

**PLANNING AND DEVELOPMENT COMMITTEE**

A meeting of the Planning and Development Committee was held on 1 November 2019.

**PRESENT:** Councillors J Hobson (Chair), D Branson, D Coupe, C Dodds, J Rostron, J Thompson, G Wilson and T Higgins (as substitute for Nugent).

**PRESENT AS OBSERVERS:** A Metcalfe (Press).

**ALSO IN ATTENDANCE:** C Huett and P Selles (Sainsbury's Supermarket Ltd).

**OFFICERS:** P Clarke, A Glossop, C Lunn, P Wilson and J Youngs.

**APOLOGIES FOR ABSENCE** Councillors L Garvey and M Nugent.

**DECLARATIONS OF INTERESTS**

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

**1 MINUTES - PLANNING AND DEVELOPMENT COMMITTEE - 6 SEPTEMBER 2019**

The minutes of the Planning and Development Committee meeting held on 6 September 2019 were taken as read and approved as a correct record.

**2 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 and reported thereon.

**19/0316/FUL Gateway Middlehaven, Land between A66 and Riverside Stadium, Cargo Fleet Middlesbrough - Re-arrangement of scheme permitted under M/FP/1262/14/P to provide 5 no. retail warehousing units with associated entrance doors, removal of existing lobby and concession block, alterations to car park and service yard.**

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 (NPPF) and the Local Development Framework.

The Head of Planning advised the Committee that the application sought permission to subdivide the approved scheme of a foodstore and up to two A1 retail units (M/FP/1262/14/P) to create five A1 retail warehousing units with associated entrance doors, the removal of the existing lobby and concession block, and alterations to the car park and service yard.

The application site was positioned to the northeast of Middlesbrough Town Centre, in an area identified as Greater Middlehaven. The existing site contained a largely complete foodstore building, associated car parking area, servicing arrangements and petrol filling station. Although the buildings on site formed part of a planning permission granted in 2015, the site remained unoccupied. Immediately adjacent to the site was a small development of three units, which were occupied by a Marston's public house, a Costa coffee shop and a KFC restaurant.

The Committee was advised that the complexity and nature of this application meant that to consider it effectively, and in light of all relevant facts, it was necessary to provide some

additional background information and context, which focused on four key areas:

- The requirement/need for a planning application to be considered;
- The fall-back position;
- The planning history of the site, and the circumstances under which each of the applications were considered; and
- The changing nature of retail patterns/turnover of the Town Centre.

In January 2015, under planning application M/FP/1262/14/P, permission was granted to provide up to three retail units (one foodstore and up to two additional retail units). The current full application sought planning permission to re-arrange the approved foodstore and retail units and provide the following development:

- The three retail units (approved under M/FP/1262/14/P) would be subdivided into five retail warehouse units (A1 use);
- 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; and
- New framework for signage was proposed above the entrances to each unit (the existing signage frame would be removed).

It was indicated to Members that the previous application considered two proposed scenarios: one with Argos occupying one of the retail warehouse units, and one without Argos. It was understood that Argos had now confirmed its commitment to occupying one of the units in the proposed development, therefore only one scenario was proposed as part of the current application.

Planning permission was being sought for the development, as follows:

- Unit A - Argos - Gross (sqm) GIA: 2,392; Net Retail Sales (SQM): 372;
- Unit B - Iceland Food Warehouse - Gross (sqm) GIA: 1,328; Net Retail Sales (SQM): 1,042;
- Unit C - Occupier currently unknown - Gross (sqm) GIA: 1,713; Net Retail Sales (SQM): 1,456;
- Unit D - Occupier currently unknown - Gross (sqm) GIA: 1,272; Net Retail Sales (SQM): 1,081; and
- Unit E - B&M Bargains Retail Warehouse - Gross (sqm) GIA: 2,323; Net Retail Sales (SQM): 2,625.

Members were advised of the fall-back position, which Sainsbury's could have carried out without the need for further planning permission, and where there was some prospect of doing so. It was explained that extant permission was currently in place: the building had largely been built, however, some of internal divisions had not yet been installed, or in accordance with the approved plans. Sainsbury's, or another food retailer, could have moved into the empty store and two other retailers could have moved into the empty units and the Council would have had no control over that. Should that have occurred, that unit could have been subdivided without any controls from the Council, other than in respect of any external alterations to the building, and provided the amount of floorspace did not change. The permission granted had a level of impact that the Council had already accepted, which officers indicated needed to be taken into consideration.

With regards to planning policy, it was indicated to Members that the Government's guidance was set out in the National Planning Policy Framework (NPPF), which stated that the general principle underlying the town planning system was that it was 'plan led'. In essence, that meant that all proposed developments that were in accordance with an up-to-date Local Plan should have been approved, anything that conflicted should have been refused (unless other material considerations indicated otherwise).

In terms of Middlesbrough's Local Plan, the Committee was advised that at the time of considering the previous application, the Council had just finished public engagement on the Publication Draft Local Plan (October 2018) and was preparing for submission to the

Secretary of State. That plan contained policies, which were relevant to the decision on that application and were considered to carry significant weight because of the stage the plan had reached in its preparation. That plan was withdrawn by the Council at its meeting in July 2019. As such, it was advised that the plan could not be taken into consideration when assessing the current application, and the policies referred to previously were no longer applicable. That was important because the Local Plan set out a number of regeneration initiatives, which the impact of the application were considered against. Those too were no longer applicable.

The Committee was advised that, following a consultation exercise, five objections had been received from or submitted on behalf of the following:

- Ward Councillor Linda Lewis;
- 5 Kildale Court;
- Stockton-on-Tees Borough Council;
- Contract Experts Limited (Dundas Shopping Centre); and
- Ellandi LLP (Coulby Newham LLP, Parkway Shopping Centre).

It was explained to the Committee that the five objections received detailed varying issues (as per the submitted report), but were, in essence, primarily concerned with the impact on the vitality and the viability of either Middlesbrough Town Centre or one of the other centres in Middlesbrough.

Reference was made to paragraph 37 of the report and the one letter of representation that had been received from Middlesbrough Football Club, which requested that matters pertaining to matchday traffic and parking, and access for emergency vehicles, be addressed.

There had been no objections received from internal technical consultees.

The Committee was advised that the application continued to be a contentious proposal that raised a range of issues, all of which needed to be closely examined. The principal issues to consider were:

- Application of the sequential test;
- Impact upon vitality and viability of the Town Centre, including:
  - Assessment of trade diversion/impacts;
  - Impact upon investment;
  - The health of the Town Centre and investor confidence; and
- Economic and regeneration impacts and benefits.

It was explained to the Committee that, in retail policy terms, the application site was situated in an out-of-centre location. The National Planning Policy Framework (NPPF) required that proposals for new Town Centre uses located outside existing centres, and not in accordance with the development plan, should address the key tests of the sequential approach and impact. At the time of the previous application, the Council had raised some concerns regarding sequential testing undertaken on behalf of Sainsbury's; however, overall, it was felt that there was not a sequentially preferable site available for Sainsbury's. In the current application those issues had been addressed: increased flexibility in assessing sites had been demonstrated, with Sainsbury's having looked at smaller sites, and also at potentially developing over more than one floor. However, there were no appropriate sites available within the Town Centre. It was highlighted to the Committee that Sainsbury's was not obliged to disaggregate the proposal, i.e. there was no requirement to split the proposal into smaller elements to try to make it fit within a Town Centre location. Essentially, planning officers held no objection to the sequential test/approach undertaken in respect of the application.

Since the previous application, submitted in January 2019, it was indicated that Sainsbury's had offered further mitigation, including enhancements to the Wilson Street store and area to improve the vitality and viability in that area of the town. There was also limitation on the range of goods that could be sold from the proposed units at the Middlehaven store.

Together, those made significant changes to the way in which planning officers viewed the current application.

Details were provided in respect of a Retail Impact Assessment, which showed that part of the application would have a 3.4% cumulative impact on the Town Centre when considered alongside other commissions. It was difficult to compare that figure with the approved scheme because the approved scheme also took into account the relocation of Sainsbury's to the Middlehaven site, but that impact was higher than the 3.4% impact it was now. If an alternative operator was to occupy that development now, with Sainsbury's remaining in situ, that impact would be as much as 7.2% on Sainsbury's in the Town Centre, which was a significant difference. However, it was explained that planning officers did meet with Sainsbury's and consultants during the application process, and did raise some concerns regarding the impact assessment and the approach undertaken. This had resulted in further household surveys being completed. A further report submitted by Sainsbury's to officers showed that, taking into account results from the 2019 household survey and the limitation on goods to be sold from the development, the impact on the Town Centre had reduced further from 3.4% to 2.2%. Officers envisaged that the figure would likely be between 2.5%-3%, which would still be below Sainsbury's original application figure. It was indicated that, by itself, the impact was not sufficient to refuse the application.

In terms of impact upon investment, in January 2019, proposals in relation to TMIV, Kwik Save at Ormesby Road, and development at Coulby Newham, had been considered. It was determined that there would be no impact on TMIV as it was not retail-based; Kwik Save had now developed and was, essentially, a different type of scheme and therefore there would be no impact; and development work undertaken in Coulby Newham was a considerable distance away to feel impact.

In terms of impact, it was indicated to the Committee that the previous planning application included provision of a gym. As there had been a clear indication/evidence that the provision of a gym would impact, permission had been refused. Given that within the current application the inclusion of a gym had been removed, it was felt that it would no longer pose an issue.

Regarding the health of the Town Centre and investor confidence, it was explained that officers felt that the health of the Town Centre had not been addressed. It was considered to be fragile, but Middlesbrough was not unique in that regard. Officers had been in negotiation with Sainsbury's, who, as previously noted, had now put further mitigation factors in place to ensure that the health of the Town Centre was not impacted. Those included environmental factor improvements, together with a commitment by Sainsbury's to remain in the Town Centre for five years, which was particularly positive given that nationwide closures were being explored. It was felt that Sainsbury's remaining at Wilson Street would help support the vitality and viability of the Town Centre.

The Committee heard that, in terms of regeneration, the application was considered against three schemes: the Snow Centre, Centre Square and TMIV. Regarding the Snow Centre, the removal of the gym element removed impact. Regarding Centre Square, as the first two office builds had now been completed, the developer was keen to bring forward the next three units. The previous proposal had not thwarted development or undermined the Town Centre in any way. Regarding TMIV, the policy framework had changed, i.e. the merging of the plan identified TMIV as a major regeneration scheme, which ought to have been protected in terms of planning decisions. As that policy framework was no longer in place, the application/development could not have been considered as having a potential impact on TMIV.

Regarding mitigation, it was explained that there would be restrictions on total floorspace, which would include any additional retail space on the car park. Any prospective changes would need to be referred back to the Committee for consideration. If Sainsbury's wished to change the number of retail units, planning permission would need to be sought, as subdivision of the units to make them smaller was not permitted. It was explained that the units would be large units with a minimum of 10,000 sq. ft. of retail space. Anything smaller would have been considered a Town Centre scheme/use. Members were advised that a 'no

poaching' clause would be attached, meaning that businesses could not move to the development within a specified period if they had existing stores in the Town Centre. Argos and B&M were exceptions to that, as it was their intention to retain their Town Centre stores. It was reiterated that Sainsbury's had committed to keeping the Town Centre store open for five years; the pedestrian crossing located outside of the store would be moved north, which was felt would encourage further footfall to the Hill Street Shopping Centre; other external improvements would be carried-out to shrubs; and the development of the Northern School of Arts building would also link to that.

In light of the comments made, i.e. that there was an existing building on site, with existing permission in place that allowed for subdivision into three retail units; a reduced impact on the Town Centre; a greater level of control in respect of the new store; and improvements to the Town Centre, officers recommended approval in accordance with conditions and section 106 agreement.

Members were directed to the recommendations and conditions detailed in the report.

Regarding condition number three, detailed in the submitted report, it was proposed that this be amended to stipulate that the gross combined floorspace of units B, C, D and E including net sales areas, servicing and other areas, would not exceed 9,732 sqm, and the combined net sales area of Units B, C, D and E would not exceed 6,204 sqm. The proposed amendment would provide the Council with the control needed on the scheme, whilst also providing Sainsbury's with flexibility for those four units, should one of the operators have required slight changes.

Following the Head of Planning's presentation, the Committee discussed the application.

In response to a request for clarification, it was explained that, originally, the building was going to be occupied solely by Sainsbury's; the total size of the building was 100,000 sq. ft. Shortly after gaining planning permission and commencing development, the retail landscape changed and operators no longer required such vast space. The closest development of that size was Tesco in Stockton-on-Tees, which had recently been subdivided to incorporate a gym and other uses. In light of that, the application now being considered sought subdivision of the building into five separate units. Sainsbury's had confirmed that it would not be relocating to Middlehaven, and would be remaining on Wilson Street.

In response to an enquiry regarding utilisation of the units and the control of them, the Committee was advised that under condition five:

- Unit A had been identified for use as a catalogue showroom and would be occupied by Argos. Any requests for changes to that would need to be referred back to the Committee;
- Unit B would be occupied by Iceland Food Warehouse for the retail of food products; and
- Unit E would be occupied by B&M Bargains Retail Warehouse.

Under condition seven, it was explained that units C and D would be limited to the sale of bulky goods, and would therefore not be for food/convenience.

Under condition six, Members heard that the sales area would be limited, i.e. 30% could be used for convenience goods, and 70% for comparison goods. It was highlighted that there were various restrictions in place to permit control.

In response to an enquiry regarding the commitment by Sainsbury's to retain operation of the store on Wilson Street for at a minimum of five years, and whether such a commitment could be replicated with the known operators of the remaining units, it was explained to the Committee that that could not be controlled by the Council; it was possible with Sainsbury's because it was their application. Consideration was given to the type of development in other areas of the country where, due to slightly different markets, both Town Centre and out-of-town formats had been complementary to one another. A Member queried whether the five-year commitment was subject to the approval of the planning application. In

response, it was explained that it was, as it would be achieved through the section 106 agreement attached to the application.

A discussion ensued with regards to transport and car parking.

In terms of provision for public transport to the site, Members heard that a bus stop was already located in the area. Consideration was given to the proximity of the site in relation to the Town Centre, the Riverside Stadium and the planned Snow Centre development, and the circular route that it formed.

A Member queried whether car parking would be offered free of charge. In response, it was explained to Members that car parking would be offered free of charge, but there would be limitations in place to ensure that facilities were used solely by site visitors. It was highlighted that a commitment had been made for provision of a car park management plan to control parking, particularly on matchdays. In terms of the size of the car park, with space for 850 vehicles, a Member queried whether it could be part fenced off to prevent people from parking on site when it was under-occupied. In response, it was explained that the key matter for the Council was to ensure that control over retail development was retained, i.e. to prevent spaces from becoming retail units. The application was being presented to the Committee as it stood; if in future any further discussion was required, it would be undertaken in line with the Council's wider Transport Strategy and parking requirements.

The Applicant presented a statement of case to the Committee.

One of the key points highlighted during the presentation referred to the creation of 200 jobs as part of the development. In response to an enquiry, it was indicated that those jobs would be new posts and not transferred from the existing Wilson Street store.

A Member welcomed the commitment of five years in respect of the existing Wilson Street store, as it was felt that it would encourage other businesses to commit to Middlesbrough.

In response to an enquiry regarding whether Sainsbury's had plans to sub-let the units, the Applicant explained that Argos was owned by Sainsbury's, however, all of the remaining units would be leased out.

It was proposed and seconded that a vote be undertaken. Following a subsequent vote, a unanimous decision was made in favour of the application.

**ORDERED** that the application be **Approved on Condition** for the reasons set out in the report and **subject to the amendment of condition three**.

### 3 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).

A Member made reference to page 59 of the report, planning application number 19/0414/COU and commented on the high level of Anti-Social Behaviour in the area where plans had been approved. In response, it was explained to the Committee that the decision had been made in accordance with policies/local centre requirements. It was difficult to factor Anti-Social Behaviour into planning because it was not the use of the development that caused the problem. There had been a police presence in the area and therefore authorities were aware of the issues. If there was a specific issue in relation to a licensed premises, this would be a matter for the Licensing department/Committee.

A Member made reference to page 57 of the report, planning application number 19/0347/FUL and sought clarification on the locality of the development, which was provided.

Mention was made of previous Anti-Social Behaviour issues, including fly tipping, which had occurred on the area of land which was to be developed; it was felt that this development

would be welcomed by residents. Members discussed the size of the development and felt that, owing to its scale, this should potentially have been considered by the Committee. Consideration was given to the criteria currently in place for determining which applications were forwarded to the Committee for consideration, including the number of objections received (currently three). A Member suggested that the size of a development, or number of units within it, could form the basis for the referral of applications. Reference was made to the Scheme of Delegation and the processes currently in place for decisions being made by both officers and the Committee. All Elected Members currently received a weekly list of all planning applications that had been received. It was explained that, should Members have felt that a specific application ought to be forwarded to the Committee, there was opportunity to do so. However, it was indicated that a planning reason needed to be identified as to why it should be forwarded. Members were advised that a proforma to facilitate that process would be devised. It was felt that it was important to strike a balance between ensuring that the Committee had a sufficient number of applications to consider, without becoming overwhelmed. The Chair advised that he would discuss the matter further with the Head of Planning.

**NOTED**

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**PLANNING APPEALS**

**Appeal Ref: APP/W0734/W/19/3226013 - 21 Park Road South, Middlesbrough TS5 6LE - Appeal Dismissed**

The development proposed was change of use of public grassed area to enclosed garden area. Erection of 1800 high solid boarded timber fence.

The main issue in this appeal was the effect of the proposal on the character and appearance of the area, with due regard to the Albert Park and Linthorpe Road Conservation Area.

**Appeal Ref: APP/W0734/D/19/3233555 - 26 The Avenue, Linthorpe, Middlesbrough TS5 6PD - Appeal Dismissed**

The development proposed new vehicular access and hard standing / driveway.

The main issue in this appeal was whether the proposal would preserve or enhance the character or appearance of the Linthorpe Conservation Area (CA).

In respect of the appeals, the Head of Planning provided Members with details of the issues raised by the Planning Inspectorate.

**NOTED**