

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 25 November 2015**

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**APPLICATION REF. NO:** Richmondshire District Council 15/00806/FUL

**STATUTORY DECISION DATE:**

**WARD/PARISH:**

**LOCATION:** Land west of A6108 Barracks Bank, Scotch Corner, North Yorkshire

**DESCRIPTION:** Designer outlet centre (Class A1 non-food) with restaurants (Class A3) and associated landscaping, car parking, servicing and access arrangements

**APPLICANT:** Peter Brett Associates

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Darlington Borough Council has been consulted on the above application by Richmondshire District Council (RDC).

**BACKGROUND**

Members will recall considering a similar application for the same site, earlier this year (Minute reference 22/10/14 PA44). Subsequently Planning Committees views were submitted to Richmondshire District Council, along with a report prepared by planning consultants White Young Green (WYG) objecting on the grounds that the proposal was contrary to national policy on retail impact (the methodology used to assess the likely impact on Darlington town centre was considered flawed) and transport sustainability issues.

On 29<sup>th</sup> January 2015, RDC members resolved to support the proposal with a view to granting conditional planning permission (subject to a Section 106 agreement), subject to the Secretary of State not issuing a direction ('calling-in' the application) under Section 77 of the Town and Country Planning Act requiring the application to be determined by, or on behalf of himself.

The planning application has since been 'called-in' for determination by the Secretary of State and DBC will be defending its objections at the Public Inquiry on 4 May 2016 for 6 days.

This revised application proposes a reduction in the floorspace of the proposed scheme by some 30% (7,203m<sup>2</sup>). This involves a reduction from 92 units to a total of 78 units.

## **APPLICATION AND SITE DESCRIPTION**

The proposal is for the erection of a designer outlet centre on land, about 9 miles to the west of Darlington, near Scotch Corner, within Richmondshire.

The development would comprise 14,052 sq m of class A1 and A3 retail units at ground floor level with associated access parking services areas and landscaping. A further 2,003 sqm of mezzanine floor space is also proposed to be associated with certain A1 shopping units. This is compared to the floor space proposed in the called-in application of 16,613 sqm of class A1 and A3 retail units at ground floor level and a further 6,645sqm of mezzanine floorspace.

In general designer outlet centres are purpose built shopping centre developments where a range of retail brands operate stores that offer goods at discounted prices, which include fashion sportswear and luxury goods. The applicants have stated that it is their intention to maintain their focus upon high end designer fashion, cosmetics and home wear retailers.

The development comprises 70 Class A1 retail uses along with 8 associated Class A3 restaurants and café, the largest unit being 830sqm and the smallest being 35sqm. This is compared to 84 Class A1 retail uses proposed in the called-in application, and 8 associated Class A3 restaurants.

In addition to the reduction in floorspace, the revised scheme also submits suggested planning conditions that would be imposed to ensure that the 'nature of the development and the quality of the scheme proposed is not eroded or altered'. The suggested planning conditions are set out below.

- a) The retail floorspace within the buildings subject to this permission shall only be used for the retail sale of goods to the public consistent with that of a 'Factory Outlet Centre' namely the sale of discounted comparison goods defined as previous season's stock, run-offs, over-runs, samples of branded goods, goods produced for subsequently cancelled orders, market testing lines, rejects, seconds, clearance goods and surplus stock and accessories.
- b) In at least 90% of the floor space within the buildings subject to this permission that is used for sales to members of the public any goods offered for sale shall be priced at least 20% below the normal price at which similar types of merchandise are or have been offered for sale in their usual place of sale.
- c) The operator of the retail floorspace shall maintain detailed stock records of goods for sale and pricing, and shall upon written request from the Local Planning Authority produce these records for the previous 12 months for inspection within two calendar weeks of the date of request.

This revised scheme also proposes additional transport enhancements following negotiations with local bus operators. It proposes to enter into a Section 106 Agreement to increase the frequency of the key bus route between Darlington and Richmond, to a service which operates every 15 minutes, timed around start and finish times for staff shifts and operating 7 days a week. In addition it proposes that existing services will be extended to cover Catterick and Catterick Garrison with a hopper service proposed to operate from the on-site bus interchange.

## **PLANNING HISTORY**

RDC 14/00687/FULL

## **PLANNING POLICY BACKGROUND**

Despite the changes to the application officers remain of the opinion that the proposal conflicts with national planning policy on important matters.

The original WYG advice identified a number of methodological issues in respect of the approach adopted by the applicant in their Retail Impact Assessment (RIA). An initial review of the RIA submitted with the revised application, has established that the objections that DBC made to the methodology of the previous RIA, have not been fully addressed. For example:

- a) Revised RIA utilises same Primary and Secondary catchment area which could result in significant underestimates of level of trade being drawn from Primary Catchment Area (PCA);
- b) 25% assumed trade draw from outside Primary and Secondary Catchment Area (PSCA) accepted by PBA as a worst case scenario, however WYG considered that this was still not justified;
- c) Sectoral impact is addressed in RIA, but still does not specifically breakdown trading pattern and trade draw by market sector.

Concerns remain therefore that the area of search for the application of the sequential test is not based on a realistic and logical primary catchment area. Accordingly, officers do not consider that the applicant has demonstrated that the proposal accords with paragraph 24 of the NPPF which requires local planning authorities to apply a sequential approach to the consideration of planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan.

In this regard, we believe that the application's primary catchment area (which forms the area of search for the purposes of the sequential test) has been drawn in too narrow a manner without appropriate justification. The primary catchment area as drawn reflects an area from which only a limited proportion of the proposal's turnover would be derived and, as such, it acts to create an inappropriately small area of search in respect of alternative sites.

By failing to consider locations outside the contrived primary catchment area, the applicant has failed to properly accord with the requirements of the sequential test.

Officers also consider the application proposal to be in direct conflict with paragraph 26 of the NPPF, which requires appropriate assessment of the impacts arising from a proposal, including the impact of a proposal on town centre vitality and viability, including local consumer choice and wider area, up to five years from the time the application is made. Given the concerns that remain about the methodology used in the RIA, the requirements of national policy have not been met.

In respect of retail planning policy, chief planning officers were reminded of the materiality of the sequential and impact tests in the Department of Communities and Local Government Planning Update Newsletter of January 2015.

'Ministers wish to restate policy which makes clear that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on the town centre as set out in the Framework, it should be refused. It is for local authorities to ensure that the sequential test and

impact test have been properly applied, and that the “town centre first” approach has been followed. This does not mean that out-of-centre development is necessarily inappropriate.’

Paragraph 2 of NPPF states that applications for retail development should be considered in terms of their impact on existing, committed and planned investment in town centres. A key policy in the Council’s Local Plan Core Strategy (CS7) gives priority to a retail-led scheme at Commercial Street. The Council currently has an arrangement with developers to bring forward the site, and there is a significant risk that if the Scotch Corner development goes ahead it will undermine the future strategy for the town centre development.

With regard to the geography of the North East, the site is set apart from all major conurbations and it would require customers to travel relatively significant distances in order for it to be a viable proposition. Given its relatively remote location, it is evident that the vast majority of journeys to the designer outlet centre would be by private car. The principal conurbation proximate to the application site is Darlington, and the scale of retail development proposed at Scotch Corner is such that it would clearly provide direct competition with established town centres in the area.

The proposal seeks to provide a scale of development commensurate with that which would ordinarily be found within a town centre, without any of the other facilities and infrastructure which support such a designation. There is no provision to access the development by train and access by bus would be limited. With the exception of some ancillary food and drink units, there are no other ‘main town centre’ uses proposed as part of the development and no particular opportunities to link trips to the designer outlet centre with other proximate facilities. The application site’s remote location also fails to encourage the linking of trips to any other attraction as part of the same journey.

In this regard, it should be noted that paragraph 7 of the NPPF indicates that there are three dimensions to sustainable development, these being economic, social and environmental. Paragraph 7 goes on to indicate that: a competitive economy should rely on land being brought forward in the right places; that local services should be accessible to reflect communities’ needs; and that resources should be used prudently.

Paragraph 34 of the NPPF states that ‘Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.’

The application proposal will attract customers away from established centres to a remote location where there is no significant planned population growth. Accordingly, the proposal does not comprise ‘sustainable development’ as it fails to accord with the requirements of NPPF paragraphs 7 and 34.

With reference to the suggested planning conditions set out above, officers are of the opinion that the proposed planning conditions are not enforceable or precise and are not sufficient to safeguard the continued use of the development as a ‘factory outlet centre’. The proposed conditions also fail to exclude the operation of the use classes order and therefore officers consider that the sale of goods cannot be controlled by the conditions after implementation of the scheme. The conditions therefore fail to meet the tests set out in paragraph 206 of NPPF.

## **CONCLUSION**

In conclusion, therefore, notwithstanding the reduced levels of retail floorspace, and proposed enhancements to public transport, concerns about the methodology used in the RIA, and the nature of the planning conditions mean that officers remain concerned about the potential impact of the proposal on Darlington Town Centre.

Officers believe that the applicant has failed to demonstrate the proposal's compliance with a number of national planning policies and that the impacts associated with the proposed development are such that they would arise at centres beyond the immediate locality of the application.

## **RECOMMENDATION**

It is recommended that Members object to this application on the basis that:

- a) The application is contrary to NPPF in that:
  1. The sequential approach has not been applied properly;
  2. The RIA methodology is flawed and therefore cannot be relied upon to provide an accurate level of impact on Darlington town centre;
  3. The proposal will potentially impact on planned investment in Darlington town centre
  4. The location of the proposed development is unsustainable
- b) The suggested planning conditions relating to the control of the sale of goods are unenforceable