

Application No: Y16/1003/SH

Location of Site: B & Q Park Farm Road Folkestone Kent

Development: Section 73 application for variation of condition 25 of planning permission Y04/1113/SH to enable an extension to the range of goods to be sold from the site.

Applicant: Butler Mason Limited
1/1, 15 North Claremont Street
Glasgow
G3 7NR

Date Valid: 10.09.16

Expiry Date: 10.12.16

Date of Committee: 20.12.16

Officer Contact: Mr Alexander Kalorkoti

RECOMMENDATION: That planning permission be granted subject to the conditions set out at the end of the report.
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1.0 THE PROPOSAL

- 1.1 This application seeks permission to vary planning condition 25 of planning permission Y04/1113/SH (erection of a building for retail (Class A1) use together with associated car parking following demolition of Cannon House) in order to extend the range of goods that are permitted to be sold from the store.
- 1.2 The current condition restricts the sale of a number of categories of goods from the store and reads:

Notwithstanding the provisions of the Town and Country (Use Classes) Order 1987, as amended by the Town and County (Use Classes) (Amendment) Order 2005 (or any order revoking the re-enacting that Order with or without modification) the Class A1 retail development hereby permitted shall not be used for the retail sale of any of the following goods within the retail unit hereby approved:

- *Food except where part of an ancillary coffee shop with Class A of the Order*
- *Alcoholic drinks*
- *Tobacco*
- *Clothing and footwear*
- *Travel goods and luggage*
- *Tableware*
- *Games*

- *Toys*
- *Sports and camping equipment*
- *Fashion accessories including jewellery*
- *Watches*
- *Cosmetics*
- *Toiletries and pharmaceutical*
- *Books, stationery, newspapers, magazines and pre-recorded audio and visual material (unless sold as ancillary to the sale of other types of goods permitted within this development)*
- *Mobile telecommunications equipment*
- *Electrical goods other than from a maximum of 100 sq m sales area (but which limitation excludes lighting fittings and accessories, power tools and other goods and items related to the carrying out of DIY, gardening and home improvements)*

1.3 This application, submitted under Section 73 of the Town and Country Planning Act, 1990, as amended, seeks to vary this condition in order to allow for 450 sq m of floor space to be used to sell food, 100 sq m to be used to sell clothing and footwear, 100 sq m to be used to sell cosmetics, toiletries and pharmaceutical products, and 150 sq m to be used to sell books, stationery, newspapers, magazines and pre-recorded audio and visual material.

1.4 The application as originally submitted also sought to remove the restriction excluding the sale of travel goods and luggage, tableware, games, toys, sports and camping equipment and electrical goods. During the process of the application, the proposal has been amended to include a floorspace cap of 1,500 sq m for electrical sales. Currently, the condition allows electrical sales from a maximum of 100 sq m, with the exception of electrical goods in connection to DIY, gardening and home improvements, which are excluded from the limitation.

1.5 Following discussions with the applicant in the processing of the application, floorspace caps have been added to categories of goods originally proposed for unrestricted sale from the store, as set out below:

- Travel Goods & Luggage up to 250 sq m
- Toys and Games up to 500 sq m
- Sports Goods up to 500 sq m

As such, tableware and camping equipment are the only categories of goods proposed for unrestricted sale as a result of the proposal.

1.6 It is understood that the existing B&Q is due to close in early 2017 and it is also understood that the application, if approved, will facilitate the occupation of the unit by an alternative retailer. The prospective retailer is not named in the application, but it is claimed in the supporting documentation that they would be new to Folkestone.

- 1.7 The application does not include a mechanism to ensure a new retailer for Folkestone. Aside from condition 25, the original permission does not include any other operational controls on the nature of the retail floor space.
- 1.8 The application is supported by a Retail Statement prepared by Butler Mason Limited (BML) and a subsequent technical note in relation to electrical sales.

2.0 LOCATION AND DESCRIPTION OF SITE

- 2.1 The application site is located in Park Farm Industrial Estate within the defined settlement boundary of Folkestone. The unit, currently occupied by B&Q, forms part of the industrial estate which is recognised as an established employment site on the Proposals Map for the Shepway District Local Plan Review.
- 2.2 The Kent Downs Area of Outstanding Natural Beauty and the Folkestone to Etchinghill Escarpment Site of Special Scientific Interest (SSSI) are located on the opposite/north side of Churchill Avenue.
- 2.3 The application site comprises a retail (Class A1) unit containing 4,958 sq m (GIA) of retail floorspace over two floors, 1,068 sq m external garden centre, 827 sq m builder's yard and associated car parking.

3.0 RELEVANT PLANNING HISTORY

- 3.1 The most relevant planning history in relation to this application is:

Y04/11113/SH - Erection of a building for retail (Class A1) use together with associated car parking following demolition of Cannon House. Approved with conditions. 10.06.05.

4.0 CONSULTATION RESPONSES

4.1 Environmental Health

Environmental Health has no objection to the granting of this application.

4.2 Economic Development

Economic Development note that additional items proposed to be sold from the site are all currently available in surrounding units at Park Farm. Economic Development raises no objection to the application.

4.3 Folkestone Town Council

Folkestone Town Council raised no objection to the application.

4.4 KCC Highways and Transportation

KCC Highways and transportation raise no objection to the proposals in respect of highway matters.

4.5 Planning Policy

Planning Policy comments on the application have not yet been received, but will be reported to Committee in the supplementary sheets.

5.0 PUBLICITY

5.1 Neighbours notified by letter. Expiry date 10.10.16

5.2 Site Notice. Expiry date 17.10.16

5.3 Press Notice. Expiry date 20.10.16

6.0 REPRESENTATIONS

6.1 2 letters were received objecting to the proposal as set out below:

- An objection to the application from AECOM on behalf of Ravensbourne Gateway Ltd dated 10th October 2016 has been received in connection with the former Silver Spring site on Park Farm Road. The letter objects on the grounds that the applicant has not addressed this site in the submitted Retail Statement, that it is a cleared brownfield site, that it is available and suitable for retail use, and that its omission from the applicant's assessment is 'clearly erroneous'.

The relevance of the former Silver Spring site to this application is addressed in the sequential test subsection of the report's appraisal below (section 8).

- A holding objection letter has been submitted by Ellandi LLP, the owners of Bouverie Place in Folkestone Town Centre. The letter references the preparation of a review of the application by Ellandi's planning advisors; a full representation has since been received. Ellandi object on the basis that the applicant has failed to demonstrate compliance with the sequential test insofar as they have failed to demonstrate sufficient flexibility and have overlooked sequentially preferable sites in Folkestone Town Centre, and that the types of goods proposed for sale from the unit will have a significant adverse impact on Folkestone Town Centre.

- In support of their objection, Ellandi point to key indicators of Folkestone Town Centre's vulnerability, including an above average vacancy rate, seasonal occupancy of units, loss of market share to out of centre locations (particularly Park Farm) and the threats from competition for expenditure

both from existing and planned out-of-centre shopping facilities. Ellandi's grounds for objection set out failure to demonstrate compliance with Policy SS4 of the Shepway Core Strategy and NPPF Paragraph 24 in relation to the sequential test, and the incorrect application of case law. The objection points to an Appeal decision relating to the extension and sub-division of a Homebase store in Leamington Spa (APP/T3725/A/14/2218334) in January 2015 which stated that as there were no named operators "the scope for flexibility here should be greater than otherwise".

- Ellandi's full representation makes reference to the expenditure draw of West Park Farm amongst Folkestone residents, as identified in the Shepway Town Centres Study in 2014, and Park Farm's recent and rapid transformation and extension. The representation raises that the latest proposal would mean that Park Farm will compete even further on a like-for-like basis with Folkestone Town Centre, to the extent that a number of current Town Centre retailers could relocate to the application site. Reference is made to the NPPG which states that very modest trade diversion may lead to a significant adverse impact where vacancy rates are high and there is limited retail demand. Ellandi's objection references that the applicant's assessment of quantitative impact on Folkestone Town Centre does not look at the highest potential trade draw facilitated by the proposed amendment of the condition, and qualitative impact assessment is lacking. The representation raises the undue weight placed by the applicant on the creation of new employment opportunities and states that these opportunities are likely to be as a result of displacement as a result of the proposal's impact. Ellandi's objection raises that linked trip generation would not be at the same level if the proposal were accommodated in a Town Centre location, which benefits from a range of sustainable transport options and a concentration of Town Centre uses.

6.2 The matters raised in the representations summarised above are addressed in the appraisal below (section 8). It is noted that the Appeal decision in Leamington Spa does clarify that a modest trade diversion may lead to a significant adverse impact, however, each case is considered on its own merits. With regard to flexibility, it is noted that the Leamington Spa decision was not refused on the basis of the sequential test. The key consideration in this regard is therefore the extent to which there would be an overlap in trade, or whether the type of retailer would be either one that currently trades in the town centre, or that would otherwise trade in the town centre if this scheme were not available.

7.0 RELEVANT POLICY GUIDANCE

7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.

7.2 The following policies of the Shepway District Local Plan Review apply:
SD1, BE1, E1

7.3 The following policies of the Shepway Local Plan Core Strategy apply:

DSD, SS4

- 7.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework: Paragraphs 14, 17, 18, 24, 26 and 27

National Planning Policy Guidance
Kent Design Guide

8.0 APPRAISAL

- 8.1 The main considerations in the determination of this application are the principle of allowing the additional goods to be sold from an out of centre location, taking into account relevant development plan policies and significant material considerations, including the requirements of the National Planning Policy Framework (NPPF) to establish the proposal's impact on town centre investment, vitality and viability. In light of the site's 'out of centre' status, the sequential test will be applied to establish whether there are any sequentially superior sites to accommodate the proposed uses and whether the level of impact on existing centres falls within acceptable levels.
- 8.2 To assist with the application of the sequential test and establishing the retail impact on the vitality and viability of Folkestone Town Centre and Cheriton District Centre, Peter Brett Associates (PBA) were commissioned to carry out a review of the submitted application documents. PBA's findings are included in the appraisal set out below.

Policy

- 8.3 Section 38 (6) of the Planning and Compensation Act 2004 Act states that "*If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise*". Appendix 1 of the Retail Statement summarises the development plan position.
- 8.4 Policy SS4 of the Shepway Core Strategy Local Plan (SCSLP) helps to define the sequential test:
- 'town centre first' policy will operate for applicable uses in line with national policy. Potential town centre activities or those creating significant transport demand, including retail, leisure and major office uses, should be located sequentially, looking firstly at locations within town centres, then on the edge of centres, and only then out of centre; and with regard to their impact on the vitality and viability of the defined town, district and local centres.'*
- 8.5 In essence, this requires the sequential test to be applied, as well as an assessment of retail impact. Given the wording of this policy, it is relevant to consider national policy as an important material consideration.

8.6 The sequential test is also required by paragraph 24 of the NPPF which states that local planning authorities should *'apply a sequential test to planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date Local Plan'*. Given that the application site is out of centre, the sequential test should apply. Paragraph 24 continues to explain that local authorities should require applications for main town centre uses to be located in town centres, then edge of centre locations and *'only if suitable sites are not available should out of centre sites be considered'*. Finally, paragraph 24 requires applicants and local planning authorities to demonstrate flexibility on issues such as format and scale.

8.7 The National Planning Practice Guidance (NPPG) considers locational requirements and explains that the *'use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations'*. It requires *'robust justification must be provided where this is the case, and land ownership does not provide such a justification'*.

8.8 In recent years, the sequential test has been subject to recent case law and there have also been notable Secretary of State decisions that consider the concepts of suitability and availability. The Retail Statement includes a selected summary of the situation in Appendix 2. PBA's assessment does not agree with all of the applicant's interpretation, but does agree on the following points based on a current understanding of case law and policy:

- The assessment of suitability needs to respond to the application submitted, taking into account a real world assessment of flexibility;
- The NPPF asks whether sites are available, and does not ask whether sites are likely to become available in the future.

8.9 Turning now to impact, paragraph 26 of the NPPF states:

When assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- *the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.*

- 8.10 It is noteworthy that there is no adopted local threshold in the development plan; therefore the threshold would default to the 2,500 sq m figure. In paragraph 5.2 of the Retail Statement, the applicant argues that because the proposed development seeks to extend the range of goods sold from only 800 sq m of the application site, there is no formal requirement to undertake an impact assessment. However, one has been undertaken nonetheless.
- 8.11 PBA has considered the applicant's argument over whether an impact assessment is required. Paragraph 26 of the NPPF refers to when assessing 'planning applications', with the submitted application being made via Section 73 that will, in effect, create a new permission if granted. Paragraph: 015 (Reference ID: 17a-015-20140306) of the NPPG explains that '*Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended*'. Since the original permission is for the whole retail store, then the application itself is also for the whole store, albeit it is only the changes to the condition that are being sought, that will be considered.
- 8.12 The proposed variation of condition includes the removal of the controls for the whole store (4,958 sq m GIA) in relation the sale of tableware and camping equipment, with floor space caps proposed for the other ranges of goods originally proposed for unrestricted sale (as set out at 1.4 and 1.5 of this report).
- 8.13 Given the fact that floor space in the original permission exceeds the 2,500 sq m threshold (4,958 sq m GIA) and the proposed variation of condition includes the removal of restrictions on the sale of certain goods across the whole store it is considered that the wording of the NPPF would require an impact assessment. Therefore, it is considered that the retail impact of the proposal should be a key consideration in the determination of this application.
- 8.14 The following paragraphs consider the extent to which the applicant has satisfied the sequential test and draws conclusions on the findings of the impact assessment, as well as considering possible planning conditions and their associated impact on the acceptability of the proposal.

Sequential Test

- 8.15 The submitted Retail Statement assesses sequential alternatives in Section 4. Paragraph 4.9 of the Retail Statement refers to the requirements of the anticipated operator and explains that any potential alternative site must be sufficient to accommodate the entire product range. Since the retailer is not named, it is not possible to verify this assertion, however, irrespective of this point, any subsequent permission and conditions would apply to the site not just to the first occupant. As such, if the application is approved the extended range of goods and matters controlled by condition would apply regardless of the first occupant's product range.
- 8.16 The retail unit already exists on the application site and therefore it is reasonable to apply the sequential test to the whole store. It is agreed that

the additional goods proposed to be sold should not be disaggregated from the wider use and the potential for these goods to be sold elsewhere is more connected with retail impact (see 8.25 onwards of this report).

8.17 In paragraph 4.10, the Retail Statement explains that flexibility has been demonstrated by considering sites that can accommodate in excess of 4,000 sqm (against the existing store of 4,958 sqm). In the circumstances, this is a reasonable approach since it reflects a real world assessment of flexibility as it is clear that the retail unit currently occupied by B&Q will remain in place, even if this application were refused.

8.18 In assessing sequential sites, the Retail Statement considers vacant units within Folkestone Town Centre and Cheriton District Centre based on a survey in August 2016. The Retail Statement concludes that there are no vacant units within these two centres that could accommodate the proposed development. PBA's assessment concurs with this conclusion.

8.19 The Retail Statement also considers development opportunities in the form of the Folkestone Seafront, Hotel Burstin and the Folkestone Bus Station site, PBA concur with the applicant in concluding that these sites do not represent sequentially preferable suitable and available sites for the reasons summarised below:

- Folkestone Seafront: the site is available, but it is agreed that the site is unsuitable for the proposed development, due to its mix of uses, the requirement for smaller units (maximum unit size of 500 sq m and with 30% of the units less than 150 sq m).
- Hotel Burstin: the Retail Statement does not provide any details on this site's availability, but based on the policy requirements for a mix of frontages, it is agreed that the site would be unsuitable for the proposed development.
- Folkestone Bus Station: contrary to the assertion in the Retail Statement, the Bus Station site is owned by the Council, with Stagecoach benefitting from a long lease. Whilst we recognise the potential of this site in the longer term, it is considered that this site is not currently available for the proposed development.

8.20 An objection to the application from AECOM on behalf of Ravensbourne Gateway Ltd, dated 10th October 2016, has been received by the Council in connection with the former Silver Spring site on Park Farm Road. The letter raises an objection to the proposal on the grounds that the applicant has not addressed this site in the submitted Retail Statement. The letter states that the former Silver Spring site is a cleared brownfield site, that it is available and suitable for retail use, and that its omission from the applicant's assessment is 'clearly erroneous'.

8.21 The former Silver Spring site is not located in the town centre. It has a draft allocation for a mix of uses, to include retail, subject to a comprehensive impact assessment under draft Policy UA4 of the emerging Places and

Policies Local Plan. Paragraph 216 of the NPPF sets out that weight can be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent of unresolved objections to the policies and the degree of consistency with the NPPF. However, the Places and Policies Local Plan is at the early preferred options stage and is currently given no weight in decision-making.

- 8.22 The omission of the former Silver Spring site from the applicant's sequential or impact assessment is not considered to be erroneous. The site only benefits from a draft allocation which is at an early stage of preparation. However, the key point is that the site cannot be considered sequentially preferable to the application site since it is also out of centre. In addition, with regard to suitability there is an existing unit at the application site to accommodate the proposal, whereas the former Silver Spring site is a cleared brownfield site.
- 8.23 Paragraph 24 of the NPPF states that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. The Silver Spring site is located south of the application site, to the south of Park Farm Road. Given its close proximity, the site is no more or no less accessible than the application site; it is therefore considered to be sequentially equivalent. On this basis, there is no requirement under paragraph 24 of the NPPF for the applicant to consider this site in their Retail Statement.
- 8.24 As a result, it is considered that the sequential test has been met under the terms of paragraph 24 of the NPPF and Policy SS4 of the Shepway Core Strategy Local Plan. It should be noted that the assessment of the sequential test discounts smaller units that could accommodate a disaggregation of the sales area due to the proposed condition to prevent subdivision of the unit, as set out at 8.45 of this report.

Retail Impact

- 8.25 The submitted Retail Statement assesses retail impact in Section 5. In paragraph 5.3, the Statement explains that it is *'axiomatic that new development will have some impact on existing facilities. The pertinent question therefore is not whether there will be an impact, but whether that impact is significant'*. This is correct and indeed, there ought to be a likelihood of that impact being significantly adverse for the application to be refused, as set out at paragraph 27 of the NPPF.
- 8.26 The assessment of retail impact addresses *'the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal'* and *'the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area'* as per paragraph 26 of the NPPF.
- 8.27 The Retail Statement assesses impact on in-centre trade/turnover in both the convenience and comparison sectors (Appendix 4 of the Retail

Statement) and then judges the significance of retail impact against the performance of the town centre (as set out in assessments of vitality and viability at Appendix 3 of the Retail Statement). It should be noted that the level of percentage impact does not automatically align with the acceptability of impact and there is no threshold over when an acceptable impact becomes unacceptable.

8.28 The quantitative retail impact exercise is based on a conventional step by step approach that estimates the turnover and then diverts this from existing destinations. This is broadly consistent with the NPPG (paragraph 018, Reference ID: 2b-018-20140306). It should be noted that the assessment within the submitted documents focuses solely on the categories of goods which were originally proposed to be subject to floor space limitations. This does not consider the turnover implications of other categories of goods that were proposed for unrestricted sale (some of which have since had floor space caps added). PBA have raised a series of observations and comments on the approach used to quantify impact in Appendix 4, as follows:

- The use of 2016 as a base year is agreed, although 2021 as a design year (i.e. the year impact is tested) is likely to be too far in the future, given that paragraph 26 of the NPPF requires impact to be assessed 'up to five years' from when the application is made. Given it is expected that B&Q will close in 2017, it is expected that a tenant will be sought to open the same year. Allowing for two years for trading to settle down would mean a design year of 2019 is more appropriate.
- The sales density assumptions of £5,000 per sq m net for convenience and £3,500 per sq m net for comparison goods appear reasonable if the goods sold are part of a single store. If they were sold in a subdivided store, the sales densities are likely to be higher.
- The Retail Statement does not address the worst case turnover of the store by considering how the additional unrestricted categories could influence the maximum additional turnover generated from the store
- The impact assessment does not consider the prospect of the store facilitating relocation from the town centre. Paragraph 2.8 of the Retail Statement states that the prospective operator is not currently represented within Folkestone, however were this scenario to occur and the subsequent void in the town centre could not be either re-let in the short to medium term, or attract a store of the equivalent turnover, then this would mean the quantitative assessment will have been underestimated.
- The allowance for the floor space to improve its turnover by 0.4% per annum in the convenience sector and 1.8% in the comparison sector appear reasonable.
- The approach to estimating turnover of existing stores in 2016 in Tables 2 and 3 appears to be reasonable, based on a combination of

the Council's own retail evidence (PBA's Town Centre Study from 2014) and benchmark allowances.

- The applicant has not assessed trade draw in the conventional sense; i.e. by plotting a catchment and then assessing where the new trade will be generated from in order to inform trade diversion assumptions. The column entitled trade draw actually is simply trade diversion (correctly recognised in the text in the Retail Statement itself). This could be seen as missing a step in the methodology, but in these circumstances is not an obstacle to reaching a conclusion on retail impact.
- The trade diversion assumptions appear to be purely informed estimates, rather than being generated by the impact model itself. This is not necessarily a concern, and having reviewed the trade diversion assumptions used and the explanation in Section 5, these appear broadly reasonable taking into account the nature of the additional restricted uses (but not the categories originally proposed for unrestricted sale).

8.29 The outcome of the applicant's exercise is that the combined impact will be 0.6% (£0.93 million) on Folkestone Town Centre and 1.5% (£0.2 million) on Cheriton District Centre. If the design year was brought forward to 2019, the impact will be very marginally higher. Similarly, if there was relocation from the town centre, then the trade impact could be higher and there might be subsequent impacts on linked trips. However, it should be noted that the applicant does not take into account expenditure or population growth in their assessment meaning that from this perspective, the assessment is conservative.

8.30 The information presented by the applicant in relation to trade diversion and associated retail impact has examined the extended range of goods over the proposed 800 sq m of floorspace. The applicants have not taken into account that the variation to condition would, as originally submitted, allow unrestricted sale of travel goods and luggage, tableware, games, toys, sports and camping equipment and electrical goods, which are currently restricted. As a result, the applicant has been asked to provide additional trade diversion data and assessment of retail impact on the vitality and viability of Folkestone Town Centre for the maximum uplift in turnover of the application site. In response, a technical note on electrical sales was produced which proposed to restrict the sale of electrical goods to 1,500 sq m and concludes that there is a potential uplift in turnover of £4.4 million per annum. The note then seeks to establish the impact of the total potential electrical turnover of the store on existing centres.

8.31 PBA's consideration of the electrical sales note is that the assumptions used are broadly reasonable, but that the applicant has not tested a worst case approach. It is noted that certain retailers might create greater competition with the town centre than others, depending on the scale of each category of goods they sell. PBA have conducted a high level worst case scenario in a realistic commercial context, the outcome of which was a trade diversion

from Folkestone town centre of 5.4% in the comparison sector, and 4% in the combined convenience/comparison sectors. The equivalent figures for Cheriton district centre are 9% and 5% respectively. The trade diversion calculations based on the assumptions set out in PBA's advice are higher than those shown in the submitted documents.

8.32 If the whole store were to trade one of the proposed unrestricted goods then the turnover would be lower and this has not been considered by the applicant. However, despite lower turnover the store would compete in a more targeted manner with specific sectors in the town centre, increasing the probability of resultant vacant units. As a result, it was considered that a condition should be attached to any permission to cap the range of goods originally proposed for unrestricted sale. Following discussions with the applicant regarding the potential qualitative impact on local centres if the store were to sell a single category of goods originally proposed for unrestricted sale, floor space caps have been added to the proposal as set out below:

- Travel Goods & Luggage up to 250 sq m
- Toys and Games up to 500 sq m
- Sports Goods up to 500 sq m

As such, tableware and camping equipment are the only categories of goods proposed for unrestricted sale as a result of the proposal. The applicant has stated in correspondence that these ranges are on sale extensively from out-of-centre locations and do not underpin the vitality and viability of defined centres. PBA have considered the proposed additional floorspace caps and have recommended that they are acceptable and address the potential qualitative impact of the original proposal.

8.33 When addressing the first of the two elements of paragraph 26 (i.e. investment), the NPPG explains that key considerations when addressing town centre investments will include:

- *'the policy status of the investment (i.e. whether it is outlined in the Development Plan)*
- *the progress made towards securing the investment (for example if contracts are established)*
- *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence'*

8.34 The Retail Statement addresses the impact on Folkestone Seafront and Folkestone Bus Station. Based on the analysis within this document, it is considered that there is unlikely to be a significant adverse impact on this investment. In respect of Folkestone Seafront, the reason for the conclusion is for the type of retail operations that will be provided at the seafront. It is accepted that a large unit will not impact on the investment at Folkestone Seafront, due to the size of units to be provided relative to the larger retail unit of the application site. However, if the permission sought here facilitated some smaller units at the application site, then this issue may require further

investigation. A condition would be attached to any grant of permission, in line with condition 12 of Y04/1113/SH, to prevent the subdivision of the large retail (Class A1) unit at the application site to control the potential impact of smaller retail units on town centre investment.

- 8.35 With regard to existing investment, the objection raised by Ellandi that the application has the potential to encourage relocations is accepted. PBA note that the relocation could only apply to one store (if the proposed condition preventing subdivision is applied, as set out at paragraph 8.45 of this report) and the unit in question could potentially be re-let, or the lease assigned, and thus the investment protected. Taking into account possible scenarios relating to the proposal's impact, PBA conclude that it is unlikely that the application will cause a significant adverse impact on existing, committed and planned public and private investment in existing centres. The matters of relocations and the attractiveness of existing stores and facilities in the town centre is more appropriately considered within the assessment of vitality and viability below.
- 8.36 It should be noted that there is no threshold for when an acceptable impact on town centres becomes unacceptable. The Retail Statement concludes that both Folkestone and Cheriton will continue to perform adequately and that the proposal would not result in a significant adverse impact due to trade diversion. As mentioned above, PBA conclude that the applicant has not tested the worst case scenario and have therefore carried out additional modelling. In their objection letter, Ellandi point to the NPPG which states that this judgement can only be reached in light of local circumstances, and that modest trade diversion may lead to a significant adverse impact depending on the health of the town centre (e.g. high number of vacant units).
- 8.37 The Shepway Town Centres Study carried out by PBA in 2014 recognised the high levels of vacancy in Folkestone town centre and the extent to which Park Farm competes with Folkestone Town Centre. The assessment of vitality and viability at Appendix 3 of the submitted Retail Statement states that vacant units account for 8.3% of total floor space and 13.1% of total units. The floor space vacancy rate is lower than the national average, but the unit vacancy rate is higher than the national average. As such, there is a predominance of smaller vacant units. PBA find that the acceptability of the levels of impact on existing town centre vitality and viability will be judged largely on two factors. Firstly, the extent of overlap in trade between the new operator of the store and the operators of Folkestone Town Centre and Cheriton District Centre. Secondly, the competition for occupiers between the application site and the town centre, either through a retailer taking the application site in favour of the town centre, or through relocations. Given that the operator is not named, it is necessary to consider the worst case scenario.
- 8.38 In assessing the extent of overlap in trade, PBA find that there is potential for the application site to compete with town centre stores, although some of this competition will already exist through the ranges that B&Q sell, and this is included in PBA's high level assessment of the worst case impact on

turnover in the comparison sector. Notwithstanding the competition of the proposed operator of the application site with town centre stores such as Wilko, Poundland and Asda, there will be overlap in trade with certain stores at Park Farm, including Sainsbury's, Home Bargains, Currys, Homebase, Wickes, Topps Tiles and Maplin. As such, the extent to which there is competition needs to be balanced against the competition that already will occur with existing retailers at Park Farm.

- 8.39 The potential for occupiers to choose the application site in favour of a vacant store in the town centre is important in relation to the ability of the centre to reduce its vacancies and impact on investment. However, PBA find that as there are no stores of over 4,000 sq m available in the town centres, the application site is not in direct competition with the town centre for a retailer looking to trade from this quantity of floorspace.
- 8.40 The potential for the relocation of a town centre retailer to the application site as a result of the proposal is a key consideration in relation to competition. A relocation has the potential to create a long term void and result in the loss of a town centre anchor store, with a consequential impact on linked trips with other retailers and businesses in the town centre. In their objection letter, Ellandi highlight that the two main candidates for relocation would be Wilko and Poundland. PBA find that the application may result in a significant adverse impact if it facilitates the relocation of an existing town centre store.
- 8.41 There will be sectoral overlap with Folkestone Town Centre and an overlap in the goods sold. Furthermore, the town centre does suffer from high vacancies, which mean that it is more at risk from lower trade impacts than would otherwise be the case. However, PBA find that the sectoral and goods overlap with existing retailers at Park Farm also needs to be taken into account as well as the potential for additional spending growth to mitigate impact, which is not taken into account in the submitted Retail Statement. PBA conclude that there will not be a likelihood of a significant adverse impact on vitality and viability in accordance with NPPF paragraph 26 if categories of goods proposed to be sold from the site are suitably limited by floorspace caps and relocations from the town centre are avoided.

Conditions

- 8.42 Paragraph 206 of the NPPF states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. As explained above, PBA's assessment concludes that the application can be approved subject to precise conditions being imposed to control a number of matters.
- 8.43 The additional categories of goods proposed to be sold (travel goods and luggage, games, toys and sports equipment), with the accepted exception of tableware and camping equipment, should be capped so that they do not represent a significant element of the floorspace of the store. The officer recommendation is based on the confirmation received from the applicant in

relation to the capping of these categories of goods, which were originally proposed for unrestricted sale. If the whole store were to trade a single category of these goods, it would compete in a different way with Folkestone Town Centre and Cheriton District Centre and could present a risk to certain sectors within the centres, a qualitative impact which has not been tested or justified by the applicant. As such, it was considered that confirmation from the applicant in relation to the additional capping of the sale of goods proposed for unrestricted sale was necessary.

8.44 It is considered that if the variation of condition facilitates the relocation of an existing retailer trading from either Folkestone Town Centre or Cheriton District Centre, the retail impact of the proposal with regard to vitality and viability will have been underestimated. As a result, a mechanism to ensure a new retailer for Folkestone is required if the proposal's retail impact is to be considered acceptable. A 'no poaching' condition would be attached to any permission, which would run with the land, to ensure that the additional categories of goods are only sold on the basis that they do not facilitate the relocation of a retailer currently present in Folkestone Town Centre or Cheriton District Centre. It is proposed that current retailers represented in the local centre would be able to occupy the store on the basis that the retention of their town centre presence is secured for a period of five years, or upon the cessation of their occupation of the application site, whichever is sooner.

8.45 The assessment of retail impact is on the basis that the store remains trading as one unit and the evidence put forward by the applicant is based on this proposition. The subdivision of the unit is currently prevented by an existing condition attached to Y04/1113/SH and the retail policy considerations for multiple subdivided units would be different compared to considering the building as a single retail unit. Given the sub-division scenario has not been considered by the applicant, if permission is granted, it is considered that a condition in line with condition 12 of Y04/1113/SH should be imposed on the new permission that prevents sub-division of the unit when being used to sell the additional goods. It is considered that this condition would meet the requirements of the NPPF.

8.46 Conditions will be attached to any grant of permission to retain and maintain the matters controlled by the conditions of Y04/1113/SH as far as is reasonable.

Conclusions

8.47 PBA have been commissioned to carefully review the case put forward by the applicant in the submitted Retail Statement to justify the variation of condition to allow for the sale of additional goods from the B&Q store on Park Farm Road. The existing condition (no. 25) is the only condition that controls the manner in which the store can trade. Having considered the arguments set out in the submitted documents, it is considered that the proposal does meet the sequential test. With regard to retail impact, it is considered that the applicant has demonstrated that the variation of condition to allow food, clothing, cosmetics and books to be sold from a

combined area of 800 sq m will not have a significant adverse impact on local town centres. The applicant has provided a scenario testing note for electrical goods which assesses the quantitative impact of the sale of electrical goods from 1,500 sq m of the store. Following discussions with the applicant, additional floorspace caps have been added to categories of goods originally proposed for unrestricted sale from the store, to avoid a potentially significant adverse impact on designated centres. As such, tableware and camping equipment are the only categories of goods proposed for unrestricted sale as a result of the proposal. As referenced above, PBA's independent advice to the Council, having considered the submitted documents as well as the subsequent note on electrical goods and the two objections received, is that the application can be supported from a retail policy perspective subject to the imposition of the conditions outlined in the preceding section of this report and listed below.

Human Rights

- 8.48 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.
- 8.49 This application is reported to Committee as it constitutes a major retail development due to the quantity of floorspace (4,958 sq m GIA) subject to the proposed variation of condition.

9.0 SUMMARY

- 9.1 An independent review of the application to justify the proposed variation of condition 25 of planning permission Y04/1113/SH to allow a wider range of goods to be sold from the existing retail (A1) unit has been carried out. PBA were commissioned to carry out a review of the extent to which the applicant has justified the principle of allowing the additional goods to be sold from the store, taking into account relevant development plan policies and significant material considerations.
- 9.2 It is considered that the applicant has demonstrated that the proposal meets the requirements of the sequential test and that a sequentially preferable site is not suitable and available to accommodate the proposal in line with the terms of paragraph 24 of the NPPF, policy SS4 of the Shepway Core Strategy Local Plan and relevant case law.
- 9.3 It is considered that following PBA's work to supplement the conclusions contained within the submitted documents, that the retail impact of the proposal will not be significantly adverse in relation to the vitality and viability of local centres, and will not have a detrimental impact on existing,

committed and planned public and private investment in those centres, subject to the precise conditions being agreed and imposed to address floorspace caps, potential relocations from existing centres and subdivision of the application unit.

10.0 BACKGROUND DOCUMENTS

10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

RECOMMENDATION – That planning permission be granted subject to the conditions below.
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1. Service yard and turning head shall be kept available and unobstructed
2. Sight lines retained and kept free of any obstruction exceeding 0.9 metres in height at all times
3. Retention of secure cycle parking
4. Car parking area shall not be used for any purpose other than the parking of vehicles
5. Hard and soft landscaping works to be retained
6. No shrubs or hedges on the site shall be disturbed without prior written permission of the local planning authority
7. Approved surface water drainage and sewage disposal scheme to be retained in a functional condition
8. No goods, waste or other materials shall be stored outside buildings at any time unless within an area identified on the approved plans under Y04/1113/SH for this purpose
9. No works shall take place within the site such as to prejudice the effectiveness of the approved scheme of remediation
10. The building shall not be subdivided into independent units
11. No additional new floor space shall be created inside the building approved without the prior written consent of the local planning authority
12. Retention of approved scheme for lighting of all external areas and lighting of the entrance area to the building, including lighting levels for the site during opening hours and when the store is closed
13. No external lighting or lighting in the entrance areas of the building shall be installed other than as part of the approved scheme
14. Approved Green Travel Plan arrangements to be retained

15. Range of goods excluded from sale from the retail (Class A1) unit, including sale of electrical goods from up to 1,500 sq m. This condition will include agreed caps on the range of goods originally proposed for unrestricted sale from the store, with the exception of tableware and camping equipment.
16. No poaching condition to ensure a new retailer not currently present in Folkestone town centre or Cheriton district centre

Decision of Committee

Y16/1003/SH
B & Q
Park Farm Road
Folkestone

