

SCHEDULE C

APPLICATION NUMBER	CB/10/01486/VOC
LOCATION	Unit 1, 3 and 4, Grove Park, Court Drive, Dunstable, LU5 4GP
PROPOSAL	Variation of condition 18 of planning permission SB/TP/03/01863 in order that the specified units can be used for Class A1 (Shops) Class A3 (Restaurant and cafes), Class A4 (Drinking establishments) and for purposes within Class D1 (Non-residential institutions) and Class D2 (Assembly and Leisure)
PARISH	Dunstable
WARD	Dunstable Downs
WARD COUNCILLORS	Cllrs Paul Freeman & Tony Green
CASE OFFICER	Gill Claxton
DATE REGISTERED	26 April 2010
EXPIRY DATE	21 June 2010
APPLICANT	CDP Dunstable Ltd
REASON FOR COMMITTEE TO DETERMINE	The land is owned by Central Bedfordshire Council and there is an unresolved objection
RECOMMENDED DECISION	Variation of Condition - Granted

Site Location:

The application site lies on the north western side of Court Drive and wraps around the south western flank of the Dunstable Leisure Centre. It comprises an L-shaped building of six commercial units that were to provide the bars and restaurants as part of The Grove Theatre development. The theatre is situated to the north west. The building, with ground and first floors is approximately 3,824sq.metres (41,161sq.ft) gross floorspace in area. It is of a modern design with mainly glass elevations in a cast stone frame and of about 8 metres in height, shielding the existing Leisure Centre building to the rear. The building, where it fronts onto Grove House Gardens has a forecourt to provide sitting out areas for customers for about the first 3.5 metres width of the generally 14 metre wide boulevard.

Three of the six units are let: Unit 2 is trading as a J D Wetherspoon public house and restaurant, The Gary Cooper, Unit 5 is a restaurant trading as Xiang Dim Sum and Unit 6 is a restaurant trading as Adesso Cucina Italiana. Three units remain vacant – Unit 1 on the Court Drive frontage, opposite Asda and Units 3 and 4 on the concourse area facing Grove House Gardens.

The site lies just outside the Dunstable Town Centre boundary. The area around the site is characterised by a mix of uses comprising residential (The Parklands), commercial, civic and community uses including the Leisure Centre, Go Bowling, Magistrate's Court, the Asda superstore and College of Further Education.

The Application:

The application proposes to widen the range of uses that can be permitted in Units 1, 3 and 4 to include Class A1 (Shops), Class D1 (Non-residential institutions) and D2 (Assembly and Leisure) in addition to the bar and restaurant uses.

Class D1 uses comprise: clinics and health centres; crèches; day nurseries and day centres (not attached to the consultant's or doctor's house); museums; public libraries; art galleries and exhibition halls; non-residential education and training centres; places of worship, religious instruction and church halls.

Class D2 uses comprise: cinema; concert hall; bingo hall; dance hall (but not nightclub); swimming bath; skating rink; gymnasium or area for indoor or outdoor sports and recreations not involving motor vehicles or firearms.

The original planning permission for the Grove Theatre, bars and restaurants, residential and associated development (SB/TP/03/01863) imposed the control on the uses to which the units could be put through condition number 18, which stated: "The bars and restaurants hereby approved shall only be used as restaurants, pubs, snack bars, cafes, or wine bars within Use Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order) and for no other purpose including any other purpose in Class A1 or Class A2, or Class D2 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order), except that ancillary use for dancing or nightclub purposes within Class D2 shall be permitted.

REASON: To control the development in the interests of amenity and in order to protect the vitality and viability of the town centre shopping area."

Unit 1 has a gross floor area of 815sq.m (8,773 sq.ft), Unit 3 - 467sq.m (5,026sq.ft) and Unit 4 - 622.7sq.m (6,702sq.ft).

In support of the application, the applicant states:

- The development was completed in 2007. The widening of the potential uses of the units has been sought as there has been no real interest in these units for approximately 2 years.
- The variety of uses is sought to achieve maximum flexibility so that the units can be used for Class A1 (Retail), Class A3 (Restaurant and Café), Class A4 (Drinking establishments), Class D1 (Non-residential institutions) and D2 (Assembly and Leisure).
- Consent already exists for A3 and arguably A4 under the current planning permission which was granted before the Use Classes Order was modified (the previous Class A3 (Food and Drink) pertinent at the time of the original grant of planning permission was reconfigured in 2006 into Class A3 (Restaurant and Café), Class A4 (Drinking establishments) and Class A5 (Hot food takeaway),
- It is acknowledged that the possibility of an A1 use is contentious and the one which may not be taken up given the amount of vacant space in the town but it was one that the applicant's bank wanted explored in the hope that it might attract a retailer who had previously discounted the scheme or the town.
- The D1 use would help with attracting either a college or crèche use.
- The D2 use is to try to capture dance uses and sports uses.
- Unit 3 has now been let and a condition of that letting is that A3, A4 and D2

uses are applied for. The need for the D2 use is questionable as ancillary dance floors are covered by the original condition. However, the tenant has requested this.

Since the application was submitted the applicant has withdrawn the request for Class A1 uses on Units 3 and 4 but wishes to retain this option for Unit 1 as he considers that this is the most likely to attract a retail user.

RELEVANT POLICIES:

National Policies (PPG & PPS)

Planning Policy Statement (PPS) 1 – Delivering Sustainable Development – (Feb 2005)

Planning Policy Statement (PPS) 4 - Planning for Sustainable Economic Growth – (Dec 2009)

Planning for Town Centres: Practice Guidance on need, impact and the sequential approach.

Regional Spatial Strategy

East of England Plan (May 2008)

SS1 - Achieving Sustainable Development

SS6 - City and Town Centres

South Bedfordshire Local Plan Review Policies

BE8 - Design Considerations

Draft Dunstable Town Centre Masterplan

Planning History

SB/TP/03/01863	Permission for the erection of an arts venue (to include theatre, music and cinema presentations and exhibition areas) bars and restaurants with external seating, residential development comprising 157 units with ancillary parking and landscaping, new public car park, re-siting of floodlit synthetic turf pitch, alterations to layout and landscaping of public park and associated highway works.
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Representations: (Parish & Neighbours)

Dunstable Town Council	No objection to the variation of Condition 18 for the units to be used for Class A3, A4, D1 and D2 but objects to the use of Class A1 (Retail) as this is out of keeping with the area and feel the original reason for the condition 'to control the development in the interests of amenity and in order to protect the vitality and viability of the town centre shopping area' is still valid.
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Neighbours	The application was publicised by the direct notification of neighbouring occupiers and the display of site notices. No replies have been received as a result.
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Consultations/Publicity responses

Highway Engineer Court Drive, in the vicinity of the site, is subject to on street Traffic Regulation Orders which prohibit on street parking; therefore subject to effective enforcement of the restrictions any concerns regarding indiscriminate parking should be eliminated.
No highway objection to this application.

Determining Issues

The main considerations in the determination of the application are:

1. Whether the proposed uses would have any adverse impact on the vitality and viability of Dunstable Town Centre and the rationale behind the original development in creating a cultural and leisure quarter in this part of the town
2. Whether there would be any adverse impact on residential amenity
3. Other matters

Considerations

- 1. Whether the proposed uses would have any adverse impact on the vitality and viability of Dunstable Town Centre and the rationale behind the original development in creating a cultural and leisure quarter in this part of the town**

When planning permission was originally granted for the scheme, Condition 18 was imposed to ensure that the all of the six units within the building comprising 3,824sq.metres (41,161sq.ft) gross floorspace in area could not exercise the permitted development right to move from Class A3 to Class A2 or Class A1 in order to safeguard the amenity of the area and protect the vitality and viability of the Town Centre.

Once the development was completed three of the units were let successfully while three remained vacant. The applicant has tried unsuccessfully to let the remaining units for more than two years. There has been a recent success in relation to Unit 3, which has been let to a bar operator and although not yet trading, is currently being fitted out. This application is seeking permission to widen the range of uses within the two still to be let units to make them more marketable and potentially more attractive to prospective tenants and likewise to ensure that there is still flexibility for Unit 3 in the future should current circumstances change.

Since the application was submitted, the applicant has withdrawn the request to seek a Class A1 (Shops) use on Units 3 and 4. A retail use is only being sought for Unit 1. Uses within Classes A3 (Restaurants and Cafes), A4 (Drinking Establishments), D1 (Non-residential institutions) and D2 (Assembly and Leisure) are being sought on all three units. The applicant has advised that the D1 use would help with attracting either a college or crèche use and the D2 use is to try to capture dance and sports uses. The tenant in Unit 3 wants the position regarding approved uses reaffirmed and it is a condition of the lease that planning permission is sought for Class A3, A4 and D2 uses.

National guidance in PPS4: 'Planning for Sustainable Economic Growth' advises Local Planning Authorities on the way in which applications for main town centre uses not in an existing centre should be considered. It advises that an impact assessment for retail and leisure developments will only be required for proposals in excess of 2,500 sq.metres. Unit 1, fronting Court Drive, is the largest unit with a floorspace of 815sq.m (8,773 sq.ft) and permission for both retail and leisure uses are sought for this unit. Class D2 uses are sought for all three units, which cumulatively have a floor area of 1,904.7sq. metres (20,501sq.ft). However, given the PPS advice, it is not considered that an impact assessment is required in this instance.

PPS4 also requires a sequential assessment to be undertaken to ensure that all in-centre options have been considered before less central sites are considered. In this case, it has not been possible to undertake such an assessment as the proposed retail and leisure uses are speculative and relate to a building which already exists.

The site lies in an edge of centre location, just beyond the Town Centre boundary and within 120 metres of the Main Shopping Area. There are good pedestrian links with the Town Centre and Main Shopping Area with car parking facilities nearby and access to public transport. For the potential retail and leisure uses, Unit 1 is opposite the Asda store and all of the Units, the subject of the application, are in close proximity to the Leisure Centre and ten-pin bowling facility.

Given the relatively small amount of additional Class A1 floorspace being created, the edge of centre location of the site and proximity to the Asda store, the length of time that the Unit has been vacant despite concerted attempts to market it, the applicant's argument for creating flexibility for letting the unit and advice in PPS4, it is considered that the proposal would not undermine the vitality and viability of Dunstable Town Centre, provided, if the unit were used for Class A1 purposes, there was a further restriction on the type of goods to be sold limiting it to comparison goods only. This would accord with the findings of the Luton and South Bedfordshire Retail Study 2009, which has identified available expenditure to support 21,300sq. metres of additional comparison goods floorspace in the town centre by 2021, based on population growth projections but virtually no expenditure to support convenience goods floorspace before 2011 and 800 sq.m between 2011 and 2016.

With regard to the leisure uses, the applicant is seeking flexibility to attract dance and sports uses. As the three units are not adjacent to one another it would not be possible to amalgamate them to create a single large unit, which might undermine the adjacent leisure facilities and those elsewhere within the town. Rather, these smaller units would complement this part of Court Drive and aid the desire to see this area as forming the leisure heart of Dunstable, which was part of the rationale behind the original theatre and bars/restaurants development.

The Class D1 use could allow a college or crèche use which would complement the existing education focus at the College.

The opportunity for the units to be let for the originally intended purposes would not be lost as the proposal seeks to retain those uses also.

The site lies within the area covered by the emerging Dunstable Masterplan. The Masterplan identifies this part of the town as an area with an existing leisure focus. The Masterplan refers to establishing new facilities north of Court Drive to expand the appeal of the area as the leisure and education heart of Dunstable. These proposals would accord with the Masterplan in this regard. The Masterplan also seeks to ensure that the focus of development should remain within the existing town centre boundary which should not be extended significantly. There are no proposals to extend the town centre boundary to include this site. However, it is considered that these proposals would not conflict with the regeneration aims of the Masterplan which seek to bring a diverse mix of uses into the Town Centre.

In conclusion, it is not considered that the proposal would have an adverse effect on the vitality and viability of the Town Centre or the rationale behind the original development in creating a cultural and leisure quarter in this part of the town.

2. Whether there would be any adverse impact on residential amenity

The nearest residential properties are located in The Parklands some distance to the north west of the site. These properties were built at the same time as the theatre and the application properties. Occupiers of these residential properties would have been aware of this development. The proposed range of uses would not be likely to alter the relationship with residential occupiers to an unacceptable degree given the nature of the uses and the distances involved.

3. Other matters

The Highway Engineer has confirmed that there is no objection to the application on highway grounds.

Reasons for Granting

The proposed range of uses would accord with national guidance in PPS4: 'Planning for Sustainable Economic Growth' and policy BE8 of the South Bedfordshire Local Plan Review in that there would be no adverse effect on the vitality and viability of the town centre, the character and appearance of the locality, residential amenity or highway considerations.

Recommendation

That planning permission be granted subject to the following:

- 1 Units 3 and 4 shall only be used for purposes falling within Use Classes A3 (Restaurants and Cafes), A4 (Drinking Establishments); D1 (Non-residential institutions) and D2 (Assembly and leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order, with or without modification) and for no other purpose including any other purpose in Class A1 or Class A2 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order, with or without modification).
REASON: To control the development in the interests of amenity and in order to protect the vitality and viability of the town centre shopping area.

- 2 Unit 1 shall only be used for purposes falling within Classes A3 (Restaurants and Cafes), A4 (Drinking Establishments); D1 (Non-residential institutions) and D2 (Assembly and leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order with or without modification). Unit 1 may also be used for purposes falling within Class A1 (Shops) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended (or any order revoking and re-enacting that Order with or without modification) provided it is only used for the sale of comparison goods. Unit 1 shall be used for no other purpose including any other purpose in Class A2 of the Town and Country Planning (Use Classes) Order 1987 (or any order revoking and re-enacting that Order, with or without modification).
REASON: In order to control the development in the interests of amenity, to restrict the sale of convenience goods outside Dunstable Town Centre, in accordance with the advice contained in Planning Policy Statement 4 - Planning for Sustainable Economic Growth and to protect the vitality and viability of the town centre shopping area.
- 3 This permission relates only to the details shown on Drawing No's 1224/AL105E and 681.SK24/4B received 26/04/10 or to any subsequent appropriately endorsed revised plan.
REASON: To identify the approved plans and to avoid doubt.

Notes to Applicant

1. In accordance with Article 22 of the Town & Country Planning (General Development Procedure) Order 1995 (as Amended), the Council hereby certify that the proposal as hereby approved conforms with the relevant policies of the Development Plan comprising of the Regional Spatial Strategy for the East of England (the East of England Plan and the Milton Keynes and South Midlands Sub-Regional Strategy), Bedfordshire Structure Plan 2011 and the South Bedfordshire Local Plan Review and material considerations do not indicate otherwise. The policies which refer are as follows:

Regional Spatial Strategy

East of England Plan (May 2008)

SS1 - Achieving Sustainable Development

SS6 - City and Town Centres

South Bedfordshire Local Plan Review Policies

BE8 - Design Considerations

2. In accordance with Article 22 of the Town and Country Planning (General Development Procedure) Order 1995 (as Amended), the reason for any condition above relates to the Policies as referred to in the Regional Spatial Strategy (RSS), Bedfordshire Structure Plan 2011 (BSP) and the South Bedfordshire Local Plan Review (SBLPR).
3. This permission relates only to that required under the Town & Country Planning Acts and does not include any consent or approval under any other enactment or under the Building Regulations. Any other consent or approval

which is necessary must be obtained from the appropriate authority.

DECISION

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