

MEETING:	PLANNING COMMITTEE
DATE:	19 DECEMBER 2012
TITLE OF REPORT:	<p>S122234/F - VARIATION OF CONDITION 5 OF PLANNING PERMISSION HC930262PF, TO ALLOW TEMPORARY OCCUPATION BY NEXT RETAIL LTD AT UNIT 3, SALMON RETAIL PARK, HOLMER ROAD, HEREFORD, HEREFORDSHIRE HR4 9SB</p> <p>For: Next Group Plc per Roger Tym & Partners, 3 Museum Square, Leicester, LE1 6UF</p>
WEBSITE LINK:	http://www.herefordshire.gov.uk/housing/planning/58286.aspx?ID=122234&NoSearch=True

Date Received: 8 August 2012

Ward: Three Elms

Grid Ref: 350669,241372

Expiry Date: 3 October 2012

Local Members: Councillors PA Andrews, EMK Chave and C Nicholls

1. Site Description and Proposal

- 1.1 Planning permission is sought for the variation of condition 5 of planning permission HC93/0262PF/E to allow temporary occupation of Unit 3, Salmon Retail Park, Holmer Road, Hereford by Next. Next proposes that its occupation of the premises would cease once their intended new premises on the former cattle market is available. It is anticipated that trading from the new premises will commence in 2014. The application is thus intended to allow Next to continue trading in Hereford during the period between the vacation of the existing store in Maylord Orchards and the opening of the new one.
- 1.2 The application site is located immediately east of the A49. Unit 3 is one of three retail units forming part of Salmon Retail Park, which itself forms part of a larger out-of-centre bulky goods retail area extending along Holmer Road and including B&Q, Comet, Halfords, Maplin, Hobbycraft and Dunelm.
- 1.3 The unit has part brick, part box profile sheet elevations and is orientated towards the A49. Access is gained via an unclassified road that runs parallel with the A49 and serves a customer parking area to the front (west) that is shared with the other two units forming part of the park. Service delivery access lies to the rear.
- 1.4 The unit extends to 1,114sq.m. gross (ground floor), with a further 544sq.m trading floor space at mezzanine level. It was formerly occupied by Dunelm. The two adjoining units are 'Dreams' Beds and 'B&M Homestores'.
- 1.5 Condition 5 of planning permission HC/930262/PF/E restricts the categories and range of goods that can be sold from the units on Salmon Retail Park. The condition acts to restrict the retail offer to non-food bulky goods comparison retailing. This application seeks to vary the condition on a temporary basis to enable Next to trade from the unit on a temporary basis.

- 1.6 The application is accompanied by a S.106 Agreement that confirms the intention to vacate the unit as soon as trading is possible from the new unit on the former cattle market site. The application confirms that other prospective town centre sites, including the former Chadds Department Store, existing Peacock's store and the unoccupied unit adjoining Wickes DIY on Widemarsh Street, have been assessed.

2. Policies

2.1 National Planning Policy Framework:

2.2 Herefordshire Unitary Development Plan:

S1	-	Sustainable Development
S2	-	Development Requirements
TCR1	-	Central Shopping and Commercial Areas
TCR2	-	Vitality and Viability
TCR9	-	Large Scale Retail and Leisure Development Outside Central Shopping and Commercial Areas
TCR20	-	Eign Gate Regeneration Area
DR3	-	Movement

- 2.3 The Unitary Development Plan policies together with any relevant supplementary planning documentation can be viewed on the Councils website by using the following link:-

<http://www.herefordshire.gov.uk/housing/planning/29815.aspp>

3. Planning History

- 3.1 HC93/0262/PFE - Site for the erection of 3 no. retail stores with associated parking and access. Approved subject to condition 5, which restricted the nature of goods sold
- 3.2 CW100741/F - Variation of condition 5 of HC93/0262/PFE. This application related to the 'B&M Homestore'. The application was approved subject to the re-imposition of the original condition, alongside a second condition permitting the sale of specific non-bulky goods over no more than 150sq.m of the total net floor space.

4. Consultation Summary

Statutory Consultations

- 4.1 None required.

Internal Council Advice

- 4.2 Traffic Manager: No objection
- 4.3 Environmental Health Manager: No objection

5. Representations

- 5.1 Hereford City Council: No objections provided it is a temporary permission.
- 5.2 Hereford Futures: Objection.

The development plan sets out a very clear retail hierarchy focused upon the central shopping and commercial area of Hereford, with capacity for growth being directed towards the Eign Gate Regeneration Area (EGRA). The retail redevelopment on the old livestock market is

underway and should be ready for occupation in Spring 2014. In this context it is vital that the established and well-founded planning control on out-of-centre locations is strictly maintained, to both retain a strong focus on the city centre, and maintain investor confidence in the EGRA. The application, if approved, would permit comparison shopping (fashion) which should be focused in the city centre.

There is no assessment of the impact of Next's withdrawal from a city centre location.

The temporary relocation sought is not on a like for like basis. The 938m2 net sales space represents a 90% increase by comparison to their existing city centre site.

Notwithstanding the applicant's temporary aspirations, such a decision would risk creating a precedent in respect of other retailers seeking to trade from this property following their vacation in 2014 and/or at other locations outside the central area.

- 5.3 The consultation responses can be viewed on the Council's website by using the following link:-
www.herefordshire.gov.uk/housing/planning/searchplanningapplications.aspx

Internet access is available at the Council's Customer Service Centres:-
www.herefordshire.gov.uk/community_and_living/consumer_advice/41840.asp

6. Officer's Appraisal

- 6.1 The application raises a complex set of issues in relation to the short-term future of Next in Hereford, the implementation of the Old Livestock Market development and the implementation of retail planning policy.
- 6.2 As Committee members will be aware detailed contractual arrangements are now in place between Stanhope plc and a variety of future tenants for the development of the Old Livestock Market site. Next will occupy Units 11 and 12 of the new development – the contract between Next and Stanhope provides that Next will take a lease of and take possession of the new store on a date to be notified by Stanhope. Subject to delivery by Stanhope, it is anticipated that the store will be open by mid 2014.
- 6.3 Next currently occupy premises in the Maylord Centre. For a different set of contractual arrangements the Company is required to vacate these premises. On the basis of these two sets of circumstances the application proposes a short-term solution for the company in Hereford. This information is set out by way of context: Members are reminded that commercial and contract arrangements between organisations are not material planning consideration and as such should be given no weight in the determination of the current application. In particular Next as a company is required by its own contract with Stanhope to occupy Units 11 and 12 in the Old Livestock Market at an appropriate point in the future irrespective of the outcome of the application.
- 6.4 The application site is a modern retail unit in Salmon Park off the Holmer Road. It is currently vacant, and was formerly occupied by Dunelm Mill (and who have now moved to larger premises to the north in Spur retail park, also off Holmer Road). The Salmon Park site allows the sale of bulky, out of centre type goods, but restricts the sale of traditional city centre goods (including fashion). It is on this basis that Next need to submit this application.
- 6.5 Your officers consider that the application falls to be considered having regard to the following key issues:
1. The principle of the development/adopted retail planning policy.

2. The opportunities that exist for Next to find temporary accommodation in other locations within and around the city centre retailing core.
3. The economic issues associated with the on-going operation of a Next store in Hereford.

Principle of development

- 6.6 The application site lies approximately 1km to the north of Hereford City Centre. It is not within the city centre retail core area as identified in the Unitary Development Plan. Similarly the site cannot reasonably be described as falling within an edge of city centre location. It is located within an established out of city centre retail park catering (through a restrictive planning condition) for bulky and electrical goods. On this basis the application is contrary to the provisions both of the National Planning Policy Framework and the adopted Unitary Development Plan.
- 6.7 This conclusion on policy terms is agreed by all concerned. In mitigation Next have proposed a package via a Section 106 Agreement that seeks to recognise the very particular circumstances in which the company finds itself. The Agreement sets out to ensure that the application site is only occupied by Next Group plc and on a temporary basis until the Old Livestock Market unit is available for occupation. In summary this package would include:
- The relaxation of the restrictive retail planning condition on the unit until the earlier of either the expiry of any temporary planning permission or Next's occupation of Units 11 and 12 in the Old Livestock Market scheme.
 - Thereafter the retail planning condition on HC93/0262/PFE would re-apply to the property.
 - The agreement would also involve the owners of the retail park and the current lessor of the unit (to provide clarity to the commercial market and to identify the very special circumstances relating to the Next position).

Next has also indicated that it would be willing to have a condition attached to any planning permission restricting occupancy to its own use.

The opportunities that exist for Next to find temporary accommodation in other locations within and around the city centre retailing core

- 6.8 Your officers have asked Next to consider a range of alternative sites within the City Centre which might be available and as an alternative to considering out of centre destinations. This analysis has been submitted with the application.
- 6.9 Next and its agent have considered a series of alternative sites. Their starting point chosen for this assessment has been units of an equivalent size to the current units in the Maylord Centre (sales area 493sqm/total area 644sqm). On this basis the majority of units in Hereford do not provide this degree of floorspace – the historic nature of the city centre results in most stores being significantly smaller.
- 6.10 The company has dismissed the Peacocks units in Eign Gate (when its future was uncertain) and the former Chadds department store for a variety of reasons including its limited ground floor coverage, the extensive upgrading that would be required to the building itself and that the associated expenses would be disproportionate to the limited time of occupation proposed.
- 6.11 Next has also considered a vacant unit (Unit C) at the Brook Retail Park off Commercial Road. This unit benefits from unrestricted A1 use. The unit is in an area of large format retail activity and which includes stores operated by Lidl, Blockbuster and Pets at Home. Next has

discounted this unit on the basis that its insufficient size would result in the same operational difficulties experienced at its current store.

- 6.12 The Committee will come to its own conclusions on the rigour of this analysis of alternative locations. In doing so members will need to analyse whether Next's commercial desire to operate from premises of a particular size is reasonable, and link this to the commercial balance that Next will need to be strike between finding alternative premises and ensuring that the costs of temporary works are not disproportionate to the relatively short period of time proposed for occupancy.

Economic Issues

- 6.13 Next is one of the major retail outlets in Hereford, and is a major attractor in its own right. On this basis it has been seen as a key anchor unit in the forthcoming Old Livestock Market development.
- 6.14 The current store employs 39 people (32 part-time and 7 full-time) within the local area. The proposed temporary location at Salmon Park would employ 62 people (53 part-time and 12 full-time). The company advise that there would be a further increase on these numbers with its occupancy of the Old Livestock Market unit in 2014. The Committee will give the weight to these economic matters as they see fit in the circumstances of this case. The key element of the economic argument in relation to the current proposal is the retention of the existing 39 jobs that would otherwise be put at risk if Next were unable to find temporary accommodation between its vacation of its current unit and its move into the Old Livestock Market site.

Conclusion

- 6.15 This application raises several issues and which pull in different directions. On the one hand the application site is clearly in out of city centre location, and a policy based refusal would be an appropriate way forward. The city has benefited from a robust retail policy over many years, and this policy has indeed attracted support from the Inspector on other sites in Holmer Road.
- 6.16 On the other hand the application sets out a very specific set of circumstances in relation to Next's proposals for its continued operation in the city as it moves premises from its current location to Units 11 and 12 in the Old Livestock Market in due course. If the Committee is minded to approve the application the existing 39 jobs in the company would be safeguarded, and the city would continue to benefit from local accessibility to Next's retail offer (albeit in an out of centre location).
- 6.17 Next argue that there are no alternative sites that perform better in sequential terms that the application site. Members will come to their own conclusions on the matter. However it is clear that there are major issues in finding suitable alternative premises of an appropriate and equivalent size to the current premises and where the cost of repair/refurbishment would not be either unreasonable or disproportionate to the temporary period concerned.
- 6.18 On balance your officers recommend that temporary planning permission is granted for the proposal. Particular issues that have influenced this recommendation include the economic benefits of Next operating in a continuous way in the City, the economic benefits of safeguarding the existing jobs at the company and the difficulties in sourcing alternative premises either in the city centre or in edge of centre locations. Additionally the granting of a temporary permission would reflect the very special circumstances of the case, and should be seen as being within the wider context of Next's eventual occupation of a bespoke unit in the Old Livestock Market.

- 6.19 The recommendation for the granting of a temporary planning permission would need to be associated with a very restrictive set of conditions and a Section 106 Agreement. A summary of the proposed agreement is set out as an appendix to this report. A condition is proposed restricting the temporary planning permission until the end of August 2014. On the basis of the anticipated building programme for the Old Livestock Market site, Next will have vacated the application site before this date (and as required by the Section 106 Agreement). A further condition is also proposed making the permission personal to Next. Whilst this approach is unusual, it is appropriate to do so in the circumstances of the case. Finally a condition is also proposed requiring the temporary permission to be implemented within six months of the granting of planning permission.

RECOMMENDATION

Subject to the satisfactory completion of a planning obligation under Section 106 of the Town and Country Planning Act 1990 in accordance with the Heads of Terms appended to this report, planning permission be granted subject to the following conditions.

1. A01 Time limit for commencement (six calendar months)

Reason: As required to be imposed by Section 91 of the Town and Country Planning Act 1990 and to reflect the particular circumstances of the application.

2. This permission shall expire on 29 August 2014

Reason: To reflect the particular circumstances of the application and to safeguard the vitality and viability of Hereford City Centre in accordance with Policies TCR1 and TCR2 of the Herefordshire Unitary Development Plan.

3. The planning permission shall enure for the benefit of the applicant, Next Group plc only and shall not enure for the benefit of the land. The use shall also enure only so long as the applicant, Next Retail Limited, occupies the premises, or up to and including the date indicated in Condition 2 of this permission, whichever is the sooner. At the point at which Next Retail Limited vacate the premises the sale of goods from Unit 3 will be as dictated by Condition 5 of planning permission HC/930262/PFE.

Reason: The nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances in order to protect Hereford's Central Shopping and Commercial Areas in accordance with Policies TCR1 and TCR2 of the Herefordshire Unitary Development Plan.

Reasons for Approval

- 1. The planning permission reflects the very special circumstances faced by the applicant, Next Retail Limited. The company is unable to continue to trade from its current premises in the Maylord Centre up to the point at which it will be able to move into the Old Livestock Market development.**
- 2. The company has carried out a search of other potential temporary premises. None of these are acceptable for a variety of size and refurbishment costs that would be disproportionate to the proposed period of occupancy.**
- 3. The associated planning obligation pursuant to Section 106 of the Town and Country Planning Act 1990 will provide the appropriate control to ensure that Next vacate the application premises at the sooner or either the expiry of the temporary**

planning permission or its occupancy of Units 11 and 12 of the Old Livestock Market development.

4. Subject to the tight controls set out in the proposed conditions and the Section 106 Agreement the Councils considers that the circumstances of the application and the material planning considerations involved as sufficient to outweigh the normal application of national and local retail planning policies.

Informative:

1. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against planning policy and any other material considerations, including representations that have been received. It has subsequently determined to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.

Heads of Terms

Proposed Planning Obligation Agreement

Obligation of the Landowner, the Tenant and the Applicant

1. **Obligation to cease selling specified goods within Class A1 and permit sale of goods authorised by the 1993 Permission only**

1.1 The Landowner, the Tenant and the Applicant covenant with the Council that following the earlier of:

1.1.1 the date of expiry of the Planning Permission; and

1.1.2 the date of first occupation by the Applicant for trading to the public of the Next Old Livestock Market Unit

they shall not permit the following types of goods within Class A1 to be sold from the Site:

- Clothing and footwear
- Cutlery, crockery and glassware
- Sports goods equipment and clothing
- Jewellery, clocks and watches and fancy goods
- Cosmetics and toiletries

1.2 The Landowner, the Tenant and the Applicant covenant with the Council that following the earlier of:

1.2.1 the date of expiry of the Planning Permission; and

1.2.1 the date of first occupation by the Applicant for trading to the public of the Next Old Livestock Market Unit

they shall permit only the types of goods within Class A1 authorised by the 1993 Permission to be sold from the Site.



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APPLICATION NO: S/122234/F

SITE ADDRESS : UNIT 3, SALMON RETAIL PARK, HOLMER ROAD, HERFORD, HERFORDSHIRE, HR4 9SB

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