

ITEM NO. 9**COMMITTEE DATE: 31 OCTOBER 2016****APPLICATION NO: 16/0984/03 VARIATION OF CONDITION****APPLICANT: Mr Cotter**

CDS (Superstores International) Ltd

PROPOSAL: Removal of Condition 3 regarding building's floor space limitation, variation of Condition 5 redefining goods to be sold from the premises and variation of Condition 8 to allow extended hours of opening to 9 PM Monday to Saturday of Planning Application 85/1023/01 allowed at appeal on 2 October 1986 (revised description).**LOCATION: Former B & Q Store, 33, Alphington Road, Exeter, EX2****REGISTRATION DATE: 22/08/2016****EXPIRY DATE: 21/11/2016****HISTORY OF SITE**

The existing retail warehouse was granted outline planning permission with conditions on 02.10.1986 by the Secretary of State following an appeal for non-determination within the appropriate period (ref. 85/1023/01) (appeal ref. T/APP/Y1110/A/85/040173/P6). The reserved matters were approved the following year on 18.03.1987 (ref. 86/1052/02).

Condition 3 of the outline permission restricted the gross external floor area of the building to a maximum of 40,000 sq ft (3,716 sq m) and garden centre to a maximum of 10,000 sq ft (929 sq m).

Condition 5 of the outline permission restricted the sale of goods from the premises to:

- Carpets
- Furniture
- Electrical goods
- Sanitary ware including bathrooms, kitchen and bedroom units
- Decorative products including ceramic tiles, wallpapers, paint and floor coverings
- Timber wall boards, packs of sand and cement, guttering and pipes, doors and other building materials and home improvement goods
- Tools and equipment
- Garden supplies and associated items
- Auto parts
- Sports goods
- Chandlery and marine accessories
- Hobbies and toys

Condition 8 of the outline permission restricted the time of retail sales to the hours of 9am to 8pm Mondays to Saturdays inclusive and 9am to 6pm on Sundays and Bank Holidays.

The additional relevant planning history is shown below:

| | | | |
|--------------|---|---------|------------|
| 88/0006/03 - | Part change of use to form tyre service depot for storage, distribution, fitting & repair of tyres, batteries | REF | 15/03/1988 |
| 94/0371/03 - | Erection of non-food retail outlet including alteration to existing car park and entrance to B & Q building and relocation of garden centre | PER | 07/07/1995 |
| 95/0517/03 - | Erection of service yard canopy | PER | 31/08/1995 |
| 16/0872/03 - | Extension to retail warehouse of 1,363 sq m (GIA) | Pending | |

to be used primarily for the sale of garden centre goods, poultry and pet products, and decorative items including housewares and gardenware (Use Class A1), with ancillary internal cafe (190 sq m), following demolition of wall/fence, and provision of ancillary air conditioning plant to the rear of the existing building (revised description).

16/0993/03 - Change of use of part of retail warehouse service yard to external garden centre (ancillary A1 use), insertion of glazed doors on Northeast elevation of warehouse and erection of 3M fence. Pending

DESCRIPTION OF SITE/PROPOSAL

The application site comprises the vacant retail warehouse (3,716 sq m GEA) formerly occupied by B&Q together with all associated land, including car park, service yard and garden centre in Alphington. It is bounded by the railway line to the north, allotments to the east, residential properties in Edwin Road and St Andrew's Church to the south, and Alphington Road, Aldi and Iceland to the west. The site is in Flood Zone 3. Prince's Square Conservation Area adjoins the site to the west, but there are no other above ground heritage assets within the immediate vicinity. There are TPO'd trees (TPO No. 537) to the west of the site fronting Alphington Road and the access to the car park. The site is in an out-of-centre location and is undesignated in the adopted Local Plan and Core Strategy.

The application has been submitted at the same time as an application to build an extension on the former garden centre and an application to change the use of part of the service yard to garden centre to allow beneficial occupation by The Range. The documents state that the store will become the company's primary retail outlet in the city, but the existing store (4,100 sq m gross) will be retained with a different retail offer. As extended, the retail warehouse will have a gross floor area of 5,079 sq m (4,146 sq m net sales).

This application relates to conditions added to the original planning permission for the retail warehouse (ref. 85/1023/01) (appeal ref. T/APP/Y1110/A/85/040173/P6). It proposes to remove condition 3 restricting the gross external floor area of the building to allow it to be extended. It also proposes to vary condition 5 to redefine the types of goods that can be sold from the premises and vary condition 8 to extend opening times by one hour to 9pm on Mondays to Saturdays inclusive (opening times will remain as 9am to 6pm on Sundays and Bank Holidays).

Condition 5 is proposed to be reworded as follows:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 and the Town and Country Planning (Use Classes) Order 2005, the following goods and services shall be permitted to be sold from the retail warehouse as extended:

- DIY and/or garden goods and supplies including products for home improvement and repair including building material and home improvement goods, tools and equipment;
- Household furniture, furnishings and textiles;
- Kitchens, bathrooms, bedroom unit decorative products, household goods and kitchenware;
- Electrical goods;
- Carpets, wall and floor coverings;
- Automotive accessories, bicycles, marine accessories and chandlery;
- Leisure, camping and toy goods;
- Pet supplies;
- Office furniture and supplies;
- Hobbies and crafts.

Notwithstanding the limitation above the following additional and ancillary categories of goods shall be permitted to be sold from the retail warehouse limited to the floorspace areas specified below:

- (1) Non-fashion clothing and footwear up to 50 sq m.
- (2) Toiletries up to 50 sq m.

The additional goods listed (1)-(2) can only be sold by CDS (Superstores International) Ltd trading as The Range on an ancillary and/or incidental basis to the main goods permitted to be sold from the retail warehouse.”

Other conditions are proposed to control the use of the café.

The application was revised to extend opening times to 9pm on Mondays to Saturdays instead of Mondays to Fridays.

SUPPORTING INFORMATION SUPPLIED BY THE APPLICANT

- Design and Access and Heritage Impact Statement (MWA) (August 2016)
- Supporting Planning and Retail Statement (MWA) (August 2016)

REPRESENTATIONS

The application has been publicised twice. The second publicity period followed the revision to extend opening hours to 9pm on Mondays to Saturdays and runs to 27 October 2016. One representation has been received requesting conditions to provide landscape screening between the existing building and residential properties in Edwin Road and removal of bamboo and ground elder. Other representations have been received relating to the applications to build an extension to the retail warehouse and change the use of part of the service yard to garden centre. These representations are summarised in the relevant officer reports for those applications.

CONSULTATIONS

Devon County Council (Local Highway Authority): No objection. The proposed variation of conditions has been assessed in the Transport Statement and is not a concern on its own.

The Environment Agency: Refer to Standing Advice.

Network Rail: Comments awaited.

South West Water: No objection in principle, but public sewers would appear to potentially be affected.

Environmental Health (ECC): No objection to extend opening by 1 hour to 9pm on Mondays to Saturdays. If a noise nuisance arises from music/tannoy announcements within the building, this can be dealt with as environmental health matter.

PLANNING POLICIES/POLICY GUIDANCE

Government Guidance

National Planning Policy Framework (NPPF)
Planning Practice Guidance (PPG)

Core Strategy (Adopted February 2012)

Core Strategy Objectives

CP1 – Spatial Strategy
CP8 – Retail
CP12 – Flood Risk

Exeter Local Plan First Review 1995-2011 (Adopted 31 March 2005)

AP1 – Design and Location of Development
AP2 – Sequential Approach
S1 – Retail Proposals/Sequential Approach
S2 – Retail Warehouse Conditions
T1 – Hierarchy of Modes
EN4 – Flood Risk

Development Delivery Development Plan Document (Publication Version, July 2015)

DD1 – Sustainable Development
DD20 – Accessibility and Sustainable Movement
DD33 – Flood Risk

OBSERVATIONS

Variation of Condition 5 / Retail Policy Issues

This application will result in a new retail permission for the premises. Therefore the Council's retail policies and national guidance to ensure the vitality of town centres apply. The site is in an out-of-centre location. The applicant has submitted a sequential assessment and impact assessment accordingly. These take into account the proposed extension to the store. Officers agree that the only potential sequentially preferable site for the proposal is the Bus and Coach Station site. The BCS site has outline planning permission for a mix of uses, including up to 11,000 sq m of retail floorspace. A reserved matters application for the commercial element is expected shortly following a public exhibition by the developer in the summer.

The applicant accepts that the BCS site is available. However, the applicant considers that it is not suitable or viable for the proposed development. It cites the business model of The Range, primarily the requirement for retail units with large floor areas between 3,500 sq m and 7,500 sq m+. The proposed store will have a gross floor area of 5,079 sq m. Whilst there is scope to provide this on the BCS site under the outline permission, the indicative proposals show the retail floorspace split into a number of smaller units, the largest being c.2,400 sq m. The applicant argues this is too small to meet their requirements and it is clear that the BCS site is targeting 'high street' retailers.

Notwithstanding, the applicant states that it can sell the majority of goods it intends to sell from the existing premises under its extant permission. The existing retail warehouse has a gross floor area of 3,716 sq m. Whilst it operated as a DIY/garden centre for many years before closing earlier this year, the 1986 appeal decision permits it to sell a wider range of goods than a typical out-of-centre retail warehouse. The proposed variation of condition 5 will permit the same types of goods to be sold from the premises, as well as the following which, arguably, do not fall within the scope of the extant permission: household furnishings, textiles, household goods and kitchenware, leisure and camping goods, pet supplies and office furniture. The proposal also includes the ability to sell non-fashion clothing and footwear, and toiletries from up to 50 sq m each as ancillary goods.

The applicant has carried out an impact assessment of the proposal on the vitality and viability of the City Centre and District Centres. It argues that the majority of trade diversion will be from the existing store in Exeter, which it says will change format to have a different retail offer. Trade will also be diverted from existing retail warehouses in this part of Exeter.

The impact on the City Centre and District Centres, including St Thomas, is considered to be negligible.

Officers are satisfied that the sequential and impact tests have been passed in this case. However, a further condition preventing the sub-division of the store (as extended) is considered necessary in accordance with Policy S2. Officers have also weighed the positive benefits of the scheme in the overall planning balance, including reuse of a vacant premises and job creation. It is estimated that the scheme will lead to the creation of 85 jobs (65 FTE).

In conclusion, the proposed variation of condition 5 to allow beneficial occupation by The Range is considered to be acceptable, subject to some minor rewording.

Impact on Local Highways

The variation of condition 5 to permit the sale of a wider range of goods from the premises may attract more customers to the site. This includes pedestrian and vehicle movements. However, the Local Highway Authority does not consider this to be significant enough to have an adverse impact.

In addition, the Local Highway Authority does not consider that the traffic generated by the retail warehouse as extended will have a significant enough impact to refuse the extension application (see Officer Report for 16/0872/03). However, pedestrian access improvements are required and will be secured as part of this application.

Removal of Condition 3 to Allow Extension

The Secretary of State provided no reasons for the conditions imposed on the original planning permission for the retail warehouse, including the restriction on the overall amount of floorspace. The applicant states that it is not clear that condition 3 serves a useful planning purpose. The only useful purpose would appear to restrict the ability to carry out minor extensions to the store under permitted development rights, as large extensions will be subject to individual planning applications. Therefore, officers consider that condition 3 can be removed, subject to a new condition withdrawing permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any superseding legislation. This takes into account the nature of the surrounding uses. The restriction on the garden centre floorspace in condition 3 is also no longer considered necessary.

Extend Opening Hours to 9pm on Mondays to Saturdays

The current permitted opening hours are 9am to 8pm on Mondays to Saturdays and 9am to 6pm on Sundays and Bank Holidays. The proposal to extend opening hours by one hour in the evenings on Mondays to Saturdays has been discussed with environmental health and is considered to be acceptable. If a noise nuisance arises from music/tannoy announcements within the building, this can be dealt with as an environmental health matter.

Conditions

In addition to the removal/variation of conditions applied for, it is considered that the conditions need to be refreshed taking into account the current planning policy context. A list of conditions is included at the end of this report and includes a new landscaping scheme, as plantings have been removed from the original scheme, cycle parking provision and a Staff Travel Plan. A condition to approve details of any new external lighting installed is also necessary to ensure residential amenity is protected in the winter months, taking into account the slightly longer opening hours. Hours for deliveries should also be controlled in the interests of residential amenity.

The proposed development is not CIL liable as it will not result in any additional floorspace. A S106 legal agreement is not necessary for this application, but will be for application ref. 16/0872/03 (extension) to secure funding to upgrade the pedestrian crossing on Alphington Road adjacent to the site access.

RECOMMENDATION

APPROVE subject to the following conditions (further conditions delegated to Assistant Director of City Development if Members/Officers consider necessary):

- 1) Reserved matters details to accord with RM approval ref. 86/1052/02
The reserved matters details of access, layout, scale, appearance and landscaping shall accord with reserved matters approval ref. 86/1052/02, unless otherwise varied by this decision.

Reason: For the avoidance of doubt.

Prior to first reoccupation

- 2) Detailed Landscaping Scheme/Planting
Prior to the first occupation or use of the development hereby permitted following the date of this decision, a Detailed Landscaping Scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of soft landscaping, including that designed to screen and/or soften the appearance of the building from the adjoining residential properties in Edwin Road. It shall specify tree/plant species and methods of planting. All trees and plants in the approved Scheme shall be planted in the first planting season following the first occupation or use of the development hereby permitted following the date of this decision or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of design and residential amenity in accordance with Policy CP17 of the Core Strategy, Policy DG1 of the Exeter Local Plan First Review, and paragraphs 17 and 58 of the NPPF.

- 3) Cycle Parking
Prior to the first occupation or use of the development hereby permitted following the date of this decision, details of cycle parking provision in accordance with the adopted Sustainable Transport SPD (March 2013) shall be submitted to and approved in writing by the Local Planning Authority. Cycle parking shall be provided on the site prior to the first occupation or use of the development hereby permitted following the date of this decision in accordance with the approved details.

Reason: To promote cycling as a sustainable mode of transport in accordance with Policy T3 of the Exeter Local Plan First Review and the Sustainable Transport SPD.

- 4) Staff Travel Plan
Prior to the first occupation or use of the development hereby permitted following the date of this decision, a Travel Plan (including recommendations and arrangements for monitoring and review) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the recommendations of the Travel Plan shall be implemented, monitored and reviewed in accordance with the approved document, or any amended document subsequently approved in writing by the Local Planning Authority.

Reason: To encourage travel by sustainable means in accordance with Policy T3 of the Exeter Local Plan First Review and the Sustainable Transport SPD.

Prior to installation

5) External Lighting

No external lighting shall be installed on the site or on the building following the date of this decision unless details of the lighting have been submitted to and approved in writing by the Local Planning Authority. Thereafter external lighting shall be installed in accordance with the approved details.

Reason: In the interests of design and residential amenity in accordance with Policy CP17 of the Core Strategy, Policies DG1 and DG7 of the Exeter Local Plan First Review, and paragraphs 17 and 58 of the NPPF.

Restrictive/Permanent

6) No pedestrian or vehicular access from Edwin Road

No pedestrian or vehicular access to the site shall be provided from Edwin Road.

Reason: To accord with the original decision and prevent disturbance to the residents of Edwin Road.

7) Restrict sale of goods

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), the retail warehouse to which this permission relates shall not be used for the sale of any goods other than those in the following categories:

- (i) Do-It-Yourself goods and garden centre goods, including related building materials, tools and equipment;
- (ii) New kitchens and bathrooms;
- (iii) Carpets, wall and floor coverings;
- (iv) Lighting products;
- (v) Household furniture, furnishings and textiles;
- (vi) Office furniture and supplies;
- (vii) Household goods and kitchenware;
- (viii) Electrical goods;
- (ix) Motor vehicle and bicycle related goods;
- (x) Marine accessories and chandlery;
- (xi) Camping and associated leisure goods (not including clothing and/or footwear);
- (xii) Pet products; and
- (xiii) Hobbies, crafts and toys.

The following categories of goods shall be permitted to be sold as ancillary goods restricted to a maximum floor area of 50 sq m each:

- a. Non-fashion clothing and footwear; and
- b. Toiletries.

Reason: In the interests of protecting the viability and vitality of the centres in the catchment area of the proposal, including the Primary and Secondary Shopping Areas in Exeter City Centre and the District and Local Centres in the city, in accordance with Policy CP8 of the Core Strategy, Policies S1 and S2 of the Exeter Local Plan First Review, and section 2 of the NPPF.

8) Prevent sub-division of the building

The retail warehouse shall not be sub-divided into more than one retail unit and shall not be used by more than one retailer with an individual fascia.

Reason: In the interests of protecting the viability and vitality of the centres in the catchment area of the proposal, including the Primary and Secondary Shopping Areas in Exeter City Centre and the District and Local Centres in the city, in accordance with Policy CP8 of the Core Strategy, Policies S1 and S2 of the Exeter Local Plan First Review, and section 2 of the NPPF.

9) Opening hours

Retail sales shall not be carried out on the site at any time outside the hours of 9.00 am to 9.00 pm on Mondays to Saturdays inclusive and the hours of 9.00 am to 6.00 pm on Sundays and Bank/Public Holidays.

Reason: To protect residential amenity in accordance with paragraph 17 of the NPPF.

10) Delivery hours

No vehicle deliveries to the retail warehouse nor loading or unloading of delivery vehicles on the site shall take place outside the hours of 7.00 am to 9.00 pm on Mondays to Fridays inclusive and the hours of 8.00 am to 1.00 pm on Saturdays. There shall be no vehicle deliveries to the retail warehouse nor loading or unloading of delivery vehicles on the site on Sundays or Bank/Public Holidays.

Reason: To protect residential amenity in accordance with paragraph 17 of the NPPF.

11) Parking spaces/access kept permanently available

The car parking spaces and access thereto in the car park of the retail warehouse shall be kept permanently available for car parking and access purposes at all times.

Reason: To ensure adequate off-street parking and access thereto is provided in the interests of highway safety and amenity.

12) Withdraw permitted development rights

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the retail warehouse shall not be extended without the prior grant of planning permission.

Reason: In the interests of design and residential amenity in accordance with Policy CP17 of the Core Strategy, Policy DG1 of the Exeter Local Plan First Review, and paragraphs 17 and 58 of the NPPF.

Local Government (Access to Information) 1985 (as amended).

Background papers used in compiling the report:

Files of planning applications available for inspection from the Customer Service Centre, Civic Centre, Paris Street, Exeter: Telephone 01392 265223