
**RE: OBJECTION TO PROPOSED
EXTENSION TO UNIT 17 AND VARIATION
OF CONDITION 7 IN PLANNING
APPROVAL C/2005/1299/F (UNDER
ARTICLE 28 OF THE PLANNING (NI)
ORDER 1991) TO PERMIT THE SALE OF
CONVENIENCE AND COMPARISON
GOODS IN UNIT 17, RIVERSIDE
REGIONAL CENTRE, CASTLEROE ROAD,
COLERAINE.
DEPARTMENTAL REF. NO.C/2013/0443/F
PAC REF. NO.2014/A0266**

STATEMENT OF CASE

ON BEHALF OF

The Diamond Centre, Coleraine



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1.0 Introduction.

1.1 We are instructed by the Diamond Centre, Coleraine to submit a Statement of Case (SOC) to this rehearing of this planning appeal supporting the refusal of this planning application by DOE Planning Service on 28th January 2015.

1.2 On a procedural note our Clients indicate that they were not formally notified by the Planning Appeals Commission of this appeal rehearing despite the fact that they were Objectors to the original planning application.

1.3 This SOC is supported by the following appendices, namely:-

- Appendix MKA1 – P1 Form
- Appendix MKA2 – Planning Appeal PAC 2014/A0266
- Appendix MKA3 – Invalid Planning Appeals
- Appendix MKA4 – Third party objections
- Appendix MKA5 – Diamond Centre Unit Floor Plan
- Appendix MKA6 – Circular Road car park permission
- Appendix MKA7 – Site Plan of Car Park.
- Appendix MKA8 – Context Plan showing other Car Parks
- Appendix MKA9 – Planning Appeal 2011/AO150

1.4 This SOC sets out that the appeal proposal is contrary to both the NAP and the SPSS as alternative town sites are both available and suitable.

2.0 Validity of Planning Application/Planning Appeal.

2.1 This planning application was described in the original P1 form, (Appendix MKA1) at Question 7 as:

“Proposed extension to Unit 17 and variation of condition 7 in planning approval C/2005/1299/F (under Article 28 of the Planning (NI) Order 1991), to permit the sale of convenience and comparison goods in Unit 17”.

2.2 In the subsequent quashed planning appeal decision issued the description was amended, (Appendix MKA2) to:

“Extension of Unit 17 and variation of Condition 8 in planning approval C/2007/0587/F to permit the sale of convenience and comparison goods in Unit 17”.

2.3 The Commissioner justified this amendment of the proposed description at Paragraph six of the appeal decision where it is stated:

"As the principle of development sought by the subject planning application has not changed, I am satisfied that no prejudice to the parties involved in this appeal, or to the general public would result by amending the planning reference number and corresponding condition within the description of development of this appeal at this stage."

2.4 We believe that this is incorrect. This is not an outline planning application. This is a specific planning application to amend a specific planning condition on a specific planning permission as set out on the P1 form and as advertised to the general public.

2.5 If the 2005 permission on the P1 form was never implemented or has been superceded by the implementation of the 2007 permission then there can be no valid application or planning appeal for variation of one of its planning conditions in front of the Commission.

2.6 Article 8 (3) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (GDPO) requires the PAC to advertise the planning appeal. The PAC advertised the appeal under the original description. Any material change in the appeal description that has not been advertised is contrary to Article 8 (3) of the GDPO. The PAC have previously made a number of planning appeals invalid due to advertising failures, (Appendix MKA 3). If the PAC do re-advertise the appeal under the amended description it is still an entirely different proposal from the application that was refused. We do not believe such a substantial amendment can be made to an application which has already been refused and is now currently at planning appeal. It fundamentally changes the nature of the application which cannot be done at the appeal stage.

2.7 Third parties and the general public in this case would then have clearly been prejudiced as they objected to an entirely different planning condition and its associated planning permission, (Appendix MKA 4). Third party objections to a planning application for variation of a planning condition on a particular permission cannot be simply re-assigned by the PAC to a different planning condition on a different permission. I believe a new planning application is required and this planning appeal is invalid if the 2005 permission has been superceded or is now expired.

3.0 Alternative Sites in Coleraine Town Centre.

3.1 Section 6 (4) of the Planning Act (Northern Ireland) 2011 requires the appeal to be determined in accordance with the Local Development Plan (LDP) unless other material considerations indicate otherwise.

The Northern Area Plan 2016 (NAP).

3.2 The NAP is an up to date development plan, only adopted in 2015 and qualifies as an LDP. The NAP states that it

“will seek to ensure that any future development of the Riverside Centre is complementary to rather than competing with , town centres, and does not adversely affect the vitality and viability of the latter. “

3.2 This proposal is not complementary to the town centre, it will compete with retail stores in the town centre which offer a similar range of goods. Lifting the bulky goods restriction on the appeal site will in the long term pose a risk to the vitality and viability of the town centre. The appeal proposal is therefore not in accordance with the LDP.

The Strategic Planning Policy Statement (SPPS).

3.3 The Ministerial Statement accompanying the SPPS indicates that the provisions of the SPPS are material to all decisions on planning applications and appeals. PPS 5 – Retailing and Town Centres is cancelled by the introduction of this new planning policy.

3.4 This planning application is contrary to the sequential approach set out in SPPS Paragraphs 6.280 and 6.281 in that alternative town centre sites are available. Paragraph 6.289 states that flexibility may be adopted in seeking to accommodate developments onto sites with a constrained development footprint. Para. 6.289 goes onto further state that Applicants will be expected to identify and fully demonstrate why alternative sites are not suitable, available and viable.

The Diamond Centre – Coleraine Town Centre.

3.5 At the planning appeal hearing the Applicant put forward various objections to the Diamond Centre’s proposal that they can amalgamate a number of smaller retail units to make one large retail unit to accommodate the appeal proposal.

3.6 We deal with each of these objections below:-

Size.

3.7 The Diamond Centre Architects have prepared a layout providing one large retail unit on a level deck floor of over 15,000 sq. ft. This is an amalgamation of existing Units 17-22, The Diamond Centre, (Appendix MKA5).

Car Parking.

3.8 The Objectors cannot provide on-site car parking for the Diamond Centre unit within the town centre. However, other retail units within the Diamond Centre and the town centre also sell convenience goods, comparison and bulky goods without on-site parking. The town centre is well served by on street and public/private car parking.

3.9 The Objectors can provide a dedicated car park for Diamond Centre shoppers at Circular Road in Coleraine, a short distance from the Centre. We attach planning permission for this car park, (Appendix MKA6). We also attach a site plan illustrating its proximity to the Diamond Centre, (Appendix MKA7). A trolley bay can also be provided within this dedicated car park. Other car parks such as Dunnes Stores and Abbey Street Car park are also adjacent or nearby (Appendix MKA8). The Objectors are also considering other options for car parking or improving accessibility to parking for the Diamond Centre to make it more attractive to retailers, and discount 'top up' retailers in particular.

Servicing.

3.10 The Applicants indicate that the proposed unit will be serviced by a 40 ft lorry twice a week. We have inspected the modern shared servicing arrangements at the Diamond Centre. The existing service yard is more than capable of handling this level and volume of servicing weekly. We also believe that Home Bargains currently operates out of shopping centres with similar servicing arrangements.

Trolleys.

3.11 The Objectors have agreed to provide trolleys within the proposed larger retail unit. The Objectors can provide a trolley bay at the dedicated parking at Circular Road. However, our experience of shopping in Home Bargains is that while some shoppers use the trolleys in store many of these shoppers carry their purchases to the car rather than using the trolley.

- 3.12 In terms of building control our Architect has indicated that the slopes on the shopping mall do not meet the definition of ramps and the mall is suitable for the use of trolleys. Customers with buggies/prams and wheelchair customers all use the mall on a daily basis with no difficulties, (Appendix MKA 9).

Variation in Floor Levels.

- 3.13 This new unit will have a level deck floor. Our Architect indicates that the floor level on one of the units (Unit 17) has to be raised by 450mm and one by 130mm (Unit 18), not by 1450mm.

Insufficient Ceiling Height.

- 3.14 A reasonable ceiling height has been provided.

Internal Layout.

- 3.15 It is accepted that there are 34 metal columns and a stairwell within the proposed unit. However, internal store layout, aisle lengths and merchandising arrangements can be modified to accommodate this proposed store layout.

Former JJB Sports Unit – Hanover Place.

Servicing/Carparking.

- 3.16 It is noted that there are only two deliveries per week to Home Bargains. It is also noted that KFC does not open to 11am. This is an existing deficiency in the access point. Many retail stores in town centres operate with less than ideal servicing arrangements. The retail operation and servicing of the former JJB store as a retail store is lawful. Therefore, the Applicant's arguments against the JJB store in terms of road safety or sweep paths are not relevant. 42 parking spaces are available. Servicing of the store can be done at off peak times or in the early morning.
- 3.17 The Applicant's claim that the 40 foot lorry leaving the site could give rise to congestion along Hanover Place. However, at present it is the traffic lights and the heavy levels of traffic using Hanover Place that cause ongoing congestion at this point. This proposal for two deliveries per week is hardly likely to significantly add to the existing congestion along Hanover Place.
- 3.18 It is noted that in the Applicant's Assessment of Town Centre Sites that the Applicant's original objection to the JJB Store was primarily on the basis of poor footfall, isolation and

poor integration into the town centre and limited parking. However, it has dedicated car parking and Home Bargains is a retail destination in itself. Objections on the servicing of the unit have only arisen subsequently.

- 3.19 While the store has a haunch height of 5.5m rather than the preferred 6m height I do not believe that this makes the alternative site unsuitable.

Other Grounds.

- 3.20 We believe that the Planning Appeal 2011/AO150 for Tesco Stores Ltd at Lands between Leyland Heights and Ramoan Road, Ballycastle, (Appendix MKA 10) is a material planning consideration in this appeal. In that case a proposal for a retail store outside the town centre was refused on the basis that an alternative town centre site existed. We believe that that decision is a precedent decision in support of refusing this proposal.

- 3.21 It is clearly more difficult to develop a town centre site for retail use than a greenfield site. The Applicant has approached the consideration of the two alternative sites in Coleraine town centre in a negative manner looking for reasons to exclude them rather than as realistic alternatives. A retailer's particular specific requirements is not the ultimate arbiter of an alternative site's suitability. The determining issue in planning policy is the availability of suitable town centre sites for the proposal. These two alternative sites are available and suitable. This proposal fundamentally changes the nature of this retail warehouse, will serve as a precedent for other existing applications to vary bulky good conditions on other retail warehouses, encourage other retailers to approve to vary the bulky goods conditions on their warehouses and will result in further erosion of the vitality and viability of the town centre.

4.0 Conclusions.

Therefore, for the reasons set out above, we request that the Commissioner refuse this planning appeal.