

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0941-21 **Applicant:** Switha Ltd

Proposal: Demolish existing buildings and erect two non food retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cars and associated works - approved under H16-0610-05. Modification of Condition 2 deleting the words 'food & drink for consumption off the premises (other than confectionary & pet foods) - re-submission of H16-0957-20.

Location: Carpetright 70 Westlode Street Spalding

Terminal Date: 7th December 2021

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
03	Design of New Development
24	The Retail Hierarchy
25	Supporting the Vitality and Viability of Boston and Spalding Town Centres
26	Primary Shopping Frontages
27	Additional Retail Provision
29	The Historic Environment
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards

National Guidance

National Planning Policy Framework 2021

NPPF 2021

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	1	0

CASE OFFICER ASSESSMENT

PROPOSAL

Demolish existing buildings and erect two non food retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cars and associated works - approved under H16-0610-05. Modification of Condition 2 deleting the words 'food & drink for consumption off the premises (other than confectionary & pet foods) - re-submission of H16-0957-20.

Condition 2 of H16-0610-05 is as follows:

The retail warehouses hereby permitted shall not be used for the sale of food and drink for consumption off the premises (other than confectionery and pet foods), clothing, fashion accessories (including handbags, luggage, watches and jewellery), footwear, sports goods (equipment and clothing), books, stationery, toiletries and perfume, audio and visual recordings, cutlery, crockery or glassware, unless any of the above are ancillary to, and related to the main ranges of goods permitted for sale.

Reason: To ensure that the development does not adversely affect the vitality and viability of Spalding town centre, in accordance with Policy STC4 of the South Holland District Local Plan.

No external changes are proposed in this application.

SITE DESCRIPTION

The application site is within the Spalding Settlement Limit as defined in the South East Lincolnshire Local Plan (SELLP), 2019. The site is also defined in the local plan as part of Spalding Town Centre. Spalding is defined in the SELLP as a Sub-Regional Centre.

The primary retail core around Broad Street and New Road is some 260 metres to the west at its nearest point.

The glossary to the NPPF defines edge of centre for retail purposes as locations well connected to and up to 300 metres from the primary shopping area. Under this definition the site is in an edge of centre location.

The NPPF also sets out the circumstances in which an impact assessment should be carried out. It sets a threshold in the absence of a locally adopted figure of 2500 sq m net - accordingly an impact assessment would not be required for this application under the NPPF.

The subject property is a large retail warehouse unit, rectangular in plan form and measuring around 604 sq m gross internal area. It is currently occupied by Carpetright, a national retailer of carpets and floor coverings. It is one of two units forming the Spalding Retail Park. Unit 1 was originally built as a garden centre, and is now occupied by B&M Retail Ltd. The retail park has 138 parking spaces, partly to the front of the units but also extending to the south west. The car park is monitored to prevent long stay parking by non customers.

Vehicular access to the car park is from Westlode Street through a high brick framed entrance with sliding steel barriers. There is a separate service access for both units further to the east along Westlode Street.

There are residential uses to the east and along Albion Street/Double Street to the south of the retail park. These are a mixture of older traditional two storey dwellings but single aspect apartments have also been built as part of the original scheme for the retail park on the southern elevation of unit 1.

RELEVANT PLANNING HISTORY

H16-0957-20 - S73A CONTINUATION. Demolish existing buildings and erect two non food retail warehouse units, external garden centre, 24 one and two bedroom flats, parking for 161 cars and associated works - approved under H16-0610-05. Modification of Condition 2 to allow the sale of food & drink items from Unit 2. REFUSED 18-12-20. Appeal lodged 01-06-21.

H16-0819-18. SECTION 73 APPLICATION. (Former Homebase Store 70 Westlode Street - the adjacent unit) Demolish existing buildings and erect two non-food retail warehouse units, external garden centre, 24 one and two-bedroomed flats, parking for 161 cars and associated works approved under H16-0610-05. Modification of Condition 2 to allow beneficial occupation of vacant store by B & M Retail Ltd. APPROVED. 05-11-18.

The relevant condition 3 was altered to the following:

The retail warehouses hereby permitted shall not be used for the sale of food and drink for consumption off the premises (other than confectionery and pet foods), clothing, fashion accessories (including handbags, luggage, watches and jewellery), footwear, sports goods (equipment and clothing), books, stationery, toiletries and perfume, audio and visual recordings, cutlery, crockery or glassware, unless any of the above are ancillary to, and related to the main ranges of goods permitted for sale.

Notwithstanding the above up to 340 sq.m. net of food and drink products can be sold from the retail warehouse. The sales of these products on an ancillary basis only while the primary use of the premises is a DIY and Home Improvement store with garden centre.

Reason: To ensure that the development does not adversely affect the vitality and viability of Spalding town centre, in accordance with Policy EC8 of the South Holland Local Plan 2006.

H16-0610-05. Demolish existing buildings and erect two non-food retail warehouse units, external garden centre, 24 one and two-bedroomed flats, parking for 161 cars and associated works. APPROVED. 09-06-05.

REPRESENTATIONS

SHDC Economic Development Department

No comments.

PLANNING CONSIDERATIONS

If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, Section 38 (6) to the Town and Country Planning Act as amended by the 2004 Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The NPPF contains a presumption in favour of sustainable development. In terms of determining planning applications it states that this means approving proposals that accord with the development plan without delay but where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Section 7 of the NPPF 2021 seeks to protect the vitality of town centres. The NPPF concludes on retail matters by advising that where an application fails the sequential approach or would be likely to have a significant adverse impact, it should be refused. The corollary of this is that if the sequential approach is passed (or is otherwise not relevant) and there isn't evidence of a likely significant impact, permission should be granted.

The purpose of Condition 2 of the 2005 consent (H16-0610-05 refers), was to ensure that the development does not adversely affect the vitality and viability of Spalding town centre, in accordance with Policy STC4 of the South Holland District Local Plan. A key consideration with regard to this current application is whether the relaxation of this condition to allow for the occupation of the unit as a supermarket would have a detrimental impact on the vitality and viability of the town centre, in line with the current Local Plan (SELLP) and the provisions of the NPPF 2019, with regard to the provision of convenience shopping and the reduction in comparison shopping at this unit.

Spalding is considered to be a sub-regional centre, by Policy 24:Retail Hierarchy, as defined by the Town Centre Boundary, which is to be the locational focus for the development of town centre uses; planning permission will be granted for retail, food and drink outlets, financial and professional

services, leisure and tourist-related uses and residential development.

Policy 25: Supporting the Vitality and Viability of Boston and Spalding Town Centres, is clear that Spalding town centre will continue to be the primary destination for retail, entertainment, markets and events in the District, and the Council will promote appropriate opportunities to support and extend the offer of the town centres as destinations.

Para 6.5.1 of the SELLP sets out that the need to identify and plan for further retail provision within the retail hierarchy is fundamental to delivering the Local Plan's priorities for sustainable growth. Based on trading density, Boston and Spalding have been identified as the most sustainable locations for retail growth over the Local Plan period.

Policy 27: Additional Retail Provision looks at the provision of comparison and convenience shopping floor space. This policy concentrates comparison shopping increases to Springfields Shopping and Festival Gardens.

Since the consideration of H16-0957-20 referenced above, a number of national and local planning policy and guidance changes have come to the fore, that have implications for the consideration of this application.

Town Centres and Retail Capacity Study (2013)

A starting point is the relevance of the Town Centres and Retail Capacity Study (2013), that underpins Policies 24 and 25 of the SELLP. This study was considered to be fit for purpose for the adoption of the SELLP, however during the examination the Inspector considered the 2013 retail study, that formed the evidence base for the local plan, required updating. As a result a 'Main Modification' was made to the plan, which amended 'Policy 25: Supporting the Vitality and Viability of Boston and Spalding Town Centres' to include:

"A review of The Town Centres and Retail Capacity Study will be commenced within one year of the adoption of the Local Plan to review retail capacity, town centre boundaries, primary shopping frontages etc. This will lead to a review of the Retail section of the Plan and will advise the most appropriate actions for the partnership to take, e.g. masterplans, site specific development briefs, town centre boundary reviews etc".

A review was commissioned to this end, and consultants were appointed in August 2019. The report of the consultants was received and considered internally by planning policy officers of SHDC and Boston BC, however the report has not been formally considered by Members. A meeting of the South East Lincolnshire Joint Strategic Planning Committee has not been convened.

Given the length of time since the adoption of the SELLP, and the undertaking to commence a review of the supporting 2013 study, officers consider that the 2013 study, whilst still giving a helpful general overview, is out of date in terms of detail and has been significantly overtaken by events.

The draft study undertaken by Reeves Retail Planning Consultancy and Williams Gallagher (April 2020), has not been adopted by SHDC or BBC as a document to accompany the SELLP, and the mechanism to do so, namely the South East Lincolnshire Joint Strategic Planning Committee has not been convened.

Given the length of time since the Reeves Retail Planning Consultancy and Williams Gallagher (April 2020) study was undertaken, this document is similarly considered to be out-of-date. Due to the lack of an up-to-date and adopted study, officers consider that there is a local policy gap/lacuna, that impacts upon the consideration of this application.

Recent changes to the Use Classes Order

On 1 September 2020, the Use Classes Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) were significantly amended, and the new permitted development rights came into force in April 2021 and August 2021. Shop uses, previously classified as Class A, are now considered within new Class E, Commercial, Business and Service Uses.

This updated and consolidated General Permitted Development Order gives certain permitted permanent changes for Class E uses, such as to a mixed use for any purpose within Class E and as

up to 2 flats, subject to prior approval (PD Class G), to a mixed use for any purpose within Class E and as up to 2 flats to a use for any purpose Class E (PD Class H) and/or to a state-funded school falling within Class F.1(a) (PD Class T) (and back to previous lawful use (PD Class U)).

The purpose of the changes to these orders is to support the Government intention to enable flexibility of uses within the associated Class E uses. Officers consider that the restriction of the application site to a warehouse type development for comparison shopping only, and the preclusion of the forms of convenience and comparison shopping precluded by the original condition, would now run contrary to the wider Govt intentions to support town centres by allowing flexibility and certain changes of use. The use of this building for a wider shopping offer would not adversely affect the vitality and viability of Spalding town centre and officers now consider that to defend such a reason for refusal given recent changes would not be sustainable.

Recent changes to the NPPF

The NPPF 2021 was published and came in to use in July 2021 and sets out the most up-to-date national planning policy guidance. The presumption in favour of development is still in place, as is the requirement for development proposals that accord with an up-to-date development plan to be approved without delay, and specifically (para 11d):

where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Para 31 of the NPPF 2021 also makes clear that:

The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focused tightly on supporting and justifying the policies concerned, and take into account relevant market signals.

The sections of the NPPF 2021 dealing with Building a strong, competitive economy (Section 6) and Ensuring the vitality of town centres (Section 7) remain as per the previous iteration of the NPPF

Impact of the South & East Lincolnshire Councils Partnership

The recent agreement to form the South & East Lincolnshire Councils Partnership will have an impact on the purpose and form of the South East Lincolnshire Joint Strategic Planning Committee, which could now be considered to be moribund.

Thus it is not currently feasible to adopt a further town centre study, whether up-to-date or not.

Impact of lockdowns/Covid

The impacts of Covid-19 and the lockdowns that have occurred are significant and will be long-lasting on town centres and officers consider that in the light of the level of uncertainty that Covid etc has brought to the future of town centres, it would not be sensible at this time to preclude a more flexible use to a large retail unit within this part of Spalding.

Sustainability

The site is defined in the Local Plan as part of Spalding Town Centre. Spalding is defined in the SELLP as a Sub-Regional Centre. The primary retail core around Broad Street and New Road is some 260 metres to the west at its nearest point.

The glossary to the NPPF defines edge of centre for retail purposes as locations well connected to and up to 300 m from the primary shopping area. Under this definition the site is in an edge of centre location.

As a geographical location for retail premises, this site is considered to be sustainable in its

broadest terms.

Layout and Design

There are no external changes to the building at this time.

Highway safety and parking

There are no changes to the parking levels on this site at this time. The 138 space parking area serves both retail units on this site.

Impact of neighbouring Residents/land users

Condition 25 of the host consent (H16-0610-05 refers) specifies that the service yard shall not be used for the overnight operation of internal combustion engine operated vehicle refrigeration motors.

Condition 42 states that the service yard access gates shall remain closed at all times other than when service vehicles are entering or leaving the site.

Condition 23 of the host consent (H16-0610-05 refers) controls the deliveries to and from the site - No deliveries shall be taken at or despatched from the site outside the hours of 08.00 to 19.00 Monday to Saturday or the hours of 10.00 to 17.00 on Sundays .

It is not considered that there would be sufficient impact as a result of this proposal that would warrant a refusal of permission based upon the residential amenity of adjoining occupiers, under Policies 2 and 3 of the SELLP.

Planning Balance

Officers consider that the planning balance in this case is to give significant weight to the wider policy and guidance matters set out above.

Conclusion

Approve.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

RECOMMENDATION

Delegated approval.

This application was considered at the Chairman's Panel of 15 October 2021 and it was agreed that this application can be dealt with via the powers delegated to the Head of Planning.