

GLOUCESTER CITY PLAN EXAMINATION

REPRESENTATIONS ON BEHALF OF THE PEEL GROUP (RESPONDENT ID: 19669921)

MATTER 12: BUILDING A STRONG, COMPETITIVE ECONOMY

Whether the GCP has been Positively Prepared and Whether it is Justified, Effective and Consistent with the JCS, and National Policy in Relation to the Approach towards the Provision and Protection of Land for Employment Uses, Cultural and Tourist, and Town Centre Uses?

Summary of Representation

1. This further comment adds to and should be read alongside the representations made on 14 February on behalf of The Peel Group (ID Comments:507).
2. The retail floorspace needs of the City as set out in the adopted Joint Core Strategy ('the JCS') should be met in full in the Gloucester City Plan ('the GCP') for it to be found to be positively planned and justified.
3. The GCP sets out no retail floorspace figures in any of the draft site allocations. Therefore, at best it is unclear whether the identified need for new retail floorspace in the City are met. The failure to fully provide for retail needs means the City will (again) lose market share and risks retail development being granted at inappropriate out-of-centre sites to the detriment of designated centres and sequentially preferable locations well connected to the primary shopping area, such as the Peel Centre.

Further Evidence: Town Centre Uses

4. The City Council in dealing with out-of-centre retail planning applications has continued to identify the Peel Centre as an appropriate and viable location to accommodate retail needs and one which, although itself out of centre, is in an accessible location which is well connected to the City Centre. It has therefore been deemed as sequentially preferable to other out of centre retail locations.
5. Most recently this has played out an appeal held by way of an Informal Hearing in respect of an out-of-centre retail scheme at 108A, Eastern Avenue (LPA Ref: 18/01330/FUL). In respect of this scheme, the Council's consultant confirmed that the Peel Centre lay in a '*sequentially preferable location*', noting that it was '*materially better connected and significantly more accessible in relation to Gloucester city centre*', see delegated report at **Appendix A**. At the recent Hearing, this remained a matter in dispute.
6. The GCP needs to identify sites for retail floorspace to meet the needs identified in the JCS. Should there be insufficient sites in the city centre and on the edge of it, it is entirely appropriate for the City Council to identify out-of-centre sites well connected to the primary shopping area. Indeed, in doing so they will be meeting the tests of delivering a sound plan and avoid the need

to discuss at each and every application for Class Ea the fact that the Peel Centre and other retail locations within the 'inner ring' of out-of-centre retail parks are sequentially preferable to other out of centre locations elsewhere in the City, as their sequential preference will be enshrined in policy. This, in turn, will provide the certainty developers require.

7. Further Evidence: Employment Uses

Should it be Made Explicit How much Land Should be Provided for Employment Uses over the Plan Period within the Administrative Boundary of the City?

8. Yes. It is important that the GCP sets out how much employment land is required to meet the adopted JCS requirements for new employment land over the plan period. The absence of such information means that it will be very difficult to accurately assess employment land supply and puts at risk the appropriate redevelopment of existing employment land, such as the Madleaze Site.

Notwithstanding the Ongoing Review of the JCS, does the GCP Identify enough Land Capable of being Delivered within the GCP Period, Consistent with Policies SP1, SP2 and SD1 and SD2 of the JCS?

9. It is not possible to tell whether the GCP identifies sufficient land capable of being delivered within the GCP to meet the targets set out in Policy SP1 of the JCS (a minimum of 192ha of B-class employment land between the combined authorities, beyond the strategic allocations in the JCS of 84ha (Policy SP2)). The GCP makes no mention of an employment land requirement within the City Council authority area in order to play its part in meeting this employment land minimum target.
10. This lack of understanding puts at risk the redevelopment of under-utilised land, such as the Madleaze Site, which might properly be redeveloped during the plan period, making an important contribution to the housing supply, owing to the uninformed view being set out in the GCP. Specifically, without detailed understanding, the GCP states at 3.2.2 (of CD010b) '*It is important that the city protects existing employment land and buildings....*' and at paragraph 3.2.3. states that '*the GCP plays its part in allocating sites for additional employment land....*'. But without an explanation informed through evidence what additional employment land is required in the City, how is it possible to say that the GCP '*plays its part*'? .

Modification Sought: Town Centre Uses

11. The allocation of the Peel Centre as a specific retail allocation, which needs to be considered as part of the sequential approach to site selection as an accessible out-of-centre location which is well connected to the primary shopping area. Policy should then make it clear that applications in other out of centre locations would be required under the sequential approach to demonstrate that there are no suitable and available locations, including vacant units, within the City Centre, then in edge of the City Centre locations and then at the Peel Centre.
12. The allocation will allow the underperforming Peel Centre to make better use of existing (and under-used) floorspace and implementing existing consented floorspace in order to provide quality retail and leisure floorspace contributing to the JCS requirements, in a location that is proven to result in linked trips with the PSA.

Modification Sought: Employment Uses

13. The GCP should set out the employment land required to be delivered over the plan period in the City in order to demonstrate that the needs set out in the adopted JCS are met.

Appendix A

GLOUCESTER CITY COUNCIL - DEVELOPMENT CONTROL
DELEGATED DECISION REPORT
APPLICATION NUMBER: 18/01330/FUL

Case Officer:	Shane Burgess
Site Address:	108A Eastern Avenue, Gloucester, GL4 4LP
Proposal:	Variation of Condition 9 (Goods Restriction) of planning permission 98/00119/FUL (dated 14th July 1998).
Expiry Date:	02.02.2019
Extension of Time Date:	24.04.2019

SITE HISTORY

Application Number	Proposal	Decision	Decision Date
98/00119/FUL	Erection of building to provide 2 No Class A1 non-food retail units together with associated service area and parking.	GSC	20.10.1998
98/00166/OUT	(Outline) Erection of Class A1 non-food retail unit with ancillary servicing area and car parking (Duplicate Application)	GOP	29.07.1998
09/01155/LAW	Proposed sub division of unit 2 into two smaller units of 941 sq. metres and 950 sq. metres.	GSC	12.11.2009
10/00381/FUL	Variation of condition on planning permission ref. 98/00119/FUL to allow for the sub-division of Unit 2 into two units.	G3Y	07.07.2010
12/00839/FUL	Variation of Condition 9 attached to planning permission: 98/00119/FUL to allow for a wider range of goods (including food and drink) to be sold from the site in order to enable Home Bargains to trade a. Furniture b. Toys and games c. Travel goods d. Children and infants goods e. Sports and leisure goods f. Bicycle and bicycle accessories g. Toiletries and health and beauty h. Household goods i. Food and drink (up to 30%)	REFREA	21.06.2013
13/00397/FUL	Variation of Condition 9 attached to planning permission: 98/00119/FUL .	G3Y	15.10.2014
15/00227/FUL	Variation of condition 9 of planning permission 98/00119/FUL to enable Unit 2b (647sqm) to be occupied by a retailer selling food and drink.	G3Y	14.08.2015

18/01330/FUL	Variation of Condition 9 (Goods Restriction) of planning permission 98/00119/FUL (dated 14th July 1998).		
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CONSULTATIONS / REPRESENTATIONS

	Date Sent	Date Expires	Comments Received			Reply Received Date
			Objection	No Objection	Other Comment	
Neighbours	06.11.2018	27.11.2018	0	0	0	N/A
POLICY	06.11.2018	27.11.2018	N/A	N/A	N/A	04.02.2019
HAUTH	06.11.2018	27.11.2018	N/A	N/A	N/A	16.01.2019

General Public

A site notice was posted on the site; a press notice was released and letters were sent to nine neighbouring properties, inviting comments on the application. No comments were received.

Planning Policy

Having reviewed the applicants supporting information and analysis and consulted Avison Young (Retail consultants), it is considered that there are sequentially preferable sites which can accommodate the proposal. Namely sites at the Peel Centre.

The applicant has failed to satisfy the requirements of the sequential assessment set down within the NPPF (2018) and Policy SD2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) by failing to demonstrate that there are no other sites that are available in the centre or in sites that are in a more accessible location to the city centre, than the application site. The application is therefore contrary to the provisions of the NPPF, and the Development Plan.

In response to the above comments, the applicant has responded with a series of comments.

Highways Authority

It has been demonstrated that the proposed reoccupation is expected to result in an increase in traffic generation of approximately 20 and 19 two-way vehicle trips in the weekday PM and Saturday peak periods respectively. Overall it is not considered that the impact of the proposed development would have a 'severe' impact on the highway network, in accordance with the NPPF. The Highway Authority therefore recommends that no highway objection be raised.

POLICIES AND GUIDANCE

National guidance

National Planning Policy Framework and Planning Practice Guidance

The Development Plan

Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (Adopted December 2017)	Policies SD2 (Retail and City / Town Centres), SD14 (Health and Environmental Quality) and INF1 (Transport Network)
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City of Gloucester Local Plan (Adopted 14 September 1983)

The statutory Development Plan for Gloucester includes the partially saved 1983 City of Gloucester Local Plan. Paragraph 215 of the NPPF states that '*...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.*' The majority of the policies in the 1983 Local Plan are out-of-date and superseded by later planning policy including the NPPF and the Joint Core Strategy. None of the saved policies are relevant to the

consideration of this application.

Gloucester Local Plan, Second Stage Deposit 2002

Regard is also had to the 2002 Revised Deposit Draft Local Plan. This has been subjected to two comprehensive periods of public and stakeholder consultation and adopted by the Council for development control purposes. Regard is had to the Local and District Centres as defined in this plan. New district centres have not been defined within the JCS so the boundaries as defined in the 2002 Local Plan should be given weight.

PLANNING OFFICERS APPRAISAL AND CONCLUSIONS

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Local Planning Authority to determine planning applications in accordance with the Development Plan, unless material considerations indicate otherwise.

An application can be made under [section 73 of the Town and Country Planning Act 1990](#) to vary or remove conditions associated with a planning permission. Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. The new permission will repeat the relevant conditions from the original planning permission, unless they have already been discharged.

Site and Surroundings

108 Eastern Avenue is within a retail park and is located approximately two kilometres south east from Gloucester City Centre and comprises 3no. retail units within a single building (Unit 1 - Office Outlet, Unit 2a - Vacant (former Maplin), Unit 2b – Farmfoods). A standalone Lidl store is located to the south of this building. Additional retail uses are also located in the local area, including Currys PC World, Harveys and Carpetright to the north on Eastern Avenue Retail Park. The site is not within a designated district centre or local centre.

Unit 1 (the subject of this application) extends to 1,858 square metres and benefits from directly adjacent customer parking in front of the unit, with dedicated HGV servicing to the rear. It is currently under occupancy as 'Office Outlet' who are a chain retailer of office supplies, furniture and equipment.

Site History

The site has been subject to a number of historic planning applications and these are important to understand the changes the site has undergone over the years:

- Planning permission was originally granted for the erection of 2no. retail units in July 1998 (98/00119/FUL). This permission was subject to 14 conditions, one of which was condition 9 that controlled the range of goods permitted to be sold from the floor space.
- A subsequent application was approved in 2010 (10/00381/FUL) to allow the subdivision of the floor space to create an additional unit. The site then became Unit 1, Unit 2a and Unit 2b.
- A later application (on unit 2b) was submitted to vary the range of goods that could be sold. This application was refused as it failed to satisfy the sequential test.
- A subsequent application (13/00397/FUL) was granted in October 2014 to physically re-configure units 2a and 2b to provide a larger unit for 2b and a smaller unit for 2a. This also included permission to restructure the original bulky goods condition to list the goods that could not be sold, as opposed to how the condition was originally worded, stating the goods that could be sold. This permission has not been implemented.
- Most recently, planning consent was granted in August 2015 to allow 'Farmfoods' to trade from Unit 2b (15/00227/FUL). The permission was specific to 'Farmfoods' whereby a condition was attached stating that only 'Farmfoods' could implement the permission.

Proposed Development

The application seeks planning permission to vary condition 9 (goods restriction) of the original

planning permission (98/00119/FUL). The application seeks to vary the condition to allow for an extended range of goods to be sold, including the sale of non-food and food and drinks products. This current condition states:

'The retail units hereby permitted shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicles, and any goods ancillary to these permitted uses and for no other purpose without the prior permission of the City Council'

The applicant proposes that the condition be varied to state:

"Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 or any Order revoking, amending or re-enacting that Order with or without modification Unit 1 as shown on drawing [Q80500 Rev 1] shall be used only for the sale of carpets, furnishings, electrical goods, pets and pet supplies, office equipment, DIY products for the maintenance and improvement of the home, garden and motor vehicle goods. Unit 1 shall not be used for the sale of the following goods unless expressly provided for and/or on a basis which is incidental and/or ancillary to the main goods sold:

- 1. food and drink, other than for consumption on the premises, except for no more than 550 square metres of gross floor space;*
- 2. pharmaceutical goods, perfume goods and toiletries, except from no more than 180 square metres of gross floor space;*
- 3. Non-durable household goods, except from no more than 180 square metres of gross floor space; and*
- 4. Toys, except from no more than 180 square metres of gross floor space. "*

The new permission is sought to allow for the sale of four core ranges of goods, from a maximum of 1,090 square metres of gross floor space. As in accordance with information submitted in support of the application; it is suggestive that the unit would be occupied by 'Home Bargains'. Home Bargains is a chain of discount food stores which sells a range of goods including food and drink, pharmaceutical goods household goods and toys (although it is the use not the occupier that is being considered).

It is considered that the main issues with regards to this application are:

- Impact upon local amenity
- Impact upon the highway network
- Retail impact

Impact upon local amenity

Paragraph 17 of the NPPF (2018) provides that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. This is reflected in Policy SD14 of the JCS which requires that new development must cause no harm to local amenity including the amenity of neighbouring occupants.

The site is located in a busy out of centre Retail Park whereby a mix of existing retailers is located. The park regularly undergoes deliveries and is not located in close proximity to any residential development. In terms of its impact upon local amenity the proposed re-occupation would not be materially different from the current occupation. For these reasons the proposed reoccupation would not be considered to unacceptably impact upon local amenity, including the amenity of neighbouring occupants, so would accord with paragraph 17 NPPF and Policy SD14 of the JCS.

Impact upon the highway network

Paragraphs 109, 110 and 111 of the NPPF (2018) requires that development proposals provide for safe and suitable access for all and that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are 'severe'. This is

reflected in Policy INF1 of the JCS which requires safe and accessible connections to the transport network and furthermore that development must not cause congestion or significantly impact upon the transport network.

The application does not propose any alterations to the highway and existing connections and parking already in place on the site would serve the proposed reoccupation. The site would therefore continue to provide safe and suitable access to the highway and provide sufficient parking.

A Transport statement has been submitted in support of the application which has demonstrated that the proposed reoccupation would be expected to result in an increase in traffic generation of approximately 20 and 19 two-way vehicle trips in the weekday PM and Saturday peak periods respectively. Gloucestershire County Council Highways Authority has reviewed the Transport Statement and corroborates with these findings. Overall it is not considered that this increase would have a 'severe' impact of the impact on the highway network.

The proposal would therefore be in accordance with paragraphs 109, 110 and 111 of the NPPF, and Policy INF1 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017.

Retail impact

Section 7 of the NPPF (2018) prescribes that planning policies and decisions should support town and city centres by defining a network and hierarchy, to promote their vitality and viability and steer main town centre uses towards city centres, edge of centre locations and/or district centres. To protect city centres and district centres; the NPPF sets out two key tests for retail proposals that are not located in a designated centre. These are the sequential test and the impact test.

1. *Sequential test*

The NPPF requires Planning Authorities to apply a sequential test. Main town centres uses should first be located within town centres, then in edge of centre locations or district centres, and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

2. *Impact Test*

If a development is over the threshold of 2,500 square metres of gross floor space the NPPF requires that an impact test be provided to assess the impact of the proposal on investment in a centre or centres in catchment areas; and the impact of the proposal on the vitality and viability of the town centre.

Sequential Test

Paragraph 90 of the NPPF (2018) states that: 'where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on investment in centres and/or the vitality and viability of the town centre, then it should be refused.'

This is reinforced within Policy SD2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 which states that: Proposals for retail and other main town centre uses that are not located in a designated centre and are not in accordance with a policy in either the JCS or District plans, will be robustly assessed against the requirements of the sequential test and impact test, as set out in the NPPF.

The site subject to this application would be a main town centre use and does not lie within a defined centre so is subject to the sequential test. For the proposal to be policy compliant the sequential test would therefore need to consider whether there are any suitable and available alternative sites or premises, which could reasonably accommodate the use, in: city centre sites and premises, edge of centre sites and premises, and out of centres sites which are more accessible and better connected to the city centre.

In respect of the above, a Planning and Retail Statement has been submitted in support of the application. The PRS had considered a range of alternative premises, that could reasonably

accommodate the occupier and concluded that there were no suitable sequentially preferable sites.

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However, having consulted the Local Planning Authorities retail consultant (Avison Young) it is considered that there are in fact sites which lie in sequentially preferable location, which provide a suitable and available alternative, within which the proposed development could reasonably be accommodated. These are as follows:

1. Units at The Peel Centre

The Peel Centre is located to the south of Gloucester City Centre. As with the application site The Peel Centre is not designated as a district or local centre. On this basis the applicant suggests that the application site and sites at the Peel Centre are sequentially equal. However, paragraph 87 of The National Planning Policy Framework (2019) states that '*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*'. The question therefore is not whether sites and premises are accessible in their own right; instead the assessment of accessibility should relate to connectivity and accessibility in relation to the defined 'town centre'. It is considered that The Peel Centre is materially better connected and significantly more accessible in relation to Gloucester city centre than the application site. As such The Peel Centre should be regarded as sequentially preferable location to the application site. Whilst this point has been contended by the applicant in a series of comments the advice of AY is that this point stands and it is suggested that no evidence from the applicant has been provided to persuade that the connectivity to the application site is materially better.

The Peel Centre comprises a range of units including five existing/committed vacant units. Of these units the former Toys R Us unit is of a similar size to the application unit and is capable of providing a broadly similar alternative. Although there is not currently any external retail space to allow for the sale of external building materials and goods, there is space adjacent to the former Toys R Us unit that could reasonably be converted into an external sales area.

Within the Peel Centre there are also three consented units (A, B and C) which are yet to be built. The amalgamation of these units could also provide a broadly similar scale unit as the application unit. This is not dissimilar to other existing stores and it is considered within the realms of reasonable flexibility that the three units could be amalgamated. Furthermore, it is not considered that there are insurmountable reasons why an external sales area could not also be provided.

Avison Young's report also referenced units at the former Countrywide unit and the former Next/Brantano unit. But at the time of writing these units have been taken up and/or have planning permission for alternative uses; so have been discounted.

In respect of the above and having balanced the applicant's comments against retail consultant comments it is considered that there are sequentially preferable sites (Peel Centre) which can accommodate the proposal.

Whilst it is considered that the Peel Centre is a suitable and available alternative for this proposal, it should be noted that Gloucester City Council has recently determined a planning application for a retail and leisure (gym) development at Kingsway (application reference: 18/01187/FUL) and this is not dissimilar in size to this proposal. In a similar way to that described above, the Peel Centre was considered to be a suitable and available sequentially preferable alternative. However, the Local Planning Authority has resolved to approve the Kingsway application. At the respective Planning Committee Councillors indicated that the sequential test had not been passed in that particular instance; but the planning committee decided to support the Kingsway proposal on the basis of its community benefits and that these were sufficient to outweigh the non-compliance with the

sequential test. As a consequence, there is no suggestion from the Kingsway decision that the Peel Centre is not available or suitable to accommodate large scale retail development.

Summarily the development fails to satisfy the requirements of the sequential assessment set down within the NPPF and Policy SD2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) by failing to demonstrate that there are no other sites that are available in the centre or in sites that are in a more accessible location to the city centre, than the application site. The application is therefore contrary to the provisions of the NPPF, and the Development Plan.

Impact Test

Unit 1 (the subject of this application) extends to 1,858 square metres. This falls below the threshold of 2,500 square metres of gross floor space so the impact test would not need to be applied.

Conclusion

This application has been considered in the context of the policies and guidance referred to above. The proposal is not consistent with those policies and guidance in terms of its wider impact upon city centre retail; the proposal is not acceptable and accordingly permission should be refused.

In compiling the recommendation full consideration has been given to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (Right to respect for private and family life, home and correspondence); Article 1 of the First Protocol (Right to the use and enjoyment of property) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 and also Article 1 of the First Protocol of adjacent occupiers. On assessing the issues raised by the application no particular matters, warrant any different action to that recommended.

RECOMMENDATION

Planning permission is **REFUSED** for the following reason.

Reason 1

The applicant has failed to satisfy the requirements of the sequential assessment set down within the NPPF and the Development Plan, by failing to demonstrate that there are no other sites that are available in the city centre or in sites that are in a more accessible location to the city centre, than the application site. The application is therefore contrary to the provisions of the NPPF and Policy SD2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017).

Shane Burgess

16th September 2019

DECISION: REFUSED

Signed:



Dated: 16/09/2019