

PLANNING AND DEVELOPMENT COMMITTEE

A meeting of the Planning and Development Committee was held on 11 January 2019.

PRESENT: Councillors Councillors M Walters (Chair), S E Bloundele, D J Branson, J Hobson, J McGee, L McGloin, F McIntyre, J Rostron and V Walkington and

ALSO IN ATTENDANCE: B Moore and R Wilson

OFFICERS: P Clarke, A Glossop, G Moore, B Roberts and P Wilson

APOLOGIES FOR ABSENCE Councillor N J Walker.

DECLARATIONS OF INTERESTS

There were no Declarations of Interest made by Members at this point of the meeting.

18/24 MINUTES - PLANNING AND DEVELOPMENT COMMITTEE - 30 NOVEMBER 2018

The minutes of the Planning and Development Committee meeting, held on 30 November 2018, were taken as read and approved as a correct record.

18/25 SCHEDULE OF REMAINING PLANNING APPLICATIONS TO BE CONSIDERED BY COMMITTEE

The Head of Planning submitted plans deposited as applications to develop land under the Town and Country Planning Act 1990.

18/0478/FUL Re-arrangement of the approved 3 no. retail units (including foodstore) to provide up to 5 no. retail units (A1), creation of outside garden centre on the northern side of building used in conjunction with adjacent unit, change of use of 1,305sqm of existing internal floorspace to gymnasium (D2), alterations to external elevations including new entrances to all units, 4.8-metre high fencing around garden centre, new car parking area, and new access steps and ramps at Gateway Middlehaven, between A66 and Riverside Stadium, Cargo Fleet, Middlesbrough for Sainsbury's Supermarket Limited.

The Head of Planning advised that the above application had been identified as requiring a site visit by Members of the Planning and Development Committee. Accordingly, a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Head of Planning reported that the application sought permission to sub-divide the proposed approved scheme of a foodstore and up to two A1 retail units (M/FP/1262/14/P) to create 5 A1 retail units, a gym and the addition of a garden centre.

The Head of Planning advised the committee that there were a number of key issues that should be taken into consideration when assessing the application.

It was explained that an application for planning permission was submitted in December 2014 (ref. M/FP/1262/14/P) and approved in January 2015 for the re-arrangement of previously approved foodstore building layout (M/FP/0773/13/P) to provide up to 2 additional retail units (A1) with associated external changes, including revisions to the service yard, car parking and landscaping. Members were advised that it was this permission that the current application was seeking to amend.

It was conveyed that, in respect of application M/FP/1262/14/P, planning condition no. 1 listed

the approved plans for the development, which showed a single large foodstore unit and two adjoining smaller retail units. Conditions 15 and 16 restricted the operational floorspace of the development and the convenience/comparison goods split, but there were no conditions explicitly preventing the subdivision of the units. Taken together, the 2015 planning permission related to a development of 4,512 sqm (net) of Class A1 comparison retail goods, and 3,000 sqm (net) of Class A1 convenience retail goods.

Members were informed that the existing permission allowed for the unit, when complete, to be occupied as a foodstore and up to two A1 retail units. It was advised that the form of development granted by M/FP/1262/14/P had not been completed in accordance with the approved plans and had never been occupied by the intended operator.

The committee was notified that the current application sought planning permission to re-arrange the approved foodstore and retail units and provide the following development:

1. The three units (approved under M/FP/1262/14/P) would be subdivided into five retail units (A1 use).
2. An outdoor garden centre (650 square metres) was proposed on the northwestern side of the building and would be used in conjunction with the adjacent retail unit. The garden centre would feature a 4.8-metre-high perimeter fencing.
3. Within the existing floorspace, to the rear of the five proposed retail units, a gymnasium (D2 use) was proposed which would result in a change of use from 1,300 square metres of A1 use.
4. The external elevations would be altered, which included the creation of new entrances for each of the proposed units, as well as to provide servicing requirements at the rear.
5. New framework for signage was proposed above the entrances to each unit (the existing signage frame would be removed).

The Head of Planning informed the committee that, unless other restrictions applied, planning legislation would normally allow (without the need for permission) for the subdivision of an existing building into smaller units within the same use class, provided that the authorised use had already commenced. The existing permission was in the process of being built, and as such the permission was extant. However, as the use of the building as a foodstore and additional retail units had not been implemented, the current building was not legally entitled to subdivide into 5 units without planning permission. Members were advised, however, that once occupied as approved, the current permission did not prevent further sub-division - subject to the resulting units complying with the restrictions placed on the levels of comparison and convenience floorspace.

It was explained to the committee that the Council was obliged to consider the important issue of any fall-back position that may be offered by the existence of the extant planning permission (ref. M/FP/1262/14/P). Members were advised that the fall-back position was important when considering and assessing the current application and its impacts and comparing those to what could be expected to be realistically delivered under the existing permission.

The Council's view was that, in order to satisfy the requirements of the extant permission, the foodstore unit would need to be occupied substantially by a food retailer. The agent had informed the Council that it was not possible for Sainsbury's to occupy the vacant unit in the prevailing climate. Furthermore, it would be a highly unlikely event for a main foodstore operator in the UK to let retail space to rival operators competing for market share in the convenience goods retail sector. Acting on behalf of Sainsbury's, WYG had identified two alternative fall-back scenarios that they felt could be implemented without the need for further planning permissions. Those were the use of the building for five retail units, and for the use of three units for occupation by B&M Home, Iceland, and Argos. Members were advised that neither of those were considered by the Council to be realistic fall-back positions as neither involved the first use of the larger unit as a foodstore, which was a pre-requisite before any further sub-division or other retail use could occur.

The committee heard that since the original permissions were granted, there had been some

significant material changes in circumstances which required consideration when assessing the application, such as the changing retail environment, the health of the Town Centre, and impact upon investment and regeneration aspirations.

When the last permission was granted in 2015, the Town Centre was in a far healthier position than it was now. It was demonstrated to the committee that in 2015 the turnover in the Town Centre was significantly higher and the Town Centre was competing more effectively with Teesside Park. The nearby out-of-centre Teesside Retail Park and Cleveland Retail Park continued to attract customers and substantially increase their turnover, while the Town Centre saw a significant drop in its turnover over the same period. Figures associated with the changing retail picture were illustrated in the submitted report. It was highlighted that Middlesbrough was now one of the most challenged town centres in the country and was more vulnerable to impacts. It was also added that the Town Centre's vacancy rate for retail and service units and vacancy floorspace were high and significantly above the national average. Members were advised that the future of key anchor tenants within Middlesbrough Town Centre was also under threat.

The Head of Planning advised that the very fact that Sainsbury's had submitted the application was already undermining confidence in the Town Centre. Whilst not apparently large in their own right, proposals for two new gym operators were on hold. A gym proposed in the Dundas Shopping Centre would have brought with it a new entrance to the centre that would have acted as a catalyst for further new investment. The operator had since pulled out of the deal citing the Sainsbury's application. A potential gym operator as part of the ski centre proposals was no longer prepared to commit to the scheme because of the Sainsbury's proposal. That impacts upon the viability of the ski centre, a key regeneration and investment initiative in Middlehaven that would drive further investment activity in the area.

There had been one significant change since the previous application was considered, which was the significant benefits associated with Sainsbury's relocation through the redevelopment of their Wilson Street Store. Although not an application for the Gateway Middlehaven site, Members were asked to note that a parallel application (M/FP/0760/13/P) was submitted for a mixed-use development on the site of the existing Sainsbury's foodstore (Wilson Street). That development primarily comprised 9 units of A1 (retail), A3 (restaurant) and A4 (drinking establishment) uses, and the construction of an 80-bed hotel with associated car parking. To facilitate that development, the existing Sainsbury's foodstore and petrol filling station would have been demolished.

The overall aim of the two original applications (M/FP/0760/13/P and M/FP/0773/13P) was to relocate the existing Sainsbury's foodstore to the larger Gateway Middlehaven site, and redevelop and improve the offer of the Town Centre. The rationale provided by the applicant was that Sainsbury's existing store, on Wilson Street, was not trading strongly, and was unable to compete effectively with other large stores in the area. Sainsbury's had also indicated that it was not possible to reconfigure or redevelop their existing store to make it more competitive and meet its future needs. The linkages between the two applications and the regeneration benefits associated with the redevelopment of the Wilson Street site was deemed a key consideration when approval was granted. However, although the two applications were submitted together, they were not legally bound. With Sainsbury's indicating their intention to remain at the Wilson Street site those regeneration proposals were no longer an option.

The Head of Planning advised that the applicant had not provided a proper assessment of the vitality and viability of the Town Centre or one that could be effectively assessed in considering the impacts of the proposal upon the health of the Town Centre. The assessment undertaken was felt to be superficial and did not credibly represent the Town Centre. As such, in line with national government guidance, there was a need for Members to take a cautionary approach in assessing the impacts of the application.

The Head of Planning commented that whilst there was an approved level of impact associated with the existing permission, it was officer opinion that overall, the proposed scheme (if implemented) would have a significant impact upon the health of the Town Centre and undermine confidence in the centre to the detriment of investment. It was also officer

opinion that the proposal would undermine the Council's aspirations for further regeneration and economic growth in Middlehaven and the Town Centre. It was recommended that the committee refused the application due to the significant adverse impact the proposal would have on the vitality and viability of the Town Centre and investment in the centre.

Standard consultation of neighbouring properties and sites had taken place and ten objections to the application had been received. The application was also in receipt of three letters of support. No objections to the application were received from the statutory consultees.

The agent spoke in support to the application. The agent highlighted to Members that the current permission had very few restrictions in place and if the committee approved the application then conditions could be attached, that would tighten up future uses on the site such as - restrictions on the total level of floorspace, restricting the number of retail units, identifying a minimum unit size and no poaching of existing Town Centre operators. The committee was advised that, on the basis that planning permission was granted for the submitted application, Sainsbury's had offered commitment to enter into a unilateral undertaking to keep the Wilson Street store open for at least 5 years. The agent highlighted that the proposed development would have economic and regeneration benefits for the town, enabling the vacant building to be occupied and providing a key entrance point into the Town Centre. It was also commented that the development would generate approximately 170 jobs.

After the agent had completed his presentation the Head of Planning sought clarification regarding the fall-back position. In a letter from WYG (10th Dec 2018), on behalf of Sainsbury's, it was stated that the fall-back position Sainsbury's intended to implement was that the three northernmost units would be occupied by B&M Home, Iceland Food Warehouse, and Argos in that order (units F,E, and D of the submitted plan). However, during the Head of Planning's presentation Sainsbury's had highlighted that the fall-back position would entail those users occupying units F,C, and E as shown on the submitted plan. The agent confirmed that the latter was Sainsbury's fall-back position.

Dodds Brown, the agents acting on behalf of key shopping centres located in the Town Centre, spoke in objection to the application. The agent highlighted that the proposals would directly compete with the town centre, which would threaten the vitality and viability of the Town Centre and potentially damage the Town Centre by pulling existing occupiers away from their current stores. It was suggested that Middlesbrough had lost approximately half of its retailing with a vacancy rate increasing to 123 units, being almost double the national average. It was indicated that a significant number of leases were within approx. 2 years of expiry which added fragility. It was added that the proposals would alter the character of the scheme from a predominantly convenience goods offer to a mainly non-food offer. Members heard that the main anchors for the application site (B&M and Iceland) were already represented in the Town Centre and would clearly be under threat of closure. It was also commented that there were a number of potential investors in the Town Centre who were hesitant to make an investment because of the proposed development. Key anchors were already at risk, and loss of more retailing would affect future investment, citing talks with proposed gym operators for the Town centre and approved snow centre scheme having ceased when the proposed application was submitted. It was further pointed out that rental and freehold values had nearly halved in Middlesbrough Town Centre since 2008.

A discussion ensued in respect of the impact that the proposed development would have on the vitality and viability of the Town Centre and on investment. Members sought a number of clarifications around the potential fall-back position and the extent to which the approved uses would need to operate in the built premises in order to then be able to rely on permitted development rights. The Head of Planning advised that these were matters of opinion and re-affirmed officers views that the fall-back position was not one which carried significant weight as there were no operators that officers were aware of that would occupy the existing stores in the approved scale and format and do so taking up the majority of the floorspace.

Regarding the issue of Iceland Food Warehouse occupying part of the food store, the Head of Planning was asked whether that would represent implementation of the approved permission. The Head of Planning reiterated that based on legal advice received the food store use would need to be substantial, and that none of the options presented by Sainsbury's

represented implementation of the approved scheme in a manner deemed to be compliant with that permission.

Members further commented that had the site been a brownfield development then a retail park would not be considered appropriate and that the proposal to create a retail park could have a dramatic impact on the town centre. Members were sympathetic to Sainsbury's position of paying rent for an empty unit but believed it was not the Council's issue to resolve that, furthermore, solving the problem in Sainsbury's favour by approving the application would create further problems for the Town Centre trading. Members also raised concerns over any developments affecting the viability of the approved snow centre scheme which Members considered to be an important dockside redevelopment for Middlesbrough.

ORDERED that the application be **Refused** for the reasons set out in the report.

18/0673/FUL Ancillary garden centre area to existing retail unit and erection of associated 4.8m high boundary fence at Gateway Middlehaven, between A66 and Riverside Stadium, Cargo Fleet, Middlesbrough for Sainsbury's Supermarket Limited.

The Development Control Manager advised that the above application had been identified as requiring a site visit by Members of the Planning and Development Committee. Accordingly a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager informed Members that the application was for the creation of an ancillary garden centre to the side of the northernmost retail unit, within the existing building, as well as the erection of a mesh fence around its perimeter.

It was explained that the application site was situated within a wider site approved for A1 retail purposes covering over 11,500 square metres of floorspace. The application sought an additional 650 square metres of outdoor space to be used in connection with the adjoining and approved retail unit.

The Development Control Manager advised key material planning considerations for the proposal related to the principle of the retail use in the location, design and flood risk.

It was considered that the design and appearance of the proposals would neither detrimentally affect the existing building nor the locality, and that there were no adverse implications relating to flood risk or ecology given the wider area was already built out. Crucially, the proposed retail area formed an ancillary part of the existing approved retail unit and related to the retailing of bulky outdoor goods which, were considered to reduce the potential impacts of additional retailing at the location on the vitality and viability of the Town Centre as well as aligning with existing policy.

Subject to appropriate conditions, including preventing the separation of the garden centre from the adjoining retail unit, the officer recommendation was for approval. On balance it was considered that the additional garden centre retail area was in accordance with relevant local policy and could therefore be supported.

Neighbourhood consultations had taken place and no objections had been received. No objections to the application were received from the statutory consultees.

Members discussed the application and the impact of the proposed development.

ORDERED that the application be **Approved on Condition** for the reasons set out in the report.

18/0742/FUL Alterations to the elevations of the stores and removal of existing store lobby and concession block at Gateway Middlehaven, between A66 and Riverside

Stadium, Cargo Fleet, Middlesbrough for Sainsbury's Supermarket Limited.

The Development Control Manager advised that the above application had been identified as requiring a site visit by Members of the Planning and Development Committee. Accordingly a site visit had been held on the morning prior to the meeting.

Full details of the planning application and the plan status were outlined in the report. The report contained a detailed analysis of the application and analysed relevant policies from the National Planning Policy Framework and the Local Development Framework.

The Development Control Manager advised the committee that the application sought permission for the alteration of the external elevations of the building at Gateway Middlehaven and the removal of the existing lobby area.

An additional application for the site had been considered by the committee earlier in the meeting, which pertained to the subdivision of the premises. As the two applications were closely linked it was considered appropriate that they should be determined at the same time.

The Development Control Manager commented that, in isolation, the proposed works would be not be considered harmful to the appearance of the existing building or the surrounding area. However, when the consequence of the proposed alterations was taken into consideration, the proposals would lead to separate entrance doors to new retail units. Those new individual and separate retail units would have the ability to strengthen the applicant's fall-back position and therefore detrimentally impact upon the vitality and viability of the Town Centre, adversely affect the inward investment into the town, and jeopardise the Council's own regeneration objectives.

The officer recommendation was to refuse the application.

Standard consultation of neighbouring properties and sites had taken place and no objections to the application had been received. No objections to the application were received from the statutory consultees.

The committee considered the consequences of the proposal.

ORDERED that the application be **Refused** for the reasons set out in the report.

18/26

APPLICATIONS APPROVED BY THE HEAD OF PLANNING

The Head of Planning submitted details of planning applications which had been approved to date in accordance with the delegated authority granted to him at Minute 187 (29 September 1992).

NOTED