
2020/1479

Variation of condition 1 of planning permission 2015/0987 to enable the sale of food and drink goods up to 250sqm net within unit 1

Unit 2, The Range, Peel Centre Retail Park, Harborough Hill Road, Barnsley, S71 1JE

Site Location and Description

The Peel Retail Park is located on Dryden Road, off Harborough Hill Road

The unit to which this application relates is towards the entrance of the main site and is occupied by The Range. The application site is the whole retail park because the application relates to a variation of a condition on a planning application relating to the entire retail park.



Site History

2015/0987 and 0988 – complex history of variation of conditions permissions on the site culminating in these two permissions which cover the whole site. Permission 2015/0987 includes a condition no. 1 which indicates that not more than 1,394 sq m of net sales area in total across units including unit 2 may be used for the retail sale of food and drink.

2015/1028 – planning permission granted 3 October 2016 for construction of a new retail unit adjacent to The Range (on land that remains in use as a garden centre in association with The Range)

The condition in question is worded:

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, and the Town and Country Planning (General Permitted Development) Order 1995, or any equivalent provisions in any statutory instrument amending revoking and/or re-enacting either or both of those Orders:

-Unit 7 shall be occupied as a leisure facility and sports good retail premises.

(A) Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur:

(1) Unit 4 shall only be used by a catalogue showroom retailer for sale and display of items listed within their catalogue. The following exceptions to the items that can be sold from the

catalogue shall apply: pharmaceuticals, hot or cold food, groceries, sweets, alcoholic and non-alcoholic drinks, tobacco, magazines and newspapers, for which there shall be no sales permitted whatsoever (for the avoidance of doubt, after the earlier of the events referred to in (A) above has occurred, Unit 4 may be used for any non-food retail purpose and for the sale of food and drink subject to the limitations within (A) (3) below;

(2) Units 3C, 5 and 6 may be used for any non-food retail purpose and for the sale of food from a maximum of 30% of the net sales area of any of these individual units (except where (A) (3) below permits a greater area to be used for the sale of food and drink);

(3) Not more than 1,394 sq.m. of net sales area in total, across all of Units 1A, 1B and 1C, 2, 2A, 3A, 3B and 3C, 4, 5, 6 and 8, may be used for the retail sale of food and drink (in relation to Units 3C, 5 and 6 that being (if applicable) in addition to any area permitted by A(2) above, which shall not be taken into account in calculating the net sales area permitted by this paragraph).

(B)

Until the earlier of (a) the expiry of a period of 5 years from the date of this permission or (b) the date of the occurrence of that one of the circumstances mentioned in (C)(1) and (2) below as is first to occur, after which any non-food retail purpose is permitted together with the sale of food and drink, subject to the limitations within A(3) above, none of the Units 1A, 1B, 1C, 2, 3A, 3B and 8 shall be used for the retail sale (other than related to the principal use of the premises) of food (except where permitted in A(3) above) or for the sale of any of alcoholic drink; tobacco; watches or clocks; books; newspapers or magazines; clothing or footwear; fashion accessories; jewellery; toys; perfume and toiletries; music, records, audio or video tapes; pharmaceutical goods or sports goods without the prior written consent of the Local Planning Authority except where such goods are sold for use for animals, except;

By an existing tenant, defined as a retailer who is in occupation of one of these units at the date of this permission, in which case that retailer may use that unit for any non-food retail purpose (with the exception of fashion retail -clothes, shoes & jewellery, where a maximum of 10% of the net sales area of each unit would be allowed).

(C)

The circumstances referred to in (A) and (B) above are:

(1) an agreement for lease or leases have been entered into in relation to five of the six anchor / MSU retail units on the proposed Better Barnsley redevelopment scheme (unit references A1, MSU 1, 2, 4, 5 and SU16 as shown on IBI drawing reference SP_00_001); or

(2) a period of 2 years having expired since the date of this permission, without agreements for lease having been exchanged, or leases entered into, relating to two or more of those six units referred to in C(1) above;

(D)The references to numbered units within this condition are references to the units so numbered on drawing number MH877-03.

Reason: In order to offer protection to the Better Barnsley Scheme and in accordance with saved UDP policy S3.

Proposed Development

The applicant seeks permission to vary condition no 1 (and specifically part A3) to allow the additional sale of food and drink goods up to 250sq m within The Range.

The application is supported by a planning statement which submits that:

- There appears to be capacity within the provisions of the existing condition 1 of 2015/0987 for at least 250sq m retail sale of food and drink in The Forge without any breach of the condition
- Since the applicant has not corroborated these figures with the other retailers at the Peel Retail Park and wish to propose a food and drink allowance within their unit, they go on to consider the impact of Local Plan policies TC1, TC3 and TC4
- They make the point that the proposal cannot be disaggregated from rest of the unit but also note that they have an unexpired lease which lasts until October 2031.
- The proposal involves the sale of mainly frozen, non-perishable items in area up to 250sq.m net which represents 7.2% of the gross floor area of The Range (3.468sq.m)
- The goods will be sourced from Iceland, who already operate from Peel Retail Park under at The Food Warehouse – as such the proposed goods are already sold from another unit at the Retail Park
- It is maintained that the proposal is locationally specific and therefore on the basis of planning practice guidance a sequential assessment should not be required. They have however submitted a sequential assessment, based on the advice in the NPPF, for a store the same size as The Range (excluding the garden centre) ie 2,800 sq m with on site parking. They make the case that the applicant is not a developer and will not consider building a new store.
- The sequential assessment concludes that there is not a sequentially preferable, suitable and available unit available in Barnsley Town Centre
- They note that the thresholds set in policy TC3 indicate that there is not policy basis to require a retail impact of the proposal. They have however submitted a retail impact assessment and note the NPPF policy that permission should only be denied where there is a significant adverse impact on investment or on vitality and viability.
- The assumed turnover of the proposed convenience goods sales area in 2023 is £1.88m (this is not moderated by the loss of existing sales from that area). The Council's Barnsley Town Centre Retail Study 2014 indicates that the towns convenience goods turnover was £75.37m in 2012. It is concluded that the impact of the proposal on existing town centre food stores in 2023 would be 0.05% and that the overall trade diversion of convenience goods expenditure would be 0.34%. It is concluded that there would be no material harm to the vitality and viability of the town centre.

Policy Context

Planning decision should be made in accordance with the development plan unless material considerations indicate otherwise and the NPPF does not change the statutory status of the development plan as the starting point for decision making.

The new Local Plan was adopted at the full Council meeting held 3th January 2019 after it was found to be sound by the appointed Planning Inspector following the examination process. This means that it now takes on full weight for decision making process in planning law terms as the development plan for the Borough, superseding the remaining saved policies from the Unitary Development Plan (adopted in the year 2000) and the Core Strategy (adopted in 2011).

Local Plan

The site is allocated as a Retail Park within the Local Plan Proposals Maps and therefore the following policies are relevant:

Policy SD1 Presumption in favour of Sustainable Development – indicates that we will take a positive approach reflecting the presumption in favour of sustainable development in the National Planning Policy Framework and that we will work proactively with applicants to find solutions to secure development that improves the economic, social and environmental conditions in the area

Policy GD1 General Development – sets a range of criteria to be applied to all proposals for development.

Policy TC1 Town Centres – indicates that new retail development will be directed to centres in order to maintain and enhance their vitality and viability and that a sequential approach will be used to assess proposals for new retail and town centre development outside the designated centres.

Policy TC3 Thresholds for Impact Assessments – sets thresholds for requiring an impact assessment of retail and leisure uses. In the case of Barnsley Town Centre, an impact assessment is only required if the proposal is within the catchment and in excess of 2,500 sq m gross.

Policy TC4 Retail Parks – indicates that retail warehouses will be allowed in retail parks and that other uses will be allowed where the role, character and function of the retail park will not be adversely affected.

NPPF

The National Planning Policy Framework sets out the Government's planning policies for England and how these are expected to be applied. At the heart is a presumption in favour of sustainable development. Development proposals that accord with the development plan should be approved unless material considerations indicate otherwise. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or where specific policies in the Framework indicate development should be restricted or unless material considerations indicate otherwise.

Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre.

Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

When assessing applications for retail/leisure outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a threshold, whether set locally, or 2,500m². This should include an assessment of the impact on investment in centres in the catchment area and on the town centre vitality and viability.

Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on investment or vitality and viability, it should be refused.

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Supplementary Planning Documents (SPD):

SPD Parking

Consultations

Ward Councillors – no comments

Representations

The application has been advertised via letters direct to neighbours on the retail park and by means of site notice; no representations have been received.

Assessment

Principle of development

The proposal involves a variation of the condition controlling the goods that may be sold in unit 2 on this out of centre Retail Park. The proposed goods are not bulky goods and therefore there is policy conflict with Local Plan policy TC4 Retail Parks. Since the proposal is not in conformity with an up-to-date local plan, it is also in conflict with Local Plan policy TC1 Town Centres – which amongst other things signals the use of the sequential approach to new retail and town centre development. Although the proposal does not fall within the thresholds set out in Local Plan Policy TC3 Thresholds for Impact Assessments, the applicant notes the relevance of policy TC1 in seeking to protect the town centre and has submitted a retail impact assessment. These detailed policy issues are considered in the following section.

Retail policy

The applicant's evidence in relation to the sequential assessment and retail impact are accepted. Even if the applicant were willing to relocate there is not a sequentially preferable location for this retail use and the retail impact of the proposal is not significantly adverse.

The submission in relation to policy TC4 is brief but the most significant points are that the proposal amounts to only 7.2% of the gross floor area of The Range, and that the proposal involves the sale of food and drink goods sourced from Iceland, goods that are currently and will continue to be sold on the retail park from The Food Warehouse. The applicant agrees to the varied condition including a limitation that the variation will only benefit the Forge and no other tenant of the unit. As such it is concluded that the limited introduction of convenience goods to this unit will not adversely affect the role, character and function of the unit nor of the retail park.

The locationally specific argument that the applicant makes is not accepted. They appear to be suggesting that because they have an unexpired lease, their business model has changed and they are not developers (ie they do not build their own premises) they should be allowed to vary the goods condition in spite of the Local Plan retail park policy which seeks to restrict the sale of goods. Planning guidance specifically notes that land ownership does not provide a locationally specific justification, and the key issue for a sequential assessment is whether there is a sequentially preferable location that could accommodate the proposal – their business model would be a material consideration would does not go to the heart of how the sequential approach should be applied. However, this argument is not critical because of the conclusions reached above.

It is concluded that the applicant has demonstrated that there are no sequentially preferable sites currently available to accommodate the proposed development, that the proposal will not have a significant adverse impact on the Town Centre and that, subject to the suggested condition limiting the variation of the condition to the Forge and to no other operators of unit , that the proposal will not adversely affect the role, character and function of the retail park.

The condition is amended as proposed, with the addition of the variation applying only for the benefit of the applicant (which has been agreed with the agent); and the conditions being amended to refer to the date of the grant of the previous planning permission (3 October 2016) and the up to date versions of legislation. References to the Better Barnsley scheme (which is now called the Glassworks) have not been changed where the reference is made in connection to an approved plan. The remaining conditions are reimposed with changes only to the reasons to reflect the change in Development Plan or to refer to the up to date version of legislation.

Recommendation

Grant subject to conditions