

Development Management Delegated Decision Report

B/21/0042



SUMMARY OF APPLICATION			
Application Reference	B/21/0042		
Application Type	Full Planning Permission		
Proposal	Application to vary Condition C3 (A1 retail unit) of approval B/01/0632 (Construction of a building for two retail stores (Class A1) and formation of associated parking, servicing and landscaping areas) to facilitate the occupation of the unit by a discount frozen food retailer		
Location	Unit 2 Queen Street Retail Park, Boston, PE21 8XD		
Applicant	Merchant Place Property Syndicate C/O Brix Advisory LLP		
Agent	Mr Mike Mills, Firstplan		
Received Date:	01-Feb-2021	Consultation Expiry Date:	04-Mar-2021
Valid Date:	01-Feb-2021	Statutory Expiry Date:	29-Mar-2021
Date of Site Visit:	11-Mar-2021	Extension of Time Date:	---
Objections received?	None		
5 day notification record: Not applicable			
Councillors notified	Date	Response received – date	Ok to continue
Recommendation	GRANT Planning Permission		
Report by:	Simon Eldred		
Date:	17 th March 2021		

OFFICER REPORT

SITE AND SURROUNDINGS:

Unit 2 of the Queen Street Retail Park is one of 5 retail units located on the western side of Queen Street, Boston. It is currently occupied by Bensons for Beds and has: to its south, a Pets at Home store and, beyond that, residential properties; to its north, a Halfords store, a McDonald's restaurant/drive-thru, and an Aldi foodstore; to its east, car parking serving the Retail Park; and to its west, a railway line and, beyond that, residential properties.

DETAILS OF PROPOSAL:

This application seeks to vary Condition 3 of planning permission B/01/0632. That decision granted permission for the construction of a building for two retail stores. The Condition limited the occupancy of the stores to *“Class A1 retailing as defined in the Town and Country Planning (use Classes) Order 1, but excluding the sale of food and drink, jewellery,*



pharmaceutical products, pet products, fashion accessories, arts and crafts, clothing, footwear, books and magazines, sports goods, toys, audio/visual discs and cassettes (except items within these groups which are ancillary and complementary to the main range of goods sold)." The reason for the Condition was *"to protect the vitality and viability of the Town Centre."*

The proposed alteration of Condition 3 is intended to enable the unit to be occupied by Farmfoods, a discount frozen foods retailer.

The application is supported by:

- a Planning and Retail Statement;
- a Transport Assessment;
- an Air Quality Assessment; and
- a Flood Risk Assessment.

RELEVANT HISTORY:

The following history relates to Unit 2 itself:

- B/00/0138 – full planning permission was granted for the construction of two retail stores (Class A1) together with the formation of parking and landscaped areas;
- B/01/0107 – full planning permission was granted for the construction of one retail store (Class A1) and one fast food restaurant (Class A3) with associated parking, servicing and landscaping;
- B/01/0632 – full planning permission was granted for the construction of a building for two retail stores (Class A1) and formation of associated parking, servicing and landscaping areas; and
- B/15/0423 – full planning permission was granted for the installation of 3 no. external air conditioning condenser units to rear of unit.

Full planning permission (B/09/0244) was granted for the variation of Condition 3 of B/01/0632 to allow the sale of pet food and pet products from the neighbouring retail unit.

RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:

The **South East Lincolnshire Local Plan 2011-2036** shows the application site as being within Boston's Settlement Boundary, approximately 60m outside Boston's Town Centre Boundary, and approximately 500m outside Boston's Primary Shopping Area. The following Policies are relevant to this application:

- Policy 1: Spatial Strategy;
- Policy 24: The Retail Hierarchy;
- Policy 25: Supporting the Vitality and Viability of Boston and Spalding Town Centres; and
- Policy 27: Additional Retail Provision.

OTHER RELEVANT DOCUMENTS / LEGISLATION / GUIDANCE:

National Planning Policy Framework (2019)

At the heart of the 2019 Framework (NPPF) is a presumption in favour of sustainable development. The following sections are relevant to this scheme:

- Section 4: Decision-making;
- Section 7: Ensuring the vitality of town centres

National Planning Practice Guidance

The guidance set out in the section entitled 'Town centres and retail' is of relevance.

CONSULTATION RESPONSES:

Lincolnshire County Council (the Local Highway and Lead Local Flood Authority) indicates that the proposed trading from Unit 2 of the Queen Street Retail Park by a discount frozen food retailer would not be expected to have an unacceptable impact upon highway safety or a severe residual cumulative impact upon the highway network. Consequently, it does not wish to object.

Boston Borough Council's Environmental Health Department notes that the applicant has provided an air quality and transport statement relating to the proposals which indicates no significant impacts and indicates that it has no objection in principle. However, it asked for clarification as to: whether the proposal would necessitate the installation of any external fixed plant, such as chiller units; and, if so, where the chiller would be sited (given that there are dwellings to the rear of the store, beyond the railway line).

On the above matter, the applicant clarified that *"it is anticipated that there will be external plant, but these will form part of a subsequent planning application for refurbishment/external alterations by the tenant once (hopefully) we have the principle of food use authorised through this application."*

THIRD PARTY REPRESENTATIONS RECEIVED:

No third party representations have been received.

EVALUATION:

This is an application under Section 73 of the Town and Country Planning Act to continue a use without complying with a condition. The effect of a successful Section 73 application is to create an entirely new permission, with the original permission unaffected. To assist with clarity, a permission under Section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.

Section 73 of the Act instructs a Local Planning Authority (LPA) to consider only the question of the planning condition's subject. If the application is considered acceptable, the LPA should grant permission accordingly. However, if the LPA decides that planning permission should be granted subject to the same conditions as the original permission, the application should be refused.

Given the provisions of the existing Condition and the reason for its imposition, it is considered that the only issue is how this proposal will affect the vitality and viability of Boston's Town Centre.

Vitality and viability of Boston's Town Centre

Policy 24 of the Local Plan indicates that (in Boston Borough) retail uses should be located in accordance with the following hierarchy: Boston Town Centre; Kirton Local Centre; and elsewhere within a settlement boundary. It goes on to require:

- proposals for retail use outside of Boston's Primary Shopping Area (not provided for under Policy 27) to demonstrate their suitability through a sequential test; and
- proposals providing a retail floor area of 500m² (net) outside Boston Town Centre Boundary (and not provided for under Policy 27) to provide a robust assessment of impact on nearby town centres.

Policy 25 of the Local Plan confirms that:

- (in Boston Borough) Boston town centre is the primary destination for retail; and
- the Council will work to secure the town centre's vitality and viability.

Policy 27 of the Local Plan identifies:

- that there is no quantitative need for additional convenience goods floorspace in the Plan area before 2021; and
- a quantitative need for an additional 3,365m² (net) of convenience goods floor space by 2031, and indicates that this should be provided as small-scale units of up to 500m² (net) either within a new Local Centre serving Sustainable Urban Extension or to provide for an underserved area.

Sequential Test

The National Planning Practice Guidance (NPPG) identifies that the purpose of a sequential retail test is to guide *"main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre)"*. The NPPG goes on to indicate that *"in line with paragraph 86 of the National Planning Policy Framework, only if suitable sites in town centre or edge of centre locations are not available (or expected to become available within a reasonable period) should out of centre sites be considered."*

The Planning and Retail Assessment (January 2021) which accompanies the application identifies that the application site occupies an 'out-of-centre' location in retail policy terms, given that it is more than 300m from Boston's Primary Shopping Area as defined in the Local Plan. The Assessment therefore concludes that consideration must be given to any available and suitable in-centre and edge-of-centre sites.

The Assessment identifies Farmfoods' operational requirements and considers sequentially preferable development sites and vacant retail units in that context, concluding that:

- there are no potential development sites within Boston's Primary Shopping Area;
- the four vacant retail units within Boston's Primary Shopping Area which are of sufficient size (former Marks and Spencers, former Poundstretcher, former Post Office, and former Oldrids) are unsuitable or would not be commercially viable because they are too large, cannot offer adjacent free customer car parking, and/or have an unsuitable floorplan;

- the two potential edge-of-centre development sites (Red Lion Street car park and the former Boston United stadium) are unsuitable or would not be commercially viable because: they both lack ‘visibility’ and scope to attract passing vehicular trade, and cannot be adequately serviced; and there are unresolved policy issues from previous use as recreational open space, in the case of the former stadium; and
- the two vacant edge-of-centre retail units which are of sufficient size (former Poundworld and former Dunelm) are unsuitable or would not be commercially viable because they lack ‘visibility’, cannot offer adjacent free customer car parking, and (in the case of the former Dunelm) is not ‘available’;

It is considered that the submitted sequential assessment:

- is proportionate and appropriate for the proposal;
- provides robust justification for Farmfoods’ market and locational requirements;
- has identified all potentially suitable and sequentially preferable sites (including any which may become available within a reasonable period);
- clearly sets out its reasoning on those sites; and
- demonstrates adequate flexibility with regards to issues such as format and scale.

Consequently, it is considered that the submitted information demonstrates that there are no suitable and available sequentially preferable locations and, as consequence, it is considered that the sequential test is passed.

Impact Test

Given that the proposal involves a unit of 790m² outside Boston’s Town Centre Boundary and is not provided for under Policy 27, Policy 24 also requires the submission of an Impact Test. NPPG identifies that the purpose of an impact test is to *“consider the impact over time of certain out of centre and edge of centre proposals on town centre vitality/viability and investment. ... It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal”*. It goes on to indicate that *“as a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector”* as *“retail uses tend to compete with their most comparable competitive facilities.”*

The Planning and Retail Assessment (January 2021) which accompanies the application identifies that:

- existing foodstores within the town centre are small-format stores which principally meet walk-in, top-up shopping needs (Heron Frozen Foods, Iceland, and McColls);
- three of the four existing edge-of-centre foodstores (Food Warehouse, Home Bargains, and the Tawney Street Lidl) are located at the opposite end of the town centre to the application site; and
- there are four existing out-of-centre foodstores in Boston (ASDA, Aldi, Lidl Westbridge Road, and Tesco).

The Assessment identifies:

- that the proposed Farmfoods store will not compete with convenience goods retail facilities in any centre other than Boston’s;
- that the impact assessment is based on an assumption that the store’s first full year of trading will be 2023;
- the scale of the store’s predicted turnover, and that 95% of this turnover will be drawn from existing stores in the Boston area;

- that the great majority of the turnover drawn from other stores will affect out-of-centre and edge-of centre stores (which are irrelevant to an Impact Test), and that impacts on existing town centre foodstores (principally Heron and Iceland (which, like Farmfoods mainly sell frozen food)) will amount to only 7% of the proposed store's turnover. These impacts will amount to 6%-8% of Heron's turnover and 4.3% of Iceland's turnover, and are argued to be acceptable;
- that Boston's town centre demonstrates largely positive signs of vitality and viability, and that the proposal will not adversely impact these positive characteristics;
- that the proposal will not have a significant adverse impact on existing, committed and planned investment in Boston's centre; and concludes
- that the proposal will not have a significant adverse impact on town centre vitality and viability (including local consumer choice and trade in the town centre).

It is considered that the information submitted in respect of retail impact is proportionate and meets all the requirements of the 'checklist' set out in the NPPG. Its findings are considered to be robust and, as a consequence, it is considered that the impact test is passed.

Other matters

The NPPG indicates that *"where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development."* However in this case, given that:

- the application is made under Section 73 of the Town and Country Planning Act;
- this Section instructs an LPA to consider only the question of the planning condition's subject; and
- condition 3 of planning permission B/01/0632 is concerned solely with protecting the vitality and viability of Boston's Town Centre

it is considered that there are no other relevant material considerations to be taken into consideration.

CONCLUSION:

The proposal involves the variation of Condition 3 of planning permission B/01/0632 to enable an existing retail unit in an 'out-of-centre' location to be occupied by a food retailer. The proposal is not provided for under Policy 27 of the South East Lincolnshire Local Plan 2011-2036 and, in these circumstances Policy 24 requires: suitability to be demonstrated through a sequential test; and for impacts upon relevant nearby centres to be assessed.

The application is accompanied by: a sequential test which demonstrates that there are no sequentially preferable locations; and an impact test which demonstrates that the proposal will not have a significant adverse impact on any nearby town centre's vitality and viability. The two tests are considered to be proportionate and robust, and thus it is considered that the proposal will not have a significant adverse impact on the vitality and viability of Boston's or any other town centre, and therefore meets the requirements of the relevant Policies of the Local Plan.

A Section 73 approval does not require the standard time-limiting condition, and there are no other conditions from the original consent which need re-imposing, with the exception of the amended condition concerned with the range of goods permitted to be sold.

RECOMMENDATION:

GRANT Planning Permission subject to the following condition and reason:-

CONDITIONS / REASONS	
Pre-commencement conditions?	Agreed with applicant/agent - Date:
1	<p>The development shall only be used for Class E as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended), but excluding the sale of jewellery, pharmaceutical products, pet products, fashion accessories, arts and crafts, clothing, footwear, books and magazines, sports goods, toys, audio/visual discs and cassettes (except items within these groups which are ancillary and complementary to the main range of goods sold).</p> <p>Reason: To protect the vitality and viability of Boston's Town Centre, in accordance with Policies 24 and 25 of the South East Lincolnshire Local Plan (2011-2036).</p>

INFORMATIVES / NOTES TO BE INCLUDED ON/WITH DECISION NOTICE**STATEMENT OF PROACTIVE WORKING:**

In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2019 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.