

DELEGATED

AGENDA NO.

REPORT TO PLANNING COMMITTEE

DATE: 18 July 2007

REPORT OF THE DIRECTOR OF
DEVELOPMENT AND
NEIGHBOURHOOD SERVICES

07/1178/ARC

Application under Section 73 to vary conditions 2 and 11 of Planning Approval 06/3008/FUL (Erection of new supermarket with car par, service area and associated works (demolition of existing supermarket))

Land at Portrack Lane, And Marston Road, Stockton-on-Tees

Expiry Date 25 July 2007

SUMMARY

Planning permission was granted in December 2006 to erect a new store of exactly the same net floor area (5110 sqm – 55,000 sq ft) to replace the existing ASDA store on Portrack Lane (06/3008/FUL). It is to be sited on disused scrubland to the south of the existing store facing onto Portrack Lane and will be of a contemporary functional design with the facing materials being primarily smooth white wall cladding. The car parking areas will be revamped and extended to include part of the land occupied by the current store. Large amounts of new landscaping are proposed around the periphery of the site. Access points will be as existing but the layout includes an internal road link between the two. Servicing for the store will be to the rear off Marston Road. The application was supported by a Planning and Retail Statement, a design and access statement, a Transport Assessment and a flood risk assessment.

The permission was subject to a section 106 agreement requiring financial contributions (£67,000) towards the provision of new bus stops and a pedestrian crossing. This agreement will need to be revised to reflect any new permission and a new unilateral agreement is promised. The application was also referred to Secretary of State in accordance with the Town & Country Planning (Shopping Development) (England and Wales (No 2) Direction 1993 but no intervention was forthcoming.

An application to revise that permission has now been submitted to increase the size of the internal mezzanine floor together with some minor changes to the external appearance and a very slight readjustment of the siting of the building.

The external changes are acceptable but there is some concern over the change to the mezzanine floor which whilst not increasing the net floor space (trading area) does increase gross floor space which includes warehousing areas, food preparation area, corridors, stairs etc. Condition 11 of the original permission limits the amount of both net and gross floor space. The current application seeks to vary that condition to allow for an extra 436 sq m of gross floor space for additional food preparation and circulation spaces. The applicant argues that the original design was faulty and simple human error meant that to adhere to the original gross floor space limitation would mean a reduction in the net floor space not only to below its existing size but to

a size of store where the viability of rebuilding the existing store became into question.

Redevelopment of the store on the existing site with same net floor space will not conflict with the guidance set out in PPS6 or development plan policy. It presents no significant concerns with regards to traffic generation or highways issues generally. Accordingly, provided net floor space is not increased (and this can be controlled by condition) there is no objection in principle to the development.

RECOMMENDATIONS

It is recommended that subject to:

- a. *The application being referred to the Secretary of State in accordance with the Town & Country Planning (Shopping Development) (England and Wales (No 2) Direction 1993.*
- b. *the completion of a revised 106 agreement in accordance with the previously agreed Heads of Terms (Financial contribution for the provision of two low level bus stops (£12,000) and for the provision of a pedestrian Crossing (£55,000);*

the application be approved subject to the following conditions;

1. *The development hereby approved shall be carried out in accordance with the following approved plan(s); unless otherwise agreed in writing with the Local Planning Authority.*

*Drawing Nos 07_12_PL-00; 07_12_PL-01; 07_12_PL-02;
07_12_PL-03; 07_12_PL-04; 07_12_PL-05; 07_12_PL-06;
07_12_PL-07; 07_12_PL-08; 07_12_PL-09; 07_12_PL-10; 600-01
Rev A*

*Design and Access Statement
Additional Transport Information prepared by Cottee transport
Planning received 18th April 2007*

2. *The permission hereby granted shall have the effect of varying condition No 11 of 06/3008/FUL as follows:*

“The floor space hereby permitted shall not vary from the following:

*Gross Floor space: 9014 square metres
Net Floor space: 5110 square metres”*

All other conditions of 06/3006/FUL shall remain in force

Reason: For the avoidance of doubt and to define the consent

3. *The landscaping of the site for development hereby approved, shall not commence until the following information additional to the information shown on indicative landscape and boundary treatment plan No 600-1 Rev A, is submitted to and agreed in writing with the local planning authority. The landscaping shall be implemented in accordance with the agreed details:*

- **Tree survey and protection measures**
- **Existing trees to be retained and protected**
- **Proposed line and level survey in particular for any mounding adjacent to Marston Road**
- **A detailed planting plan**
- **dense tree and shrub planting will be required alongside all highway boundaries to compliment the existing planting**
- **Specifications for planting methods**
- **Specifications for maintenance and management for a 2 year period**
- **Detailed hard landscape proposals for surfacing and enclosure**

Reason: To ensure satisfactory landscaping to improve the appearance of the site in the interests of visual amenity

Redevelopment of the store on the existing site with same net floor space as existing has already been agreed as it will not conflict with the guidance set out in PPS6 or development plan policy. The case put forward by the applicant as to why an increase in gross floor space is necessary is accepted. It also presents no significant concerns with regards to traffic generation or highways issues generally. Accordingly there is no objection in principle to the development.

The new store will also be a modern store improving the quality of food shopping for people living in the area as well as the access arrangements to allow people to visit the store using means of transport other than by private car. It will also potentially provide more jobs and aid the important regeneration initiatives in the area.

The Proposal has been considered against the policies below and it is considered that the scheme accords with these policies and there are no other material considerations which indicate a decision should be otherwise.

PPS1, PPS6, PPG13

Regional Planning Guidance RPG1 and draft Regional Spatial Strategy

Tees Valley Structure Plan (2004) Policies

TC1; TC3; TC4; TC5;

Stockton on Tees Local Plan (June 1997) Policies:

GP1 General Principles

Alteration No 1 policies S1; S2

BACKGROUND

1. The application relates to the ASDA store located on Portrack Lane at the roundabout junction with Marston Road. On the opposite side of Portrack Lane is the existing Big W store, to the west is the Corus pipe mill (for planning permission has been granted to redevelop for a mixed use development including 375 Nos of houses) and to the south is a caravan and camping park associated with the Tees Barrage and canoe facility. To the east is a ceramic tile shop. The

total site area extends to 2.2 hectares and comprises at present, the existing store on the site, its extensive car parking area and an area of disused scrubland to the south. Access to the store is available both from Portrack Lane and from Marston Road.

2. Planning permission was granted in December 2006 to erect a new store of exactly the same net floor area (5110 sqm – 55,000 sq ft) to replace the existing ASDA store on Portrack Lane (06/3008/FUL). The only change in floor space was to be a minor increase in gross terms to allow service functions currently outside to be brought within the building. The scheme includes a mezzanine floor of 11,000 sq ft and the new store is to be sited on disused scrubland to the south of the existing store. The store will face onto Portrack Lane and will be of a contemporary functional design with a large element of feature glazing to the front elevation and a mono roof incorporating a grid of roof lights to allow natural light into the store. The facing materials will be primarily smooth white wall cladding. The car parking area will be revamped and extended to include part of the land occupied by the current store. A total of 702 spaces will be provided. The existing store has 532. Large amounts of new landscaping are proposed around the periphery of the site.
3. The application was supported by a Planning and Retail Statement, a design and access statement, a Transport Assessment and a flood risk assessment.
4. The planning approval was subject to a number of planning conditions including condition No 2 which is a standard condition requiring the development to be carried out in accordance with the approved plans and condition No 11 which sets limits on both the net and gross floor space of the new store. Gross floor space is limited to 8,578 sqm and net floor space at 5,110 sq m as existing.

THE PROPOSAL

5. This application seeks to change the approved scheme in a number of ways which requires that conditions 2 and 11 are varied through an application under section 73 of the Town and Country Planning act 1990. Condition 2 because the approved plans are to be slightly changed and condition 11 because an increase in the approved gross floor space limits is sought.
6. The alterations sought are:
 - Alterations to the store layout including an increase in size of the mezzanine floor from 1,077 sq m by 436 sq m to 1,513 sq m
 - Construction of smoking and cycle shelters located at the side of the new store near to the service area
 - Construction of two clad 'pods' to house escape staircases and lifts on either side of the main store
 - Provision of rear fire escape
 - Construction of a covered pedestrian walkway, cycle parking and additional trolley bays
 - Construction of an ATM pod
 - Construction of a draught lobby to the front
 - Minor alterations to car park layout and access
7. Of these changes the most significant is the change to a mezzanine floor. The applicant's reasons for this are given as primarily simple human error in the original design layout which was submitted for approval. Specifically it is stated:

"In detail, the building design approved under the original application.... provided 4,033m² of net retail floor space, and therefore a mezzanine of 1,077m² of retail floor space was added to provide a total sales area of 5,110m² to, in combination, make a like-for-like replacement for the existing store. Unfortunately, to enable a mezzanine sales area to work, travellers, lifts and stairs are required with associated circulation space, and fire escape stairs and corridors are also required. No allowance was made for this at planning stage in calculating the necessary total floor space requirement and, when designed in detail, this has taken about 100m² of space at ground floor (including the addition of an entrance lobby) and 100m² of space at first floor levels. The plans submitted as part of the subject application detail the addition of the associated stair and lift pods and entrance lobby.

The updated design that ASDA has now developed has reorganized the disposition of elements within the sales area and now includes a full back wall offer of delicatessen areas and an enhanced ready meal offer. In the previous model a nominal island delicatessen was accommodated on the sales floor. The provision of this offer with associated food preparation areas to meet current retail demands has meant an increase in 236m² in the floor area of the back of house accommodation. It can be seen that the location of the back wall of the sales area has moved forward to accommodate the additional food preparation areas on the latest submitted plans.

In total the provision of the additional food preparation areas of 236m² and additional circulation areas of 200m² has meant that the mezzanine sales area, and consequently the total gross floor area of the building has increased by 436m² to maintain the approved and required net sales area."

8. The application is supported by the required Design and Access statement and additional transport information provided by consultants. An indicative landscape and boundary treatment plan is also submitted for approval.

PUBLICITY

9. The application has been advertised on site and in the press and neighbours individually notified. No objections have been received as a result of this publicity.

CONSULTATIONS

10. Environmental Health Unit: has no objections

11. Head of Technical Services comments:

"General Summary

There are no Urban Design objections to this application subject to the comments below.

Highways Comments

Following confirmation that the additional floor space will have no increase in NFS due to the design of the mezzanine floor I have no objection to this application.

Landscape & Visual Comments

The application is acceptable in both landscape and visual terms. Should this application be approved landscape conditions shall be placed to require the provision and approval of the following information prior to commencing on site"

- *Tree survey and protection measures*
- *Existing trees to be retained and protected*

- *Proposed line and level survey in particular for any mounding adjacent to Marston Road*
- *A detailed planting plan*
- *dense tree and shrub planting will be required alongside all highway boundaries to compliment the existing planting*
- *Specifications for planting methods*
- *Specifications for maintenance and management for a 2 year period*
- *Detailed hard landscape proposals for surfacing and enclosure*
- *Sustainable Urban Drainage*

12. Environment Agency: No objections

13. Northumbria Water: no comment received but had no adverse comments on the previous proposal.

14. Northern Gas: no objections

15. CE Electric: provides information on electricity supply in the area

16. Highways Agency: no objection but is concerned about any further increase in floor space and recommends that the permission defines and limits the floor space to that set out in the current application.

17. Development Plans: Final comments are awaited but has stated:

"We do not consider this to be a gross increase, but something that should probably come out of the net floor area in any case.

We do not consider that SBC has opened the door in any way to gross increase of floor space of any kind, as the "gross increase" permitted was solely to bring the lorry unloading bay under cover, and did not increase any other floor area use. The approval was granted on the understanding that it was like-for-like replacement store in all respects.

If we are to consider the proposal, then the applicant will also be required to demonstrate that there will not be any increase in turnover resulting from the development: an RIA may be required, along with detailed floor plans showing how this will operate in the mezzanine.

In short, it is not possible to comment more thoroughly without scrutinising detailed proposals."

18. Head of Regeneration: comments

"Having now established that the store's net retail floorspace is controlled by a planning condition, and that you are satisfied that this will prove to be more robust than a legal agreement in restricting potential sales area expansion plans in the future, I am happy to withdraw Regeneration's concerns regarding this Section 73 planning application. Provided that the LPA has this effective control over net retail floorspace, then a like for like sales area is maintained and detrimental impact on the vitality and viability of existing centres in the Borough prevented"

PLANNING POLICY

19. Relevant planning policy guidance is contained national policy statements and the development plan.

National Planning Policy Guidance

PPS1 – Delivering Sustainable Development (February 2005)

20. PPS1 builds on the principles set down in PPG1 and emphasises the contribution the planning system can make to achieving sustainable development and a high standard of design.

PPS 6 – Planning For Town Centres (March 2005)

21. Planning Policy Statement 6 (PPS6) sets out the Government's approach to the provision of town centre uses.

22. The key objective of PPS6 is to promote the vitality and viability of town centres, both by planning for the growth of existing centres and by promoting and enhancing existing centres, by focusing development in such centres and encouraging a wide range of services in a good quality environment, which are accessible to all. The Statement sets out further objectives which should be addressed as a means by which to achieve the overall key objective:

- “Enhancing consumer choice by making provision for a range of shopping, leisure and local services, which allow genuine choice to meet the needs of the entire community, and particularly socially excluded groups;
- Supporting efficient, competitive and innovative retail, leisure, tourism and other sectors, with improving productivity; and
- Improving accessibility, ensuring that existing or new development is, or will be, accessible and well served by a choice of means of transport.”

23. Section 3 of PPS6 sets out the considerations which should be taken into account by Local Planning Authorities in determining planning applications for all proposals relating to main town centre uses, with paragraph 3.1 of PPS6 confirming that the considerations apply to the redevelopment of existing facilities as well as to the development of new facilities and at 3.4 that applicants should be required to demonstrate the following:

- (a) The need for the development;
- (b) That the development is of an appropriate scale;
- (c) That there are no more central sites for the development;
- (d) That there are no unacceptable impacts on existing centres; and
- (e) That locations are accessible.

24. In addition to the considerations discussed above, PPS6 states that the following material considerations may also be taken into account in assessing planning applications for a main town centre use:

- Physical regeneration;
- Employment creation;
- Economic growth; and
- Social inclusion.

Planning Policy Guidance Note 13 - Transport (March 2001)

25. The advice on locating new retail development is reinforced by Planning Policy Guidance Note on Transport (PPG13), which was published in March 2001. The key aims of the Guidance are set out in the introductory text, namely to integrate planning and transport at the national, regional, strategic and local level to:

- Promote more sustainable transport choices for both people and for moving freight;
- Promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; and
- Reduce the need to travel, especially by car.

26. Paragraph 35 sets out the guidance relating to shopping development and is consistent with PPS6 in that it also emphasises that new retail development should be focused in existing shopping centres where it is likely to be most accessible to the population by a variety of means of transport.

Development Plan Policy

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. In this case the relevant Development Plans are the Regional Spatial Strategy (RSS), Tees Valley Structure Plan (TVSP) and the Stockton on Tees Local Plan (STLP)

Regional Planning Policy

RPG1 - Regional Planning Guidance for the North East (November 2002)

28. RPG 1 was published in November 2002. The guidance sets out the broad strategic planning policies as well as a broad development strategy for the region over a 15 to 20 year period. The aim of the Spatial Strategy is to:

“Continue to strengthen and diversify the economy, improve living conditions and safeguard the region’s outstanding cultural and natural heritage to create a truly sustainable future for the North East.”

Regional Spatial Strategy (2005)

29. A review of the planning framework at the regional level is under-way with the production of Regional Spatial Strategies (RSS).An RSS Submission Draft (“View: Shaping the North East”) was published in July 2005 and has been subject to an Examination in Public, draft findings published and the response from the Secretary of State issued in May. The RSS is currently expected to be adopted in 2007, and will supersede RPG 1 as the Regional Spatial Strategy.

Structure Plan Policy

Tees Valley Structure Plan (2004)

30. The Tees Valley Structure Plan was adopted January 2004. The strategic retail aim is to maintain and enhance the vitality and viability of the town and district

centres. The plan contains four policies which are relevant to the proposal. These are: -

Policy TC1 - aims to maintain and strengthen the vitality and viability of the Town Centre within the county

Policy TC3 – aims to guide future retail development and ensure that it is appropriate to the role of the respective centres. For this purpose an agreed hierarchy of centres has been established. In determining development proposals, Local Authorities are urged to take account of the size of the development, scale, massing and character of the centre.

Policy TC4 – establishes a sequential approach to large scale shopping developments by attempting to direct such development to defined town centres or the edge of the centres. Policy TC4 reaffirms advice contained within PPG6 that locating large-scale retail developments within the defined centres will help ensure their continued vitality and viability.

Policy TC5 – advises that major out-of-town retail developments are generally not acceptable because they generate many unnecessary journeys, are overly reliant on the use of the private car and are not easily accessible by other modes of transport. This policy clarifies *inter alia* that out-of-centre retail development will only be permitted where the development is justified in terms of need, the likely cumulative effects of the proposed development would not undermine the vitality and viability of any nearby town or district centre and the proposed development will incorporate measures to reduce reliance on the motor car.

Local Policy

Stockton-on-Tees Local Plan (1997)

31. .Relevant policies are:

32. Policy GP 1 requires proposals for development to be examined in relation to policies in the structure plan and a number of criteria. The criteria Include:

- The external appearance of the development and its relationship with the surrounding area
- The effect on the amenities of the occupiers of nearby properties
- Provision of satisfactory access and parking arrangements
- Need for a high standard of landscaping

Alteration No 1 (2006)

33. The Council has undertaken a partial review of the Adopted plan, Alteration No 1 which was adopted in March 2006. The plan deals solely with retail and town centre proposals and developments that lie in flood risk areas. Reflecting the renewed emphasis on town centres for retailing; shopping policies in the alteration to the local plan seek to maintain the existing town centres as the dominant element in the shopping hierarchy. New investment should be delivered towards existing centres as far as is possible, in line with the general approach to sustainable development. Relevant Policies are:

34. *Policy S1* – aims to guide future retail development and ensure that it is appropriate to the role of the respective centres. For this purpose an agreed hierarchy of centres has been established.

35. *Policy S2* – advises that proposals for new or extensions to major retail development outside the primary shopping areas will not be permitted unless there is a clearly defined need for the proposed development, it can be clearly demonstrated that there are no other sequentially preferable sites or premises, the proposal would not have an adverse impact on the vitality and viability of any defined centre and the proposed development would be accessible by a choice and means of transport whilst assisting in reducing the need to travel by the motor car.

MATERIAL PLANNING CONSIDERATIONS

36. The principle of a like for like replacement of the existing Asda store on Portrack has been established with the previous permission. From the consultation responses and policy concerns, two primary issues can be identified. These are whether the allowing the not insignificant increase to the internal mezzanine floor breaches planning policy in respect of out of centre development and whether the other physical changes proposed to the approved layout and design of the store are acceptable.

Planning Policy

37. In accordance with PPS 6 the applicant in its retail assessment provided for the original development last year, carried a number of tests that should be applied to the proposed development - need; a sequential approach; impact on the vitality and viability of centres and transport issues. However, the Spatial Planning Officer was of the view that as the proposal involved a like-for-like replacement of an existing store on the same site, it was not necessary in this instance to undertake either the sequential site selection or a Need assessment. There is no increase in the existing floor space, and in essence, the only change is the format and layout of the site.
38. With regard to the current proposal to increase the gross floor space a more cautious approach has been taken and the authority needs to be satisfied that the development remains a like-for-like replacement. In response the applicant's consultant has commented:

"[A] simple human error at ASDA that has meant that the 55,000 sq ft net floor space quoted in the extant consent, within the Planning and Retail Statement to drive the proposed store's turnover and on the approved application plans cannot actually be delivered on the ground. I have also attached the block plans mentioned therein. I trust this clarifies matters a little.

2. We appreciate that the store as approved was intended to be a like-for-like replacement facility and it is for this reason that we are so keen to ensure the approved net sales floor space can be delivered. We similarly appreciate that it is counterintuitive that a modern store requires larger "back of house" areas than the existing store and hence a larger gross floor area. As your colleagues comment, this is due in part to the changes to the warehouse layout and servicing arrangements ASDA now utilise as well as customer expectations of increased circulation space, more stringent fire strategy requirements and the implications of "access for all" arrangements throughout the store.

3. As outlined above and in my letter, there is no proposed increase in net sales area from the existing store or the consented store in terms of the analysis undertaken to support the development. Simply, there is a requirement to amend the plans to show how the approved net floor space can be accommodated on the site. As a result, there is no need for any additional retail analysis as the turnover of the store will not increase - store turnover in retail assessments is driven by the net sales area.

I hope this answers their concerns. As you will appreciate, it is imperative that the new store delivers at least the net sales area for which consent has been granted and which exists on site at present - 55,000 sq ft - to ensure customer expectations continue to be met. I would re-iterate that we are seeking only to vary the Condition as it relates to gross floor space and crucially not the net floor space figure that is of concern to retail planners."

39. The response from Spatial Planning Officer is awaited but it is understood that provided the restriction on net floor space is maintained no further objection will be made.

External changes

40. The proposed alterations to the approved plans represent relatively minor change to the external appearance of the building. The lift pods, ATM pod and draft lobby (the main changes) will match in design and appearance and do add to the net floor space. Consequently no objection is raised to these alterations.
41. The proposed covered pedestrian walkway will link the store entrance to the car park areas and to the main pedestrian ingress point into the site. As such it will provide weather protection for the store customers. Other changes include a very marginal re-siting of the store to improve servicing and provide better landscaping to the rear of the store onto Marston Road as well slight changes to the configuration of the car park. Again no objection is raised against these changes.

Other matters

42. Other concerns regarding full landscaping details can be secured through the provision of appropriate planning conditions or are already controlled by conditions imposed on the previous permission which should be conditioned to remain in force.

Procedural Matters: Referral to Secretary of State

43. Should Members be minded to approve the application then the Council will be required to notify the Secretary of State, before granting planning permission. This is set out in the Town and Country Planning (Shopping Direction) (England and Wales) (No.2) Direction 1993.

CONCLUSIONS

44. Redevelopment of the store on the existing site with same net floor space as existing has already been agreed as it will not conflict with the guidance set out in PPS6 or development plan policy. Whilst there were initial concerns about agreeing an increase in gross floor space the case put forward by the applicant as to why this is necessary is accepted. It also presents no significant concerns with regards to traffic generation or highways issues generally. Accordingly there is no objection in principle to the development.
45. The new store will also be a modern store improving the quality of food shopping for people living in the area as well as the access arrangements to allow people to visit the store using means of transport other than by private car. It will also potentially provide more jobs and aid the important regeneration initiatives in the area.

46. Subject to a satisfactory revised legal agreement and reference to the Secretary of state in accordance with the Shopping Directive of 1993, it is recommended that approval of the application be granted.

Director of Development and Neighbourhood Services

Contact Officer: Peter Whaley

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Financial Implications: None

Environmental Implications: See report

Human Rights Implications: The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Community Safety implications: None

Background Papers: Application files 06/1270/FUL and 06/3008/FUL

Ward(s) and Ward Councillors:

Stockton Town Centre Ward

Councillor P Kirton
Councillor D Coleman