

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	20 TH April 2011		
Application Number	10/03664/FUL		
Site Address	Methuen Park, Bath Road, Chippenham, SN14 0UL		
Proposal	Reconfiguration and refurbishment of existing retail warehouse to create 3 retail warehouse units together with improvements to car parking landscaping and servicing.		
Applicant	Legal and General Assurance Society Ltd		
Town/Parish Council	Corsham Town Council		
Electoral Division	Corsham Town	Unitary Member	Councillor Peter Davis
Grid Ref	389844 172029		
Type of application	Full		
Case Officer	Charmian Burkey	01249 706667	charmian.burkey@wiltshire.gov.uk

Reason for the application being considered by Committee

The application is being brought to Committee under The Area Development Manager's discretion due to the significant amount of interest in the application.

1. Purpose of report

To consider the above application and to recommend that planning permission be GRANTED subject to conditions.

2. Report summary

The main issues in the consideration of this application are as follows:

- Visual appearance.
- Impact on vitality and viability of Chippenham Town Centre.
- Landscape considerations.
- Highways issues

The application has generated no objection from Corsham Town Council and 4 letters of objection from the public and Chippenham Vision

3. Site Description

The site is currently one large warehouse-like building which houses Focus Do-It-All. There is some significant landscaping around the site and there is an existing car park to serve the store.

4. Relevant Planning History

Application Number	Proposal	Decision
N.90.2742.F	New building for non-food retail use/garden centre/associated landscaping/ car parking and access road.	Permitted subject to

N.94.1610.F	Extension to existing garden centre	conditions including on restricting the sale of food other than confectionary Permitted no conditions
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5. Proposal

The proposal is for the reconfiguration and refurbishment of an existing retail warehouse to create 3 retail units.

6. Planning Policy

North Wiltshire Local Plan: policies C3; Retail Policy R4 (Proposals outside town centres)

Central Government Planning Policy Statement PPS4

7. Consultations

Corsham Town Council raise no objections.

Highways do not object subject to the proposal remaining non-food.

The Council's landscape officer is satisfied with revised proposals in relation to landscape issues and the specific matter of adequately retaining and incorporating existing trees as important landscape features subject to conditions.

Environment Agency does not object subject to conditions and an informative.

Spatial Plans Officer questions the need for a full retail assessment given the nature of the proposal to "reconfigure" part of the floorspace. A subsequent meeting was held between the agent, spatial plans officer and DC officer.

The agent has subsequently submitted revised the proposal so that the total sales area is 3375 sqm comprising of 3 units with a total sales area of 2725sqm and one mezzanine of 650sqm floor area. The total sales space is marginally greater than the existing floor space on site (3,315sqm), but less than the permitted development (ie 3315sqm plus 200sqm mezzanine) and has no regard to the retail sales space comprising the garden centre/external sales area (1,320sqm). The revised proposals now result in less sales space at ground floor level compared to the existing (circa 590sqm) and 1460sqm less sales space overall.

The Council's Strategic Planner is happy with this amended proposal.

ING (who are working with the Council on the Bath Road Car Park Site) are very concerned about the nature of this retail application. The proposed units are the size of units likely on the Bath Road Carpark site. They state that the supporting material fails to provide analysis sufficient to determine the planning application. Given the significant change in the retail offer they consider the application requires both an assessment of retail impact and a sequential assessment of other sites. They point to Policy R4 of the Local Plan and PPS4. Policy EC14.4 states that an impact assessment is required for planning applications below 2,500sqm not in an existing centre and not in accordance with the development plan that would be likely to have a significant impact on other centres. The type of retailers being attracted to the site are typically national town centre type retailers, many of whom do not currently exist in the town centre. This would have the effect of

diluting the retailer demand in the town centre. They argue that as the scheme enhances the qualitative nature of the permitted floorspace, policy EC14 indicates that the applicant should undertake a retail impact and sequential site assessment.

Chippenham Vision state: The applicants are proposing to reconfigure and refurbish the property to create 3 retail units.

Case law Stevenage Borough Council v Secretary of State for Communities and Local Government 2010 - In 2006 Stevenage Borough Council granted permission to retail premises that sought some minor amendments to an existing premises including installation of additional entrance doors. The planning authority had treated the application as being an amendment or alteration of the building permitted by the 1987 planning permission

The Secretary of State however determined that the impact of the planning permission was therefore to create a new "building" for the purposes of planning legislation. By treating the application as an amendment the authority failed to reapply existing conditions or take the opportunity to apply new conditions.

In accordance with the decision of *Newbury DC v Secretary of State for the Environment 1981*, it is noted that it was held by the House of Lords, that if the granting of planning permission was of such character that led to the creation of a new planning unit then the existing use rights are extinguished.

The Court of Appeal in *Jennings Motor Ltd v Secretary of State for the Environment 1982* held that 'where there has been a total change of the physical nature of the premises it is easy to infer that reliance on any prior use is abandoned and a new planning history [begins]'

Wiltshire Council also has experience of this ruling – see *Bourne Retail Park, Salisbury 2010*. Wiltshire Council had an opportunity to apply a condition to restrict the use of planning units – it did not apply a restrictive condition only but made reference to a previous permission which resulted in a legal challenge.

This development (10/03664) is clearly the creation of three new buildings. Separate entrances are created, it is a completely new build, the development is divided into three distinctly separate units with their own access, delivery, servicing and security arrangements. Whatever permission, conditions or principles that were applied to the original development no longer apply. The application must be treated as new development. It is not appropriate to merely accept the interpretation of the development based on the applicant's own words.

The works could not and should not be carried out without planning permission. The application creates three completely new buildings where one stood previously.

Therefore all policies pertaining to new development should be applied in this case.

These include:

Policy R4 of the adopted North Wiltshire Local Plan 2011 states that retail proposals (Use Classes A1, A2, A3) on the edge or outside of the defined town centre shopping areas will only be permitted where:

- (i) There is a demonstrable need for the development;
- (ii) It can be demonstrated the sequential test approach has been followed, whereby there are no suitable sites in the town centre and edge of centre sites;
- (iii) Proposals do not individually or cumulatively undermine the vitality or viability of the town centres; and
- (iv) The proposal is accessible by a range of means including walking, cycling and by public transport.

The policy also states that ‘Applications to vary the goods sold or to allow subdivision of units will be permitted where it can be demonstrated that the proposal would not harm the vitality and viability of the town centre.’

PPS4 sets out planning policies for economic development to be taken into account when preparing local development documents and are a material consideration in development management decisions. PPS4 identifies that in achieving a prosperous economy, the Government’s overarching objective is sustainable economic growth. To achieve this, key objectives include, amongst other things, improving the economic performance of towns, delivering more sustainable patterns of development, promoting the vitality and viability of towns and other centres. This latter objective is to be achieved through, focussing economic development and growth in existing town centres and competition between retailers through the provision of efficient shopping services in town centres.

The sequential approach requires that all in-centre options have been thoroughly assessed before less central sites are considered. Where no town centre site is available, suitable and viable, preference should be given to edge-of-centre sites that are well connected to the centre by easy pedestrian access.

There is therefore a very strong case for requiring a sequential impact assessment for this site prior to any planning permission being granted.

The Spatial Planning Officer who assessed the application stated:

“I have asked that appropriate conditions are added in order that we can claw back some control over the site, although I recognise that this may only be in relation to design matters.”

Appropriate conditions added to the development could (and we believe should) include restrictions to the range of goods permitted for sale, notably restrictions to bulky goods only. This would provide a degree of protection to the town centre with regards to both comparison and convenience goods sales.

The Chippenham Vision therefore requests that these conditions should be applied to the planning application.

The local planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application.

Such conditions would be consistent with national planning policies as expressed in Government Circulars, Planning Policy Guidance notes and other published material. They also accord with the provisions of development plans and other policies of local planning authorities

The original planning permission was granted in 1991. Planning policy both at local and national level has changed. The retail environment in and around Chippenham has changed and the focus and priority on ‘sustainable’ development is now at the fore of all planning and development activity.

Such a condition would not be unduly restrictive. The previous retail operator was a provider of bulky goods, therefore it would not nullify the benefit of any permission being granted. A large number of out of town retailers are covered by similar restrictions without problem.

Furthermore it is possible to restrict changes of use which would not be regarded as development within the terms of the Town and Country Planning Act, or by reason of the provisions of the Town and Country Planning Order 1987.

Changes of use can be restricted either by prohibiting any change from the use permitted or by precluding specific alternative uses.

The Act identifies that it is reasonable to restrict changes of use so as to prevent the use of large retail premises where such a use might have a damaging effect on the vitality of a nearby town centre.

Such a specific restriction may be defined as retail sales limited to DIY products, furniture, carpets, electrical goods, gardening goods, office supplies and toys.

The Chippenham Vision believes that this would be reasonable in this particular case. The impact will be primarily on Chippenham Town Centre not Corsham.

Therefore to reiterate the position of the Vision members:

- The Chippenham Vision therefore urges that this application and the officer's recommendations relating to it be urgently reviewed by the planning committee.
- The Chippenham Vision requests that a detailed sequential impact assessment be undertaken and reviewed prior to any decision being taken.
- The Vision also requests that full consideration be given to the application of class use restrictions (limiting trading to 'bulky goods' only) as a condition of planning permission.

The Chippenham Vision comprises Chippenham Area Board Councillors, Chippenham Town Council, North Wiltshire Economic Partnership, Chippenham Community Area Partnership, Chippenham Civic Society, Chippenham Chamber of Commerce, Wiltshire College, Sheldon School, Chippenham Borough Lands Trust.

8. Publicity

The application was advertised by site notice and press advert.

4 letters of objection have been received.

Summary of key relevant points raised:

- Effect on Town Centre Vitality and viability.
- Conditions to be imposed.

9. Planning Considerations

The proposal is for the reconfiguration and refurbishment of an existing retail warehouse to create 3 retail units.

The building in question currently operates as a FOCUS Do-it All store and was originally granted planning permission under N.90.2742.F and the garden centre extended under 94/1610/FUL. The original permission, whilst preventing food retail (other than ancillary) allows "general" retail. It also allows for subdivision of the units and no minimum sizes of units and insertion of units up to 200sqm (Mezzanines over this size require planning permission in any event). Just because the current occupier has used it as one unit for essentially bulky goods does not deflect from this. In addition to this the garden centre addition had no conditions restricting what could be sold from that floor area.

The originally submitted application involved removing a rear section of the building and rebuilding it to the side and introducing mezzanine floors within the building. The total retail area remained the same. The total retail area used as a base by the applicants included the outside retail space. The newly formed structure would be divided into 3 units with mezzanines inserted (Still total floor area identical to the existing unit including the outside retail area).

However, officers have expressed concern that the outdoor sales area was being included. Such an argument has been supported by appeal decisions, but in order to allay the Council's fears, the

applicant has submitted revisions which, by the removal of the mezzanines and removing the floor area apportioned to the outside retail area (barring 60 sqm), brings the floor area figure within the floor area of the existing building.

Policy EC14 states "References in this policy to planning applications for main town centre uses include any applications which create additional floor space, including applications for internal alterations where planning permission is required, and applications to vary or remove conditions changing the range of goods sold". The current application falls outside this definition as no additional floorspace is being provided.

In determining this application the Council **MUST** take into account the existing permitted use of the site - That is 3315sqm of ground floor with 1,320sqm of external retail space = 4635 sqm. No conditions on the original approval placed any restriction on the goods to be sold other than it should only be for non food for the building and none at all for the outdoor retail space; there was no restriction on subdivision nor on adding (permitted development size) mezzanines.

The proposal, whilst involving demolition and rebuilding, will actually result in a retail floor area of less than the existing store plus its permitted "additions" and this figure includes taking out the external retail floor area (barring 60 sqm). The units will essentially be turned to face the car park and there will be 3 of them with their own entrances. The profile of the building will change, but the revisions are considered to enhance the scheme's appearance.

The legal cases referred to by Chippenham Vision are not considered to be relevant to this application. Approximately 55% of the original unit footprint will remain and 45% will be "reconfigured". The Mothercare case in Salisbury is to do with non-imposition of conditions when a variation to a permission is granted. In this case the same conditions regarding limiting the range of goods to be sold are to be imposed; *Newbury DC v Secretary of State for the Environment 1981* refers to the creation of a new planning unit where "radical" changes to the nature of the building have occurred; *Jennings Motor Ltd v SoS for the Environment 1982* relies on there being "a total change in the physical nature of the premises. With 55% of the original building remaining it is not considered that a total change has occurred. If Chippenham Vision's argument is followed to its logical conclusion, one could end up with a new building with 55% of it as open non-food retail (as the original building) and 45% (some partly within the un restricted non-food retail units) more tightly conditioned. This is clearly untenable.

The existing store is only restricted from selling food (other than confectionary), so whilst the fears of ING and Chippenham Vision are understood, it is not possible to further condition to restrict what can be sold as one of the tests of Circular 11/95 is that conditions should be reasonable. It is considered that with the amendments that the agent has made in terms of floor area, the proposal is compliant with policy C3 of the North Wiltshire Local Plan 2011.

10. Recommendation

Planning Permission be GRANTED for the following reason:

In determining this application the Council must take into account the existing permitted use of the site - That is 3315sqm of ground floor with 1,320sqm of external retail space = 4635 sqm. No conditions on the original approval placed any restriction on the goods to be sold other than it should only be for non food; there was no restriction on subdivision nor on adding (permitted development size) mezzanines.

The proposal, whilst involving demolition and rebuilding, will actually result in a retail floor area of less than the existing store plus its permitted "additions" and this figure includes taking out the external retail floor area (barring 60 sqm), which has an open retail use. The units will essentially be turned to face the car park and there will be 3 of them with their own entrances. The profile of the building will change, but the revisions are considered to enhance the scheme's appearance.

The existing store is only restricted from selling food (other than confectionary), so whilst the fears about impact on the town centre are understood, it is not possible to further condition to restrict what can be sold. One of the tests of Circular 11/95 is that conditions should be reasonable. It is considered that with the amendments that the agent has made in terms of floor area, the proposal is compliant with policy C3 of the North Wiltshire Local Plan 2011 and advice in PPS4 Planning for Sustainable Economic Growth.

Subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

3. The proposed units shall not be used for the sale of food other than confectionery, ancillary to the main use, without the prior grant of planning permission in that respect.

REASON: In the interests of protecting the vitality and viability of the town centre.

4. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:

- (a) indications of all existing trees and hedgerows on the land;
- (b) details of any to be retained, together with measures for their protection in the course of development;
- (c) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
- (d) finished levels and contours;
- (e) means of enclosure;
- (f) car park layouts;
- (g) other vehicle and pedestrian access and circulation areas;
- (h) hard surfacing materials;
- (i) minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
- (j) proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc);
- (k) retained historic landscape features and proposed restoration, where relevant.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

5. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6. Prior to any development taking place a tree protection plan showing root protection areas for retained trees; routes of protective tree fencing; specification of protective fencing; construction exclusion zones in accordance with 'BS 5837:2005 Trees in relation to construction-recommendations' shall be submitted and approved in writing by the Local Planning Authority. The agreed methodology shall be implemented during the duration of the proposed construction phase of the development permitted.

REASON: To protect retained trees during construction.

7. Prior to any development taking place an arboricultural method statement shall be submitted to and approved in writing by the local planning authority for the excavation within the root protection area of Poplar Trees T1 and T2 as identified within 'Quaife Woodland Arboricultural Survey AR/2299/ci-amended 31st January 2011' and for the proposed route for the outflow pipe from the surface water cellular storage tank. The development shall be carried out in accordance with the approved methodology.

REASON: To safeguard the trees identified for retention for public visual amenity.

8. The total retail sales space (including any mezzanines the development hereby permitted shall not exceed 3,375 sqm.

REASON: To define the permission.

9. The development hereby permitted shall not be sub-divided to create more than 3 separate units and no individual unit shall be less than 850sqm. in floor area.

REASON: To protect the vitality and viability of the town centre

