

E/0006/38/15

BREACH OF PLANNING CONDITION RESTRICTING CLOTHING SALES TO 20% OF RETAIL SPACE

OCCUPIER:

OWNER: GO OUTDOORS
UNITS 2 & 3 ST JOHNS BUSINESS PARK, PRIORY WAY
INDUSTRIAL ESTATE, TAUNTON
TA1 2BB

PURPOSE OF REPORT

To consider whether it is expedient to serve an Enforcement Notice requiring the breach of condition 10 of planning permission 38/13/0267 to cease.

RECOMMENDATION

The Solicitor of the Council be authorised to service an Enforcement Notice and take prosecution action subject to sufficient evidence being obtained that the notice has not been complied with.

The Enforcement Notice shall require:

- a) Cease the breach of condition 10 of planning permission 38/13/0267 which restricts more than 20% of the internal net floor area of the store to be used for the sale of clothing and footwear.
- b) Remove clothing and footwear in excess of the permitted 20% from the net floor area of the retail store.

Time for compliance

With regards to a) above 3 months from the date on which the notice takes effect.

With regards to b) above 3 months from the date on which the notice takes effect.

SITE DESCRIPTION

The site comprises retail units numbers 2 & 3 St Johns Retail Park, situated between Toneway and the railway line. To the front of the units is a large car parking area which also serves the retail unit number 1 St Johns Retail Park opposite. To the rear of the units there is a small servicing and delivery area. To the south-west of the unit is Priory Way industrial estate which comprises a number of small business units. Access is off a one way system off Toneway. The 2 units have gross floor area of 2989 square meters, comprising ground floor and mezzanine level.

BACKGROUND

A written complaint was made to the Council on 13 January 2015 alleging that the amount of floor space that was devoted to clothing and footwear was more than the 20% allowed by condition 10 of 38/13/0267.

The site was inspected and discussions held with the occupier's agent. Given the difficulties with calculating the division of floor space the agent was requested to prepare a plan of the floor area. There has been considerable discussion with the agent regarding the method of measuring the amount of floor area and how the 20% requirement was calculated. Two plans were submitted to the Council showing either 12% of 31% floor area (depending on the method of measurement employed) given over to clothing and footwear. Your officers opinion is that the level is currently well in excess of 30%.

It is acknowledged that the method of interpreting the floor area is not clear, however your officers are satisfied that a breach existed and the occupiers were instructed to reduce the amount of floor space to comply with the 20% level. The occupier's agent still asserts that the method of calculation is not clear and the site has not been altered to comply.

Authority is sought to serve an Enforcement Notice (rather than a Breach of Condition Notice) to require the store to alter its layout to comply with the 20% requirement. A breach of Condition notice has no right of appeal, therefore any interpretation of the condition would only occur via prosecution proceedings in the Magistrates Court. The issuing of an (appealable) Enforcement Notice will ensure that the interpretation of the condition is determined by a planning inspector. It is believed that the Planning Inspectorate is the more appropriate place to consider the interpretation of the condition and will result in a more robust decision.

DESCRIPTION OF BREACH OF PLANNING CONTROL

Breach of condition 10 of 38/13/0267, more than 20% of net floor area for the sale of clothing and footwear directly associated with the range of goods permitted.

RELEVANT PLANNING HISTORY

38/98/0441 - Demolition of buildings and redevelopment to provide 4,180 sq m of non-food retail warehousing with associated car parking, cycle provision and servicing at St Johns garden centre, Toneway.

38/13/0265 - Installation of a mezzanine floor extending to 1,115 sqm and external alterations associated with the amalgamation of units 2 and 3 St Johns retail park, Priory Way, Taunton

38/13/0267 - Variation of condition no. 24 of application 38/98/0441 to allow for occupation of the vacant units by Go Outdoors, a camping and leisure goods retailer at units 2 and 3 St Johns retail park, Priory Way, Taunton

E/0006/38/15 – Breach of planning condition restricting clothing sales to 20% of retail space.

RELEVANT PLANNING POLICES

National Planning Policy Framework

Para 207 – Enforcement

CP2 - TD CORE STRATEGY - ECONOMY,

CP3 - TD CORE STRATEGY - TOWN AND OTHER CENTRES,
SP1 - TD CORE STRATEGY SUSTAINABLE DEVELOPMENT LOCATIONS,
SP2 - TD CORE STRATEGY - REALISING THE VISION FOR TAUNTON,
DM1 - TD CORE STRATEGY - GENERAL REQUIREMENTS,
TTCAP - Taunton Town Centre Area Action Plan,

DETERMINING ISSUES AND CONSIDERATIONS

The primary issue relating to this breach of planning control is the planning assessment that led to the imposition of the condition restricting clothing and footwear to 20%.

In considering the planning application to vary the condition and allow Go Outdoors onto the site the planning officer stated the following:

“The existing units are currently vacant and are not contributing to the economic welfare Taunton as a whole. The current planning permission for the site allows camping and caravan in goods, cycles, cycle goods, parts equipment, accessories and slightly related goods to be sold. However, outdoor activity pursuit equipment and accessories including clothing and footwear cannot be sold. This application is for a variation of condition to allow clothing and footwear to be sold, thereby enabling Go Outdoors to sell their full range of products. The application has been submitted alongside an application for a mezzanine floor, extending to 1115 m², and external alterations to the building to enable the amalgamation of the 2 units to form one large store.

Go Outdoors is a large national retail company which also operates an Internet shopping facility, including “click and collect”. ‘Go Outdoors’ stores accommodate large display and demonstration areas for tents and camping equipment and furniture which allows customers to view the products in a camp site setting. Approximately 68% of a typical store layout is devoted to the sale and display of tents, camping equipments, accessories and sleeping equipment. Typically 18-20% of floor space is devoted to specialist outdoor clothing such as wind/ waterproof jackets, thermal tops, walking and climbing boots and associated hats and gloves. They state that the range of clothing is different to the “outdoor fashion clothing and boots” traditionally sold in town centre. However, concern has been raised from consultees that the sale of clothing from the store would be detrimental to the vitality and viability of Taunton town centre. Furthermore, there is also concern that by widening the types of goods to be sold to include clothing of footwear would set an undesirable precedent for the sale of clothing and footwear in the other “out of centre” retail parks in Taunton.

It is acknowledged that the business model of Go Outdoors is atypical in that they require a very large area to display some of their goods. The large display areas required mean that Go Outdoors find it difficult to source suitable units to accommodate within town centres. The retail statement submitted with the application goes through the sequential approach in considering the availability of sequentially preferable sites within the town centre. It is considered that although the regeneration of Taunton town centre would facilitate provision of new retail areas there are currently no suitable sites available which meet the size requirements of Go Outdoors. A view

needs to be taken whether any new sites would come forward within a reasonable timeframe that would suit the needs of the applicant. It is also appropriate to consider whether there is scope for flexibility in the format and/or scale of the proposal and what contribution more central sites are able to make, either individually or collectively, to meet the same requirements as the application is intended to meet.

With the units already having a retail use this application is concerned with the impact of the sale of clothing and footwear upon the town centre. The applicant is prepared to work within the confines of a revised condition restricting the sale of clothing and footwear to items in connection with specific outdoor activities and pursuits. Whilst there may be some trade drawn away from certain stores within the town centre that also cater for clothing and footwear for these activities the majority of retail units in the town centre would not be affected. The impact upon the viability and vitality of the town centre is therefore not likely to be significant. Consideration must also be given to the economic benefits of the proposal, including the provision of 50 jobs. The presence of a national retail store, which is currently not provided for in Taunton, would add to the towns presence and is likely to draw people to Taunton instead of them going further afield to Bristol or Exeter.

In summary, the proposal would bring economic benefit to Taunton despite the sale of some clothing and footwear outside of the town centre. The proposed variation of condition is considered acceptable provided there are strict limits on the types of clothing and footwear that could be sold and the amount of floor space that could be used to sell them, thus reducing and minimising any adverse impact upon the viability and vitality of Taunton town centre. It is considered essential to restrict the sale of clothing and footwear to be in connection with outdoor activities and pursuits listed and to restrict the total the amount of floor area that can be used for the sale of clothing and footwear to a maximum of 20%. This will prevent a larger proportion of clothing and footwear from being sold and prevent other users from operating within the site selling a wider range of clothing and footwear which could be detrimental to the vitality and viability of Taunton town centre.”

The assessment of the planning application was centred on strictly limiting the amount of floor space that would be devoted to clothing and footwear.

The noncompliance with the condition in question undermines the basis upon which permission was given. The breach of planning control is contrary to the plan policies and it is considered that the need for enforcement action exists.

In preparing this report the Enforcement Officer has considered fully the Implications and requirements of the Human Rights Act 1998

PLANNING OFFICER:

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