

17 DCNC2004/2148/F - RETROSPECTIVE APPLICATION TO REMOVE CONDITIONS 2 & 3 (PLANNING PERMISSION 97/0953/N) AND CONDITION 5 (PLANNING PERMISSION 900852) TO ALLOW THE SALE OF NON-CONVENIENCE GOODS AND TO ALLOW CLASS A1 RETAIL USE WITHIN THE FORMER CRECHE FACILITY AT SAFEWAY STORES PLC, BARONS CROSS ROAD, LEOMINSTER, HEREFORDSHIRE, HR6 8RH

**For: Safeway Stores Ltd per DTZ Piedad Consulting
10 Colmore Row Birmingham B3 2QD**

Date Received:

14th June 2004

Expiry Date:

9th August 2004

Local Member: Councillors R Burke and J P Thomas

Ward:

Leominster South

Grid Ref:

48339, 58608

Introduction

This application was deferred at the Sub-Committee on 18 May 2005 for further discussion with the applicant to ascertain the possibility of alternative community provision being made. The applicant has responded:

"We consider firstly, it is necessary to clarify that the former crèche facility now forms part of an enlarged café area within the store and does not provide additional retail area as stated in paragraph 5.2 of the committee report.

*The former Safeway store crèche provided temporary child care facilities to customers **only** and only for the duration of their shopping visit. The crèche did not provide a facility to the wider community and we do not consider that the former private crèche can be classified as a community facility.*

The reason for the relevant planning condition (97/0953/N condition 3) is to define the planning permission. The planning permission makes no reference to community facilities.

The store is now operated by Wm. Morrisons and has recently been refurbished to reflect the operational requirements of Wm Morrisons. The standard internal layout of a Wm Morrison store does not include a crèche facility.

We share your misgivings that the retention of the sub-post office can be achieved through the planning system and we do not consider that it is reasonable for your authority to request that our client provides community as part of this planning application and we do not consider that any such condition would meet the requirements of Circular 1/97."

1. Site Description and Proposal

1.1 Safeway/Morrisons is located on the south side of the A44, Barons Cross Road, on the outskirts of Leominster. The site lies on the edge of the settlement boundary for Leominster as shown in the Leominster District Local Plan (Herefordshire).

1.2 This application proposes the removal of conditions:

Condition 5 of planning permission 90 0852:

'Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (A1 Retail Food Shops) the supermarket hereby permitted shall only be used for the sale of convenience goods.'

Similarly, condition 2 of planning permission 97/0953/N:

'The use of the additional retail floor space hereby permitted shall be limited to the sale of convenience goods only and for no other purpose (including any other purpose in Class A1 (Shops) of the Town and Country Planning (Use Classes) Order 1987, in any provisional equivalent to that class in any statutory instruments revoking or re-enacting that Order with or without modification.'

The existing store previously contained a creche facility in the extended area of the store and a restrictive condition was placed on the creche area that states:

'The creche facility hereby permitted shall be limited to that use only and for no other purpose within Class D1 (Non Residential Institutions) of the Town and Country Planning (Use Classes) Order 1987, in any provisional equivalent to that Class in any statutory instrument revoking or re-enacting that order with or without modification.'

2. Policies

2.1 Leominster District Local Plan (Herefordshire)

A1 – Managing the district's assets and resources
A33 – Major retail developments
A52 – Primarily residential areas

2.2 Hereford and Worcester County Structure Plan

S3 – Retail development outside town centres

2.3 Herefordshire Unitary Development Plan (Revised Deposit Draft)

TCR1 – Central shopping and commercial areas
TCR2 – Vitality and viability
TCR9 – Large-scale retail development outside shopping and commercial areas
TCR13 – Local and neighbourhood shopping centres

2.3 PPS1 – Delivering Sustainable Development
PPS6 – Planning for Town Centres

3. Planning History

90 0852 - Site for store and petrol filling station. Outline planning permission approved 22.4.91.

91/269 - Erection of sales supermarket. Reserved matters approved 9.7.91.

97/0953/N - Extension to store to provide new creche and increase in sales area. Approved 10.3.98.

NC2002/0738/F - Extension to provide additional Class A1 sales area, ancillary warehousing, staff facilities, extension to existing coffee shop. Withdrawn 17.5.2002.

NC2002/3730/F - Extension to provide additional Class A1 sales area, ancillary warehousing, staff facilities, extension to existing coffee shop. Withdrawn 10.11.2003.

4. Consultation Summary

Statutory Consultations

4.1 None required.

Internal Council Advice

4.2 Traffic Manager: No objection.

5. Representations

5.1 Leominster Town Council: Recommend refusal, as it is felt that the extension of sales and sales area will be detrimental to the existing retail businesses in the Leominster Town Centre area.

5.2 The applicant has said:

'The existing Safeway Store is the main food store within Leominster and is located within close proximity to Leominster Town Centre. Non-convenience goods are presently being sold from the store, and have been for nearly 10 years. Furthermore, as part of the national programme of store refurbishment there has been recently an alteration of the internal layout of the store, which comprised the removal of the creche area in order to provide additional retail sales area. This planning application therefore seeks to regularise the current retail offer within the store.

Safeway Stores are not alone amongst the major grocers in terms of their desire to revise the standard offer presented in their stores and are responding to market conditions and consumer demand to meet the needs and desires of today's shoppers.

The format of the new-style store has been specifically designed to present a point of difference in this market place and to move away from the catch all offer presented by competing operators.

The company's intention is not to change the retail function of the store, which would continue to provide a main and bulk food shopping role. The non-food goods will be incidental to and/or impulse purchases as part of a main food shopping trip.'

5.3 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford, and prior to the Sub-Committee meeting.

6. Officers Appraisal

6.1 This is a retrospective application for the removal of conditions that restricted to the sale of convenience foods only, and the change of use of the former crèche to an enlarged café area.

6.2 The development of the Safeway/Morrisons store has enabled the town to provide modern convenience shopping comparable with other competing centres, and increased competition within Leominster Town. The store also meets the need of the local area offering an important and convenient service for those less mobile, and reducing the need for travel. Limited growth in goods being offered for sale will meet the continuing needs of the local community.

6.3 Two previous applications for the extension of the store have been withdrawn. Both applications had been recommended for refusal in that:

“The proposal involves the extension of an out-of-centre food store primarily for the sale of comparison goods (which at present are not permitted). No justification for the scale of the requested provision has been submitted. The proposal therefore conflicts with the Government policy, which requires the quantitative provision be demonstrated in the case of out-of-centre stores. The proposal also conflicts with the proper application of a sequential approach in considering where any need that can be shown shall be appropriately located. It is therefore accordingly contrary to Policies S3 and CTC9 of the Hereford and Worcester County Structure Plan, Policy A33 of the Leominster District Local Plan (Herefordshire), PPS6 (Planning for Town Centres) and ODPM Statement issued on 11 April 2003.”

6.4 This application, though, is not for an extension to the store but seeks the removal of conditions that restrict the sale of non-convenience goods – domestic electrical items such as kettles, irons, cookware, bathroom products, textiles and home decorations, and family entertainment such as CDs, videos and computer games. These items are offered for sale from one aisle within the store. Notwithstanding the comments of Leominster Town Council, there has been no objection raised from traders in Leominster to the continuing sale of non-convenience goods from the store. Given that the sale of these goods has continued for nearly 10 years without complaint, and that they are restricted to a single aisle in the store, it is not considered that sale of these items affects the viability and vitality of the town centre. However, to ensure this continues the sale of these items should be restricted to no more than 10% of the available aisle space within the store. This equates to the single aisle currently being used for this purpose. The increase in floor area of the café is also considered acceptable.

6.5 The application also seeks retrospective permission for that part of the store used as a crèche to café. The crèche was provided for use by customers to the store only and not to provide a wider community need. Notwithstanding the reason for the deferral of this application at the May meeting of the Sub-Committee Officers do not consider it appropriate to require the applicant to provide alternative community facility. Such a requirement would not meet the 6 tests for conditions as set out in Circular 11/95: The Use of Conditions in Planning Permissions. The test requires that conditions should be:

- Relevant to planning;
- Necessary;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

6.6 In considering whether a particular condition meets these requirements, the Council as Local Planning Authority, would need to ask whether planning permission would have been refused if that condition were not imposed. In this particular case the reason given to limiting the use of the crèche for that purpose only was to define the permission.

6.7 In view of the above your Officers consider that it would be unreasonable to require the applicant to provide any community facility by way of this application.

RECOMMENDATION

That planning permission be granted subject to the following condition:

- 1 – No more than 10% of the available aisle space within the existing retail floor space shall be used for the sale and display of non-convenience goods.**

Reason: In order to define the permission.

Informative:

- 1 - N15 - Reason(s) for the Grant of PP/LBC/CAC**

Decision:

Notes:

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Background Papers

Internal departmental consultation replies.