



Report to: Planning Committee, 21st February 2019

Report of: Deputy Director – Economic Development and Planning

Subject: APPLICATION P18K0410: APPLICATION TO REMOVE CONDITION 2 OF PLANNING APPLICATION P85C0447 TO ALLOW OCCUPATION/TRADING BY ANOTHER OCCUPANT, FORMER 'HOMEBASE' STORE, HYLTON ROAD

1. Recommendation

The Deputy Director – Economic Development and Planning recommends that the Planning Committee grant permission to remove condition 2 of application P85C0447.

2. Background

- 2.1 The application has been referred to the Planning Committee at the request of Councillor Udall on grounds of impact on the St Johns retail area.
- 2.2 The application was received on 9th October 2018 and the target date for determination has been extended to 22nd February 2019.

3. The Site and Surrounding Area

- 3.1 The application site comprises the existing Homebase retail store located on Hylton Road within the St Johns area of the City. The building is occupied by Homebase and is set within a retail park occupied by McDonalds and Aldi . To the north the site is bordered by the railway viaduct and to the west by residential properties at St Clements Court.
- 3.2 The Homebase store extends to 4,859 sq.m. and there is an external garden centre extending to 1,395 sq.m.

4. The proposal

- 4.1 Application P85C0447 granted consent for "Redevelopment to provide a retail store and garden centre and retail sub let unit and associated car park and restaurant" at land at the corner of Tybridge Street and Hylton Road. This application was approved 1st June 1986.
- 4.2 Application P85C0447 was the subject of the following condition:

"The permission hereby granted shall enure for the benefit of Homebase Limited only and not for the benefit of any other person whomsoever, provided that the area of 10,000 sq.ft. shown as the sublet unit on the submitted plan 3369/123E may be operated by a person, company or body other than the Applicant."

The reason for the above condition is given as follows:

"To enable the Council to maintain control over the use and development of the site."

- 4.3 The effect of the above condition is that the approval acts as a personal permission for Homebase, who have traded from the site since the approval was implemented, to the exclusion of any other retailer. This means that no occupier other than Homebase can trade from the site (with the exception of the sublet unit). The submitted proposal seeks to remove this condition. This in turn would enable another retailer to trade from the site, allowing the applicant, The Range, to occupy the unit.
- 4.4 This application is referred to Planning Committee in conjunction with application P18K0411 which seeks to vary a condition restricting the goods which can be sold from the store. Associated with this application a deed of variation to the section 52 agreement to amend the goods/trader restrictions on the store is proposed. Full consideration of this is given under the planning committee report associated with application P18K0411.
- 4.5 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council's website. As such, Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

5. Planning Policy

- 5.1 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be taken into account. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan, unless material considerations indicate otherwise.
- 5.2 The Development Plan for Worcester now comprises:
- The South Worcestershire Development Plan (SWDP) which was adopted February 2016
 - The Worcestershire Waste Core Strategy, which was adopted in December 2012

South Worcestershire Development Plan (SWDP)

- 5.3 The following policies of the SWDP are considered to be relevant to the application proposals:-

SWDP 1	Overarching Sustainability Principles
SWDP 3	Employment, Housing and Retail Provision Requirement and Delivery
SWDP 9	Creating and Sustaining Vibrant Centres

National Planning Policy Framework (NPPF)

- 5.4 The updated version of the National Planning Policy Framework (NPPF) was published and came into effect on 24th July 2018. The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It constitutes guidance for local planning authorities and decision takers and is a material planning consideration in determining planning applications.
- 5.5 All the policies in the NPPF constitute Government's view of what sustainable development in England means in practice: an economic role, contributing to a strong, responsive, competitive economy; a social role, supporting vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations and by creating a high quality built environment with accessible local services that reflect the community's needs; and an environmental role, protecting and enhancing our natural, built and historic environment. Economic, social and environmental improvement should be sought jointly and simultaneously.
- 5.6 Paragraph 38 of the NPPF encourages Local Planning Authorities to approach decision taking in a positive way and to foster the delivery of sustainable development. Local Planning Authorities are advised to approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

National Planning Practice Guidance (NPPG)

- 5.7 On 6th March 2014 the Government also published National Planning Practice Guidance (NPPG) that has been revised and updated in the meantime and comprises, amongst other matters: Air Quality, Health and Wellbeing, Noise, and Use of Planning Conditions.

6 Planning History

- 6.1 There following application is relevant to the current proposal:

P85C0447 "Redevelopment to provide a retail store and garden centre and retail sub let unit and associated car park and restaurant"

P01A0240 "Erection of single retail warehouse building of 2,015 square metres gross and extension to existing retail warehouse with associated garden centre, additional parking spaces, customer and service access from Tybridge Street and works to provide independent curtilage to 52 Tybridge Street."

7. Consultations

- 7.1 Formal consultation, including display of site notices, has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

Worcestershire County Highways- No objection

Planning Policy Officer-No objection

Economic Development Team Leader- No objection

- 7.2 No letters of representation have been received in relation to this proposal. St Johns Traders association were consulted on the proposal but have not commented.
- 7.3 Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.

8. Comments of Deputy Director – Economic Development and Planning

8.1 It is considered that the main issue for consideration in the determination of this application is as follows:

- Principle of the proposed removal of condition and impact on the City Centre and St Johns Centre

Principle of the proposed removal of condition and impact on the City Centre and St Johns Centre

- 8.2 The submitted proposal seeks to remove a condition which specifies the name of the retailer to occupy the premises. The applicant considers that the condition is no longer necessary and essentially amounts to a personal permission. To enable another retailer to occupy the premises it is necessary to remove this condition.
- 8.3 The reason specified for attaching this condition stated that the condition was necessary "*To enable the Council to maintain control over the use and development of the site.*" It is Officer opinion that the condition is not necessary to maintain control over the use and development of the site as this is effectively controlled by other conditions and the section 52 agreement associated with the site. Given this, it is Officer opinion that no harm would arise from any other named occupier operating from the premises.
- 8.4 Paragraphs 54, 55 and 56 of the NPPF and the NPPG provide guidance on the appropriate use of conditions. The NPPG states that planning conditions should only be imposed where they are:

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

It is Officer opinion that a personal condition which restricts the occupier of this unit in the interests of maintaining control over the use and development of the site would not meet the six aforementioned requirements in that this condition is not necessary to ensure the appropriate use of this land. The type of occupant (A1 retail) is controlled by the planning permission and the type of goods to be sold is controlled through the host application and related section 52 agreement.

I can see no harm that would arise on either the City Centre or St Johns District Centre in allowing another named trader to occupy these premises. Furthermore, I would add that the removal of the condition is necessary in any case to allow any trader to occupy this unit once Homebase vacate the premises: it is therefore necessary to prevent the property from remaining vacant and the current condition prevents the continued use of the unit for retail use. There are therefore merits in the deletion of this condition to allow another named trader to occupy these premises.

- 8.5 It should be noted that the NPPG guidance on conditions advises against the use of conditions which limit the benefits of planning permission to certain groups of people advising that unless the permission otherwise provides, planning permission runs with the land and it is rarely appropriate to provide otherwise. Given this I consider a condition which restricts a development to a specified retailer, in this case Homebase, to be contrary to current NPPG guidance on conditions and therefore welcome the removal of this restriction.
- 8.6 It is Officer opinion that enabling another retailer to trade from the premises would not have any impact on the highway network given that the unit is currently, and would remain in, retail use. This is confirmed by the lack of objection from Worcestershire County Highways. The continued trading by another retailer would not have any impact on the amenities enjoyed by neighbouring residents, including the properties of St Clements Close which border the site to the west.
- 8.7 On balance the removal of the condition is welcomed as it would enable the continued use of the premises once Homebase cease trading from the unit.

9. Conclusion

- 9.1 The above assessment of the planning application demonstrates that the application responds to, and is in accordance with, the requirements of relevant planning policy and material considerations relevant to the determination of the application.
- 9.2 I acknowledge all comments received as part of the consultation process, especially those of local residents and consider all material planning issues have been considered including those of the NPPF including economic, environmental and social, as well as diversity, in the determination of this application.
- 9.3 I am satisfied that adequate and appropriate information has been submitted as part of this planning application in order for an informed decision to be reached.
- 9.4 For the above reasons I consider the application acceptable and should be supported.

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Background Papers: Application P85C0447