

**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. Background:**

- 1.1 APC1 resolved to grant planning permission for this variation of condition subject to conditions and the applicant entering into a section 106 agreement to secure a financial contribution towards public realm enhancements along the riverside footpath to the south of the site.
- 1.2 Annexe 1 to this report contains the previous reports to the planning committee of 13 January 2022 and 25 November 2021.
- 1.3 Since the resolution to grant planning permission was made but prior to the section 106 agreement being completed and the permission being granted, the Planning Inspectorate has determined the appeal for Units 1B and 1C (our reference TM/20/02334/FL refers).
- 1.4 This appeal decision represents a new material planning consideration that the Council is duty bound to consider. It is therefore necessary to report the matter back to APC1 for a fresh determination.

## **2. Determining issues:**

- 2.1 Members will recall that the earlier application subject of the appeal was refused by APC1 on highways grounds. The applicant agreed to provide a financial contribution towards public realm enhancements and as part of their appeal submitted a unilateral undertaking setting out that this would be paid.
- 2.2 In this respect, the Inspector's decision clearly sets out as follows:

*The planning obligation would provide for a financial contribution towards public realm works. The Council's rationale for this contribution is that the proposal would result in a more intense use of the appeal site that would generate additional pressure on the public realm. However, the proposal would result in a significant reduction in retail floorspace and would not materially affect the amount of vehicle traffic at the retail park. The general character of the retail park would be unchanged and there is no evidence that there would be any impact on the public realm, such as to require some form of mitigation. I do not consider that the obligation has been shown to be necessary to make the proposal acceptable in*

*planning terms, nor is it related to the development in question. The obligation does not meet the relevant tests and, accordingly, I have not taken it into account in my decision.*

- 2.3 Given the Inspector's very clear conclusion in connection with the financial contribution, coupled with the fact that the later scheme for Unit 1C (as yet undetermined) relates to an even smaller resultant retail footprint than the appeal scheme, it would be unreasonable and indefensible to continue to pursue such a contribution in connection with this application now.
- 2.4 As such, it is now necessary for APC1 to make a fresh resolution to grant planning permission without the financial contribution being sought. This is reflected in the recommendation below.

### **3. Recommendation:**

- 3.1 **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 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) 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.

Contact: Adem Mehmet