

APPLICATION NO: 13/02174/FUL	OFFICER: Mrs Lucy White
DATE REGISTERED: 8th January 2014	DATE OF EXPIRY: 5th March 2014
WARD: Charlton Park	PARISH: Charlton Kings
APPLICANT:	CTC (Gloucester) Ltd
AGENT:	Hunter Page Planning
LOCATION:	86 Cirencester Road Charlton Kings Cheltenham
PROPOSAL:	Erection of a new convenience store (A1) with associated parking (following demolition of existing buildings on the site)

Update to Officer Report

1. OFFICER COMMENTS

- 1.1. On 14th July 2014 the applicants have submitted a legal advice note prepared by Counsel in respect of the Officer Report and recommendation.
- 1.2. In summary, this document reviews the Officer Report looking at the key considerations of policy, retail impact and the requirement for a retail impact assessment, design and amenity. It also considers whether further information or representation should be provided on behalf of the applicant to add clarification to any outstanding matters, points of conflict and to address any issues of policy interpretation.
- 1.3. The review concludes that Officers have assessed the application and all associated material thoroughly, have applied the correct principles and, with regard to the objections raised, make a clear recommendation to grant planning permission on what is a brownfield site in existing commercial use. As such, the applicant's legal officer comments that there is no need for the applicants to provide further information in support of their application and that there is no overriding objection to the grant of planning permission which is presumed in favour by paragraph 14 of the NPPF.
- 1.4. A short update to the applicant retail impact statement prepared by Mango was submitted on 14th July. This report confirms that, as stated at paragraph 26 of the NPPF, the requirement for a retail impact assessment applies only to proposals for out of town centre retail, leisure and office development that exceed 2,500 sq metres gross floorspace, unless there is a different locally set threshold. Mango also point out that this is also set out in the latest government Planning Practice Guidance 'Ensuring the vitality of town centres' issued in March 2014. As such, Mango argue that if an assessment of impact is not required for a proposal below 2,500 *'it is illogical that such matters could comprise a reason for refusal'*.
- 1.5. The applicants' legal advice note and Mango update report are attached to this report.
- 1.6. The Environmental Noise Survey and Noise Impact Assessment Report prepared by Hann Tucker on behalf of the applicant has been amended to refer correctly to Cheltenham Borough Council and not Cheltenham City Council. There are no other changes to this report since it was last revised on June 26th 2014 as outlined in the previous officer update report.
- 1.7. One further representation has been received from a local resident and is attached.

DB/130081/L0003

9 July 2014



Mr G Brockbank
Hunter Page Planning
Thornbury House
18 High Street
Cheltenham
GL50 1DZ

Dear Giles

**Former Charlton Kings Garage, 86 Cirencester Road, Charlton Kings
(13/02174/FUL)**

I write to provide you with a brief update on the issue of impact assessments. Paragraph 26 of the NPPF states that applications outside of town centres should be accompanied by an impact assessment if the development is over a proportionate, locally set threshold, otherwise the default threshold is 2,500 sq m.

This has been supported by a number appeal decisions (e.g. Bracknell and Coggleshall) that state clearly that the test of impact does not apply.

Importantly, the latest guidance set out in "Ensuring the vitality of town centres" issued in March 2014, states expressly that:

"The impact test only applies to proposals that exceed 2,500 sq m gross of floorspace unless a different locally appropriate threshold is set by the local planning authority".

As such, if an applicant does not need to assess impacts arising from a proposal below 2,500 sq m, it is illogical that such matters could comprise a reason for refusal.

Should you require any further information please do not hesitate to contact me.

Yours sincerely

Darren Brown
Associate

cc. Mr T Waldron CTC (Gloucester) Ltd

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Re 86 Cirencester Road, Charlton Kings, Cheltenham

ADVICE

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Re 86 Cirencester Road, Charlton Kings, Cheltenham

ADVICE

Introduction

1. I am instructed by Hunter Page Planning on behalf of CTC (Gloucester) Ltd, the applicant for planning permission for the erection of a new convenience store (A1) and associated parking (following demolition of existing buildings) at 86 Cirencester Road, Charlton Kings, Cheltenham the above site ("the Application Site").
2. I have been asked to review the Officers' Report in order to consider if further information or representations should be provided on behalf of the applicant, and to address any issues of policy interpretation that may arise.

Retail issues

3. The first principle noted by officers in section 6¹ is that notwithstanding desires expressed by third parties to see a residential development on the Application Site, the application is for a retail development and the relative merits of a residential scheme are therefore irrelevant. I endorse Officers' view on this. The Council plainly has to address the merits of the proposal before it, and if its impacts are considered acceptable then there can be no basis for refusing it on the basis that another application which has not been put forward may be preferable (*R (on the application of Mount Cook Land Ltd v Westminster City Council* [2004] JPL 470).

¹ Paragraph 6.2.2

4. Secondly, the approach to the assessment of this retail application is to assess the proposal against the sequential test and to consider the impact of the proposal on the vitality and viability on existing centres.
5. The Council commissioned a review of the applicant's Retail Statement and this review was prepared by DPDS. DPDS refer to policy RT7 of the Cheltenham Borough Local Plan (Second Review) 2006 ("Local Plan") which presumes against retail development outside the defined shopping areas unless a need for the additional retail floorspace has been demonstrated and the proposals would not harm the vitality and viability of the relevant centres. DPDS draw attention to the fact that a requirement to demonstrate need was removed from previous national planning policy and is not contained within the Framework. Therefore policy RT7 is out of date in this regard and should attract reduced weight for being inconsistent with the Framework².
6. Accordingly, a refusal based on this limb of the policy would not be well-founded. I agree with the position taken by Officers³ that the consideration of the vitality and viability limb of the test, as now referred to in paragraph 26 and 27 of the Framework remains relevant, but that a requirement to demonstrate need is not consistent with the Framework. In addition, the sequential test is relevant under both national and local policy⁴.
7. I note that DPDS has provided an independent view on the assessment of the proposal against those issues, and this is summarised within the Officers' Report. One issue of disagreement between the Applicant's retail consultants and DPDS concerns whether it is appropriate for the Council to apply an impact test for the proposed development on account of its scale (gross 423 sq m; net 280 sq m⁵). The Retail Statement was prepared in November 2013. The DPDS review was prepared in February 2014, and its addendum on 4 March 2014. On 6 March 2014 the Government published its National Planning Practice Guidance, which includes a response to the question

² Paragraph 215 of the Framework refers

³ 6.3.8

⁴ Framework 24, Local Plan RT1

⁵ Officers' Report 6.4.2

‘When should the impact test be used?’⁶. The first sentence of the response provides as follows:

“When should the impact test be used?”

The impact test only applies to proposals exceeding 2,500 square metres gross of floorspace unless a different locally appropriate threshold is set by the local planning authority.”

8. Paragraph 2b-001-20140306 says this:

“The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy). It applies only above a floorspace threshold as set out in paragraph 26 of the National Planning Policy Framework.”

9. As far as I am aware there is no adopted locally appropriate threshold, and the Local Plan does not contain one. It follows that the NPPG confirms the approach taken by the Applicant’s retail consultant that for a proposal of this size the impact test does not apply as a result of paragraph 26 of the Framework. The Local Plan should be read consistently with the Framework if possible, failing which the weight to be given to it should be reduced⁷.

10. In any event, DPDS’s independent assessment concludes, although taking different reasoning, that there is compliance with the sequential test⁸, and that refusing permission on impact grounds would place the Council at considerable risk at appeal. Officers endorse that conclusion and advise Members that they consider that there is not sufficient evidence to be able to put forward a refusal on retail impact grounds that the Council could substantiate at appeal. This conclusion is reached even without making reference to the NPPG advice that the impact test does not apply to proposals the size of the appeal proposal.

⁶ Paragraph 2b-16.20140306

⁷ NPPF 215

⁸ Summarised in 6.4.4.

11. Officers also, in my opinion rightly, set out the principle that an assessment of retail impact must be made on objective grounds only⁹. For example, a preference for one retailer over another would not by itself be a relevant consideration.

Design and External Appearance

12. There is little to be said on the question of design. The submitted proposals were the subject of considerable pre-application discussion, and Officers note in addition that control over further design details can be secured through condition¹⁰.

13. Officers conclude that the scheme will deliver a building of acceptable and good quality appearance, and that the overall layout and design is satisfactory and the proposed buildings will sit comfortably on an awkward shaped site, and that the revised scheme offers improvements in architectural detailing, materials and orientation to the original proposals 6.6.14 and 6.6.15.

14. In short, Officers have considered the proposal thoroughly and consistently with national policy in paragraphs 56, 58 and 60 of the Framework, and paragraph 64 that advises that permission should be refused for buildings of poor design that fail to take the opportunities available to improve the character and quality of the area and how it functions.

15. I note also that the Council's consultation with Urban Design concludes that the building is satisfactory (subject to landscaping negotiations) in terms of built form, mass, block layout and landscape, as a result of negotiations with officers.

16. In my view, there is no reason for the applicant to submit further information or seek a more thorough review.

⁹ Paragraph 6.3.8

¹⁰ Paragraph 6.6.13

Residential Amenity

17. Officers conclude in relation to noise and disturbance that the impact of the proposed use on balance will be no worse than the existing use¹¹. The advice from the Environmental Health department is that conditions should be imposed and no objection is raised subject to the proposed conditions being imposed. Officers accept that advice and propose a number of conditions.

18. However, I note that no reference is made to the relevant national policy on this issue. Paragraph 123 of the Framework provides:

“123. Planning policies and decisions should aim to:

(a) Avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;

(b) mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;

...

19. Although this paragraph is not expressly set out in the report it appears that Officers had this advice in mind in writing the report and the relevant test (significant adverse impact) is referred to in paragraphs 6.8.9 and 6.8.11 of the Report. The advice from the Environmental Health Officer by reference to the Applicant's Environmental Noise Survey and Noise Assessment Report is summarised by officers as follows: *“[The EHO] has no concerns about impact on nearby residential properties, particularly those opposite the site and the bungalow at the rear, subject to a number of conditions being imposed which relate to opening and delivery hours and the approval of ventilation/refrigeration equipment”*.

20. It seems to me that where the proposed use is considered to be not materially worse than the existing or alternative uses it is very difficult to see how a conclusion that the impact was a significant adverse one could be substantiated.

¹¹ 6.8.11

Conclusion

21. Accordingly, it seems to me that there is no need for the Applicant to supplement its representations at this stage. The Officers' consideration of the issues is thorough and addresses all the material considerations applying the correct principles.
22. The one exception to that relates to the consideration of the impact test under policy 26 of the Framework. The NPPG states clearly that this does not apply to proposals the scale of the appeal proposals. The DPDS review pre-dates the NPPG of 6 March 2014. The applicant may therefore wish to draw this to the Committee's attention through its retail consultants, whose approach is consistent with the NPPG.
23. In any event, the outcome of the DPDS review was to advise the Council that any refusal on retail grounds would be difficult to substantiate on appeal even were impact to be taken into account, contrary to the NPPG guidance. Accordingly, the prospect of substantiating any refusal on appeal is further reduced.
24. Otherwise it appears to me that the Officer have assessed the application material thoroughly alongside the objections raised and make a clear recommendation to grant planning permission on what is a brownfield urban site in existing commercial use, and they have no overriding objection to the grant of permission which is therefore presumed in favour of by paragraph 14 of the Framework.

**Landmark Chambers,
180 Fleet Street,
London EC4A 2HG**

GUY WILLIAMS

8th July 2014.

Bafford Croft
4 Bafford Lane
Charlton Kings
Cheltenham
GL53 8DL

14 July 2014

To: all councillors on CBC Planning Committee
Cc: Mrs L White

Planning application 13/02174/FUL

We are writing to you to express our concerns about planning policy for Cheltenham as set out in the draft Joint Core Strategy (reference JCS). Our immediate concern is the proposed retail development on Cirencester Road (13/01274/FUL). We would like you to turn down the application as unnecessary and inappropriate and to revise the Joint Core Strategy to introduce a more stringent test of impact in future for such out-of-centre developments.

When we last wrote (10/6/14) objecting to the proposed development, an important part of the objection relied on the flawed impact assessment made in the planning application. The proposed retail development has a floor area of 280 sq.m. This is above the local out-of-centre threshold for requiring an impact assessment of 200 sq.m. that was recommended by the DPDS study (paragraph 7.33 on page 95) and which was re-affirmed in the review (DPDS/A paragraph A16 on page 6) which followed publication of NPPF.

We have since discovered that the draft JCS has not included this recommendation in its policies. Policy E2 outlined on pages 41-42 of JCS states only "*impact test as set out in national planning guidance*".

The national planning guidance (NPPF, para 26 on page 8) states that local planning authorities should require an impact assessment "*if the development is over a proportionate, locally set threshold (if there is no locally set threshold, the default threshold is 2,500 sq m)*".

As a consequence, given the presumption in favour of development, the Cheltenham planning authority will have no power to evaluate the impact of any proposed development of less than 2,500 sq.m, which is a substantial development for a town the size of Cheltenham.

The proposed JCS is expected to provide the planning policy framework for the next 15 years, and during that period we anticipate that additional development opportunities of this scale could arise. The cumulative effect of multiple medium-scale developments in the suburbs of Cheltenham has the potential to destroy their current individual characters if not properly scrutinised. We ask that the planning committee take steps to revise the JCS appropriately before it is submitted to the Secretary of State for approval.

Yours sincerely

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References

(JCS) Draft Joint Core Strategy for Gloucester Cheltenham and Tewkesbury, October 2013

(DPDS) Joint Core Strategy Retail Study, DPDS Ltd, December 2011

(DPDS/A) Addendum to DPDS study, December 2012

(NPPF) National Planning Policy Framework, March 2012

(13/01274/FUL) Planning application for a retail development at 86 Cirencester Rd

(10/6/14) Letter of objection to 13/01274/FUL (copy attached)

Bafford Croft
4 Bafford Lane
Charlton Kings
Cheltenham
GL53 8DL

10 June 2014

Dear Mrs White

Planning application 13/02174/FUL

Thank you for notifying us of the revisions to the above planning application.

Our objections to the proposed development are set out below.

Summary

The planning proposal fails to identify a need for more capacity in the area, and the proposed development is very likely to have a significant and detrimental impact on existing convenience stores.

Retail statement

Para 1.3 of the retail statement states "*It has been prepared in the context of the Joint Core Strategy Retail Study prepared by DPDS Limited in December 2011 ("The DPDS Study")."*

However, two very relevant parts of that study have been ignored.

- para A16 of the supplement recommends that when considering the effect of a proposed development on local centres, the relevant threshold for assessing impact should be 200sq.m. The retail statement does have a brief impact assessment (section 6), but it is superficial.
- Appendix D to the study concludes that Cheltenham already has an oversupply of convenience shopping. It anticipates no requirement for additional capacity until at least 2031.

Para 6.10 states that the NISA store does not appear as an individual entry in the household survey data of the DPDS study as a top up. It claims this as evidence that further top up provision is needed in the area.

However the household survey conducted by DPDS was not designed to identify top up provision across all of Cheltenham, but was specifically targeted at the city centre and three large local centres (Bath Rd., Coronation Sq. and Caernarvon Rd.). It consulted a total of 100 households in all of Cheltenham. The response figures for top up food shopping include 6 for Charlton Kings Coop (London Rd), and 9 for "Charlton Kings" which can be taken to comprise the other Charlton Kings convenience food stores.

The fact that NISA or other Charlton Kings convenience stores exist and appear to be trading successfully (see para 6.24 which estimates the NISA turnover at £650,000-£750,000 p.a.) is evidence enough that they are used.

The retail statement makes no attempt to estimate the total top up expenditure locally, so its claim (paras 3.7 and 6.14) that the majority of top up spending is directed to larger stores further afield has no data to support it.

Para 3.5 describes the range of goods that it is proposed will be offered *“A store of this size and character would typically offer a basic range of convenience goods such as groceries, sandwiches, snacks and confectionery. Non-food goods would comprise no more than 10% of the proposed floorspace and would typically be limited to toiletries, nappies and other ‘essential’ goods.”*

There is no mention here of alcoholic beverages or tobacco and nicotine products. Late-opening convenience stores across the country have extensive provision for the sale of such goods. The retail statement criticises the NISA offering in para 3.7 *“The Nisa unit appears to cater more for small basket and occasional purchases rather than providing a full top-up shopping outlet.”* and again in para 6.9 *“...the store continues to have a relatively limited offer, particularly in terms of fresh fruit and vegetables, fresh meat and other perishable goods.”* However the proposed store makes no claim to be offer anything other than what is already on offer in NISA.

Para 3.10 claims that the proposed store will offer *“between 20 and 30 full and part time positions for local people”*. No evidence is presented for this figure. The only citations (e.g. Tesco in Quedgley) indicate 15 positions. Given the oversupply of convenience capacity in Cheltenham as a whole identified by the DPDS study, it is doubtful if many of the jobs created would be genuinely new jobs, they would likely be at least partially compensated by redundancies elsewhere.

Impact and Sequential assessment

The retail statement has what it calls a sequential assessment (section 5) which is fundamentally flawed. A sequential assessment is relevant in the context of a defined centre or local centres, and is intended to test whether the demonstrated need could best be served in existing centres.

The planning proposal fails to demonstrate any need for additional convenience capacity either in Cheltenham as a whole or in Charlton Kings. The executive summary states *“... the accompanying Retail Statement suitably demonstrates that there is a need for a retail use in this location and that it will not have a negative impact on the existing neighbourhood centres.”* Yet the only part of the retail statement that addresses need is in paras 3.7-3.9 which claim an increase of choice by comparison (solely) with NISA at Cirencester/Croft Rd and ignoring two other neighbourhood stores at Lyefield Rd and Church St. The retail statement indeed makes a point (in para 4.17) of stating that there is no requirement to define a need.

The sequential assessment that they do make is based on the assertion that there is an established need for new capacity in the Cirencester Rd area, and also treats the proposed location as an edge of centre location based on proximity to Cirencester Rd/Croft Rd shops. But as the retail statement itself points out (para 4.18) *“Small*

parades of shops of purely neighbourhood significance are not regarded as centres for the purposes of this policy statement.” The only nearby candidates for local centres according to this definition are the Lyefield Road and Church St centres, which lie 600m (by road or foot) away.

Para 5.13 restricts consideration to a catchment within 500m walking distance of the application site. This figure appears to be chosen so as to exclude the two existing local centres at Lyefield Rd and Church St, each of which is at 600m (less than 400m as the crow flies).

Para 5.14 seeks to justify this by reference to a previous appeal, however in that case the relevant distances were significantly greater at 1.2 km and 1.6 km.

Para 6.21-6.23 present some figures for the source of customers. They assert that 80% of custom will come from shopping which would otherwise have taken place at supermarkets much further afield, and only 20% from existing local shops. There is no evidence presented to justify these proportions.

An alternative estimate would start by looking at the total expected expenditure on top up shopping.

Industry estimates have around 25% - 30% of total convenience expenditure as top up.

Cheltenham convenience shopping is estimated (2014 figures taken from Table 2a of the DPDS Study, Appendix D) at £1,953/head. Taking the population of Charlton Kings to be 10,000 (2011 census, including the area north of London Rd) this gives an estimate of annual top up expenditure to be

$$30\% \times £1,953 \times 10,000 = £5.86M$$

Using the sales density figure from para 6.17 of the retail study of £4,500 per sq. m. gives a total need in Charlton Kings of

$$£5.86M / £4,500 = 1300 \text{ sq. m.}$$

Note that if we use higher estimates of sales density then the required need for sales area is correspondingly lower. According to Table 9 of Appendix D to the DPDS Study, the Charlton Kings Coop (London Rd) has a sales density of £7,600/sq.m. Using this higher sales density gives a total sales area need of

$$£5.86M / £7,600 = 771 \text{ sq.m.}$$

The inclusion of the area north of London Rd, much of whose population may well use Tesco Express on Hewlett Rd or Sainsburys on Priors Rd for their top up shopping means that these figures are likely to significantly overestimate the need for top up shopping south of London Rd.

According to the Valuation Office Agency's website, the existing stores have sales areas as follows:

Coop (London Rd)	314 sq.m.
Coop (Church St)	369 sq.m.

Budgens 117 sq.m.
NISA (revised) 131 sq.m.

The total is 931 sq.m.

In the context of this existing adequate provision, the proposed new convenience store of 280 sq.m will have a significant impact on the viability of existing smaller stores nearby (Budgen and NISA) as well as drawing trade from the Church St Coop.

Site proposals

The original proposal included a large "totem". We note that this part of the design has been altered, as have some of the architectural features of the proposed buildings. The design has clearly been altered to take into account the concerns of residents and be a little more sympathetic to the surrounding buildings; however it is completely generic with no form of supermarket branding and it seems unlikely that it could survive like this.

Traffic

The planning proposal (para 2.2) refers to "*very intensive use*" and "*a steady stream of traffic entering the site*" with the existing use as a car wash. The car wash only operates during daylight hours, it is not a 7am-11pm facility. The proposed use as a convenience store would have delivery lorries arriving in the early morning before store opening.

Closure of the car wash would not reduce traffic levels overall as cars would have to find an alternative, most likely more distant, facility.

Additionally there would be a significantly increased risk of traffic accidents due to more people crossing the main road on what is already a difficult and dangerous bend for pedestrians. The population densities of the immediately surrounding areas are such that the majority of customers arriving on foot will be from the north-east side of Cirencester Road and so will have to cross the road twice.

The portion of Cirencester Road between Croft Road and Moorend Park Road/Lyefield Road already suffers from cars parked part-way on the pavement which both obstructs the footway and makes it more difficult to get a clear sight while crossing. This development would inevitably lead to additional illegal short-term parking in the area close to the shop, including the hazardous corner where Newcourt Road meets Bafford Lane.

Yours sincerely



Telephone: 