

## Application for a Lawful Development Certificate for a Proposed Use or Development

### Town and Country Planning Act 1990 (as amended)

#### Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

### Site Location

**Disclaimer:** We can only make recommendations based on the answers given in the questions.

If you cannot provide a postcode, the description of site location must be completed. Please provide the most accurate site description you can, to help locate the site - for example "field to the North of the Post Office".

Number

Suffix

Property Name

Address Line 1

Address Line 2

Address Line 3

Town/city

Postcode

Description of site location must be completed if postcode is not known:

Easting (x)  Northing (y)

Description

## Applicant Details

### Name/Company

Title

First name

Surname

Company Name

### Address

Address line 1

Address line 2

Address line 3

Town/City

Country

Postcode

Are you an agent acting on behalf of the applicant?

Yes

No

### Contact Details

Primary number

Secondary number

Fax number

Email address

## Agent Details

Name/Company

Title

First name

Surname

Company Name

## Address

Address line 1

Address line 2

Address line 3

Town/City

Country

Postcode

## Contact Details

Primary number

Secondary number

Fax number

Email address

## Description of Proposal

Does the proposal consist of, or include, the carrying out of building or other operations?

- Yes  
 No

Does the proposal consist of, or include, a change of use of the land or building(s)?

- Yes  
 No

Has the proposal been started?

- Yes  
 No

## Grounds for Application

### Information about the existing use(s)

Please explain why you consider the existing or last use of the land is lawful, or why you consider that any existing buildings, which it is proposed to alter or extend are lawful

Please list the supporting documentary evidence (such as a planning permission) which accompanies this application

Select the use class that relates to the existing or last use.

**Please note that following changes to Use Classes on 1 September 2020:** The list includes the now revoked Use Classes A1-5, B1, and D1-2 that should not be used in most cases. Also, the list does not include the newly introduced Use Classes E and F1-2. To provide details in relation to these or any 'Sui Generis' use, select 'Other' and specify the use where prompted. See help for more details on Use Classes.

Other (please specify)

### Information about the proposed use(s)

Select the use class that relates to the proposed use.

**Please note that following changes to Use Classes on 1 September 2020:** The list includes the now revoked Use Classes A1-5, B1, and D1-2 that should not be used in most cases. Also, the list does not include the newly introduced Use Classes E and F1-2. To provide details in relation to these or any 'Sui Generis' use, select 'Other' and specify the use where prompted. See help for more details on Use Classes.

Other (please specify)

Use Class E

Is the proposed operation or use

- Permanent  
 Temporary

Why do you consider that a Lawful Development Certificate should be granted for this proposal?

Please see covering letter.

## Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

- Yes  
 No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

- The agent  
 The applicant  
 Other person

## Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

- Yes  
 No

## Authority Employee/Member

With respect to the Authority, is the applicant and/or agent one of the following:

- (a) a member of staff  
(b) an elected member  
(c) related to a member of staff  
(d) related to an elected member

It is an important principle of decision-making that the process is open and transparent.

For the purposes of this question, "related to" means related, by birth or otherwise, closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was bias on the part of the decision-maker in the Local Planning Authority.

Do any of the above statements apply?

- Yes  
 No

## Interest in the Land

Please state the applicant's interest in the land

- Owner
- Lessee
- Occupier
- Other

## Declaration

I / We hereby apply for Lawful development: Proposed use as described in this form and accompanying plans/drawings and additional information. I / We confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine options of the persons giving them. I / We also accept that: Once submitted, this information will be transmitted to the Local Planning Authority and, once validated by them, be made available as part of a public register and on the authority's website; our system will automatically generate and send you emails in regard to the submission of this application.

I / We agree to the outlined declaration

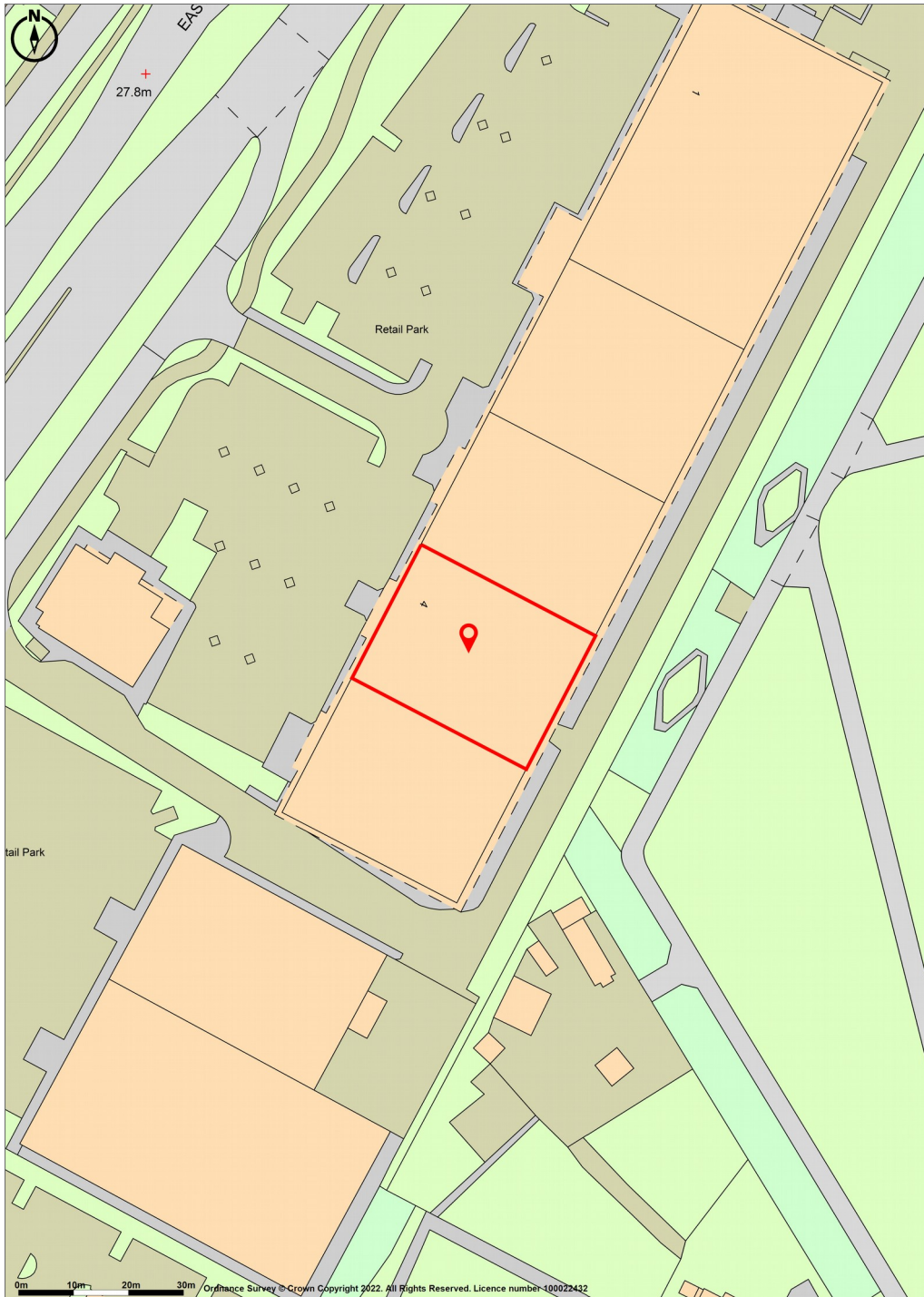
Signed

Brad Wiseman

Date

17/06/2022

# Unit 4, Eastern Avenue Retail Park, Gloucester



**Promap**

LANDMARK INFORMATION

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Plotted Scale - 1:1250. Paper Size - A4

Drawing Ref: TPUT/EARP/SLP - 'Site Location Plan'

17 June 2022  
L220617 – SAV Cover Letter



Head of Planning  
Gloucester City Council

Submitted via the Planning Portal (Reference PP-11334544)

Belvedere  
12 Booth Street  
Manchester M2 4AW  
savills.com

Dear Sir or Madam

**Section 192 of the Town and Country Planning Act 1990 (As Amended)  
Application for a Certificate of Lawfulness to Confirm that the Proposed Use of the Floorspace for Indoor Sport, Recreation or Fitness Purposes Within Use Class E is Lawful  
Unit 4, Eastern Avenue Retail Park, Eastern Avenue, Gloucester  
Application by Threadneedle Property Unit Trust**

**Introduction**

We write on behalf of the above client to apply for a Certificate under Section 192 of the Act to confirm that the proposed use of the floorspace at Unit 4, Eastern Avenue Retail Park in Gloucester for indoor sport, recreation or fitness purposes within Use Class E is lawful.

The application comprises the following documents:

- This covering letter which constitutes our Planning Statement
- The completed application forms
- Plan Reference TPUT/EARP/SLP – ‘Site Location Plan’
- Planning Permission Reference 53102/01/OUT

The application fee of £231 has been paid online via the Planning Portal.

**Relevant Planning History**

Unit 4 is currently controlled by Condition 8 of Permission Reference 53102/01/OUT which was allowed on Appeal (Reference T/APP/U1620/A/94/236854/P. A copy of the decision is attached. Conditions 8 states:

*“The retail units hereby permitted shall be used only for the sale of carpets, furniture, electrical goods, and DIY maintenance and improvement products for the home, garden and car and for no other purpose.”*

There are no other permissions relevant to the consideration of the application.

**Justification for the Proposed Use**

The floorspace at Unit 4 is used for retail purposes. These operation was formerly classified within Use Class A1.

However, on 21 July 2020, Statutory Instrument 2020 No. 757 was laid before parliament by the Government. It comprises a number of changes to the Town and Country Planning (Use Classes) Order 1987 (the “**Use Classes Order**”). The changes outlined within the Statutory Instrument became effective on 1 September 2020.

Offices and associates throughout the Americas, Europe, Asia Pacific, Africa and the Middle East..

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Registered office: 33 Margaret Street, London, W1G 0JD





Statutory Instrument 2020 No. 757 introduces amendments to the Use Classes Order which seeks to simplify the classification of commercial uses. The effect of the new legislation is to revoke Use Classes A, B1 and D and replace those classes with a new, single classification covering 'Commercial, business and service' uses (Class E).

The use of the floorspace at Unit 4 therefore now falls within Use Class E.

Condition 8 of Permission Reference 53102/01/OUT restricts the retail use of Unit 4. However, the condition only takes effect when the unit is used for the sale of retail goods as if the unit was used for another purpose within Class E, it would not be operating as a 'retail unit' to which the restriction to a particular type of retail operations applies as confirmed by the condition.

As the Local Planning Authority will be aware, moving from one operation to another within the same use classification is not development as defined by Section 55(2)(f) of the Town and Country Planning Act 1990 (**'the Principal Act'**). Section 55(2)(f) states:

- (2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –*
  - (f) *in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.*

As there are no restrictions in Permission Reference 53102/01/OUT to any of the other uses within Use Class E, Unit 4 can be used for non-retail purposes within Use Class E without restriction, because to use it for those other purposes within Class E would not be development as defined by the Act.

The application is therefore very straightforward and applicant merely seeks formal confirmation of the permitted use of the property given the well-established position that now exists around Use Class E. More specifically, the applicant seeks formal confirmation by means of a Certificate issued under Section 192 of the Act confirming that the proposed use of the floorspace at Unit 4 for indoor sport, recreation or fitness purposes within Class E is lawful.

## **Conclusion**

The above demonstrates that the floorspace at the application site can lawfully be used for indoor sport, recreation or fitness purposes within Use Class E without the requirement for formal planning permission.

Accordingly, we request that the application is approved and a Certificate issued under Section 192 of the Act confirming as described above.

We trust that the details included above provide you with sufficient information to register and consider the application. We will endeavour to contact you within the next couple of days to ascertain the Council's timetable for decision making.



In the meantime, should you require any clarification or additional information, please do not hesitate to contact either [REDACTED] at these offices.

Yours sincerely



**Savills (UK) Ltd**  
Planning

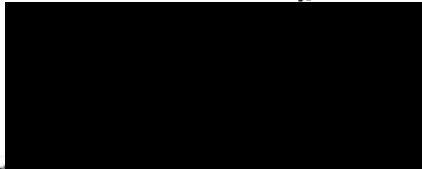
Enc



# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ



*TU for King*

MVM Planning Ltd  
40 Park Street  
Bristol  
BS1 5JG

PLANNING & TECHNICAL SERVICES DEPARTMENT
DATE 10 SEP 1994
LEADS TO: [ ]
FILE NO

*CP*  
*DTP*

your reference  
0067  
our reference  
T/APP/U1620/A/94/236854/P7  
date 16 SEP 1994

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
APPEAL BY BOOTS DEVELOPMENT PROPERTIES LIMITED and  
CENTRAL DISPOSALS UNIT (PL) ES MINISTRY OF DEFENCE  
APPLICATION NO: 53102/01/OUT

- As you know, I have been appointed by the Secretary of State for the Environment to determine your clients' appeal. This appeal is against the failure of Gloucester City Council to issue a decision within the prescribed period on an application for planning permission for Class A1 (non-food) retail development (5,713 sq m (61,500 sq ft) gross) on land at the corner of Eastern Avenue and Metz Avenue, Gloucester. The application was made in outline, with all matters reserved for subsequent approval. I held a local inquiry on 16-18 August 1994. My site visit included a tour of the city centre and several of the sites which were mentioned during the inquiry.
- Revised drawings were submitted to the council in the course of negotiations; these correspond with the drawings considered by the council on a duplicate application which has been refused. You have asked that siting, access and landscaping be determined now. The council was prepared to accept the revised drawings in relation to the current proposal (see document 4), and I see no objection to them or to the altered status of the application. I shall consider the appeal accordingly.
- No restrictions were originally suggested by your clients on the type of non-food retail development to be permitted, and the council prepared its case in relation to a proposal which was unrestricted other than by the exclusion of food. However, in his supplementary proof, submitted at the inquiry, Mr Lowin stated that your clients would be content to accept a condition which would restrict the development to occupiers drawn from the traditional retail warehouse sector (a 'bulky-goods' condition), with the exception of one unit which might be occupied by a 'retailer of children's products'; you stated that this had always been your clients' intention. The exception was framed with Childrens World in mind, which would occupy 1,393 sq m (15,000 sq ft). The council's evidence was modified accordingly.
- In these circumstances, I consider that there are three options for me to consider: a permission subject to a bulky-goods condition with the exception requested by you, a permission wholly subject to a bulky-goods condition, and dismissal of the appeal. There is a fourth option, an unrestricted permission, but as this had not been your intention and is not now proposed by you, I shall not address this possibility.



5 In the light of my inspection of the site and its surroundings, and having considered the representations made at the inquiry and in writing by you, by the council, and by another person, I consider that the two main options for permission raise different issues. A development wholly subject to a bulky-goods condition, which I shall refer to for the purposes of this letter as retail warehousing, raises the question of the impact on other proposals and existing permissions for retail warehousing, while the exception for a retailer of children's products, requested by you, raises the further question of its relationship to the city centre, both in regard to impact and in regard to policy objectives. The city council raised objection to both options; the county council's witness, however, indicated that on a strategic view the former would not be objectionable. I shall consider the two options separately, and also deal with the two issues identified for the second option separately. In the light of the revised drawings the council did not raise any objections relating to highways or landscaping, and I do not see any objection relating to these matters which would justify a refusal of permission.

6 In considering the appeal, I have borne in mind the policies which were drawn to my attention in the Gloucestershire Structure Plan (First Alteration) approved in January 1992, the City of Gloucester Local Plan adopted in September 1983, and the two 1991 Local Plans for the City of Gloucester, and national planning guidance and policies. The City of Gloucester (Pre 1991 Boundary Extension) Local Plan 1991 and the City of Gloucester (Additional Areas Post 1991 Boundary Extension) Local Plan 1991 have been deposited, and they have been considered at an inquiry in 1993; the inspector's report was received by the council in June 1994 and published in July 1994. I shall refer to the two plans together as the Local Plan.

7 While the statutory development plan comprises the Structure Plan First Alteration of 1992 and the City of Gloucester Local Plan of 1983, it was recognised both by you and by the council that with regard to shopping policies the 1983 plan no longer accorded with more recent published Government guidance, especially the revised PPG6. It was agreed, therefore, in my view rightly, that the 1991 Local Plan, being at a late stage in the preparation process, should carry considerable weight as an emerging plan. I will, accordingly, rely on its provisions in their latest form, which appear to be in conformity with Government policy and with the Structure Plan, in considering the appeal.

#### RETAIL WAREHOUSING

8 In essence, the council's case was that although the Structure Plan requirement for the provision of additional retail floorspace in the district had not been reached, it was not far off that figure at a time when the plan period (1986-2001) was only about half gone. There was a substantial area with planning permission for non-food retail development at Quedgeley on two sites in an area of rapid and extensive population growth; one site was subject to a bulky-goods condition, while the other, also subject to such a condition, was required to provide eight retail units not exceeding 1,250 sq ft each. These sites, with permission for a total of 176,000 sq ft (16,350 sq m) gross, provided ample space to accommodate any retail warehousing proposals, and both the council and Quedgeley Parish Council were anxious that developments elsewhere did not prevent the provision of much-needed small units. Development of the appeal site for retail warehousing would make the development of the Quedgeley sites less likely; Robert Hitchins Developments had written to support the council. The Local Plan inspector had recommended that there should be a policy which would give protection to these developments; the council would be considering the inspector's report, so that it would be premature to give consent now. The council did not contend that there was a site available in or near the city centre for a retail warehouse park or that retail warehousing on the appeal site would have any material adverse impact on the city centre.

9 In your view, the matter should be considered in the light of the Local Plan as it stood at the moment, without any specific protection offered to the sites at

Quedgeley; planning permission would not affect the deliberations to be held on the Local Plan. In any case, you considered that the development of your clients' site would have no effect on progress at Quedgeley; you did not see how the aim of providing a better range of shops to serve the local population could be achieved by providing retail warehousing. The Quedgeley sites were in the wrong place in relation to Gloucester as a whole, because of highway problems and their location, so that retail warehouse operators had not been interested in them since they were approved in 1987, a time of boom, and 1989; preventing the development of the appeal site would not bring about the development of the Quedgeley sites.

10 Growth of expenditure up to 1997, the design year for the appeal proposal, and up to 2001, the end of the plan period, would ensure that there was scope for development at Quedgeley. You estimated that in the primary catchment area there would be growth between 1994 and 2001 of £76.9m (£30m at 1997) in comparison business expenditure, of which £23.7m would relate to retail warehousing. The proposed development would draw £7.6m from the area, only 3.4% of the projected comparison goods expenditure of £224m in 1997; this would amount to a diversion of 1.4% of comparison goods from expenditure in the city centre of £181m. It could not be shown that there was any demonstrable harm arising from the development of retail warehousing on the appeal site.

11 In my view, the development of 5,713 sq m (61,500 sq ft) gross of retail warehousing on the appeal site would not in practice harm any interest of acknowledged importance. It is not contended that it would affect the city centre or any other site except those with planning permission at Quedgeley. Quedgeley is, as the appellants pointed out, in a remote part of Gloucester, although there is a considerable growing population, and potential for growth beyond the plan period; it has poor road communications, although it is intended that these should be improved.

12 The appeal site, by contrast, is well located for car-borne customers, for whom retail warehousing primarily caters, from the whole city, and in an area where there are other similar developments. Even if the council is concerned now with the lack of development at Quedgeley, there is a considerable increase in expenditure anticipated, which will become available in due course. It is clear that Quedgeley is not an attractive location for operators; I do not consider that withholding permission for the appeal site would make Quedgeley more attractive. Since it appears that this is unlikely to be affected by any measures taken to protect Quedgeley in the Local Plan and since the sites already have planning permission, I do not consider that the grant of planning permission on the appeal site would be premature or would prejudice the decision on the Local Plan in relation to retail warehousing at Quedgeley. I conclude, therefore, that while the appeal site is not allocated for retail use in the Local Plan there is no sufficient reason to withhold planning permission for development comprising retail warehousing on the appeal site. This permission will need to be appropriately restricted using a bulky-goods condition.

#### THE SALE OF CHILDREN'S PRODUCTS ON THE APPEAL SITE

13 There are two main issues to be considered, arising from general policy S.2 of the Structure Plan, as amplified by the emerging policies of the Local Plan. The first issue arises from Clause (B) of the general policy, which relates to the effect on the vitality and viability of a town centre as a whole; this is effectively subdivided in new policy S.2 of the Local Plan into two elements, effect on the vitality and viability of the city centre (Clause B), and prejudice to the implementation of allocated sites (Clause A).

14 The second issue is derived from clause (A) of general policy S.2 of the Structure Plan, namely whether, in this case, the proposed development can be satisfactorily accommodated in or adjacent to the city centre, in accordance with principal policy S.1; under this policy, priority will be given to meeting the required floorspace provision in that location. This is reiterated and the defini-

tion of the appropriate area refined in core policy S.1 of the Local Plan. While new policy S.2 of the Local Plan does not contain a comparable test relating to the satisfactory accommodation of a development in or adjacent to the city centre, this policy must be read in conjunction both with principal policy S.1 of the Structure Plan and with core policy S.1 of the Local Plan; it is, therefore, an appropriate test to apply to the appeal proposal. Clauses (C) and (D) of general policy S.2 did not give rise to any objections.

*The first issue: effect on the vitality and viability of the city centre and implementation of allocated sites*

15 In relation to the first issue, I was told that there is a total of some 111,500 sq m (1,200,000 sq ft) of retail floorspace in the city centre, as defined in the Local Plan, of which 70,000 sq m (750,000 sq ft) is for non-food goods. The unit proposed to be exempt from the bulky-goods condition would be 1,393 sq m (15,000 sq ft). It was calculated by the council, and accepted by you, that the direct impact of this unit would amount to less than 1%. This in itself would clearly not give rise to material harm to the vitality and viability of the city centre as a whole. The council also expressed concern at the cumulative impact with the opening of Cribbs Causeway near Bristol, which has planning permission, and the Co.swold Outlet Centre (13,935 sq m), now the subject of an inquiry. G L Hearn and Partners, advising the council, had estimated that the impact of these together would amount to 8-10%; in your view, this is to be seen against the expenditure growth of 15% between 1994 and 1997. I note that the council, on the advice of G L Hearn, have not objected to the latter. In my view, the impact of the proposed unit for children's products would not be large enough to tip the balance.

16 The impact of the proposed unit on retailers in the same sector would, no doubt, be larger than the impact on the city centre as a whole (ie 1%), but the council could not point to any closure which could be expected, though it was unwilling to rule out some such effect in the long term. Bearing in mind that it is inappropriate to consider the impact on individual sectors of trade, I do not consider that there is any ground for objection even if a significant impact on other traders in the same field could be shown unless it was part of a harmful effect on the vitality and viability of the city centre as a whole.

17 The second limb of the impact argument concerns the effect on Local Plan proposals for the city centre, principally through the effect of the development on the confidence of investors. There are two sites identified in the Local Plan for retail development, namely the Cattle Market and Blackfriars. I am satisfied from your evidence that development of the Cattle Market is most likely to be carried out by Tesco with a food superstore; this would not be inhibited by the proposed unit for children's products on the appeal site. Any other development of the rest of the Cattle market site, at present in use, is some way off.

18 The Blackfriars development was seen by the council as the anchor for the regeneration of Gloucester. This area, with frontages to Westgate Street and Southgate Street, contains much of architectural, historic, and archaeological interest, but also much that is unsightly and derelict; it lies in an important position between the centre of the city and the Docks area which is being revitalised with new uses and with considerable success. The council has proposed an ambitious scheme for the Blackfriars area, and proposes to develop the area in partnership with a private developer; the process of selecting a developer is now under way. The scheme would include 14,000 sq m (150,000 sq ft) of retail floorspace. Your clients, Boots Development Properties, have expressed a serious interest in the Blackfriars development; this, you said, shows that the confidence of investors would not be diminished by your proposal at Eastern Avenue; there would, in your view, be no overlap between the appeal site and the unit shops, which would include of the Blackfriars development.

19 It appears to me, as the council asserted, that a high proportion of the goods which would be included in the children's products sold, for example, by Childrens World, would also be found at several of the typical national multiples; I consider, therefore, that there would be a significant overlap of goods sold. However, because of the comparatively small quantity which actually would be diverted, I am not convinced that it would have any significant impact on the prospects for the development of Blackfriars, bearing in mind also the substantial increase in available expenditure, and therefore directly on investor confidence.

20 I conclude, first, that the direct impact of the proposed unit on sales in the city centre would not be sufficient to justify a refusal of planning permission, and secondly that that unit would not prejudice the implementation of the sites allocated in implementation policy S.1(a) of the Local Plan.

*The second issue: location in or adjacent to the city centre*

21 I turn, therefore, to consider the test in general policy S.2 (B) of the Structure Plan. It was not suggested by the council that the whole of the development proposed for the appeal site could be accommodated in or adjacent to the city centre; I take the view that it would not be appropriate for your clients to seek to locate a retail warehouse park there. However, the council considered that there were sites which could provide 1,393 sq m for a unit for children's products; there was ample car parking, even if not situated on one level immediately adjacent; almost all the goods proposed were already available in the city, and bulky items could be ordered for delivery. The sites put forward were vacant units on the Peel Centre, adjacent to the Inner Ring Road, the site of the Cannon Cinema which was now vacant and suitable for development, and the In-Store site, where there had recently been a fire; the council conceded in the light of your evidence that the In-Store site was not likely to be a possibility.

22 You laid great emphasis on your clients' specification for a Childrens World store; this included a level car park, proximity to a main road, and other features which could not be accommodated on any site in or adjacent to the city centre; even if there were 1,393 sq m available in the city centre your clients' would not consider developing it without an adjacent level car park. There were difficulties at the Peel Centre where conditions on the planning permission would preclude a Childrens World store, and Perrings, though in liquidation, had not given up their lease.

23 It seems to me that there could be an opportunity at the Peel Centre which has not been sufficiently investigated. This site would fulfil the terms of Structure Plan principal policy S.1 and general policy S.2 (A); it would provide level car parking, and is adjacent to a main road, though not as prominent as the appeal site. The council's witness indicated, without being able to commit the council as local planning authority, that a relaxation of the relevant condition might be considered. With regard to the cinema site, I accept that it could not accommodate a car park as specified by your clients, but I am satisfied that the present availability of car parks for some 3,200 cars in the city centre, some within a short distance of the cinema site, is an appropriate and adequate facility, and in addition it is close to the bus station. As the purpose of locating such stores in or adjacent to the city centre is to enable customers to visit more than one store or facility, the increased demand on car parking would not be in proportion to the increased floorspace. I am also satisfied that there is no reason why the special ordering of the most bulky items, which is referred to on page 8 of the 'The Concept Explained', to be delivered, should not apply to whatever degree is necessary without compromising the principle of having as much as possible available for immediate removal. Other shortcomings of the existing facilities referred in your clients' market survey could be met either on the Peel Centre and the cinema site, or, as the council suggested, by improvements by existing retailers.

24 The importance of supporting the priority to be given to the city centre is, in my view, substantially increased by the need to maintain the council's development, management, and enhancement plans for the city centre. The council gave evidence on the positive steps which it had taken, in addition to promoting the Blackfriars scheme; these were the establishment of its City Centre Management Forum, and the various improvements completed, in progress or in prospect, including the pedestrianisation of Northgate Street and Southgate Street. It seems to me that the priority to be given, a tool in achieving a balance between the city centre and out-of-centre locations, is soundly based on the strategy of meeting future floor-space requirements primarily in town centres, to ensure and enhance their role and function and in some cases to assist in the regeneration of urban sites (as set out in the Structure Plan at paragraph 8.3.1); the last applies especially to Gloucester, which has had almost no significant new development in the last ten or fifteen years. The concept of priority subsumes the less tangible and less measurable aspects of precedent and erosion. The principle of priority has been tested in the High Court (*Carter Commercial Developments Ltd v Secretary of State for the Environment and Gloucester City Council*, 28 June 1993) and upheld, though I am aware that the judgment is being challenged in the Court of Appeal.

25 Bearing in mind what Mr Justice Latham says on the relationship between the Structure Plan and PPG6 ('PPG6 provides merely the background against which to construe the Structure Plan policies'), I consider that the priority expressed in the Structure Plan is of greater importance than meeting precisely and in full the requirements of a particular retailer such as Childrens World: I have not been persuaded (as I have shown above) that the important features cannot be provided in or near the city centre. If your clients say that they are not interested in developing a Childrens World in or adjacent to the city centre, that is a commercial decision for them to make. Accordingly, I consider that the condition on the planning permission I propose to grant should not make an exception for one unit for the sale of children's products.

#### GENERAL CONCLUSION

26 From the foregoing discussion of the main issues I conclude that planning permission should be granted for the development of the appeal site with retail warehousing subject to a bulky-goods condition, and that it would not be appropriate to make an exception for one unit to be occupied by a retailer of children's products. I shall allow the appeal accordingly. It will be necessary to impose conditions; those in the council's schedule appear to be appropriate and uncontroversial, with the exception of those restricting the goods which may be sold and the minimum size of unit.

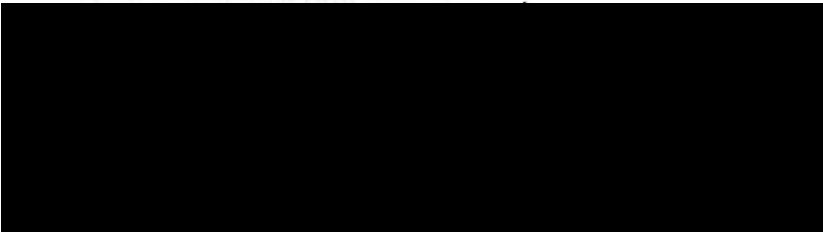
27 You considered that the condition imposing a minimum size was not necessary, and also asked for an exception for one unit of 5,000 sq ft (464 sq m) to be permitted; it seems to me that while the necessary restriction is primarily achieved by the bulky-goods condition, the absence of a restriction on size would allow smaller retailers who could be satisfactorily accommodated in or adjacent to the city centre (as required by general policy S.2 (A)) to be located on the appeal site. With regard to permitting one unit of 464 sq m, it seems to me that this is a matter to be resolved by letting and management procedures, and that if any difficulty arises it could be addressed in consultation with the council; I have phrased the relevant condition accordingly.

28 I have considered all the other matters which have been raised, including vacancy and rental rates, the ranking of town centres, precedent and the URBED report, public transport facilities near the appeal site, and pedestrian access to the site, but none of them affects my decision.

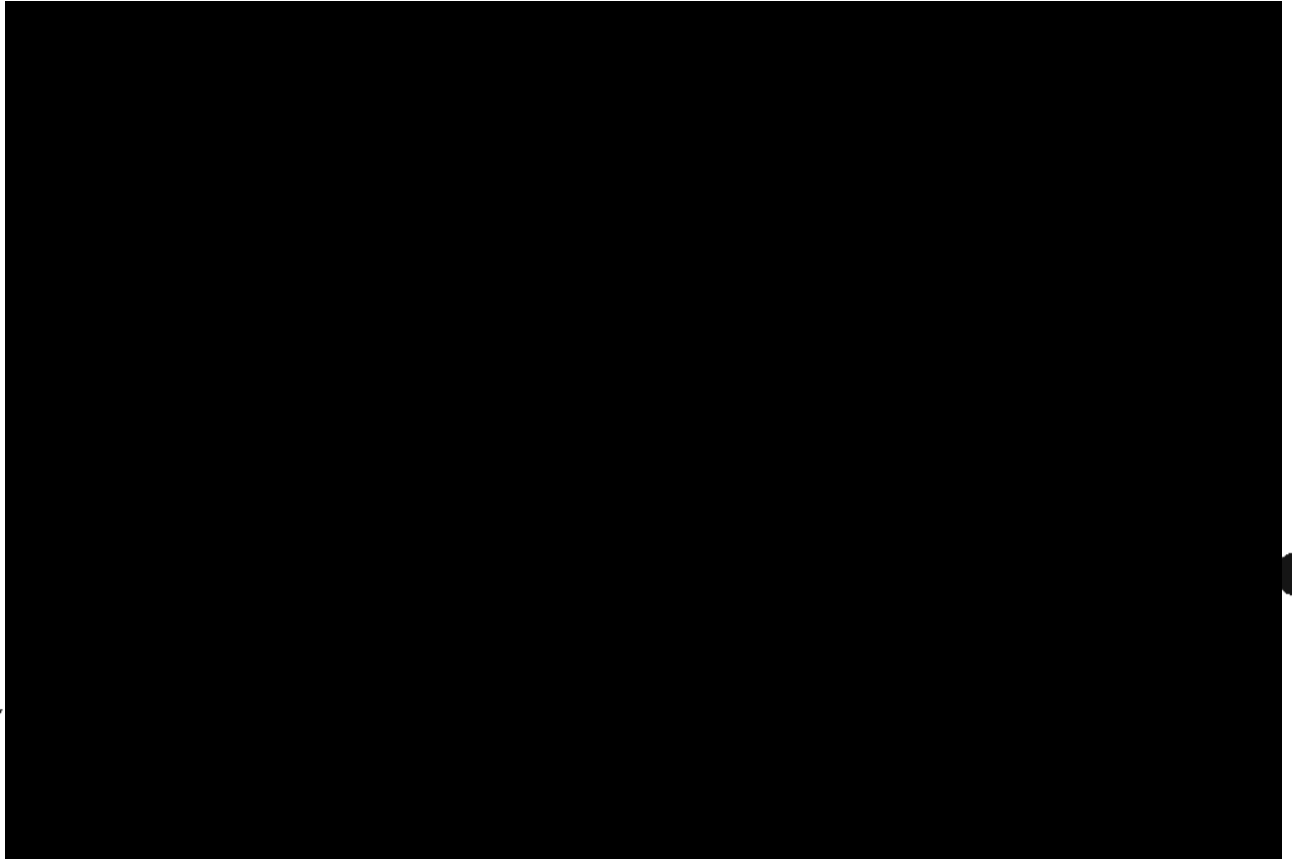
29 For the reasons given above, and in the exercise of the powers transferred to me, I hereby allow your clients' appeal and grant planning permission for Class A1



(non-food) retail development in accordance with the terms of the application (No 53102/10/OUT) dated 28 October 1992 and the plans referred to in paragraph 2 (see doc 4), subject to the following conditions:

- 1 approval of the details of the design and external appearance of the buildings (hereinafter called the 'reserved matters') shall be obtained from the local planning authority;
  - 2 application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this letter;
  - 3 the development hereby permitted shall be begun either before the expiration of five years from the date of this letter or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later;
  - 4 before the commencement of any of the works hereby permitted, other than that required by this condition, the associated highway works shall be carried out in accordance with the details indicated on drawing 45693/02 SK 10 rev B;
  - 5 no retail unit shall be open for trade until the new access arrangements, the internal service road, and the parking areas have been laid out and constructed in accordance with the approved details;
  - 6 the landscaping scheme shown on drawing 1019/02 rev B shall be implemented in full not later than the planting season following the completion of the development; if at any time during the subsequent five years any tree, shrub or hedge forming part of the scheme shall for any reason die, be removed, or felled, it shall be replaced with another tree, shrub, or hedge, of the same species during the next planting season to the satisfaction of the local planning authority unless permitted in writing by the authority to do otherwise;
  - 7 no retail unit shall be created or altered so as to provide individual units of occupation of less than 929 sq m gross floor area, unless permitted in writing by the local planning authority;
  - 8 the retail units hereby permitted shall be used only for the sale of carpets, furniture, electrical goods, and DIY maintenance and improvement products for the home, garden and car, and for no other purpose.
- 30 Your attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission and for approval of the reserved matters referred to in the permission has a statutory right of appeal to the Secretary of State if approval is refused or is granted conditionally or if the authority fails to give notice of its decision within the prescribed period. Attention is drawn also to the enclosed note relating to the requirements of the Building (Disabled People) Regulations 1987.
- 31 This letter does not convey any approval or consent which may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
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APPEARANCES



## DOCUMENTS

- 1 Lists of persons present at the inquiry.
- 2 Notice of the inquiry and list of those notified.
- 3 Written representations relating to the appeal.

### DOCUMENTS SUBMITTED BY THE APPELLANTS

- 4 Application drawings: a. site location plan (1:25,000); b. site location plan (1:1250); c. preliminary site plan (93.37 P(O)13D); d. proposed highway modifications (45693/02 SK10B); e. planting plan (1019/02B).
- 5 Superseded application drawings (Adjacent highways; 93.37 P(O)12; 1048 001A; 1048 002; 1048 003; 45693 PL 01; 1019/01).
- 6 Appendices to evidence of D R Lowan (DRL 1-21).
- 7 Appendices to supplementary evidence of D R Lowan (1, 2; NB: app 3 now filed as documents 4d, e).
- 8 Appendices to evidence of J Whittaker (JDW1-8).
- 9 Summary type report (outlet counts) for Gloucester by Chas E Goad Ltd, 1994.
- 10 Letter dated 9 August 1994 from Phoenix Beard to Bartnell Taylor Cook.

### DOCUMENTS SUBMITTED BY THE COUNCIL

- 11 Appendices to evidence of A J Roberts (I, II).
- 12 1991 Census Priority Tabulations.
- 13 Extract from URPI Information Brief 94/2.
- 14 Appendices to evidence of P E P Wynn (Plans 1-8, Appendices 1-10).
- 15 Plans of Romford and Milton Keynes.
- 16 Plan of Gloucester, showing distance from the city centre to the appeal site.
- 17 Plan of Gloucester city centre, showing vacant and charity shops within the primary shopping area.
- 18 Schedule of Childrens World stores.
- 19 Letter, dated 1 August 1994 from Boots The Chemist to the Planning Inspectorate relating to the proposed factory outlet mall at Tewkesbury.
- 20 Extract from Erdman Lewis chart showing 1994 retail rents by economic region.
- 21 Extract from Assessment of the proposed Cotswold Outlet Centre at Tewkesbury, prepared by G L Bearn & Partners.
- 22 Extract from Vital and Viable Town Centres - Meeting the Challenge.
- 23 Extracts from the Encyclopaedia of Planning Law and Practice.
- 24 Schedule of conditions suggested by the council, including condition 2 as suggested by the appellants.