

Application No: 12/4532M

Location: 22, 24, 26 & 36 CASTLE STREET; 25, 25B & 25C CASTLE STREET MALL; MACCLESFIELD

Proposal: Removal of Condition 5 (Servicing Plan), 6 (Films/Transfers) and 7(Renewable Energy Measures) on Planning Application 12/2073C - Change of Use of Ground and First Floors of no. 36 Castle Street from Office (Class B1) to Retail (Class A1), Internal Subdivision and Alterations Together with the Demolition of Retail Units nos 22, 24 and 26 Castle Street and nos 25, 25B, 25C Castle Street Mall to Facilitate the Development of a Two Storey Building to Adjoin no.36 Castle Street for the Provision of Three Retail Units (Ground and First Floor) with Offices Above (Second Floor), External Alterations and Associated Works.

Applicant: John Sullivan, Eskmuir Securities Limited

Expiry Date: 26-Feb-2013

SUMMARY RECOMMENDATION: Remove Conditions 5 and 7 and Vary Condition 6

MAIN ISSUES

- **Heritage & Design**
- **Sustainability**
- **Highway Safety and Traffic Generation**

Date Report Prepared: 1st February 2013

REASON FOR REPORT

The application has been referred to the Northern Planning Committee as the proposal is for the variation of conditions attached to an application for a small scale major development where the proposed floorspace would comprise retail/ commercial and other floorspace exceeding 1,000 sq. m.

DESCRIPTION OF SITE AND CONTEXT

The application site measures approximately 2768 sq. m. It comprises a three to four storey B1 office building (former Cheshire Building Society premises) located at the junction of Churchill Way and Castle Street in Macclesfield Town Centre and a two storey section of the Grosvenor Centre in the south west corner which lies adjacent to the former Cheshire Building Society premises.

The section of the Grosvenor Centre included within the site boundary comprises five ground floor retail units with storage and servicing above, plus a projecting canopy above and the entrance into the Grosvenor Centre taken from Castle Street. All of the retail units are currently occupied.

The entire site lies within the designated Primary Shopping Area, an area of archaeological potential and adjacent to the High Street Conservation Area. The building formerly occupied by Cheshire Building Society is also a locally listed building.

DETAILS OF PROPOSAL

This application seeks the removal of condition 5 (servicing plan), condition 6 (films/ transfers) and condition 7 (renewable energy measures) attached to permission 12/2073m. That permission related to the demolition of five retail units contained within the Grosvenor Centre and construction of a replacement two storey building forming an extension to the former Cheshire Building Society premises, to facilitate a change of use of the former Cheshire Building Society premises from B1 offices to mixed use comprising ground and first floor A1 retailing with B1 offices above.

Planning History

12/2073M Change of Use of Ground and First Floors of no. 36 Castle Street from Office (Class B1) to Retail (Class A1), Internal Subdivision and Alterations Together with the Demolition of Retail Units nos 22, 24 and 26 Castle Street and nos 25, 25B, 25C Castle Street Mall to Facilitate the Development of a Two Storey Building to Adjoin no.36 Castle Street for the Provision of Three Retail Units (Ground and First Floor) with Offices Above (Second Floor), External Alterations and Associated Works. Approved subject to conditions 23-Aug-2012.

POLICIES

Regional Spatial Strategy

Policy DP 1 Spatial Principles

Policy DP 2 Promote Sustainable Communities

Policy DP 3 Promote Sustainable Economic Development
Policy DP 4 Make the Best Use of Existing Resources and Infrastructure
Policy DP 5 Manage Travel Demand; Reduce the Need to Travel, and Increase Accessibility
Policy DP 6 Marry Opportunity and Need
Policy DP 7 Promote Environmental Quality
Policy DP 9 Reduce Emissions and Adapt to Climate Change
Policy W 5 Retail Development
Policy L 1 Health, Sport, Recreation, Cultural and Education Services Provision
Policy RT 2 Managing Travel Demand
Policy EM 1 Integrated Enhancement and Protection of the Region's Environmental Assets
Policy EM 18 Decentralised Energy Supply

The Cheshire 2016: Structure Plan Alteration:
Policy T7: Parking

Local Plan Policy

Policy BE1 - Design Guidance
Policy BE2 - Preservation of Historic Fabric
Policy BE20 - Locally Important Buildings
Policy BE22 – Sites of Archaeological Potential
Policy T9 - Traffic Management and Traffic Calming
Policy S1 - Town Centre Shopping Development
Policy MTC1 - Prime Shopping Area
Policy MTC22 - Offices
Policy DC1 - Design and Amenity
Policy DC2 - Design and Amenity
Policy DC3 - Design and Amenity
Policy DC5 - Design and Amenity
Policy DC6 - Design and Amenity
Policy DC13 - Noise
Policy DC14 – Noise
Policy IMP4 – Environmental Improvements in Town Centres

Other Material Considerations

PPS4: Planning For Sustainable Economic Growth – Companion Guide
National Planning Policy Framework (The Framework)
SPD List of Locally Important Buildings
SPG S106 Agreements/ Planning Obligations
Cheshire Retail Study Update
Macclesfield Town Centre Public Realm Strategy
Macclesfield Town Vision
Cheshire East Development Strategy and Policy Principles
Ministerial Statement – Planning for Growth (March 2011)
Draft Planning Obligations SPD

CONSULTATIONS (External to Planning)

Highways – Based on the information provided, it is considered that the removal of condition

5 would not raise significant highway safety issues to the extent that would justify a refusal of planning permission and therefore there are no objections raised.

Guild & Chamber of Trade - no objections to the proposals and wish to support the progression of retail development in order to attract investment to the Core retail area of the Town in line with current planning policies.

In supporting the application for retail growth in this location, being the preferred option cited in the CBRE Richard Ellis Regeneration Report, we are minded to remind the Planning Authority that access and sufficient convenient car parking is essential.

The existing central surface car parking on Churchill Way and Exchange Street is reported as being the most used in the said report for the reasons of providing convenient access and generating pedestrian flow.

Macclesfield Civic Society – note the nature of the application to remove disputed conditions. Presumably the application will be considered against the policy and legal tests to be applied to the imposition of any planning conditions. Arguably the servicing plan may be necessary and relevant to the application. Conditions 6 and 7 would have to be specifically justified in the context of the development proposed. Would not films and transfers be subject to control under the Advertisement Regulations ? We are not too sure what the requirement for renewable energy would entail for this type of development.

Generally we do not support "aspirational" or "long-stop" conditions for other legislation or policy areas.

Archaeology – no objections

Environmental Health – no objections

REPRESENTATIONS

None received

OFFICER APPRAISAL

Principle of Development

This is an application under section 73 of the TCPA 1990 (as amended) to remove conditions on an extant permission which has not been implemented.

Conditions should normally be consistent with national planning policies as expressed in Government Circulars, Planning Policy Guidance notes, Minerals Policy Guidance Notes and other published material. They should also normally accord with the provisions of development plans and other policies of local planning authorities.

Circular 11/95 sets out the tests that planning conditions need to satisfy:-

- i. necessary;
- ii. relevant to planning;
- iii. relevant to the development to be permitted;
- iv. enforceable;
- v. precise; and
- vi. reasonable in all other respects.

On a number of occasions the courts have laid down the general criteria for the validity of planning conditions. In addition to satisfying the court's criteria for validity, the Secretaries of State take the view that conditions should not be imposed unless they are both necessary and effective, and do not place unjustifiable burdens on applicants.

In considering whether a particular condition is necessary, authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. If it would not, then the condition needs special and precise justification.

Condition 5: Servicing Plan

Condition 5 is as follows:-

The retail use of the development hereby approved shall be restricted to non-food retail only, unless a detailed servicing plan has first been submitted to and approved in writing by the Local Planning Authority prior to the commencement of any food retail use. The servicing plan shall include details of any extraction and refrigeration equipment required as well as the details and management of goods delivery vehicles to and from the site. The approved servicing plan shall be implemented prior to the commencement of any food retail use of the site.

Reason: To ensure adequate servicing arrangements are in place in the event of a food retail use on the site in the interests of highways safety and the amenity of the site and adjoining area and in accordance with policies DC3 and DC6 within the Macclesfield Local Plan and in accordance with guidance within The Framework.

The proposals related to the formation of three large format retail units at ground and first floor level. These units would create approximately 4000 sq. m of retail floorspace which could be subdivided or amalgamated and used by any retailer which is classified as an A1 retailer. The condition as originally worded sought to restrict the development to the three units as the Highways Engineer had assessed the application on face value. The comments received reflected this assumption, and it was considered appropriate to restrict the development in this manner as any changes to the size of the units would give rise to different operational requirements which may result in larger vehicles and more frequent deliveries which would impact upon the free flow of traffic along Churchill Way.

The Highways Engineer considered that at present, the servicing arrangements for the existing five retail units from Churchill Way are adequate for the type and amount of units which are serviced at this entrance point. However the proposals would increase this

floorspace and if the units were to be amalgamated and occupied by a convenience store, the operational and servicing arrangements would be greater (such retailers often require fresh deliveries everyday via HGVs). The information submitted did not demonstrate to the satisfaction of the Highways Engineer that the available servicing arrangements would be able to cope with this. In so doing, the proposals in the absence of further information, under the above scenario, could lead to queuing along Churchill Way which would have an adverse impact upon highway safety. The condition was therefore considered necessary to make a component of the development which may have been unacceptable, acceptable.

The agent has indicated that the conditions imposed are onerous and consider their removal necessary to deliver a more appropriate and less restrictive permission. The covering letter considers that "the original application clearly demonstrated the existing dedicated elevated service yard arrangements...this is understood to have operated without problem for many years including daily use by HGVs...there is no discernible difference between servicing arrangements for any (or all) of the retail units as food retail compared to non food retail uses.

The agent has provided an annotated plan showing the turning circle for a HGV. The Highways Engineer has commented that in light of this new information, the applicant has demonstrated that there would be no demonstrable harm to highway safety resulting from the scenario noted above. On that basis, it is considered appropriate to allow the removal of the condition.

The condition also requires the submission of re Fridgeration and extraction details however as such equipment would require the submission of a further planning application if it materially altered the appearance of the building and there are no nearby properties affected, the removal of the condition would not raise further issues in respect of amenity.

Condition 6

Condition 6 is as follows:-

No films or transfers shall be attached to the windows internally or externally without the prior written consent of the Local Planning Authority.

Reason:- In the interests of the appearance of the development in the locality and in accordance with policies DC1, DC2, BE1 and BE2 of the Macclesfield Local Plan 2004 and guidance within The Framework.

The Officers Report provides a commentary on the issue of attaching film transfers to windows:-

"There are concerns regarding the functionality of the building. The Design & Access Statement makes specific reference to the possibility of future retailers filming over the windows on the Churchill Way elevation which would involve putting a transfer on the window to facilitate the installation of shop fittings behind. This would have an adverse impact upon the streetscene."

At present, the former Cheshire Building Society premises is an outward facing building with all servicing internalised and the building retaining an active frontage to both Churchill Way

and Castle Street. In addition, the existing retail units within the Grosvenor Centre scheduled for demolition face onto both Castle Street and Castle Street Mall, which also have active frontages. The absence of entrance points coupled with the possibility of obscuring those windows would have an adverse impact upon the character of the streetscene. It would also discourage shoppers from the search and comparison of goods along the high street which could impact upon the vitality and viability of the wider town centre.

The content of the officer's report provides justification for the condition in respect of the impact on the character of the streetscene.

Obscuring the windows within the retail units is a legitimate planning concern and it is considered appropriate that the LPA try to prevent this in the interests of the character of the streetscene and the locally listed building. However, it is duly acknowledged that the original wording of the condition could be considered too restrictive in its current format. In order to approach decision making in a positive way, the LPA is suggesting the condition be revised as follows:-

"The shopfront windows must be used for display purposes and the window glass of the shopfront shall not be painted or otherwise obscured."

Reason

To ensure that the external appearance of the building is satisfactory and contributes to the character and appearance of the area, and in order that the special architectural and historic interest of this building is safeguarded and to safeguard the appearance and character of the shopping street and to minimise visual intrusion in accordance with policies DC1, DC2, BE1, BE2 of the Macclesfield Local Plan 2004 and guidance within The Framework.

Condition 7

Condition 7 is as follows:-

Prior to the commencement of development, details of renewable energy measures to provide for a minimum of 10% of the predicted energy requirements of the development shall be submitted to and agreed in writing by the Local Planning Authority. Such measures shall be installed in full prior to the first occupation of the building and thereafter be so retained.

Reason:- In the interests of sustainable development and in accordance with policy EM18 within the North West Regional Spatial Strategy 2021 and guidance within The Framework.

The Officers Report indicates that:-

Policy EM18 states that in advance of local targets being set, new non residential developments above a threshold of 1,000m² should secure at least 10% of their predicted energy requirements from decentralised and renewable or low-carbon sources, unless it can be demonstrated by the applicant that this is not feasible or viable. No such information has been forthcoming and therefore at the time of writing this report, it is recommended that a condition be imposed relating to this requirement.

Whilst the agent considers the policy position to be “weak” given the impending abolition of the Regional Spatial Strategy, an identical policy requirement is within the emerging Cheshire East Local Plan – policy SE8 also requires developments of over 1,000 sq. m of new floorspace to require 10% of their energy needs to come from renewable sources. As the development would create over 1,000 sq. m of new floorspace it would trigger the requirement.

The existing RSS policy and the emerging LP policy do however indicate that this would not be required if it could be demonstrated that this would be unreasonable or unviable.

Comments from the policy section indicate that the RSS renewable energy policy is still in place – once abolished local policy will take over. Emerging policy SE8 (copied below) considered as part of the Development Strategy package of documents was considered by SPB in November and does point towards a suggested future approach. Even if the building does not lend itself to certain options the conversion of the building could still be carried out to the highest possible standard in terms of energy efficiency/rating etc and details could be obtained to demonstrate these energy efficiency savings etc. If we don’t strive for energy efficiency and renewable energy across all new development then this contradicts the NPFF’s desire to “move to a low carbon future” paragraph 95. These points are duly noted however only very limited weight can be given to the RSS policy:- since application 12/2073m was determined, the SEA into the abolition of the RSS has been published and is out to consultation. This concludes that there would not be any environmental impacts associated with abolition. In addition, recent appeal decisions have indicated that given that the Development Strategy is at inception stage, only very limited weight can be given to these policies. Therefore, the policy position in respect of renewable energy measures has noticeably weakened since application 12/2073M was determined.

Notwithstanding this, the covering letter from the agent suggests that there are limited opportunities to incorporate renewable energy measures and there are concerns over the viability of the scheme.

As the applicant has demonstrated that such measures would be unreasonable as there are limited opportunities to incorporate renewable energy measures and it could make the scheme unviable, that coupled with the weakened policy position justifies removing the condition. In addition both the policies within the RSS the emerging Local Plan and The Framework indicate that meeting energy efficiency targets is not a reason to refuse otherwise acceptable development proposals.

CONCLUSIONS AND REASON(S) FOR THE DECISION

The proposed removal of conditions 5 and 7 would not raise any issues in respect of sustainability or highway safety and therefore the removal of these conditions would accord with the relevant policies within the Macclesfield Local Plan 2004 and guidance within The Framework. It is however considered that an amended version of condition 6 is justified however a variation to this would enable greater flexibility to the developer which is encouraged by The Framework. As the scheme minus conditions 5 and 7 would still deliver a

number of key benefits, the application is therefore recommended for APPROVAL, subject to a variation of condition 6 and all other conditions attached to the original permission.

The Local Planning Authority (LPA), in reaching this decision, has followed the guidance in paragraphs 186 and 187 of the National Planning Policy Framework. The Framework advises that the LPA should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area. This has been demonstrated by actively engaging in pre-application discussions with the applicant to try and find solutions to problem and by providing advice to the applicant/agent during the course of the application on potential problems and possible solutions.

Application for Full Planning

RECOMMENDATION: Approve subject to following conditions

1. A03FP - Commencement of development (3 years)
2. A02EX - Submission of samples of building materials
3. A01AP - Development in accord with approved plans
4. Submission of detailed elevational and cross sectional drawings of windows
5. No films or transfers shall be attached to the windows internally or externally without the prior written consent of the Local Planning Authority
6. Details of finish and construction materials for rainwater goods to be submitted to and approved in writing by the Local Planning Authority
7. Prior to the commencement of any internal alterations details of a photographic record of the internal subdivisions of the building shall be submitted to the Local Planning Authority
8. Drainage details to be submitted to and approved in writing by the Local Planning Authority

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