in November, further submissions have been made in connection with this unit and the use proposed by this submission. These relate to works to the shopfront, associated signage and plant equipment. Members will be aware that these will each be assessed on their own individual merits in accordance with the relevant adopted policies contained within the development plan and all material planning considerations. They can have no bearing on the decision to be taken in respect of the current application before Members for determination, which relates solely to the variation of conditions as set out at Appendix 1 and in the assessment that follows.

**2. Consultations (received since 25 November 2021)**

2.1 TMBC EP: Further comments provided reiterating need for restrictions on deliveries until further noise evidence is produced (recommended to be secured by condition) and further advice on informatives.

2.2 KCC (H+T): Comments awaited

**3. Determining issues:**

3.1 The analysis below should be read in conjunction with the earlier report annexed in full as it sets out the full assessment of the scheme. The issues discussed below are intended to address matters that expressly resulted from the site inspection and the additional information submitted by the developer since the deferral back in November.

Highway impacts:

3.2 The table contained at Appendix 2 of this report demonstrates that the data collected in June 2021 showed higher levels of traffic to and from the retail park than the data collected subsequently in November. The applicant points to the fact that general lockdown restrictions had just been lifted and there was an initial surge in retail demand.

3.3 This further evidence therefore gives no suggestion that the local highway network would be adversely impacted by the proposed variation of condition here, particularly when considering the mitigation to be provided by the junction. As such, the position in this respect remains as the assessment contained within the previous reports (Appendix 1) and there is no justification to resist the variation of condition on grounds of highway impacts.

Residential amenity:

3.4 At the last meeting, Members expressed concerns that the proposals would have an unacceptable impact on residential amenity, within the context of breaches of conditions across the wider retail park and with matters concerning noise and external lighting in mind. Members were also concerned that conditions they might seek to impose in granting permission would not be complied with.

3.5 In this respect, it should firstly be remembered that this application is only seeking to vary the wording of an existing condition; to increase the range of goods that can be sold at the store (to include food). It does not propose any changes to the fabric of the building which already functions as a retail store which has HGV deliveries taking place throughout the day. There is no proposal for increased lighting to the rear to serve the unit.

3.6 When used properly, conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to

refuse planning permission, by mitigating the adverse effects. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls. It is not possible to impose conditions on a planning permission that resolve pre-existing planning issues; they must be utilised to mitigate impacts arising from the development in question.

3.7 Paragraph 55 of the NPPF sets out that planning conditions should only be used where they satisfy the following tests:

- Necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise; and
- reasonable in all other respects.

3.8 These are referred to as “the 6 tests”, and each of them needs to be satisfied for each condition which an authority intends to apply. If these tests are met, the authority must grant permission subject to those conditions rather than refusing permission and there must be an assumption that there will be compliance with those conditions.

3.9 The existing retail park already generates noise and activity from established operations, which include an unrestricted number of deliveries, staff coming and going, visitors and existing plant and equipment. The adjacent road also generates background noise given that this is a characteristically urban area. The Council’s Environmental Protection Officers have reconfirmed that they are satisfied that any further noise generation from required plant can be controlled by condition with the following wording:

*“The rating level of the noise from fixed plant and equipment emitted from the site shall be lower than the existing background noise level by at least 5dB at the nearest noise-sensitive premises. The measurements and assessment shall be made according to BS4142:2014 +A1:2019.”*

3.10 Any noise impacts from a home delivery service would similarly have to be demonstrated as acceptable before such a service could commence; this is a requirement of the recommended conditions to be imposed. The Council’s Environmental Protection Officers continue to confirm that they raise no objection

to this approach. Any breach of the noise conditions would of course be investigated and, where breaches are evidenced, they would be subject to planning enforcement action.

3.11 Whilst this application proposes no additional lighting to be installed, it would be reasonable to impose a condition making clear that any future requirements for lighting would need to first be formally considered and approved by the Council. This is reflected in the recommendation that follows.

3.12 Quite aside from controls that can be put in place through the planning system, it should be remembered that Part 3 of the Environmental Protection Act 1990 addresses statutory nuisance. This is defined as '*an unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it*'. The Courts have held that even where planning permission has been granted for a development, a statutory nuisance may be found to be occurring. Informative [1] is included in the recommendation to reflect this distinction.

Trees and landscaping:

3.13 Works to trees across the wider site have already been subject to separate consent and another submission proposing works is currently under consideration. This will be assessed on its own merits having regard to all relevant legislation and policy. Crucially in this respect, there is no indication by Environmental Protection Officers that any additional planting or barriers are required in order to make this development acceptable in planning terms.

3.14 Given the limited scope of the submission (which is solely seeking to vary planning conditions), it would not be necessary or reasonable to require the applicant to provide additional planting. However, it could be suggested by way of an informative that they seek to maximise any such opportunities wherever possible to do so.

Conclusions:

3.15 There remains an absence of any technical evidence to support a conclusion that the highways impacts would be severe, or that there would be unacceptable safety impacts. These are the specific thresholds that need to be reached to justify a refusal on highways grounds, set out under paragraph 111 of the NPPF.

3.16 Furthermore, it is considered that suitably worded planning conditions can properly and fully control the use of the site in an effective and proportionate way, whilst meeting the policy tests for imposition. These are reflected in the recommendation below.

**4. Recommendation:**

4.1 **Grant planning permission** in accordance with the following submitted details: Location Plan dated 26.07.2021, Existing Floor Plans dated 26.07.2021, Proposed Floor Plans dated 26.07.2021, Site Plan Car Park dated 26.07.2021, Letter covering dated 26.07.2021, Letter from applicant dated 26.07.2021, Flood Risk Assessment dated 26.07.2021, Statement Operations dated 26.07.2021, Assessment Planning and retail dated 26.07.2021, Transport Assessment dated 26.07.2021, Transport Technical Note dated 06.12.2021 subject to the following:

- The applicant entering into a planning obligation with the Borough Council to provide financial contributions towards public realm enhancements in the Tonbridge Central Area to mitigate development impacts.

4.2 It is expected that the section 106 agreement should be agreed in principle and the legalities completed within 3 months of the committee resolution unless there are good reasons for the delay. Should the agreement under Section 106 of the Act not be completed and signed by all relevant parties within 3 months, a report back to the Area 1 Planning Committee will be made either updating on progress and making a further recommendation or in the alternative the application may be refused under powers delegated to the Director of Planning, Housing and Environmental Health who will determine the specific reasons for refusal in consultation with the Chairman and Ward Members.

- The following conditions:

**Conditions**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990.

2 The use of the retail warehousing shall be limited to the retail sales of DIY home and garden products, hardware, self-assembly or pre-assembled furniture, household furnishings, floor coverings, electrical goods, motor accessories and motor vehicles office equipment and supplies, bicycles, pets, pet food and drink and pet products, camping equipment and computer equipment.

Up to 1,396 sqm (GIA) within 1C shall additionally be permitted to be used for the sale of convenience goods and associated comparison goods.

Unit 1D shall additionally be permitted to be used for variety retailing including the retail sale of food and drink goods from an area not exceeding 30% of the net retail floorspace of Unit 1D, and otherwise shall be used for the sale of non-food

comparison goods. It shall not be used for the principal purpose of the sale and display of clothing and footwear.

Reason: The site is located outside an area where general retailing would normally be permitted.

- 3 No delivery or despatch of goods shall be carried out outside the hours of 07.00 to 21.00 Mondays to Saturdays or 09.00 to 17.00 on Sundays, Bank and Public Holidays.

Reason: In the interests of residential amenity.

- 4 Before the use hereby approved is commenced details of an updated site management plan to coordinate deliveries to and the removal of waste from the new use at Unit 1C shall be submitted to and approved by the Local Planning Authority, and the approved plan shall be adhered to by all occupiers of the building in perpetuity. The management plan shall include specific details of which party(s)ies is/are responsible for opening and closing the barrier at the entrance of the site and what times of the day it is to be opened and closed in order to facilitate the effective management of deliveries and waste removal. The units shall be strictly operated in accordance with the approved management plan.

Reason: In the interest of residential amenity and highway safety.

- 5 The development shall be carried out strictly in accordance with all the recommendations contained within the submitted noise survey reference 07011/3/1/4 received on the 28<sup>th</sup> October 2021. The rating level of the noise from fixed plant and equipment emitted from the site shall be lower than the existing background noise level by at least 5dB at the nearest noise-sensitive premises. The measurements and assessment shall be made according to BS4142:2014 +A1:2019.

Reason: In the interests of residential amenity.

- 6 The use hereby approved shall not commence until the improvements to the local highway network to provide a widened two lane exit in accordance with approved drawing number 9843 P 301 have been completed (via a s.278 Agreement with Kent County Council if required) and thereafter retained in perpetuity.

Reason: In the interests of local amenity and highway safety.

- 7 No home delivery service shall operate from the store until a further noise survey has been submitted to and approved in writing by the Local Planning Authority, setting out noise impacts on any affected receptors and any recommended mitigation measures. The home delivery service shall thereafter be undertaken in strict accordance with any such approved scheme and associated mitigation measures.

Reason: In the interests of residential amenity

- 8 The existing unit 1C shall not be subdivided into two or more units nor amalgamated with another unit without the prior consent in writing from the Local Planning Authority.

Reason: In the interests of retail impact and highways safety

- 9 Before the use hereby approved commences the floorspace will be reduced to 1,396 sqm GIA in accordance with the submitted details. Thereafter no additional floorspace shall be created through the insertion of another mezzanine floor or by any other method without the prior consent in writing from the Local Planning Authority.

Reason: In the interests of retail impact and highways safety.

- 10 No additional external lighting shall be installed in connection with the unit until any such external lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The lighting shall thereafter be installed and maintained in accordance with the approved details in perpetuity.

Reason: In the interests of residential amenity.

**Informatives:**

- 1 The applicant is reminded that substantiated complaints of noise nuisance arising from the permitted use may result in formal enforcement action under statutory noise nuisance legislation.
- 2 The applicant is strongly encouraged to investigate all opportunities for soft landscaping and tree planting to the rear of the site.

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