



Report to: Planning Committee, 21st February 2019

Report of: Deputy Director – Economic Development and Planning

Subject: APPLICATION P18K0411: APPLICATION FOR VARIATION OF CONDITION 2 OF APPLICATION P01A0240 (RESTRICTION OF RETAIL SALE CATEGORIES), FORMER HOMEBASE LTD, HYLTON ROAD

1. Recommendation

1.1 The Deputy Director – Economic Development and Planning recommends that the Planning Committee:-

- i. grant permission to vary condition 2 of application P01A0240 to the following:**

“Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, the units shall only be used for sale of carpets, furniture, furnishings, electrical goods, automotive and cycle products, DIY maintenance and improvement products for the house and garden, pets and pet products, and office equipment and accessories (including blank cassettes and compact discs relating to computers and computer products).

The sale of goods within the following categories shall be permitted from a maximum of 925 square metres of the store only:

- (i) Food and drink**
- (ii) Clothing including children’s clothing and sports wear**
- (iii) Stationary items and post office services**
- (iv) Shoes**
- (v) Toys and sports goods**
- (vi) Fashion accessories including handbags and luggage**
- (vii) Watches and jewellery**
- (viii) Perfume and toiletries**
- (ix) Pharmaceutical items**
- (x) Books**
- (xi) Music, records, CD’s, pre-recorded videos and audio tapes**

The retail sale of goods shall not be permitted other than as detailed above and the store shall be used for no other purpose (including any other purpose in Class A of the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that order with or without modification) without prior written agreement with the local planning authority.

For the following reason:

To safeguard the vitality and viability of the City Centre and St Johns District Centre in accordance with the aims and objectives of SWDP10.”

- ii. Approve the variation of the Section 52 Agreement dated 21st April 1986 as amended by previous Deeds of Variation dated 24th July 2001 and 19th November 2015 respectively.**

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 the “Redevelopment to provide a retail store and garden centre and retail sub let unit and associated car park and restaurant.” This permission was the subject of a Section 52 Agreement dated 21st April 1986. Paragraph 5 of the Second Schedule to that agreement specified the following:

“The Site shall not be used for the retail sale of goods except for goods falling within the description in Column I below subject to the limitations as to gross retail floor space expressed in Column 2 below and there shall be no outside storage or display or retailing of goods other than on those areas provided for those purposes and shown hatched yellow on the Plan appended hereto:

(i) Building materials, plumbing fittings, tiles, flooring, rainwater goods, ironmongery, timber doors wallboards, insulation, felt, double glazing kits, paint, paint sundries, wallpaper, textiles and fabrics (excluding ready made products) for home furnishing, cement, plaster, loft and general ladders, adhesives, tools (including power tools) kitchen furniture and bathroom fittings, workwear for protective gardening purposes, glass, central heating products, timber and timber doors, electrical and lighting products, books and other publications, cleaning materials, ceramic pots, key cutting service- NO RESTRICTION

(ii) Garden equipment including garden sheds, fencing, stone walling, paving slabs, lawn mowers, hedge trimmers, plants and trees, Beat, fertilizers, insecticides and greenhouses. Together with other goods and materials of a similar nature and used for similar purposes- NO RESTRICTION

All retail activity (including display and ancillary storage of goods) relating to goods described hereafter shall take place wholly within that part of the Premises comprising 10,000 sq.ft. of gross retail floor space described as. A sublet unit in the Application and shown hatched blue on the plan appended hereto

(iii) Furniture (including flat pack furniture) fabrics and carpets- NO RESTRICTION

(iv) Household electrical goods and equipment- NO RESTRICTION

(v) Sports and leisure equipment clothing and footwear- The gross retail floor space devoted to sports and leisure clothing and footwear shall not exceed 3000 sq.ft

(vi) Toys- Not to exceed 1,000 sq.ft.

(vii) Soft Furnishings- Not to exceed 1,000 sq.ft.

(viii) Car accessories- Not to exceed 1,000 sq.ft."

- 4.2 Application P01A0240 granted consent for the "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." This permission was the subject to the following condition:

"Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, the new retail units shall not be used for the sale of food (other than confectionery) and shall only be used for sale of carpets, furniture, furnishings, electrical goods, automotive and cycle products, DIY maintenance and improvement products for the house and garden, pets and pet products, and office equipment and accessories (including blank cassettes and compact discs relating to computers and computer products) and for no other purpose unless a further planning permission has been granted to widen the permitted range of goods.

For the following reason:

To restrict the retail impact of the development in accordance with the relevant policies in the City of Worcester Local Plan 1998."

- 4.3 A deed of variation dated 24th July 2001 associated with the above application (amending the Section 52 Agreement dated 21st April 1986) had the effect of deleting Paragraph 5 of the Second Schedule to the Section 52 Agreement and replacing it with the following:

"The site shall not be used for the retail sale of goods in the following descriptions:

- (i) Food and drink
- (ii) Clothing including children's clothing and sports wear
- (iii) Stationery items and post office services
- (iv) Shoes
- (v) Toys and sports goods

- (vi) Fashion accessories including handbags and luggage
- (vii) Watches and jewellery
- (viii) Perfume and toiletries
- (ix) Pharmaceutical items
- (x) Books (other than those relating to maintenance and/ or improvements and/or repairs to home, garden or cars
- (xi) Music, records, CD's, pre-recorded videos and audio tapes provided that for the avoidance of doubt blank tapes and compact discs relating to computers and computer products are not included in such a description.

- 4.4 A further deed of variation was authorised on 5th November 2015. This had the effect of further varying paragraph 5 of the original Section 52 Agreement to permit the sale by a Catalogue Showroom retailer only of all of the items detailed in 4.3 above (with the exception of food and drink) from up to a maximum of 185m² of the existing sales area. A Catalogue Showroom Retailer is defined as a retailer selling a wide selection of non-food (class A1) goods elected by the visiting public from a catalogue or digital browser and supplied to them fully packaged. This use was not implemented.
- 4.5 The effect of the above condition 2 of planning application P01A0240 and the aforementioned Section 52 Agreement (as amended) is that the store can only be used for the sale of the goods listed in section 4.2 above and that up to 185 m² of floor space can be used for the sale of the non foods goods detailed in section 4.3 above by a Catalogue Showroom Retailer. Therefore, in order for the store to sell a wider range of non-bulky goods not listed above it is necessary to vary condition 2 and the associated Section 52 Agreement..
- 4.6 The submitted proposal seeks to vary condition 2 of application P01A0240 to allow for a wider range of goods to be sold from the store. It is proposed that the condition be amended to read as follows:

"Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, the units shall only be used for sale of carpets, furniture, furnishings, electrical goods, automotive and cycle products, DIY maintenance and improvement products for the house and garden, pets and pet products, and office equipment and accessories (including blank cassettes and compact discs relating to computers and computer products).

The sale of goods within the following categories shall be permitted from a maximum of 925 square metres of the store only:

- (i) Food and drink
- (ii) Clothing including children's clothing and sports wear
- (iii) Stationary items and post office services
- (iv) Shoes
- (v) Toys and sports goods
- (vi) Fashion accessories including handbags and luggage
- (vii) Watches and jewellery
- (viii) Perfume and toiletries
- (ix) Pharmaceutical items
- (x) Books
- (xi) Music, records, CD's, pre-recorded videos and audio tapes

The retail sale of goods shall not be permitted other than as detailed above and the store shall be used for no other purpose (including any other purpose in Class A of the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that order with or without modification) without prior written agreement with the local planning authority.

For the following reason:

To safeguard the vitality and viability of the City Centre and St Johns District Centre in accordance with the aims and objectives of SWDP10.”

- 4.7 It is proposed to further vary the Section 52 Agreement to amend the goods permitted for sale from the store and to increase the permitted floor area to 925m² in line with the above amended condition and permit the operation of a café within the store extending up to 190 m². This will remain an ancillary offer within the store. It is also requested that the restriction limiting use to a Catalogue Showroom Retailer be deleted from the Section 52 agreement.
- 4.8 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

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 The following applications are 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 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 variation of condition and impact on the City Centre and St Johns Centre

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

8.2 The submitted proposal seeks to vary a condition which will enable a different range of products, typically sold by the applicant 'The Range', to be sold from the store and to increase the floor area used for the sale of these additional non-bulky goods to 925 m². The condition as originally imposed in 2001 sought to limit the products which could be sold from the store to ensure that the store did not adversely impact upon the viability and vitality of the St Johns Centre and the City Centre. The original condition to application P01A0240 restricted the goods to be sold as follows:

"the new retail units shall not be used for the sale of food (other than confectionery) and shall only be used for sale of carpets, furniture, furnishings, electrical goods, automotive and cycle products, DIY maintenance and improvement products for the house and garden, pets and pet products, and office equipment and accessories (including blank cassettes and compact discs relating to computers and computer products) and for no other purpose unless a further planning permission has been granted to widen the permitted range of goods."

8.3 The permission granted pursuant to application P01A0240 varied the original Section 52 Agreement dated 25th April 1986 and a further deed of variation to the original Section 52 Agreement was completed in 2015. This further amended the obligations in the Section 52 Agreement to permit the sale of the following goods from up to 185 m² of the existing floorspace provided that the floor space is occupied by a Catalogue Showroom Retailer:

- i. Food and drink
- ii. Clothing including children's clothing and sports wear
- iii. Stationery items and post office services
- iv. Shoes
- v. Toys and sports goods
- vi. Fashion accessories including handbags and luggage
- vii. Watches and jewellery
- viii. Perfume and toiletries

- ix. Pharmaceutical items
- x. Books (other than those relating to maintenance and/or improvements and/or repairs to home, garden or cars)
- xi. Music, records, CD's pre-recorded videos and audio tapes provides that for the avoidance of doubt blank tapes and compact discs relating to computers and computer products are not included in such description.

- 8.4 In varying condition 2 of application P01A0240 it is also necessary to further amend the Section 52 Agreement to remove the reference to a Catalogue Showroom Retailer. It is also necessary to increase the permitted floor area for the sale of these goods from 185m² to 925m² as detailed in the previously amended Section 52 Agreement . It is important to consider whether the increase in trade floor space of the unit for the sale of the amended range of goods listed above, in addition to the range of goods currently permitted by condition 2, would impact upon the vitality and viability of the City Centre and St Johns District Centre centres.
- 8.5 Policy SWDP 10 outlines the approach for the protection and promotion of centres and local shops. Criterion B. advises that any retail or leisure development in excess of 1,000 m² located outside defined centres should be accompanied by an Impact Assessment. Criterion C. of the policy requires applicants to demonstrate that they comply with the sequential approach and that no significant impact would arise on the vitality and viability of existing centres. In Worcester, the policy defines Worcester City Centre as a City and Town Centre and the St John's District Centre as a District Centre. Paragraph 89 of the NPPF sets out the circumstances under which an Impact Assessment should be undertaken to accompany proposals for retail, leisure and office development outside of town centres, which are not in accordance with an up to- date Local Plan. Planning authorities should require an Impact Assessment if the development is over a proportionate locally-set floor space threshold. Paragraph 89 goes on to state that where there is no locally-set threshold, the default threshold is 2,500 m². In Worcester the threshold is 1,000 m². The proposed variation relates to 925 m² of space and consequently an Impact Assessment is not required as the proposal falls below the threshold for consideration of this impact and the application is therefore not supported by one.
- 8.6 Paragraph 86 of The Framework requires LPAs to apply the sequential test to planning applications for main town centre uses that are not in existing centres or in accordance with an up to date development plan. Suitable sites must be sites that are available and appropriate for the given proposal. Appropriate sites include available sites that can accommodate the proposal with regard to flexibility being applied to the proposal concerned. The Guidance further advises at Paragraph 011 that use of the sequential test should recognise that certain main town centre uses have particular market and location requirements. It is therefore necessary to assess whether there are there any suitable sites in established centres that are available within a reasonable period and can meet the same market and locational requirements to provide floor space for the scheme as proposed. The sequential test relates entirely to the application proposal as a whole; it is not a question of whether a materially reduced or otherwise different scheme can in theory be pursued on other sites. Provided that an element of flexibility is exercised on issues such as format and scale, any potential sequential sites should be considered in terms of whether they could accommodate the complete application proposal.
- 8.7 The applicant, The Range offer mid-price home and garden products. The principal product lines are:

- Furniture and textiles (and other items associated with the improvement of the home);
- Camping and bulky leisure goods – these include tents and associated products (but not outdoor clothing) and garden play equipment and toys (swings, pools, slides);
- Household and garden goods – including items such as plastic storage, rotary lines, dustbins, ironing boards, cooking utensils, tableware, pots and pans and ceramics;
- DIY and lighting;
- Arts and crafts; and
- Pet products

8.8 The range of goods is predominantly bulky in nature, and typically requires large store sizes (3,500 square metres gross minimum). Given this 'The Range' does not typically operate out of City/Town centre locations because of these space requirements. The application is supported by a sequential assessment which assesses the merits of other available sites within the City Centre and other district centres over 4000m² in size. This assessment explains why these sites are not suitable for occupation by the applicant, 'The Range'. This assessment concludes that none of the units assessed provide sufficient space or are operationally appropriate to accommodate the requirements of 'The Range'. Having assessed this sequential assessment it is clear that these units would not meet the operational requirements of the applicant and it is clear why they have been dismissed and the application site is considered to be the sequentially preferable site.

8.9 It is proposed that up to 925m² of the floor area of the store would be taken up by the goods listed in paragraph 4.2 (e.g. clothing, toys, perfume). This amounts to 19% of the space within the store or 15% of the whole store if the garden centre is included. These goods would therefore form an ancillary offer to the generally bulky nature of the goods which would be sold from the store (e.g. DIY products, household and garden goods). In light of this, it is considered that an out of centre location such as the application site, which benefits from a large unit size and on-site car parking, is the most appropriate location for the use proposed and furthermore that the relatively small scale of the open retail offer in the context of the host building will limit the overall impact of the proposal on the nearby St Johns Centre and City Centre, given that the majority of the store (85%) will remain as bulky goods retail as it is at present in accordance with the limitations of condition 2 of P01A0240. In light of this, it is Officer opinion that it would be unreasonable to resist the proposed amendment to the condition to enable retail trading from 925 m² of the store on grounds of impact on the vitality and viability of the City Centre and St Johns centre given the ancillary nature of this retail offer to the whole store, the exercise which has been undertaken of assessing sequentially preferable sites to the application site and the fact that the application falls below the threshold for requiring an impact assessment, thereby failing to demonstrate that the proposal would have an impact.

8.10 The submitted proposal does not involve the sub-division of the permitted unit or any increase in retail space: it seeks to vary a condition which restricts the range of goods which can be sold from the store. The proposal does not involve the sub-division of the permitted unit and the applicant has confirmed that the sale of food and the additional goods will not be operated on a franchised or concessionary basis.

Furthermore, all items will be purchased at the main store and there will be no separate entrance or exit for customers wishing to buy food items: the store will not therefore be directly competing with nearby food retailers. On this basis it is Officer opinion that, while 925 m² of the store will sell products such as food, clothes, perfume, the store as a whole will continue to function as a bulky goods store and this will limit the impact on neighbouring centres (St Johns and the City Centre) by ensuring that the store does not function as a separate unit for the sale of these goods. The unit would remain as a retail warehouse mainly for the sale of DIY, garden centre and home improvement/homeware products. This is entirely consistent with its current occupation by Homebase and as set out above a use which would be unsuited to a City Centre location.

- 8.11 It is also proposed to provide a café within the store extending up to 190 m². This will remain an ancillary offer within the store (i.e. it will not be operated independently from the main store). A further amendment will be required to the existing section 52 agreement (which prohibits the sale of food and beverages for human consumption). A condition is also recommended to control the floor area and operation of this cafe. Ancillary cafés can be found in many stores of this nature throughout the City and it is Officer opinion that this will complement the retail offer within the store. It is Officer opinion that this ancillary café will not adversely impact upon the vitality or viability of the St Johns Centre or the City Centre.
- 8.12 The store will generate around 85 employment opportunities (55 Full Time Equivalent positions). Given the size of the store there are a limited number of traders who could operate from the store without a change of use or subdivision application once the current occupiers (Homebase) vacate the store. The benefits of securing continued use and the employment opportunities for local residents generated by this proposal are material in the consideration of this application.
- 8.13 It is Officer Opinion that amendments to the range of products sold 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 the Highway Authority. 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.

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, 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 P01A0240