# PLANNING COMMITTEE 17 April 2013

#### REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

# Unit 1A and 1B Castle Retail Park, Radford Boulevard

#### 1 SUMMARY

Application No: 13/00242/PFUL3

Application by: UBS Global Asset Management (UK) Limited

Proposal: Amalgamation of Units 1A and 1B and change of use of Unit 1B, to

create a new food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. Resubmission of planning application reference 12/03177/PFUL3.

The application is brought to Committee because it is a major application and involves the interpretation of legal issues.

To meet the Council's Performance Targets this application should be determined by 6 May 2013.

# 2 **RECOMMENDATIONS**

**GRANT PLANNING PERMISSION** subject to the conditions listed in the draft decision notice at the end of this report.

Power to determine the final details of the conditions to be delegated to the Head of Development Management.

# 3 BACKGROUND

# Site and Surroundings

- 3.1 The application site comprises Unit 1A and Unit 1B of Castle Retail Park and includes the car park and associated areas to the south of the vehicular access into the retail park. The retail park currently provides approximately 10,403 sq metres (112,000 sq ft) of floor space configured within six units. The retail units subject to the application are located adjacent to the southern boundary, fronting north into the park with Unit 1A currently occupied by BM Home Stores and Unit 1B by Gala Bingo. The remaining four retail units, Topps Tiles (Unit 2), Maplin (Unit 3), Aldi (Unit 4), Dunelm (Unit 5), are situated on the west side of the retail park with their frontages facing east across the car park.
- 3.2 The retail park dates to the late 1980s with the units constructed in a mix of brick and grey cladding. Each unit has a large gable entrance and a canopy that runs continuously around the front of the buildings. Vehicular access to the retail park is achieved off Radford Boulevard. Pedestrian access to the retail park is from the

corner of Radford Boulevard and Hartley Road, through a soft and hard landscaped area that includes a brick clock tower, or alternatively via a path adjacent to the main vehicular access. All the existing retail units are serviced from the west off Churchfield Lane. The retail park is on a lower level than Radford Boulevard and the car park slopes down gradually from north to south and east to west.

3.3 The surrounding area is generally characterised by residential development, though there are offices to the east and St Peter's Church to the west. The nearest shopping centres to the site (as defined in the Local Plan) are Hyson Green Town Centre, Alfreton Road and Hartley Road Local Centres.

#### Relevant Site History

- 3.4 Castle Retail Park was originally granted planning permission (ref: 376/10/87) in 1988. This application permitted the construction of five retail units, including the original Unit 1. The 1988 Permission included provision for Unit 1 to be used as a foodstore and condition 6 of the above permission restricted the goods to be sold across the park to:
  - a) i) building and DIY materials and tools;
    - ii) motor parts and spares; cycles;
    - iii) caravans, camping equipment and boats;
    - iv) furniture and carpets;
    - v) large electrical 'white' goods;
    - vi) in the case of unit 1 only, no more than 12,000 sq ft (gross) of food and convenience goods.
  - i) goods which are ancillary or directly associated with the above items (i) –
     (v), to a limit of 15% of net sales area of each retail unit or 3,000 sq ft, whichever is the lower figure.
- 3.5 In July 1988, the Council granted planning permission for: 'Use of Unit 1 by one or two non-food operators' (ref: 334/06/88). The Permission enabled the sub-division of the original unit into two new units: Units 1A and 1B. No conditions were attached to the Permission which controlled the retail use of the new units. Unit 1A remains in use as a retail operation (B&M Bargains) while Unit 1B is now occupied by Gala Bingo following the grant of planning permission for a change of use to Class D2 in 1996 (Ref 96/01658/PFUL3).
- 3.6 In November 2007, the Council issued a Certificate which confirmed that Unit 1A can lawfully be used for the retail sale of all goods within Class A1 (ref: 07/01982PCLO).
- 3.7 In June 2008, the Council issued a Certificate (ref: 08/01163/PCLO) which confirmed that the completion of a mezzanine floor measuring 2,135 sq. m within Unit 1A was lawful. This floorspace can also be used for the retail sale of all goods within Class A1.
- 3.8 In March 2012, the Council granted planning permission for the change of use of Unit 1B from a bingo hall (Class D2), to a flexible use of a bingo hall (Class D2) or retail (Class A1) (ref: 12/00073/PFUL3). The permission allows the floorspace to be used for retail purposes although Condition 5 limits the range of goods that can be sold. The restrictions are identical to the condition imposed on the original permission for the retail park (reference 376/10/87) with the exception of permitting any food retail.

- 3.9 In November 2012, an application (ref:12/03177/PFUL3) was submitted for the amalgamation of Units 1A and 1B and change of use of Unit 1B, to create a new food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. This application was very similar to the current application but was withdrawn to allow some further consideration of design and highway/parking issues.
- 3.10 Although not involving the application site it is also relevant to note that in 2009 an application (08/2912/PVAR3) was refused to vary an existing condition on Unit 5 to permit the sale of convenience retail goods. This application was refused on grounds that retail need had not been demonstrated and that the proposal would adversely impact upon the vitality and viability of existing Town and Local Centres.

# 4 <u>DETAILS OF THE PROPOSAL</u>

- 4.1 The application seeks to amalgamate Units 1A and 1B and change the use of Unit 1B, to create a new food retail store (Class A1). This would form a retail unit with a gross floor space of approximately 4,200m2 and a net retail floor space of approximately 2,356m2. Whilst permission exists for unfettered A1 retail use within Unit 1A, the condition restricting goods on Unit 1B within the 2012 permission means that consent is required for this part of a newly formed single unit for food retail use. The internal layout proposes a café on the east side of the building, with the warehousing and servicing area to the west and all the retail space is contained at ground floor. Two mezzanines at separate ends of the building of 344m2 and 161m2 are proposed and will contain staff facilities and plant respectively.
- 4.2 The application also proposes some external alterations to the building including a new entrance lobby to replace the two existing entrances, a replacement canopy and the insertion of glazing into the east elevation. A sprinkler tank is proposed to the rear of the south elevation, adjacent to Hartley Road and alterations to the layout of the car park are also included within the application.
- 4.3 The application is supported by a covering letter which reviews relevant planning policy and submits that there is a 'fallback position' with regard to the combined occupation of Units 1A and 1B as a single food retail without planning permission. This view is supported by a Legal Opinion produced by Paul Tucker QC and the consequence of this reasoning is that no Retail Impact Assessment or Transport Assessment is submitted with this application. The merits of this position are considered in the appraisal. The application also includes a Design and Access Statement and a Flood Risk Assessment.
- 4.4 As part of the development package the developer is to deliver local employment and training opportunities during both the construction and subsequent operation of the development, including a financial contribution towards pre-employment training and recruitment costs. Despite the lack of a Transport Assessment, in response to the Highway Authority's comments that there may be traffic impacts if the development is permitted, the developer is offering a financial contribution to monitor and, where appropriate, mitigate any adverse effects. These contributions will be secured through a Section 106 obligation.

# 5 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS

#### Adjoining occupiers consulted:

- 5.1 The application has been advertised by site notices (x3) and press advert. In addition the following neighbours have been directly consulted:
  - Flats 1-2 123, 125, Flats 1-3 127, Flats 1-4 129, 131-153 (odds only), 134-136 (evens only), Units 2, 3B, 4 and 5 Castle Retail Park and 159 Forster Avenue.
- 5.2 There have been five responses as a result of the neighbour notification or the site and press notices. A detailed objection from GL Hearn acting on behalf of Development Securities PLC & RG Foster Textile Machinery has been received. The objection letter states that the applicant's assessment that the fall back position is realistic is flawed. It is submitted that in actual fact the fall back position is not commercially attractive, with particular concerns presented over the viability of servicing, given the distance that delivery vehicles would need to reverse, and that the store entrance would interrupt existing customer parking provision. In addition the objection states that a Retail Impact Assessment should be provided with the application to comply with the requirements of the NPPF and the accompanying guide to PPS4. It is also submitted that a sequential test should be undertaken and a Transport Assessment be provided to support the application. The objection concludes that the fall back position does not justify granting planning permission without considering the impact on existing centres and the impact on highway and transport issues.
- 5.3 Three of the other responses object to the application with reasons again including that the absence a Retail Impact Assessment, the sequential test assessment and a Transport Assessment will mean that the application will not be appropriately considered. Why is this different from the Tesco application in 2008? The fallback position is considered to be flawed by an objector who cites that it contravenes the existing planning restrictions on site and furthermore is an unrealistic option. An objector advises that the Bobbers Mill site, which is being promoted through the LAPP process, represents a far more appropriate site and is sequentially preferable. To permit a food retail outlet of this size at the retail park would adversely affect the character of the area.
- One local shop owner advises that they have no objection and that the proposed use would have less harm than the existing occupants of one of the units. He comments that a condition should be imposed to limit use to 9pm (Monday to Saturdays) and Sunday at 4pm.

#### Additional consultation letters sent to:

5.5 **Highways:** Advise that they would normally require a Transport Assessment for a development of this type and size but note the legal advice that the units could be occupied for A1 (food) purposes to the size proposed without planning permission under a different configuration, and on this basis understand that a TA is not justified. Whilst this is accepted, the Highway Authority still has concerns with the proposal, in the absence of submission of a Transport Assessment, including that the traffic generated is likely to cause congestion, firstly within the site itself and then consequently at the site access junction and potentially further onto the highway network. Normally a package of measures would be secured through either condition or a Section 106 obligation to mitigate any traffic impacts.

Improvements may need to be made for pedestrians within the retail park as currently they are required to walk across the car park with no dedicated footway. A car park management plan is recommended to be secured via condition.

5.6 **Noise and Pollution Control:** No objections subject to conditions covering noise from plant, delivery times, ventilation and extraction and top soil to be deposited in the landscaped areas.

# 6 RELEVANT POLICIES AND GUIDANCE

#### **National Planning Policy Framework:**

- 6.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies. While planning applications still need to be determined in accordance with the development plan, which are set out in the report, the NPPF is a material consideration in the assessment of this application. The NPPF advises that there is a presumption in favour of sustainable development and that development which is sustainable should be approved.
- 6.2 Paragraph 24 states that local planning authorities should apply the sequential test for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. The requirement is for retail development to first be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.
- 6.3 Paragraph 26 states that applications for retail developments outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). Advice is given in the NPPF as to the content of the assessment. Paragraph 27 concludes that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on town centres or on existing, committed and planned public and private investment in a centre or centres in the identified catchment area of the proposal, that application should be refused.
- 6.4 Planning for Town Centres A Practice Guide on Need, Impact and the Sequential Approach was published in 2009 as an accompanying document to PPS4. Whilst PPS4 itself is now superseded by the NPPF, the practice guide remains a material consideration. Of particular relevance is Appendix D which deals with quantifying the impact of retail development, specifically paragraphs D9 and D10 which provide advice on the merits of considering the fallback position. The guidance explains

"There is a difference between a purely 'hypothetical' fall back position, and a position which actually could be implemented. If there is a realistic prospect that the fall back position would be brought forward, then it would be appropriate to attach significant weight to it in judging the impact of the proposal in question."

# **Nottingham Local Plan (November 2005):**

ST1 – Sustainable Communities. Complies

- S5 Retail development, Edge/Outside Centres Complies
- BE2 Layout and Community Safety. Complies
- BE3 Building Design. Complies
- BE4 Sustainable Design. Complies
- T1 Location of development Complies
- T2 Planning Obligations and Conditions Complies
- T3 Car, Cycle and Servicing Parking Complies

# Nottingham City Council Interim Retail Planning Guidance (2010)

The Council published in October 2010 an interim retail planning guidance document. The Council recognises that this guidance is not part of the Development plan, and as such it cannot be afforded full weight in the decision making process. However, this document was subject to public consultation and has been adopted by the City Council's Executive Board on 19th October 2010 as Interim Retail Planning Guidance (IRPG). It represents the current view of the City Council in relation to a series of retail issues.

# 7. APPRAISAL OF PROPOSED DEVELOPMENT

#### Main Issues

- i) Whether the justification for excluding the submission of a Retail Impact Assessment, a sequential test and a Transport Assessment is sound (the assessment of the 'fall back position').
- ii) The impact of the proposal on the vitality and viability of existing Centres, either by itself, or cumulatively with other proposals.
- iii) Impact on Traffic, Parking and Pedestrian Movements
- iv) External alterations and landscaping.

Whether the justification for excluding the submission of a Retail Impact Assessment, a sequential test and a Transport Assessment is sound. (NPPF paragraphs 24 & 26, Policy S5 of the Local Plan and Policy 5 of interim retail guidance)

7.1 The application seeks to amalgamate Units 1A and 1B to create a single food retail unit comprising approximately 4200m2 of gross floor space and 2356m2 of net retail floor space. From the planning history it is clear that the certificate issued in 2007 establishes that Unit 1A has unrestricted A1 retail use. This unit has 2480m2 of floor space at ground floor, but the further certificate granted in 2008 established the lawfulness of the mezzanine floor which provides a further 2,135m2 of unrestricted floor space. This results in a total floorspace within Unit 1A of 4615m2. With regard to Unit 1B this has permission to be used as either a bingo hall or for retail purposes subject to restrictions on the goods to be sold and excludes food retail use. Unit 1B has floor space of 1210m2 at ground floor and a further 1197m2 at mezzanine level (which was constructed in 1996), giving a total of 2407m2. This results in an overall gross floor space total across both units of 7022m2. There are no restrictions on the retail park with regard to amalgamation. The Table below

summarises the currently permitted floor space.

	Ground Floor	Mezzanine	Total
Unit 1A	2480m2	2135m2	4615m2
Unit 1B	1210m2	1197m2	2407m2
Total	3690m2	3332m2	7022m2

\* Note Unit 1B floor space subject to restrictions outlined above

- 7.2 The applicant submits that they could achieve the floor space they desire without requiring permission. As set out above, the total amount of floor space sought pursuant to the application is 4200m2 which could be achieved within Unit 1A which currently has unfettered A1 use. However this would be across two floors, with a comparatively even distribution of floor space which would not be attractive to a potential retailer. An alternative, more realistic and viable option is presented as the applicant's main case in terms of establishing a fall back position. This proposes the accommodation of all the retail floor space within the ground floor of what is currently Unit 1A and the supporting facilities such as the servicing warehouse, toilets etc within what is currently Unit 1B from which no goods would be sold. This would provide a net retail floor space of 2480m2 compared to 2356m2 proposed in the application. The application is supported by a QC opinion which confirms that whilst the condition on Unit 1B would still bite if the units were amalgamated, this arrangement would not breach that condition.
- 7.3 The weight of the potential fallback position is also discussed within the QC opinion and case law is referred to which confirms that it should be a material consideration providing that there is a real prospect, and not merely a theoretical one, of the fallback development taking place. The application documentation submitted has been considered very carefully and the Council's legal section has advised that the QC approach is correct. A1 use would be permitted throughout the amalgamated units and providing that the area comprising the former unit 1B is not used for the sale of any goods other than those permitted by condition 5 of the March 2012 permission there would be no breach of planning control. Thus, it would be permissible for the former unit 1B to be used as a warehouse ancillary to the 'shop floor', for staff facilities / toilets or indeed for the sale of goods permitted by the 2012 condition.
- 7.4 It is accepted that there is no justification for requiring a Retail Impact Assessment to support the planning application because there is already in existence planning approval for retail use covering both units 1A and 1B (albeit with a restrictive condition on unit 1B) for a floor area in excess of that specified in the application. Whilst the NPPF, PPS4 Practice Guidance, Policy S5 of the Local Plan and Policy 5 of the interim retail guidance all provide advice on thresholds for impact assessments, as the QC opinion states, a Retail Impact Assessment is not required under paragraph 26 of the NPPF where no new retail floor space is being created. Indeed, through the imposition of conditions the amount of retail floorspace permitted in the new unit will be significantly less than currently permitted. Similarly the requirement for a sequential test must also fall if the retail floor space is established and even accounting for the restriction of the condition on the 2012 permission, the applicant has demonstrated a fallback position which although perhaps not ideal, appears realistic and capable of being exercised.
- 7.5 Some of the objections submitted clearly disagree that the fallback position is realistic. It is noted that the servicing arrangements under the fall back position are questioned, with the submission from GL Hearn specifically referencing that

delivery lorries would need to undertake a 60m+ reversing manoeuvre. It is considered that whilst this might not be an ideal situation, it is workable and this does not amount to such a constraint that it would render the fallback position unrealistic. The concern regarding the customer access to the store dissecting parking spaces could be resolved relatively easily and is not considered a significant reason to claim that the fallback position is flawed and would not be brought forward. Whilst the fall back position might not be as desirable as the proposal submitted, it appears sufficiently realistic to attach significant weight to the decision making process.

7.6 The objection letter from GL Hearn also quotes a section from paragraph D10 of the practice guidance which states:

"when comparing the impact of a proposal with a fall back position, it will be relevant to consider the impact of the proposal as a whole, rather than just the 'incremental' impact of the difference between the two. This applies to all impact assessments, where the relevant test is the cumulative impact of the proposal in question."

The objection letter considers that the true fall back position is the unfettered use of Unit 1A only (which would require either floor space over two floors or a reduced floor space at ground floor). However it is considered that the fall back position promoted through the application (that is the use of Unit 1B for the back office operations) exists, is realistic and provides a net floor space marginally greater than that proposed in the application. It is not the case that the fall back position would provide a lesser impact but one that would, theoretically, be virtually identical.

7.7 With regards to a Transport Assessment the same argument prevails in that the Council could not reasonably insist on the submission of such when a development with identical or near identical impacts could be undertaken without the requirement for planning permission.

The impact of the proposal on the vitality and viability of existing Centres, either by itself, or cumulatively with other proposals. (Policies ST1 and S5 of the Local Plan and Policy 5 of the interim retail guidance)

- 7.8 The position that has been established on the above issue essentially governs the outcome of this consideration. Again it would be unreasonable to resist the application against the background that an alternative solution exists whereby the retail impact of the application would be identical, or near identical to a permitted development scheme as demonstrated through the applicant's promoted fall back position.
- 7.9 It is noted that an objector has referred to the application for the sale of convenience goods within Unit 5 of the retail park, which was refused permission in 2009 (08/02912/PVAR3). This application would have delivered a similar amount of gross and net floor space to the current proposal but was refused on the grounds that no demonstrable need had been evidenced and it would also adversely impact upon the vitality and viability of existing town and local centres. The requirement to demonstrate need no longer exists in national planning policy and, whilst it was considered justifiable to refuse the application on the grounds of impact on town and local centres, Unit 5 does not benefit from the lawful use for unrestricted retail sales as Unit 1A does. It is noted that the committee report for the 2009 decision commented on the position with regard to Unit 1A and recognised that the use of

this unit alone as a food retail unit was not likely to be attractive to occupiers. However, the fallback position promoted as part of the current scheme relies on the amalgamation of Units 1A and 1B following the grant of permission for (restricted) retail use of the latter in March 2012.

7.10 In light of the retail floorspace currently permitted, it is considered that the impact of the development as proposed is acceptable. However, the application provides the opportunity to ensure that the amount of retail floor space is unable to increase from that in the current application and a condition to restrict the total amount of floor space is included within the recommendation. A condition is also recommended to prevent further amalgamation with other units or future subdivision of the new unit formed by any permission.

# Impact on Traffic, Parking and Pedestrian Movements (Policies BE2, T1, T2 and T3)

- 7.11 Whilst the Council's highway section accepts the position with regard to the Transport Assessment, concerns are expressed about the potential impact on the highway network through increased traffic. In the absence of a Transport Assessment it is very hard to establish the level of likely impact, if any, that would result from the proposal. What is clear is that the proposal would see a reduction in overall floor space at the retail park, assuming that the recommended condition is imposed to restrict this. In these terms, it would be unreasonable to refuse the application on the grounds of traffic generation.
- 7.12 The application includes alterations to the layout of the car park for the section to the south of the main access road. The legibility of the existing car park layout is poor and so this will be an enhancement for visitors to the retail park and should help customers find spaces and exit the site more quickly. The overall number of spaces as proposed is marginally less, with a reduction of five, but there is provision for four more disabled bays, three parent and child bays and ten cycle stands. The application originally proposed approximately 14-16 additional parking spaces to the east of the building but this would restrict pedestrian movements and any potential enhancement to this area and has therefore been removed from the scheme. An internal pedestrian walkway within the car park is also proposed which will enhance pedestrian safety
- 7.13 Although not a material consideration on which this application can be determined, by way of mitigating any adverse impacts of the development, the applicant has offered to make a contribution of £50,000 towards, firstly, the monitoring of the traffic impact of the development once operational and, if required, improvements to access and egress from the retail park to Radford Boulevard and pedestrian accessibility.

# External alterations and landscaping. (Policy BE3)

7.14 The new proposed entrance lobby is considered to be acceptable in design terms. The existing retail park frontages appear a little dated in architectural terms and given the position of the proposed amalgamated units within the retail park it is considered that the introduction of this glazed entrance will not adversely alter the character or appearance of the park. The other main alteration to the building consists of increasing the amount of glazing on the east elevation to provide an active frontage. This is considered an enhancement with the benefit of making the area to the east of the building more attractive in what is currently an unwelcoming

environment. The sprinkler tank will be situated to the south of the building, close to the delivery yard. The existing brick boundary wall will partially screen the tank and though this will be still visible in the street-scene, it will be seen in the context of the rear elevation of the building. It is considered that subject to a condition to determine its final appearance this is acceptable.

7.15 It is considered that the area to the east of the building could be further improved with some alterations to open up the space and improve permeability. This could consist of removing part of the retaining wall which contains a large low level planting and possibly introducing some trees to have a more significant landscaping impact. The applicant has agreed in principle to provide a scheme to improve this area and it is considered that the details of this should be secured by condition. In addition the submitted scheme proposes formal tree planting within the car park which should improve the attractiveness of the environment and soften what is quite a hard landscaped area.

# 8. SUSTAINABILITY / BIODIVERSITY

An Energy Statement has been submitted with the application which sets out how the applicant will attempt to achieve the Council's target of 10% reduction in carbon emissions. This is proposed to be achieved through the proposed physical works to the building (new roof and cladding) and operational process installations which will ensure that the energy performance of the building is significantly enhanced and the energy consumption of the store is minimised. It is considered that the submission in this regard is too generic and a condition is required to ensure that sufficient measures are proposed and implemented to achieve compliance with Policy BE4 of the Local Plan.

#### 9 FINANCIAL IMPLICATIONS

None.

# 10 LEGAL IMPLICATIONS

The issues raised in this report are primarily ones of planning judgement. However, the application raises issues regarding reliance on the fall back position as a material consideration in the determination of the application, which involves an element of legal interpretation. Accordingly legal advice on this issue has been incorporated into the report. Should any further legal considerations arise these will be addressed at the meeting.

# 11 **EQUALITY AND DIVERSITY IMPLICATIONS**

None.

# 12 RISK MANAGEMENT ISSUES

None.

# 13 STRATEGIC PRIORITIES

Working Nottingham: The development will deliver local employment and training opportunities during both the construction and subsequent operation of the development.

# 14 CRIME AND DISORDER ACT IMPLICATIONS

None.

# 15 VALUE FOR MONEY

None.

# 16 <u>List of background papers other than published works or those disclosing</u> confidential or exempt information

1.Application reference number: 13/00242/PFUL3 http://plan4.nottinghamcity.gov.uk/WAM/pas/findCaseFile.do?appNumber=13%2F00242&action=Search

- 2. NCC Highways comments dated 12-2-13
- 3. NCC Noise and Pollution Control comments dated 18-2-13
- 4. Local resident/business comments dated 19-2-13(x2), 5-3-13, 21-3-13
- 5. Comments of GL Hearn dated 28-3-13

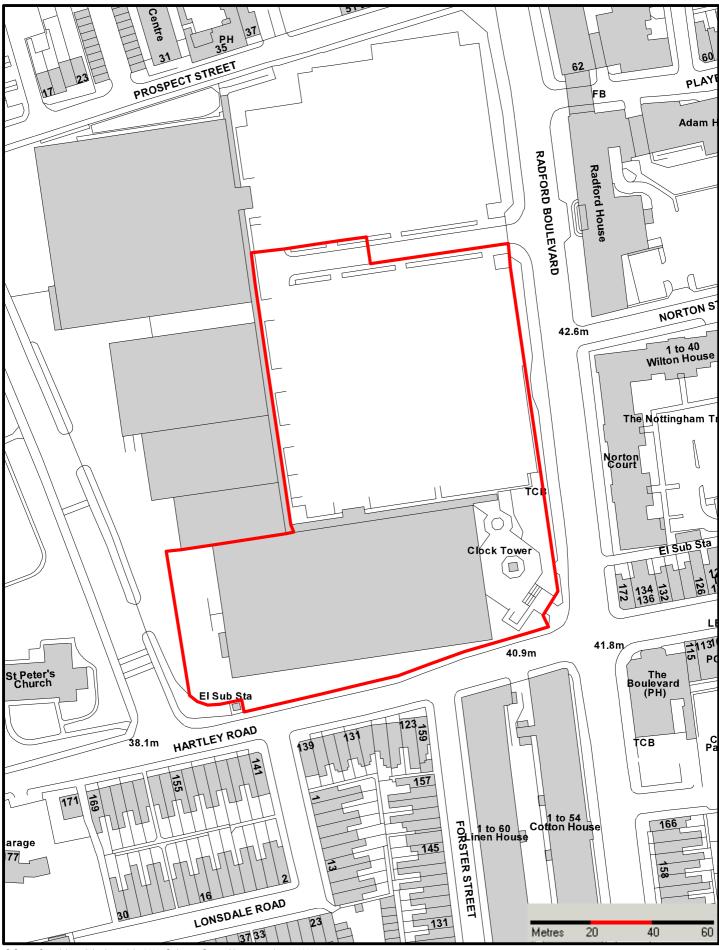
# 17 Published documents referred to in compiling this report

- 1. Nottingham Local Plan (November 2005).
- 2. National Planning Policy Framework.

#### **Contact Officer:**

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Units 1A and 1B, Castle Retail Park 13/00242/PFUL3





**My Ref:** 13/00242/PFUL3 (PP-02439479)

Your Ref:

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Date of decision:

# TOWN AND COUNTRY PLANNING ACT 1990 APPLICATION FOR PLANNING PERMISSION

Application No: 13/00242/PFUL3 (PP-02439479)

Application by: UBS Global Asset Management (UK) Limited

Location: Unit 1A And 1B, Castle Retail Park, Radford Boulevard

Proposal: Amalgamation of Units 1A and 1B and change of use of Unit 1B, to create a new

food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. Resubmission of planning application reference

12/03177/PFUL3.

Nottingham City Council as Local Planning Authority hereby **GRANTS PLANNING PERMISSION** for the development described in the above application subject to the following conditions:-

#### Time limit

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

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

#### **Pre-commencement conditions**

(The conditions in this section require further matters to be submitted to the local planning authority for approval before starting work)

2. Prior to the commencement of development, a detailed hard and soft landscaping scheme for the alterations to the area to the east of the retail unit hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include any alterations to retaining walls, boundary treatment, pedestrian access points and surfacing and the soft landscaping element details shall indicate the type, height, species and location of proposed trees and shrubs.

Reason: To encourage greater pedestrian access into the site and to enhance the appearance of the local environment in accordance with the aims of Policy BE3 of the Local Plan.



DRAFT ONLY
Not for issue

3. Notwithstanding the details provided in the submitted Energy Statement and prior to the commencement of the development, a detailed scheme identifying how the predicted CO2 emissions of the development will be reduced by at least 10% shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To provide 10% of energy by renewable means in accordance with the aims of Policy BE4 of the Local Plan.

4. Prior to the commencement of development a detailed landscaping and planting scheme for the development to supplement the proposals shown in principle on drawing number 2012-050/804 Revision D shall be submitted to and approved in writing by the Local Planning Authority. The landscaping shall indicate the type, height, species and location of proposed trees and shrubs and shall provide a detailed methodology for the planting of trees within hard surfaced areas.

Reason: To enhance the appearance of the car park and surrounding areas and in accordance with the aims of Policy BE3 of the Local Plan.

5. Prior to the commencement of development a car park management plan for the construction period shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall detail how car parking will be maintained for the other operators within the retail park whilst the works approved to reconfigure the car park are carried out. The management plan shall be carried out in accordance with the approved details.

Reason: To ensure adequate car parking within the retail park during the construction period and in accordance with the aims of Policies BE2 and T3 of the Local Plan.

#### **Pre-occupation conditions**

(The conditions in this section must be complied with before the development is occupied)

6. The retail unit hereby approved shall not first be brought into use until the external alterations have been carried out in accordance with drawing number 2012-050/203 Revision B, using the approved materials listed within the schedule on this drawing, unless a variation is first submitted to and approved in writing by the Local Planning Authority.

Reason: To enhance the appearance of the building and the local environment in accordance with the aims of Policy BE3 of the Local Plan.

7. The retail unit hereby approved shall not first be brought into use until the alterations to the car park have been carried out in accordance with drawing number 2012-050/804 Revision D unless a variation is first submitted to and approved in writing by the Local Planning Authority.

Reason: To deliver the improvements to the car park and in accordance with the aims of Policies BE2 and T3 of the Local Plan.

8. The approved landscaping scheme shall be carried out in the first planting and seeding seasons following the completion of the development and any trees or plants which die or are removed or become seriously damaged or diseased within five years shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To ensure that the appearance of the development is satisfactory, in accordance with Policy BE3 of the Local Plan.



DRAFT<sup>2</sup>ONLY
Not for issue

9. The development shall not be first brought into use until the renewable/low carbon energy scheme has been implemented in accordance with details approved pursuant to condition 3.

Reason: To provide 10% of energy by renewable means in accordance with the aims of Policy BE4 of the Local Plan.

10. Prior to the installation of any external plant or air handling equipment, details of the type and model of all plant and/or air handling equipment including siting, the acoustic specification, any proposed shielding and relevant calculations and a noise assessment report shall be submitted to and approved in writing by the Local Planning Authority.

The noise assessment shall demonstrate that the noise from all plant and/or air handling equipment on site meets the following criteria at the nearest noise sensitive properties:

- a. For 24hr operation Noise Rating NR35 (see BS 8233:1999)
- b. For operation between 07:00 and 23:00 Noise Rating NR45 (see BS 8233:1999)

Any plant and/or air handling equipment approved shall be carried out in accordance with the approved details.

Reason: In the interests of amenity and in accordance with the aims of Policy BE3 of the Local Plan.

11. The retail unit hereby approved shall not be brought into use until a system of ventilation and means of discharging fumes therefrom has been installed. The system shall not be installed other than in accordance with details which shall have first been submitted to and approved in writing by the Local Planning Authority. The system shall include provision for fumes to be discharged not less than one metre above the roof ridge level of the premises or adjoining buildings.

Reason: To safeguard the amenities of the occupiers of neighbouring properties in accordance with Policy NE9 of the Local Plan.

12. Prior to the installation of the sprinkler tank details of its appearance shall be submitted to and approved in writing by the Local Planning Authority. The sprinkler tank shall be installed in accordance with the approved details.

Reason: In the interests of amenity and in accordance with the aims of Policy BE3 of the Local Plan.

#### Regulatory/ongoing conditions

(Conditions relating to the subsequent use of the development and other regulatory matters)

13. The net retail floor space within the retail unit hereby permitted must not exceed........

Reason: In the interests of protecting the vitality and viability of Hyson Green Town Centre in accordance with Policy S5 of the Local Plan.

14. The retail unit hereby approved must not be sub-divided or further amalgamated without prior approval from the Local Planning Authority.

Reason: In the interests of protecting the vitality and viability of Hyson Green Town Centre in accordance with Policy S5 of the Local Plan..

15. No deliveries shall take place between 10:00pm and 7:00am on any day.



DRAFT<sup>3</sup>ONLY
Not for issue

Reason: To protect the amenities of the occupants of nearby properties in accordance with Policy BE3 of the Local Plan.

#### Standard condition- scope of permission

S1. Unless otherwise agreed in writing by the Local Planning Authority or modified by the conditions listed above, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the council on 4 February 2013.

Reason: To determine the scope of this permission.

#### **Informatives**

- 1. The reason for this decision, and a summary of the policies the local planning authority has had regard to are set out in the committee report, enclosed herewith and forming part of this decision.
- 2. This permission is valid only for the purposes of Part III of the Town & Country Planning Act 1990. It does not remove the need to obtain any other consents that may be necessary, nor does it imply that such other consents will necessarily be forthcoming. It does not override any restrictions contained in the deeds to the property or the rights of neighbours. You are advised to check what other restrictions there are and what other consents may be needed, for example from the landowner, statutory bodies and neighbours. This permission is not an approval under the Building Regulations.
- 3. It should be noted that the City Council granted this permission following the signing of an agreement between the Council and the applicant in accordance with the provisions of Section 106 of the Town & Country Planning Act 1990, Section 111 of the Local Government Act 1972 or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982. The terms of the agreement bind successors in the title and assigns and can be enforced against them.
- 4. The applicant is advised that with regard to condition 11 the ventilation system includes the following:-
- 1) A canopy of adequate size, sited over the cooking appliances,
- 2) Washable or disposable grease filters. Additional odour-reducing filters will be needed in some circumstances.
- 3) A fan of adequate capacity capable of achieving 20/30 air changes per hour in the kitchen area, connected to a variable fan speed control switch is provided
- 4) Ducting to convey cooking fumes and steam to a suitable point for adequate dispersal into the atmosphere. A cap and or cowl at the point of discharge should therefore not be provided.
- 5) Permanent make up air facilities which are fitted with back-draught shutters, are insect proof and are sited to ensure efficient circulation of air into the kitchen
- 6) The ventilation system must be maintained by a competent ventilation engineer, to include regular cleaning or changing of any filters and sufficient access points to enable periodic cleaning of the system are provided.

The onus for ensuring that the system does not cause odour nuisance rests with the applicant. If the system is found to be causing an odour nuisance at any point, then this department will require suitable modification works to be carried out and an abatement notice may be served.



DRAFT ONLY
Not for issue

Where a condition specified in this decision notice requires any further details to be submitted for approval, please note that an application fee will be payable at the time such details are submitted to the City Council. A form is available from the City Council for this purpose.

Your attention is drawn to the rights of appeal set out on the attached sheet.



# DRAFT ONLY Not for issue

#### **RIGHTS OF APPEAL**

Application No: 13/00242/PFUL3 (PP-02439479)

If the applicant is aggrieved by the decision of the City Council to impose conditions on the grant of permission for the proposed development, then he or she can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

Any appeal must be submitted within six months of the date of this notice. You can obtain an appeal form from the Customer Support Unit, The Planning Inspectorate, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Phone: 0117 372 6372. Appeal forms can also be downloaded from the Planning Inspectorate website at http://www.planning-inspectorate.gov.uk/pins/index.htm. Alternatively, the Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see www.planningportal.gov.uk/pcs.

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay.

The Secretary of State need not consider an appeal if the City Council could not for legal reasons have granted permission or approved the proposals without the conditions it imposed.

In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

# **PURCHASE NOTICES**

If either the City Council or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. This procedure is set out in Part VI of the Town and Country Planning Act 1990.

#### **COMPENSATION**

In certain limited circumstances, a claim may be made against the City Council for compensation where permission is refused or granted subject to conditions by the Secretary of State. The circumstances in which compensation is payable are set out in Section 114 of the Town & Country Planning Act 1990.



**DRAFT ONLY** 

Not for issue