

BOROUGH OF KETTERING

Committee	Full Planning Committee - 19/11/2019	Item No: 5.4
Report Originator	Theresa Nicholl Development Team Leader	Application No: KET/2019/0557
Wards Affected	Northfield	
Location	Belgrave Retail Park, Northfield Avenue, Kettering	
Proposal	s.73 Application: Variation of condition 7 of KET/2018/0585 in respect of lighting	
Applicant	Iceland Foods Ltd	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED subject to the following Condition(s):-

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

REASON: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and to prevent an accumulation of unimplemented planning permissions.

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any other order invoking or re-enacting that Order, the floorspace hereby approved within the unit identified on drawing reference 15510-104 shall only be used for the sale of convenience goods and an area not exceeding 235 square metres of net retail floorspace may be used for the sale of comparison goods.

REASON: To clarify what is hereby approved and to protect the vitality and viability of the town centre in accordance with Section 7 of the NPPF, policy 12 of the North Northamptonshire Joint Core Strategy, saved policy 64 of the Local Plan for Kettering Borough and policies 1, 2, 3 and 15 of the Kettering Town Centre Area Action Plan.

3. Unit 3 hereby permitted shall not be used other than for the sale of bulky non-food retail items as follows: DIY/garden goods and furniture, carpets and floor coverings, bulky electrical goods and related goods and for no other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or any Statutory Instrument revoking and re-enacting that Order with or without modification.

REASON: To clarify what is hereby approved and to protect the vitality and viability of the town centre in accordance with Section 7 of the NPPF, policy 12 of the North Northamptonshire Joint Core Strategy, saved policy 64 of the Local Plan for Kettering Borough and policies 1, 2, 3 and 15 of the Kettering Town Centre Area Action Plan.

4. The premises hereby approved shall not be used for the purposes hereby permitted other than during the hours of 07:00 to 21:00 Mondays to Saturdays, 10:00 to 16:00 on Sundays and 09:00 to 18:00 on publicly recognised Bank Holidays but excluding Christmas Day and Easter Sunday when the premises shall not be open.

REASON: In recognition of the impact of trading on the area and on local amenity in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

5. The hard and soft landscaping of the site shall be in accordance with the approved plan 0908/6: Landscape Proposals received on 29.05.09 by the local planning authority. Any trees or plants which, within a period of ten years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

REASON: To improve the appearance of the site in the interests of the visual amenity of the locality in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

6. The maintenance and management of the landscape areas shall not be carried out other than in accordance with the following approved details for a period of 15 years from 15.06.09; attachment to letter dated 05.05.09 from P J Landscapes received 29.05.09 by the local planning authority.

REASON: To improve the appearance of the site in the interests of the visual amenity of the locality in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

7. There shall be no external illumination on the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the local planning authority. All external lights shall only be illuminated during hours in which the buildings are open to the public. All internal lighting (except for security lights) shall only be illuminated during hours in which the buildings are open to the public. Outside of these hours, internal lighting (except for security lights) shall only be illuminated where blinds are installed and closed on the upper windows on the Northfield Avenue (front) elevation of the store, as detailed on plan no. ICE383-KETTERING

REASON: In the interests of visual amenity and highway safety in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

8. The total gross internal floorspace area hereby permitted shall not exceed the following: 1,282 square metres plus 180 square metres mezzanine in the unit identified on drawing reference 15510-104 which is created from combining Units 1 and 2; and 929 square metres plus 372 square metres mezzanine in Unit 3. There shall be no internal mezzanines other than those hereby permitted.

REASON: To define the permission and to ensure no adverse impact on the vitality and viability of Kettering town centre in accordance with policy 12 of the North Northamptonshire Joint Core Strategy and policy 2 of the Kettering Town Centre Area Action Plan.

9. The site access and cycling and pedestrian facilities shall be retained as approved as shown on Units Plan 090107025 Rev M received by the local planning authority on 26.11.08.

REASON: In the interests of highway safety in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

10. The development shall not be carried out other than in accordance with the following approved plans:

Location Plan 15510-99

Proposed Site Plan 15510-101

Proposed Ground Floor GIA 15510-104

Proposed First Floor GIA 15510-105

REASON: To define the development and to secure a satisfactory form of development in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

11. None of the approved retail floorspace within the unit identified on drawing 155100104, shall be occupied at any time by a food retailer who occupies retail floorspace within Kettering town centre. This limitation shall apply for a period of 24 months starting the date of the first occupation of the approved retail floorspace shown on the aforementioned drawing.

REASON: To ensure the vitality and viability of the town centre in accordance with Section 7 of the NPPF, policy 12 of the North Northamptonshire Joint Core Strategy and saved policy 64 of the Local Plan for Kettering Borough.

12. Notwithstanding the wording of condition 2 of planning permission KET/2018/0585 the reference to drawing number 15510 -104 can be substituted by reference to drawing 15510-104 Rev B. The requirements of condition 2 otherwise remain in full force.

REASON: To define the permission and to ensure no adverse impact on the vitality and viability of Kettering town centre in accordance with policy 12 of the North Northamptonshire Joint Core Strategy and policy 2 of the Kettering Town Centre Area Action Plan.

13. Notwithstanding the wording of condition 8 of planning permission KET/2018/0585, this condition is amended as follows;

The total gross internal floor space area hereby created shall not exceed the following 1,282 square metres plus 260 square metres mezzanine in the unit identified on drawing reference 15510-104 Rev B which is created from combining units 1 and 2; this mezzanine shall not be used for retail floorspace but for storage and staff facilities only; and 929 square metres plus 372 square metres mezzanine in Unit 3. There shall be no internal mezzanines other than those hereby permitted. This condition remains in full force.

REASON: To define the permission and to ensure no adverse impact on the vitality and viability of Kettering town centre in accordance with policy 12 of the North Northamptonshire Joint Core Strategy and policy 2 of the Kettering Town Centre Area Action Plan.

14. Notwithstanding the wording of condition 10 the reference to the Proposed Ground Floor GIA 15510-104 and Proposed First Floor GIA 15510-105 can be substituted by drawings 15510-104 Rev B and 15510-105 Rev B. The condition remains in full force.

REASON: To define the permission and to ensure no adverse impact on the vitality and viability of Kettering town centre in accordance with policy 12 of the North Northamptonshire Joint Core Strategy and policy 2 of the Kettering Town Centre Area Action Plan.

15. Notwithstanding the wording of condition 11 of planning permission KET/2018/0585, reference to drawing 15510-104 can be substituted by reference to drawing 15510-104 Rev B. The condition remains in full force.

REASON: To define the permission and to ensure no adverse impact on the vitality and viability of Kettering town centre in accordance with policy 12 of the North Northamptonshire Joint Core Strategy and policy 2 of the Kettering Town Centre Area Action Plan.

Officers Report for KET/2019/0557

This application is reported for Committee decision because there are unresolved, material objections to the proposal.

3.0 Information

Relevant Planning History

KET/2007/0132 Erection of 3 bulky goods non-food retail units and additional mezzanine approved subject to S106 agreement 28/08/2008

- This permission granted Unit 1 1344 sqm with 121 sqm mezzanine, unit 2 929 sqm with 408 sqm mezzanine and unit 3 929sqm with 279 sqm mezzanine (total 3010 sqm)

KET/2009/0275 variation of Condition 10 of KET/2007/0132 to allow additional internal mezzanine and for the internal floor space not to exceed 3103 square metres, approved with S106 agreement 28/07/2009.

- This permission granted at total of 3102 sqm of floorspace

KET/2009/0406 variation of condition 10 of KET/2009/0275 to allow additional internal mezzanine floorspace and for the gross internal floorspace not to exceed 3530 sqm approved with a S106 agreement 27/10/2009

KET/2012/0737 variation of condition 3 of KET/2009/0406 in relation to the use of Unit 2 approved 16 May 2013.

- This permission granted the 1764 sqm total gross internal floorspace of unit 2 to be used for the sale only of non-food comparison goods. Condition 2 states that food and drink for consumption off the premises, tobacco, flowers, clothing, footwear and holidays/other travel related items shall not be sold other than from an area not exceeding 20% of the net retail sales floorspace. (Therefore 353 sqm of the floorspace can be used to sell convenience goods).
- Condition 3 restricts the use of units 1 and 3 to the sale of bulky non-food retail items.
- Condition 8 restricts the total gross internal floorspace to 344 sqm plus 121 sqm mezzanine in Unit 1; 929 sqm plus 835 sqm mezzanine in Unit 2 and 929 sqm plus 92 sqm mezzanine in Unit 3.

KET/2013/0786 Non material amendment to KET/2012/0737

KET/2016/ 0650 Variation of condition 8 of KET/2012/0737 (as amended by KET/2013/0786) to allow a larger mezzanine floor in unit 3.

KET/2018/0585 Variation of conditions 2, 3 and 8 of KET/2012/0737 in respect of the use restriction and mezzanine floors permitted 12/11/18. This permission allowed the following changes to take place;

- A reduction in overall retail floorspace of 758 sqm of mezzanine in units 1 and 2
- The amalgamation of units 1 and 2 into a single unit
- Change of goods sold from 1764sqm of comparison goods (of which 353sqm could be used for food and drink retail), and 465sqm of bulky goods to a gross

store floor area of 1462 sqm of which 1170 sqm net would be for sales; the convenience net floorspace would be 936sqm and the comparison floorspace would be 234sqm.

- The goods sold from unit 3 would remain as permitted
- The sale of convenience goods from units 1 and 2 would generate an additional 8 inbound movements and 9 outbound movements during the peak hour of 1400 to 1500 on Saturdays.

KET/2018/0920 – Non material amendment to KET/2018/0585 approved 26/03/19 which allowed the following;

- the retention of the whole of the existing mezzanine floor which would provide an additional 80 square metres of mezzanine floorspace to that approved. The total mezzanine space would therefore be 260 square metres. This floorspace is not for retail purposes but for storage and staff facilities.

KET/2019/0030 – 3 internally illuminated fascia signs, 1 non-illuminated totem graphic sign and 3 window vinyls - consented 05/04/19

Site Visit

Officer's site inspection was carried out on 15/10/2019, 22/10/2019 and on various previous occasions. The blinds referred to in the suggested condition and on the submitted plans have been installed.

Site Description

The site comprises part of the application site approved under KET/2018/0585 i.e. units 1 and 2 which appear as single unit occupied by Food Warehouse. The site lies within the northern corner of Belgrave Retail Park, a linear row of retail units of varying sizes situated between the railway line and Northfield Avenue. The units face onto a communal car park. Northfield Avenue is to the east and beyond that the Slade Brook and the rear of residential properties in Leicester Close. The rear face of 25 Leicester Close is just over 100 metres from the front face of units 1 and 2.

Previous permissions have enabled Food Warehouse to occupy units 1 and 2 by removing the restrictions imposed by conditions as to the goods than can be sold from the unit.

The units are serviced to the rear via Stanier Close.

Proposed Development

This is an application submitted under Section 73 of the Town and Country Planning Act to vary condition 7 attached to KET/2018/0585. The condition concerns lighting and is as follows;

There shall be no external illumination on the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the local planning authority. All internal lighting (except for

security lights) and external lights shall only be illuminated during hours in which the buildings are open to the public.

REASON: In the interests of visual amenity and highway safety in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

The applicant proposes the variation of the condition to read as follows;

*There shall be no external illumination of the site at any time other than in accordance with a detailed scheme which shall first have been submitted to and approved in writing by the local planning authority. **All external lights shall only be illuminated during hours in which the buildings are open to the public. Outside of these hours, internal lighting (except for security lights) shall only be illuminated where blinds are installed and closed on the upper windows on the Northfield Avenue (front) elevation of the store, as detailed on plan no. ICE383-KETTERING-PLN05.****

**proposed changed wording in bold*

Any Constraints Affecting the Site

A Road – Northfield Avenue A6003.

Part of the access to the retail park is within Flood Zone 2 but this area lies outside the application site boundary (although within the ownership of the applicant).

4.0 Consultation and Customer Impact

KBC Environmental Protection

No comments to make

Neighbours

Two objections have been received from occupiers of residential property on Leicester Close, who raise the following issues;

- Currently the store is breaching their planning conditions by leaving lights on all night and conducting their business operations 24 hours a day
- Now there are staff there at night there are car alarms going off and sometimes this happens in the middle of the night and the noise is focussed on our home
- Conducting business throughout the night is wholly inappropriate and if it's allowed, I am taking legal action both against the applicant and the Council
- I have had many issues with this site over the years which I and other residents have mitigated by communicating with the businesses. Both the Planning and Environmental Health departments have failed us many times. This is the reason why most of the residents I have spoken to cannot be bothered to complain.
- The only reason the blinds have been put in is because I have liaised with senior members of staff there who have tried to help but the blinds only come half way down the window. There are no longer trees that screen us as the Council cut them down. There is no visual screening along Northfield Avenue for our homes.

- Staff should wear head torches if they want to work in the store after hours.
- I believe that no vehicles are allowed to be left on site after business hours. There are always staff cars which occasionally cause nuisance through alarms and even “morons” bibbing horns to get attention of other staff on arrival
- If any form of business is to be conducted outside the permitted trading hours then there should be no evidence of light vehicles, staff and all associated activity
- Bank holiday promotions with a large PA system have been used. Is this permitted?
- Concerned that if this is allowed to continue it will set a precedent for other businesses on the retail park to extend their business hours and operations.

5.0 Planning Policy

National Planning Policy Framework

15. Conserving and enhancing the natural environment

Paragraph 180 – Planning decisions should ensure that new development is appropriate for its location taking into account the likely effects on health, living conditions and the natural environment including (c) limiting the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation

National Planning Practice Guidance

Sets out the following with regards to LPAs dealing with Section 73 applications;

- Some or all of the conditions could be removed or changed by making an application to the local planning authority under [section 73 of the Town and Country Planning Act 1990](#). ***In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.*** A local planning authority decision to refuse an application under section 73 can be appealed to the Secretary of State, who will also only consider the condition/s in question.

Paragraph: 031 Reference ID: 21a-031-20180615

Development Plan Policies

North Northamptonshire Joint Core Strategy

Policy 8 – North Northamptonshire Place Shaping Principles

- (b) Making safe and pleasant streets and spaces
- (c) Ensure quality of life and safer and healthier communities

6.0 Financial/Resource Implications

None

7.0 Planning Considerations

The key issues for consideration in this application are:-

- The impact of varying the condition upon highway safety; and the impact of varying the condition upon the character of the area and residential amenity

The lights inside the store will not cause a highway danger. They are situated back from Northfield Avenue and do not shine directly onto the highway so as to cause driver distraction.

The proposed change to condition 7 would enable the internal store lights to be kept on outside of the hours when the store is open to the public as long as blinds are installed and closed on the upper windows on the front elevation of the store which faces Northfield Avenue as shown on the submitted drawing ICE383-KETTERING-PLN05. The external lighting would still be required to be switched off when the store is not open to the public.

The store is open to the public during the hours of 07:00 to 21:00 Mondays to Saturdays, 10:00 to 16:00 on Sundays and 09:00 to 18:00 on public recognised bank holidays but excluding Christmas Day and Easter Sunday.

The applicant sets out that the current condition would fail the test of reasonableness because staff are required to be present inside the store to undertake business such as aisle cleaning, replenishing stock, cashing up, security checks etc.

The Planning Practice Guidance sets out that LPAs can only address the issues pertaining to the condition which is subject to change. It cannot re-assess the whole planning permission.

A complaint had been received from a resident in Leicester Close who has referred to the excessive lighting opposite his property and that it is affecting his living conditions. He also raises other issues which are discussed further below. This application has been submitted in response to the Enforcement investigation into the resident's complaint.

A site visit undertaken at 9.00pm one evening revealed that the blinds referred to in the suggested re-wording of condition 7 are in situ. They were down at the time of the visit so as to black out the top half of the shop front windows. At a previous site visit undertaken in the dark, the ceiling lights were observed to be on and bright. In the case officer's opinion, the blinds were effective in reducing the amount of light and glare spilling out from the shop windows because they blocked out the source of the light i.e. the ceiling lights. In terms of the character of the area, it was noted that other nearby shops, such as DFS have lights on inside the store.

The rear of properties in Leicester Close are just over 100 metres away from the front of the store. It is considered that with the blinds down, the light spillage from the store is not going to cause any unacceptable light pollution to the occupiers of the residential properties.

As the reason for putting this condition on the planning permission was for highway safety and visual amenity issues only, it is considered that the proposed amended condition will ensure that these issues set out in policy 8 of the North Northamptonshire Joint Core Strategy (JCS) will be adequately dealt with and the development will remain in compliance with this policy.

Other issues raised by third parties

The other issues raised by the objectors concern conducting business outside of the permitted hours and noise nuisance.

These issues relate primarily to condition 4 and not condition 7 the subject of this application which is solely concerned with lighting. These matters will be investigated outside consideration of this application. If it were established that conditions are being breached AND that is causing unacceptable harm, then a proportionate action could be taken.

There are no conditions which prevent vehicles being parked in the car park outside the times the store is closed to the public.

The LPA has taken action over the complaints received. This planning application is submitted as a result of that action.

Conclusion

The variation of condition 7 is acceptable. The condition will be worded such that outside the hours stipulated in condition 4, all external lighting shall be switched off except and outside of these hours, lighting shall only be switched on inside the store provided that the blinds shown on the submitted drawings are all in the down position.

Background Papers

Title of Document:

Date:

Contact Officer:

Theresa Nicholl, Development Team Leader on 01536 534316

Previous Reports/Minutes

Ref:

Date: