

The Application seeks to vary condition 3 of planning permission 11/00611/FUL which granted planning permission for the store.

Condition 3 as worded in the decision notice is as follows:

The permission hereby granted relates to a single retail unit of 13,010 m² gross internal floorspace with a sales area floorspace of no more than 8,962 m², of which no more than 7,973 m² shall be for the display of comparison goods and no more than 989 m² shall be for the display and sale of convenience goods only.

The reason given for the condition within the decision notice was;

For the avoidance of doubt, to ensure the development does not unduly affect the vitality and viability of Newcastle-under-Lyme town centre, and the City Centre and in accordance with Policy TC1 of the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011, Policy SP1 of the Newcastle-under-Lyme and Stoke on Trent Core Spatial Strategy 2006 – 2026 and the aims and objectives of the National Planning Policy Framework.

The variation that is being sought is increase the amount of floorspace for the display and sale of convenience goods to 1,496 m² but the sales area floorspace would remain unaltered

The site lies within the Newcastle Urban South and East Neighbourhood Area on the Local Development Framework Proposals Map.

The 13 week period for this application expires on 14th February 2017.

RECOMMENDATION

Subject to the applicant entering into planning obligations by no later than 12th February 2017, that preserve the Newcastle Borough and Stoke City Councils' position in respect of obligations secured prior to the grant of permission 11/00611/FUL, PERMIT the variation of condition 3 of 11/00611/FUL so that it reads as follows:

The permission hereby granted relates to a single storey retail unit of 13,010 m² gross internal floorspace with a sales area floorspace of no more than 8,962 m², of which no more than 7,973 m² shall be for the display of comparison goods and no more than 1,496 m² shall be for the display and sale of convenience goods only.

and subject to the imposition of all other conditions attached to planning permission 11/00611/FUL that remain relevant at this time.

Reason for Recommendation

The proposal would not result in any additional retail floorspace in this out of centre location and as such there is no requirement to undertake either a sequential or an impact assessment as defined in the NPPF. In addition parking at the retail park would remain acceptable.

The effect of a grant of approval is to create a new planning permission. The previous permission was only granted following the entering into of a Section 106 agreement securing a number of matters, of which the following remain relevant and would require a further obligation to be entered into to ensure that these matters continue to be secured:

- The proposed store to only be occupied by M&S for a period of 5 years from date of occupation;

- Under the Marks and Start programme, M&S to work with a number of local residents that are long term unemployed, homeless or under care of local charities and provide them with work placements at the store;
- Within the public area of the store, M&S to provide an area for community displays in order to promote Newcastle-under-Lyme town centre in accordance with details to be agreed and appropriate parameters that are specified;
- M&S Wolstanton to contribute £10,000 per annum. This will continue until the earlier of M&S ceasing to trade at Wolstanton or M&S opening a Simply Food store in the town centre with an option for M&S to continue thereafter;
- No more than 10% of the gross internal floorspace of the building to be occupied in aggregate by concessions/franchises.
- M&S to commit to operate at least a full Simply Food store, of a minimum size to be agreed, on a site which provides for a tenancy at market-prevailing terms within Newcastle Town centre prior to them opening to trade on this out of centre site; and
- The provision of a bus service to connect the site to/from Newcastle town centre for a minimum period of 3 years from the date of occupation (November 2014) to run at a 30 minute frequency between the hours of 0800 and 1800 Monday to Saturday;

In addition a separate obligation was entered into with Stoke City Council requiring for a period of five years from occupation Marks and Spencer should continue to trade from the existing, or a substitute, Hanley Store and the further obligation is required to ensure that this matters continue to be secured.

Subject to this and the imposition of the same conditions as were imposed on 11/00611/FUL that remain relevant at this time it is not considered that there are any adverse impacts of the development that would significantly and demonstrably outweigh the benefits and accordingly permission should be granted.

Statement as to how the Local Planning Authority has worked in a positive and proactive manner in dealing with the planning application

This is considered to be a sustainable form of development and so complies with the provisions of the National Planning Policy Framework.

Key Issues

The application seeks a variation of condition 3 of the planning permission reference 11/00611/FUL which permitted a new store at Wolstanton Retail Park, now occupied by Marks and Spencer. The condition set an upper limit on the amount of floorspace within the building, limiting the overall amount of sales floors space to 8,962 m² specifying that sales floorspace for the display and sale of convenience goods (food, drinks etc.) should not exceed 989 m². The variation sought is an increase in the amount of floorspace dedicated to convenience goods to 1,496 m² (an additional 507 m²). Additional floorspace is not proposed by extension to the store, or by increasing the overall amount of sales floorspace within the building, the increase in convenience goods floorspace as proposed is at the expense of the overall amount of comparison goods floorspace within the building.

The applicant, Marks and Spencer, are looking to expand the Foodhall by adding a delicatessen which will have bar stool seating to provide an alternative offer to the café at first floor.

The key issues for consideration in the determination of this application are:

- The principle of the proposed increase in convenience goods floorspace
- Parking
- Are further section 106 planning obligations required.

Principle of the proposed increase in convenience goods floorspace

CSS Policies SP1 and SP2 seek to direct retail development to Newcastle town centre or Hanley City Centre. CSS Policy ASP5 indicates that any retail development outside of Newcastle Town Centre will be within a local centre and that its nature and scale should be appropriate to that local centre and will primarily meet the identified local requirements.

The NPPF, at paragraph 24, indicates that LPAs should apply a sequential test to planning applications for 'main town centre uses' that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require main town centre uses to 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. Applicants *and* local planning authorities should demonstrate flexibility on issues such as format and scale.

The NPPF states the following, at paragraph 26.

When assessing applications for retail, leisure and office development 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). This should include assessment of:

- *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.*

No change to the sales area floorspace of 8,962 m² is proposed and as such the variation of condition if implemented would result in a reduction in the amount of floorspace dedicated to comparison goods. As the amount of sales area floorspace would remain unchanged the variation of condition as proposed would therefore allow some flexibility so that a subsequent reduction in the overall amount of convenience goods floorspace, and an increase in comparison goods floorspace, could take place without any further need to vary the condition.

Given that no additional main town centre use floorspace is proposed there is no policy requirement to apply a sequential or impact assessment to the proposal. Notwithstanding this the applicant has sought to consider any changes to the health of Newcastle Town Centre in its submission since the original proposal was permitted and since the opening of the Marks and Spencer Wolstanton Store in November 2014.

The submission indicates that there has been a decrease in the proportion of convenience units in Newcastle town centre between 2011 and 2016 in terms of the number of units (10% to 8.56%) and floorspace (13.3% to 12.91%). This is said to be reflective of the national trend of decreases in the number of convenience units and floorspace in the same period (9.2% to 8.66%, and 17.4% to 15.22% respectively) where town centres are becoming more service based with fewer convenience units and floorspace.

The submission also indicates that vacancy rates have dropped between 2011 and 2016 from 13% to 10.4% in terms of number of units and from 18.3% to 7.93% in terms of floorspace. This has resulted in vacancy rates in Newcastle changing from a position where it was significantly above the national average in 2011 (the national average being 12.9% in terms of number of units and 11.3% in terms of floorspace) to now being below the national average in 2016 (11.5% in terms of number of units and 9% in terms of floorspace).

Therefore, overall the health of Newcastle Town Centre can be considered to have improved since 2011.

The other element of impact as set out in paragraph 26 of the NPPF is the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. At the time that the original application was determined it was concluded that it could not be argued that the development would have an unacceptable impact on the planned investment in the Ryecroft site (the town centre site comprising the former Sainsbury's store and the Civic Offices). Since then some progress has been made on this planned investment, as a development partner is now in place although a planning application has not been submitted or determined as yet, and it is not known whether the development will accommodate a convenience goods retailer. Whilst the City Council have referred to recent national announcements by the retailer relating to store closures and a greater focus on food sales, that same announcement (within the firm's half year results) did include an intention to continue with the rollout of their Simply Food stores. There is no firm evidence that the proposal will discourage a convenience goods retailer operating from the Ryecroft development, including the applicant, and that this will adversely impact on this planned investment. It is accepted that the submission does not address any impact on Hanley.

However in any event, given that impact is not a matter that can be addressed within the consideration of this application, given the scale of the increased convenience floorspace involved, such impact whether on existing, committed, and planned investment whether in Newcastle or Stoke could not form grounds for its refusal. Nevertheless the applicant has been invited to respond to the City Council's comments as reported below, and a supplementary report will be provided on that if any response is provided.

In light of the above, and taking into consideration that the proposal will require in the region of approximately six Full Time Equivalent staff, it is concluded that there are no objection to the principle of the proposal.

Parking

Policy T16 of the Local Plan sets out, in the associated Annex, maximum parking standards for different uses. It indicates that the maximum number of parking spaces for food retailing, at 1 space per 14 m² of floor space, is higher than for non-food retailing which is 1 space per 20 m². The development was permitted with a total of 1,479 parking spaces for the whole retail park including the new store. This was calculated to be 72 spaces short of the maximum and was considered to be within a reasonable tolerance level. The changes as proposed, which would increase the number of spaces short of the maximum to about 82 spaces.

The existing car park provides adequate parking to meet the needs of the retail park overall. It is not considered that the proposed change will have any material impact on the adequacy of the parking provision at this location.

Are further Section 106 obligations required?

The previous permission was only granted following the entering into of two Section 106 agreements securing a number of matters, of which a number remain relevant and would require further obligations to be entered into to ensure that these matters continue to be secured. For the reasons indicated above it is not considered appropriate to make the permission conditional (whether by condition or by obligation) upon the prior occupation of a unit in Newcastle Town Centre of an M&S Simply Food operation (and that the company commits to a lease of a certain minimum length). The obligations sought should be limited to those previously secured.

APPENDIX

Policies and proposals in the approved development plan relevant to this decision:-

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2006-2026

Policy SP1: Spatial Principles of Targeted Regeneration
Policy SP2: Spatial Principles of Economic Development
Policy SP3: Spatial Principles of Movement and Access
Policy ASP4: Newcastle Town Centre Area Spatial Policy
Policy ASP5: Newcastle and Kidsgrove Urban Neighbourhoods Area Spatial Policy
Policy CSP10: Planning Obligations

Newcastle-under-Lyme Local Plan (NLP) 2011

Policy T16: Development - General Parking Requirements
Policy T18: Development – Servicing Requirements
Policy IM1: Provision of Essential Supporting Infrastructure and Community Facilities

Other Material Considerations include:

National Planning Policy Framework (NPPF) (2012)
Planning Practice Guidance (PPG) (2014) including guidance on the use of conditions

The Newcastle-under-Lyme Retail and Leisure Study 2011

Relevant Planning History

Planning permission was granted for the demolition of existing retail warehouse units, distribution unit and redundant methane pumping station. Construction of new retail store with ancillary refreshment facilities, new and altered car parking, servicing and sewerage facilities under application reference, 11/00611/FUL.

Views of Consultees

The **Economic Regeneration Section** comment that one of the offers made by M&S to mitigate the impact of the Wolstanton development on the town centre (as well as committing to a certain annual payment to support the work of the Business Improvement District (BID)) was they would use their best endeavours to locate a 'Simply Food' outlet in the town centre. HDD, developers of the Ryecroft site, have, as a result, been in discussions with M&S about their committing to a lease on the 1,115 m² unit within the retail element of the Ryecroft scheme (the HDD scheme provides for around 6,224 m² of retail space overall). There is no enforceable legal obligation on M&S to commit to such a lease and so, to date, these discussions have moved forward on a goodwill basis only. Planning control can, however, provide an obligation and planning permission should be granted for the proposal but that should be conditional upon the prior occupation of a unit in Newcastle Town Centre of an M&S Simply Food operation (and that the company commits to a lease of a certain minimum length).

Stoke City Council notes that the submission fails to address the potential for any impacts upon Hanley, despite this centre featuring within the reason for imposing the condition. It is considered important to assess the impact of this proposal upon existing, committed and planned public and private investment in Hanley. Given the announcement that Marks and Spencer would provide one of the anchor tenants for the new Unity Walk development in Hanley, any impact must be closely examined, particularly in the context of national announcements by the retailer relating to store closures and a greater focus on food sales.

After updating the trade diversion calculations undertaken in support of the original application there would be an impact of up to 12.8% on the existing M&S store located within Hanley. Given that the existing store in Hanley contributes to the centre's vitality and viability there is concern that such a proposal could threaten its continued viability. Furthermore, as it is known that this store is scheduled

to be vacated in favour of a store presence within the Unity Walk development there is a greater concern that this proposal could threaten this future investment.

They consider that further information should be sought from the applicant as to their future business plans for Hanley in order that the impact of the application on the centre and future public and private investment can be fully understood before taking a decision on the case.

East Newcastle LAP have not provided any comments by the due date and so are assumed to have no observations upon the application.

Representations

None received.

Applicant's/Agent's submission

The application form and location plan and supporting information are available for inspection at the Guildhall and on the website that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/16/00958/FUL>

Background papers

Planning files referred to
Planning Documents referred to

Date report prepared

20th December 2016