

Simon Davis

From: [REDACTED]
Sent: 23 January 2015 17:34
To: Simon Davis
Subject: RE: Bognor Regis Retail Park - Fitness First PD8500

Thanks Simon.

When will the revised report be available? I'm in meetings most of the morning of the 28th, and then will be travelling down to Littlehampton – obviously I'd like to see the revised report as soon as it is available

Thanks

Have a nice weekend
Tim.

Tim Miles
Associate

Montagu Evans LLP
5 Bolton Street, London W1J 8BA

[REDACTED]
Website: www.montagu-evans.co.uk



From: Simon Davis [REDACTED]
Sent: 22 January 2015 16:17
To: Tim Miles
Subject: RE: Bognor Regis Retail Park - Fitness First PD8500

Dear Tim,

Thank you for the additional information which is most helpful. We will consider this further and make a decision before the Committee on the 28th. This will then be reflected within our update report which will be available on the day. Please note that we are aware that if we do not accept your proposed condition that you are likely to submit an appeal.

Kind Regards

Simon J Davis BA (Hons) DipTp MRTPI | Principal Planning Officer, Planning Department, [Arun District Council](http://www.arun.gov.uk) |
Location: 1st Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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From: Tim Miles [REDACTED]
Sent: 22 January 2015 12:07

To: Simon Davis

Subject: RE: Bognor Regis Retail Park - Fitness First PD8500

Simon,

Thanks for the below.

I wanted to take one more opportunity to draw your attention to some of the specifics of the Home Bargains business model before the decision is made to withdraw the application from committee.

The application proposes 30% of the GIA to be used for the sale of food goods. This equates to 284 sq m of the GIA. Your email below seems to indicate an acceptance of 20% GIA for food sales (190 sq m). The difference between the two equates to 94 sq m which is a very small floor area with a very low turnover (£0.232m). The additional impact of that increased turnover would be *de minimis* considering that it would fall primarily on existing out of centre space and the rest of the impact would be diffused between a large number of retail destinations.

- The application was submitted on the basis that 30% food is required for Home Bargains, and the application has been assessed on this basis at Appendix 3 of the report.
- The imposition of a condition, in the absence of any planning reason to do so, would therefore be unreasonable in that it would prevent the operation of what is applied for.
- The threshold for an adverse impact within the NPPF is 'significant and demonstrable'. The officer report makes no such suggestion that such a level of impact is likely, nor does the report raise any concerns at all about the sale of a limited amount for food from the unit.
- In fact the officer report at p159 specifically agrees with our Statement's conclusion the level of diversion would not equate to harm to the viability and vitality of the town centre. A condition would not be justified in these circumstances.
- Our impact assessment identifies that potential impact on Morrisons would be the most likely to cause concern in planning terms. Our assessment shows only a 0.6% impact on the turnover of Morrisons. This is *de minimis* and is no way significant or adverse. It will be absorbed very quickly by natural growth in expenditure.
- Other impacts will fall on out of centre locations (not protected in policy terms) or diffused among many other destinations such that the impact will be *de minimis*.

Our assessment of food sales impact follows precisely the method used by your own consultants in the assessment of application reference BE/37/14. This was for a much larger scheme (M&S Simply Food with 780 sq m net sales area) allowing for the sale of a full range of food and drink with a turnover of £8.52m (£10,928 sq m per sq m). This is compared to Home Bargains' £0.71m food sales turnover (£2,500 per sq m). M&S Simply Food is clearly of a very different order from the current application proposals, but in applying the same approach as your own retail consultants to our current application is a simple way of demonstrating the very minor impact of the application proposals. In that context the restriction on food sales to lower than 30% is disproportionate to the actual impact of the scheme. It therefore fails the 'necessity' test set out in the NPPF and NPPG.

This discussion is all notwithstanding that a Retail Impact Assessment is not required under the NPPF or the emerging local plan – even with reference to the emerging local plan's threshold of 1,000 sq m, 284 sq m falls far below the threshold for assessment. It follows that had we applied for the use of the whole unit for food sales, there would have been no need to undertake an impact assessment and a refusal on impact grounds or a restricting condition would not be justified. We are aware of a growing number of appeal decisions where applications have been refused in such circumstances by planning authorities and then allowed at appeal with costs awarded against the Council. We can share the details of these with you if you like. It must follow that an application for a sum of floorspace underneath the threshold (far below in this case) would be subject to the same considerations – there would be no justification to restrict the floor space.

In terms of the application BE/23/14, the officer report quotes GL Hearn as stating:

"the impact upon the town centre of a foodstore on the proposal site would not in our view be significantly adverse,"

Having already assessed the use of that whole unit and found that there would be no adverse impact, it seems very unlikely that the use of a much smaller area would be significantly adversely harmful. The same conclusion must hold.

It is clear from the officer report that GL Hearn recommended that the food restriction be placed as they considered that an Aldi could be located on the Hothampton site. However, the circumstances of the Hothampton site have now

changed and the Council accepts that this is not a sequentially preferable site, so the same conclusion does not hold. The circumstances surrounding the current application are different, so BE/23/14 cannot be considered as a kind of precedent.

I cannot find the GL Hearn report on BE/23/14 available on the web portal, so please could you forward this to me for my review?

I hope that you find the above helpful.

Thanks and regards

Tim

Tim Miles
Associate

Montagu Evans LLP
5 Bolton Street, London W1J 8BA

Website: www.montagu-evans.co.uk



From: Simon Davis [REDACTED]
Sent: 22 January 2015 10:24
To: Tim Miles
Subject: RE: Bognor Regis Retail Park - Fitness First PD8500

Dear Tim,

I've now had chance to talk this through with my team leader and with the Head of Development Control. We have had regard to the recent Oldlands Way retail permission (Ref BE/23/14) and consider that we can support a condition worded the same as imposed on that consent. However, that would only allow for minor and ancillary sales of food & drink – certainly not the 30% you seek. At most, we might consider allowing food & drink sales at 20%. If you wanted to pursue a greater amount then we would need to pull this application from Committee and seek independent retail planning advice.

Kind Regards

Simon J Davis BA (Hons) DipTPI MRTPI | Principal Planning Officer, Planning Department, Arun District Council |
Location: 1st Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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From: Tim Miles [REDACTED]
Sent: 16 January 2015 15:46
To: Simon Davis
Subject: Bognor Regis Retail Park - Fitness First PD8500

Dear Simon,

Further to our telephone conversation yesterday, I email with my comments on proposed condition 4 of application reference BE/136/14/PL.

As set out in section 3 of the Planning Statement, as well as the goods identified in the proposed condition 4, Home Bargains also sells goods such as:

- Pets Products and Pet Supplies;
- Baby and Child Goods and Toys;
- Health and Beauty Goods and Fragrances;
- Household and Cleaning Products;
- Travel and Leisure Goods; and
- A limited range of Arts and Crafts and Stationary Goods.

Paragraph 3.8 of the Planning and Retail Statement indicates that Home Bargains sells a range of bulky and non-bulky goods. Paragraph 3.9 of the Planning Statement indicates that Home Bargains also sells a very limited range of food products, limited to no more than 30% of the gross internal floor area of the unit.

Condition 4 as drafted would wholly prevent Home Bargains from occupying and trading from the unit. The condition as currently worded would prevent the delivery of planning benefits identified in the Officer report such as an increase in employment.

The Planning and Retail Statement submitted with the application has been prepared on the basis of the detail of Home Bargains' business model. We have clearly identified the goods that will be sold from the unit, and assessed the application on this basis. The Officer report indicates that it is in agreement that there is no harm to the vitality and the viability of the Town Centre arising from the proposals and that there are no sequentially preferable sites to accommodate Home Bargains. Our assessment has been undertaken on the basis that Home Bargains will be selling the range of goods identified, and therefore it follows that the Council is in agreement that the sale of those goods in the Home Bargains format will not harm the vitality and viability of the Town Centre.

The application has not been submitted on the basis that the unit will be used solely for the sale of bulky goods, and this is clearly explained in the supporting information.

Turning then to the use of planning conditions as advised by the National Planning Policy Framework. There are, as you know, six tests relevant to the use of planning conditions. As it stands, our view is that condition 4 in its current form is not necessary as there is no definite planning reason for it. It is not needed to make the development acceptable on planning terms, as the Council has accepted that the assessment undertaken by Montagu Evans indicates no planning harm that needs mitigation by use of a condition. The NPPG states in particular that if a condition is wider in scope than is necessary to achieve the desired objective (and I acknowledge that the Council will wish to protect the vitality and viability of the Town Centre), then it will fail the 'necessity' test.

We also consider that it fails the 'reasonableness' test set out in the NPPF and NPPG. The condition places an unjustifiable and disproportionate burden on the occupier and prevents them from operating their business model. A condition that prevents the use applied for is self-evidently unreasonable.

Unit 3 was last in retail use in 2001. Applying the same condition that was in force then fails to take account of the changes in circumstances, the development applied for and the six tests in general terms.

We note that planning permission was recently granted under application reference BE/23/14/PL for a change of use from B8 to Class A1 at Oldlands Way. This is subject to a condition which states that the retail premises shall be used only for the purposes of A1 retail excluding the sale of food, fashion and footwear. The Officer Report to Committee originally recommended a condition identical to the proposed condition 4 of Bognor Regis Retail Park. However, following representation from the applicants, the Officers changed their recommendation to restrictions on food, fashion and footwear only. This follows advice from the Council's Retail Consultants.

As a matter of consistency, it would seem to follow that if that condition was acceptable at Oldlands Way, then such condition will be acceptable at Bognor Regis Retail Park (save the complete restriction on the sale of food). It is also

relevant that the Oldlands Way development did not identify a specific retailer and was speculative in nature. In contrast, the Bognor Regis Retail Park application not only identifies the retailer but it is absolutely clear as to the range of goods that will be sold and has been assessed in the supporting statement on that basis. With respect to the sale of a limited range of food goods, this has been assessed in the application and we have demonstrated to the Council's satisfaction that there would be no harm to the vitality and viability of the town centre.

We note also that conditions imposed on planning permission reference BE/37/14 were tailored to the proposed occupier (in that case M&S Simply Food and Next).

In the light of the above, we acknowledge that the Council will wish to impose some controls on the unit to protect the vitality and viability of District Town Centres. I suggest the following form of wording which will allow Home Bargains to trade and will be consistent with the Oldlands Way recent planning permission:

The retail premises hereby permitted shall only be used for the sale of non-food goods (Class A1) excluding fashion and footwear, save for an area of no more than 30% of the Gross Internal Area which shall be used for the sale of food and drink. Goods falling outside the permitted range may be sold only where they form a strictly minor and ancillary part of the proposed store's operation.

And for no other purposes (including any other purpose in in Class A1 of the Use Classes Order 1987 as amended without the prior permission in writing of the Local Planning Authority.

Such a wording prevents the sale of clothing and footwear. Thus the types of occupiers that the Council would most like to see located in the town centre will not be able to locate within the retail park.

I will be grateful to hear your comments on this as soon as possible, and I am confident that we can agree a form of wording that would allow Home Bargains to trade and would also be acceptable to the Council. Please do let me know if you require any further information.

Thanks and kind regards

Tim Miles
Associate

Montagu Evans LLP
5 Bolton Street, London W1J 8BA

Website: www.montagu-evans.co.uk



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