

## WEST DUNBARTONSHIRE COUNCIL

### Report by the Executive Director of Infrastructure and Regeneration

Planning Committee: 22 October 2014

---

**DC14/173: Modification of Planning Agreement relating to permission CB88/152, in order to allow up to 30% of net retail floorspace to be used for the sale of food and drink, at Unit 7A, Clyde Retail Park, Clydebank by Motherwell Investment LP**

#### 1. REASON FOR REPORT

- 1.1 This application relates to the modification of a planning agreement, the terms of which were originally agreed by the Planning Committee. Under the terms of the approved scheme of delegation the application therefore requires to be determined by the Planning Committee.

#### 2. RECOMMENDATION

- 2.1 That the Committee indicate that it is **Minded to Grant** an alteration to the existing Planning Agreement to specify that not more than 30% of the unit's floorspace may be used for the sale of food or drink and it delegates authority to the Planning and Building Standards Manager to conclude the modification of the planning agreement.

#### 3. DEVELOPMENT DETAILS

- 3.1 This application relates to a retail unit within the Clyde Retail Park, on the north side of Livingstone Street, Clydebank. The unit had been operated by B&M until the last few weeks and it has now closed. B&M were a retailer who sold a mixed range of products including household goods and pet supplies amongst other products. These stores also sell a limited range of food products, primarily long-shelf-life products such as dry foods, canned food, condiments, confectionary and beverages. It has been indicated that a similar operator is due to take up the lease of the site in the next few weeks. They wish to expand upon the range of such products which it would sell in the store and use up to 30% of the floorspace of the unit for the sale of food and drink. No details have been provided of the operators name at this stage.
- 3.2 The original outline planning permission for the Clyde Retail Park was granted in December 1988 (CB88/152), which allowed retail warehousing subject to conditions which included the following:
5. *The following classes of retailing will not be permitted as the principal use of any unit within the development: food, drink, cars, petrol, clothes and footwear. However, it will be permitted, within each individual unit, to sell food and drink as a service to customers of the principal use and*

*it will also be permissible to sell clothing and footwear as an ancillary part of any retail operation.*

Additionally, the outline permission was subject to a Planning Agreement made under Section 50 of the Town and Country Planning (Scotland) Act 1972. S.50 Agreements were the predecessors of Planning Obligations, which are now made under Section 75 of the 1997 Act. Amongst various other clauses, the Planning Agreement included the following:

**THIRD**      *The parties hereto hereby agree that none of the units within the proposed development will be used primarily for the retailing of food items, drink, cars, petrol, footwear and clothing. Notwithstanding the foregoing however it is understood that (1) within any unit the retailing of food and drink (whether hot or cold) will be permissible where said retailing is only engaged in as a minor function ancillary to another type of use and (2) the sale of footwear and clothing will be permitted within any unit only if it is ancillary to the principal retail use of that particular unit.*

- 3.3**      The reason for these restrictions appears to have been that the retail park was originally intended for large “retail warehouse” stores selling bulky goods such as furniture, electrical items, DIY supplies and carpets, and to only allow the sale of certain goods if they were ancillary to the sale of more bulky goods. At the time of the grant of the permission it was not considered desirable to allow the units to sell convenience or fashion goods which would compete directly with the Clyde Shopping Centre.
- 3.4**      Subsequently there have been various applications to vary these restrictions. Permission PE97/93 (September 1997) removed the restrictions on the sale of clothing and footwear throughout the retail park subject to a restriction on unit sizes for such uses, and permission PE97/154 (March 1998) amended the unit size condition in relation to certain individual units. The Section 50 Agreement was also amended in line with these two permissions at the time of decision PE97/154. The restriction on clothing and footwear sales was subsequently removed altogether by permission PE00/188 (April 2001), with the Section 50 Agreement again being amended accordingly. However, the restrictions on the sale of food, drink, cars and petrol remained. In practice the restrictions on the sale of cars and petrol are academic as such uses are outwith Use Class 1 (Retail) and would require planning permission as changes of use.
- 3.5**      Earlier this year the applicant applied for a Certificate of Lawfulness for Proposed Development, for the use of up to 30% of the floorspace of Unit 7A for the sale of food and drink (DC14/121). Such applications are determined on a legal basis without any subjective assessment of the merits of what is proposed. In this case it was considered that the wording of the original condition was somewhat ambiguous, but that as what was proposed would not result in food sales becoming the principal use of the unit the proposal would be within the terms of the existing planning permission. Accordingly, a

Certificate of Lawfulness was granted in July 2014. The wording of the Section 50 Agreement is similar to that of the condition.

#### **4. CONSULTATIONS**

- 4.1** West Dunbartonshire Council Estates Service has no objection to the proposal.

#### **5. REPRESENTATIONS**

- 5.1** This type of application is not subject to neighbour notification or publicity, and no representations have been received.

#### **6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN**

##### West Dunbartonshire Local Plan 2010

- 6.1** The Clyde Retail Park is defined as a Commercial Centre. Policy RET2A indicates that proposals for retail development in Commercial Centres will be supported where their function complements that of other centres within the network of centres, and in particular does not undermine Town Centres. The Clyde Retail Park is also noted to be an “edge of centre” location in terms of the sequential approach to retail site selection. In this case it is considered that the part use of the unit for food and drink up to 30% of floorspace would not have any significant impact on the town centre and that the proposal would accord with this policy.

#### **7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

##### West Dunbartonshire Local Development Plan, Proposed Plan

- 7.1** The Clyde Retail Park is defined as a Commercial Centre. Under Policy SC1 proposals for retail development within the network of centres should accord with the retail strategy and with the role and function of the centre. The amendment to the legal agreement does not conflict with Policy SC1 as discussed in paragraph 6.1 above.

##### Background to the Planning Agreement

- 7.2** When the Clyde Retail Park was first approved in 1988, it was allowed on the basis that it would be a “bulky goods” type retail park, with restrictions on food and fashion retailing as well as unit size being applied in order to protect the adjacent Clydebank Town Centre. Subsequently, in 1997-2001 the restrictions on clothing and shoe sales were removed. At that time, the extant development plan (the Clydebank District Local Plan 1994) included the Clyde Retail Park within the Town Centre boundary, which negated much of the policy justification for restricting the types of retail allowed in the retail park units. Partly as a result of the relaxation of the restriction on clothing sales, but also because of competition from Great Western Retail Park, the number of bulky-goods retailers within Clydebank Retail Park has declined and the retail park now contains a mixture of various retailers.

**7.3** Under the current and emerging development plans, the Clyde Retail Park has reverted to being a Commercial Centre, and it therefore remains appropriate to continue this designation to ensure that development within the retail park does not detract from the vitality or viability of the Town Centre. It is therefore appropriate for some restriction on food and drink sales to remain.

**7.4** In view of the ambiguity of the current wording, it would therefore be desirable to vary the Section 50 Agreement in order to provide greater clarity. It is therefore considered that it would be acceptable to amend the Agreement to specify that not more than to 30% of the floorspace of the unit concerned may be used for food retail purposes.

## **8. CONCLUSION**

**8.1** The wording of the legal agreement is ambiguous, and it is considered that it would be advantageous to both the applicant and the Council to make the wording clearer. Additionally, it is considered that food and drink sales of the level proposed would be ancillary to the other goods being sold from this unit. The Clyde Retail Park has developed into a relatively mixed retail area, and that this level of food and drink sales would not detract from the vitality or viability of the nearby Clydebank Town Centre or the principal role of the Retail Park.

## **9. CONDITIONS**

Not applicable.

**Richard Cairns**

**Executive Director of Infrastructure and Regeneration**

**Date: 3 October 2014**

---

**Person to Contact:** Pamela Clifford, Planning & Building Standards Manager,  
Housing, Environmental and Economic Development,  
Council Offices, Clydebank. G81 1TG.  
01389 738656  
email: [Pamela.Clifford@west-dunbarton.gov.uk](mailto:Pamela.Clifford@west-dunbarton.gov.uk)

**Appendix:** None

**Background Papers:**

1. Application documents and plans
2. Planning application no CB88/152
3. West Dunbartonshire Local Plan 2010
4. West Dunbartonshire Local Development Plan - (Proposed Plan)

**Wards affected:** Ward 6 (Clydebank Waterfront)