
HAYLE 05/P/1410/FD MARKS AND SPENCER PLC

VARIATION OF CONDITION 2 OF WEST CORNWALL RETAIL PARK
05/P/0034/F TO ALLOW LIMITED MARSH LANE
ANCILLARY FOOD SALES HAYLE

Head No. 85343 Grid Ref. S575 W383 Officer MR P EDGECOMBE

MINOR DEVELOPMENT Target Date 11 JANUARY 2006

EXECUTIVE SUMMARY:

This full application proposes the variation of condition 2 of the approved application 05/P/0034/F, which was the planning permission that allowed the development of the retail park by the roundabout at Marsh Lane, Hayle. The condition restricted the sale of goods from the development to non-food. It is proposed that part of one unit, identified for occupation by Marks and Spencers plc would be allowed to use part of the floor space to sell food. **Planning permission is recommended.**

TOWN COUNCIL COMMENTS:

Hayle Town Council:
'No objection - support the proposal'

RELEVANT PLANNING HISTORY:

There is a history of retail planning permissions for this site. An appeal was allowed in 1986 for a retail warehouse, with sales restricted, the floor area being 2 x 2322sq m. This permission was renewed in 1991 and 1994.

In 1996, planning permission was approved for a tourist/retail park, including a restaurant, retail craft unit, weaving demonstration area and Tourist Information Centre. A further application to allow the implementation of the permission by the construction of the access road junction was approved in 2000. The Council accepted that this amounted to a material commencement of the 1996 permission.

On 5 April 2005 planning permission reference 05/P/0034 was granted. It allowed the development of a retail park including Tourist Information Centre, associated car parking and highway works and the construction of a replacement rugby club gate house, gates and fence, the existence of the extant 1996 permission being critical to this decision. The planning permission has been implemented and development is continuing at present.

On 15 November 2005 planning permission was granted that allowed the variation of condition 6 of permission 05/P/0034, which allowed an increase of internal retail floorspace within the buildings approved under that earlier planning permission, with the use of a significant part of the increased area being controlled to the effect that general sales use is restricted.

CONSTRAINTS:

None

DEVELOPMENT PLAN POLICY:

Regional Planning Guidance for the South West: Policies: EC1, EC3
Cornwall Structure Plan 2004: Policies: 3, 12, 14, 25, 28
Penwith Local Plan 2004: Policies: TV-1, TV-16, TV-17, TP-12

DESCRIPTION OF THE PROPOSAL:

This full application proposes the variation of condition 2 of 05/P/0034/F. The condition stated:

'No food shall be retailed from the site apart from confectionery and that for consumption on the site' The reason for the condition was 'To safeguard the vitality and viability of Hayle Town Centre',

Thus if planning permission is granted, food sales would be allowed. The proposal does not include an increase in the total retail floorspace, but instead proposes that food is sold from part of the approved non-food retail sales area. Of the total retail floor space (net) approved for units C and D, which the company will occupy as one unit, it is proposed that 1,115sq m remains non-food, with the remaining 465 sq m (2,229 sq m and 558 sq m gross respectively) being given over to food sales and located in one area at the southern end of the unit that would be occupied by Marks and Spencers plc.

In support of their application, the applicant has stated that the '...Food Hall is not a stand-alone proposal, but is intrinsically linked to the Marks & Spencer non-food offer and would fully integrate with the rest of the store with no sub-division...'. They identify what they consider to be the following benefits: '...Improve the food retailing provision in Penwith by offering consumers a high quality food choice; provide a comprehensive offering to Marks & Spencers customers; help retain shoppers within the District and attract other shoppers in to the towns; offer local people well-paid and rewarding employment in retail; present an accessible site by a choice of means of transport, leading to a reduction in the need to travel to distant centres...'

CONSULTATIONS:

The County Council's Assistant Director: Spatial Planning considers the proposal to be contrary to development plan policy and is of the opinion that if the Council were minded to grant planning permission, the proposal should be referred to the Deputy Prime Minister as a major departure from the development plan (See Appendix A)

Initially both the Highways Agency and the County Surveyor objected to the proposal, with the Highways Agency issuing a Direction which stopped this Council granting planning permission. The grounds for objection were based on the lack of information in respect of the demand for parking spaces and any additional traffic using the approach roads and junctions. The applicant then submitted further information and the Highways Agency now has no objection to the proposal.

The County Surveyor still has some concerns, particularly in relation to the car parking provision which he feels will be inadequate to cater for the additional traffic that he considers would be generated by the proposal. He states the whole retail park of 7384 sq m actually requires 296 spaces (317 with the food retail) but 200 spaces were accepted due to cycling/pedestrian measures and the proposed land use. This is now a shortfall of 117 parking spaces...'. He goes on to say '...Given the Highways Agency's acceptance of the proposal, clearly a reason for refusal on traffic queuing from the development or parking on the adjacent road network is not defensible, but I have real concerns regarding traffic accumulation...'. He asks that either planning permission is granted for 1 year only '...to allow the impact to be assessed...', or that an addition is made to the Travel Plan that is required by a condition attached to the planning permission for the retail development of the site whereby some form of traffic

measure would be provided if parking problems arise. In addition the County Surveyor asks that there should '...be some form of parking enforcement within the site to ensure maximum efficiency use the limited spaces....'. He asks that any proposed system should be agreed with this Council in consultation with him.

REPRESENTATIONS

24 letters/e-mails of support has been received from the general public.

Hayle Area Forum advised that 16 of their members commented to the Forum, expressing their support of the planning application.

Hayle Residents Association have written in support of the proposal, saying they have undertaken a mini survey of people aged 15 to 89 years old (no numbers specified) and found that all spoke in favour.

Hayle Chamber of Commerce has written and has expressed its strong support for the proposal.

PLANNING ASSESSMENT

In considering the planning merits of this proposal it is necessary to divorce the intended tenant from the use, in respect of this retail unit. Although the intended tenant is to be Mark and Spencers plc, Members must consider the proposal on the basis of the retail unit being occupied by any retail business, for it is the use and not the operator that is material to this planning application.

Policy

It will be noted above (and in **Appendices A and B attached**) that the County Council's Assistant Director: Spatial Planning considers the proposal to be contrary to development plan policy. He cites (in **Appendix A**) Cornwall Structure Plan policies 14 and 28 as the relevant policies. Policy 14 is the policy that aims to protect the vitality of town centres by giving priority to retail development in locations that are in or adjoining town centres and only allowing retail development elsewhere where the needs could not reasonably be expected to be met in adjoining town centres, having taken account of existing provision available and further development opportunities. Thus the policy adopts a sequential approach to identifying retail sites. Policy 28 concerns accessibility saying that consideration should be given to the overall impact on travel patterns and the availability of alternative locations for development in order to minimise the need to travel and to increase choice of travel by walking, cycling and public transport.

Policies TV-16 and TV-17 of the Penwith Local Plan 2004 are also relevant. Policy TV-16 also adopts a sequential approach for locating major retail developments, saying they should be located in town centres and that any edge of town centre development will only be allowed if it cannot be accommodated in the centre. Out of town sites will not be permitted unless all the sites in the town centres and on the edge of town centres have been shown to be unsuitable. Policy TV-17 refers to this sequential approach and goes further to say if none of the sites in the sequence can be identified and there is a need for the type of retail outlet proposed, it can be allowed provided it would not impact adversely on the vitality and viability of the town centres, is readily accessible and is compatible with its surroundings and will not materially affect the viability of village of neighbourhood shops.

In considering the above policies, one must weigh their relevance to the current proposal. It will be noted that the County Council's Assistant Director: Spatial Planning considers that the policies are

highly relevant and calls for a full assessment of the issues raised in the policies because the combination of food and non-food retailing has not been addressed. I am of the opinion that had the proposed development concerned **new** or a **significant amount of additional** retail floor space, the policies quoted above would undoubtedly be highly relevant and would therefore have been given considerable weight. In this instance, however, it is proposed that approximately one third of the approved retail floor space of one of a number of retail units on the approved new retail park is given over to food sales rather than non-food. Therefore, it is not a matter of considering the principle of retail development per se, but rather the type of sales to be undertaken. The aforementioned policies are concerned with the principle of development. Thus the weight given to these policies must be limited significantly in this instance.

Attached in **Appendix C** is a copy of a consultants report that was commissioned by this Council. As well as considering the proposal against local, regional and national policies, the report addresses the comments of the County Council's Assistant Director: Spatial Planning, wherein the conclusion is that the County Council's Assistant Director: has adopted the wrong approach in considering the proposal and that the planning application can be considered on its merits (paragraphs 6.17 to 6.22 of **Appendix C**).

In conclusion, I do not consider that the proposed development is in conflict with the material policies in the Development Plan sufficiently, that would justify a refusal.

Highway

Given that the Highways Agency has no objection to the proposal, it is reasonable to consider that the proposed development will not prejudice the safe and free flow of traffic on the trunk road (A30).

The County Surveyor has nevertheless expressed concern about traffic accumulation, citing parking as a particular problem and identifying a need for an additional 21 spaces as a direct result of the food sales, as proposed. In response the applicant has indicated a willingness to provide additional measures in the travel plan that was required as part of the original (2005) permission which this application seeks to vary in respect of condition 2 that was attached thereto. At the time of writing the Council has received written confirmation of the measures to be proposed and those have been referred to the County Surveyor for his comments. I shall report further to your meeting.

Visual Amenity

The proposed development does not propose any physical alterations to the external appearance of the approved retail development. Thus it is not considered that the proposed development would have any detrimental effect on visual amenity.

Residential Amenity

There are no residential properties within close proximity of the proposed development and therefore it is not considered that the proposal will have any detrimental effects on local resident's amenity.

Other Material Considerations

A material consideration is the status of the planning application, particularly given the opinion of the County Council's Assistant Director: Spatial Planning that the application should not be considered separately for the whole development (i.e. that we should not consider the application just with regard to the food sales, but that the whole principle of the retail development of the site should be considered anew, given that food is now proposed to be sold from

the site). I am satisfied that this Council can consider the application as submitted. I am led to that conclusion by the case of Regina v Coventry City Council ex parte Arrowcroft Group plc (2000) which concluded that provided the planning application to vary a condition is not one that could be considered as 'a fundamental alteration to the proposal put forward in the original application' then the local planning authority may consider that application and look at the condition. The proposed retail floor space for food (465 sq m) would comprise about 7% of the overall floorspace for the development as a whole and the conclusion of the retail consultant employed by this Council is that, having considered the proposal fully, including its impact on the local retail centres and taken into account the comments of the County Council's Assistant Director: Spatial Planning and Government guidance on retail development, the proposal does not amount to a material change in the nature of the development (**Appendix C - paragraphs 7.3 to 7.5**). Thus I am of the opinion that the proposal cannot be considered to be a 'fundamental alteration' to the original planning permission granted in 2005 for the retail development as a whole and it is appropriate for this Council to determine the planning application on its merits.

CONCLUSION

It is considered that the proposed development is not in material conflict to the development plan policies, and, subject to the comments of the County Surveyor, it is not detrimental to the free and safe flow of traffic to an extent that would justify a refusal of planning permission. Further, the proposal will not harm visual amenity, nor the amenities of neighbours. In the circumstances, it is considered that planning permission should be granted.

***** RECOMMEND : CONDITIONAL APPROVAL**

CONDITIONS

- (1) Statutory
- (2) With the exception of Unit C/D shown on drawing 2005/039P-01 no other unit or part of a unit shall be used for the sale of food except the sale of confectionery, and that for consumption on the site, unless planning permission has been granted by the Local Planning Authority made in that behalf. Not more than 558 sq.m of sales area of unit C/D shall be used for the retail sale of food unless otherwise agreed in writing by the Local Planning Authority.
- (3) In the event of Unit C/D being partly occupied for food sales in accordance with the terms of this planning permission, there will be no subdivision of Unit C/D to create a separate food unit.
- (4) Before any retail trading is commenced on the site, the measures to mitigate flood risk, as approved pursuant to Condition 12 attached to planning permission reference 05/P/0034, shall be provided.
- (5) Before the development is first used or occupied, the drainage works as approved pursuant to Condition 14 of planning permission 05/P/0034/F shall be completed.
- (6) Prior to any retail trading on the site, the roundabout in Marsh Lane shall be provided in accordance with the details approved pursuant Condition 7 attached to planning permission reference 05/P/0034.
- (7) Before retail trading commences on the site, landscaping of the site shall be undertaken in accordance with the details that were approved pursuant to Condition 10 attached to planning permission reference 05/P/0034. Any trees, shrubs or grass that die, become seriously diseased or are removed within 3 years from the date of the planting shall be replaced with a similar plant during the first planting season of its removal.

- (8) Before any of the development hereby permitted is brought into use, suitable parking spaces for use in conjunction therewith shall be constructed to the satisfaction of the Local Planning Authority in the positions indicated on the approved plan 33137 no. 10E for planning permission 05/P/0034/F and the said parking spaces shall not thereafter be obstructed or used for any other purpose.
- (9) Prior to the commencement of trading, all pedestrian and cycle track entrances to the site indicated on approved drawing 33137 no. 10E shall be provided.
- (10) The travel plan initiatives identified in the submitted Transport Assessment (Cameron Taylor Bedford) shall be implemented within two months of the commencement of retail trading and shall thereafter be maintained and only varied with the express consent of the Local Planning Authority.
- (11) No structures shall be erected (including gates, walls or fences), materials stored or ground levels raised within that area shown to be on floodplain on Drawing No. Figure 6, Project No. 04-2612 dated 3rd March 2005 of the Flood Risk Assessment (land below 6.3m AOD) and/or 7 metres of the top of any bank of the watercourse without the prior written consent of the Local Planning Authority.

REASONS

- (1) Statutory
- (2) To define the terms under which planning permission is granted and to ensure that the extent of the food sales area is restricted in the interest of retaining predominantly non-food sales from the site so that the vitality and viability of the existing centres of retail is not harmed.
- (3) To ensure that the food sales remains ancillary to the larger non-food sales area of one retail unit and that a separate food outlet is not created, in the interests of ensuring that the retail park development remains predominantly non-food so that the vitality and viability of the existing centres of retail is not harmed.
- (4) To ensure safe passage from the building during times of flood.
- (5) To prevent the increased risk of flooding by ensuring the provision of satisfactory means of surface water disposal.
- (6) To safeguard satisfactory access to the site in the interests of highway safety.
- (7) In the interests of visual amenity.
- (8) To ensure adequate parking facilities off the adjoining highway.
- (9) To ensure adequate provision is made for cyclists and pedestrians using the site.
- (10) To ensure that adequate provision is made for non-car borne modes of travel.
- (11) To maintain flood storage, overland flood routes or improvement access to the watercourse for maintenance.

REASON FOR APPROVAL

The proposed development is not in material conflict with the development plan policies, nor is it detrimental to the free and safe flow of traffic, to an extent that would justify a refusal of planning permission. Further, the proposal will not harm visual amenity, nor the amenities of neighbours. In the circumstances, it is considered that development is in accordance with the development plan and there are no material considerations that outweigh the decision to grant planning permission.



Mr A England
Sustainable Development And Design Manager
Penwith District Council
Municipal Offices
St Clare
Penzance
TR18 3QW

Please ask for: Mr Tim Horwood
Tel: 01872 322635

My Ref: P/05/P/1410
Your Ref: 05/P/1410

Date: 30 January 2006

Dear Mr England

PLANNING AND COOMPULSORY ACT 2004
TOWN AND COUNTRY PLANNING ACT, 1990
LOCAL GOVERNMENT ACT, 1972
LOCAL GOVERNMENT PLANNING AND LAND ACT, 1980

Variation of condition 2 on 05/P/0034/F to allow limited ancillary food sales
Land Off Marsh Lane Hayle Cornwall
Applicant: Marks & Spencer Plc

Thank you for your consultation with the County Council as the County Planning Authority received on 28 November 2005.

The proposal to locate a Marks and Spencer Store on the West Cornwall Retail Park at Hayle raises very significant strategic policy issues in respect of both the retail and transport accessibility matters. A store of this type is likely to significant change retail and travel for shopping purposes.

The key policy matters to be addressed to satisfy national guidance, the regional strategy and the structure plan are

- The need for the development
- The sequential approach
- The impact on vitality and viability of existing centres (including the potential impact on the regeneration focus in Camborne-Pool-Redruth and in Hayle harbour)
- The impact on travel patterns and accessibility by non car modes

A full assessment of the above issues is necessary. The combination of food and non- food retailing on this site have not been addressed. The case for the development is based on the importance and significance to Penwith of a Marks and Spencer Store – consequently it is the impact of a Marks and Spencer store in its entirety, including both food and non food that should be addressed.

Unfortunately the accompanying planning statement by RPS Planning does not adequately address these matters. Instead it seeks to make a case that only the food element of the new

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proposal should be considered and in view of the scale argues that even this does not require a full assessment.

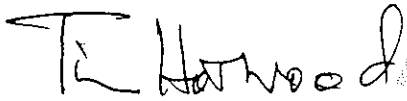
I understand you have appointed your own retail consultants to undertake a full assessment. Closely related to the retail implications of the proposal are the changes in travel patterns that would result. Again a Transport Assessment is required to assess the specific impact of a Marks and Spencer Store – reliance on previous assessments is inadequate.

Subject to considering more detailed evidence the proposal is in significant conflict with Structure Plan policy 14 and 28, RSS Policy EC6 and national planning guidance for the following reasons

- There is inadequate justification of a retail need that could not be met in or adjoining an existing centre
- A sequential approach has not been followed
- An adverse impact on the vitality and viability of other centres may result and the proposal is likely to divert investment from the regeneration focus in Camborne-Pool-Redruth and Hayle
- The out of town location would not facilitate accessibility by non car modes or encourage linked trips and the likely draw of Marks and Spencer is likely to result in an overall increase in car travel

If the council is minded to grant consent the proposal should first be referred to the Deputy Prime Minister as a major departure from the development plan.

Yours sincerely,



 Mark Jones
Assistant Director: Spatial Planning

sst.rtf

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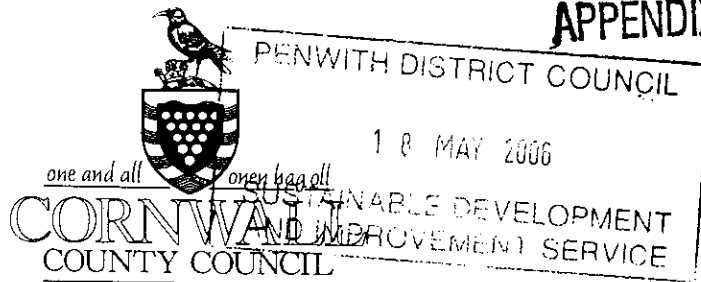
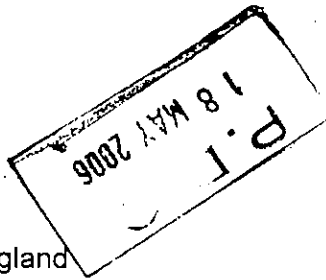
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Your ref: 05/P/1410

My ref:

Direct Line: 01872 322635

Email: thorwood@cornwall.gov.uk

Date: 16 May 2006

Dear Andy

Further to our meeting last week I have considered further the second draft of the retail assessment undertaken by Colliers CRE. In respect of the issues raised in our letter of 30th January, 2006 the revision clearly does not take forward the scope of the retail assessment in the way we had suggested ie it does not provide an assessment of the impact of a Marks and Spencer store trading in this location.

The consultants take the view that this is unnecessary given the existing consent but give little justification to support that view.

In very straightforward terms this application should be considered against any changes in circumstances since the condition was imposed. There is no change in policy since the condition was imposed on the planning permission in 2005. This condition and those on earlier consents is the key control to ensure development is consistent with national and development plan policies to protect and enhance town centres.

The only change in circumstance is the potential interest of Marks and Spencer in this development. If weight is to be given to the potential benefits of Marks and Spencer's then these need to be demonstrated by considering the impact on retailing and transport over the area of influence. As previously advised these effects have not been examined in connection with either the current application or previous planning permissions.

Taken by itself the food element proposed is unlikely to adversely affect town centres – equally in policy terms town centres are perfectly able to accommodate this scale of retail provision and should be afforded priority in line with the sequential approach.

The argument that Marks and Spencer's should not be expected to disaggregate their food and non food provision is reasonable enough but this is not an argument to remove a condition designed to restrict off centre retailing to types of retailing that could not be readily met in existing town centres. The original consent on this site was to accommodate bulky goods retailing that could not be satisfactorily provide in town centres.

Overall therefore our advice is that there are no changes in circumstances that suggest this condition should now be removed. If the case for its removal rests with the interest of Marks and Spencer then it is necessary to consider the full consequences of any decision.. The impact of the

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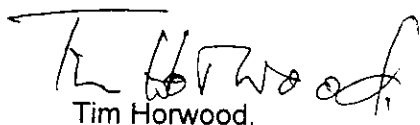


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food element should be considered in the context of an out of town development with Marks and Spencer. The "fall back" position is a development without Marks and Spencer's (given the indication that a food element is a pre-requisite for their development). The difference between these two trading positions and their potential effects on town centres and conformity with existing policies is material to this decision.

It is apparent that you and your consultants have a different view on the scope of consideration necessary – and you may well no doubt wish to take a legal opinion also. There has - as I'm sure you are aware – been a considerable amount of interest on this matter in the local media and in some cases a misunderstanding or misinterpretation of the County Council's position. I would like to propose a further meeting to consider how the application is to be progressed at which our Economy Portfolio Holder Andrew Mitchell has requested attendance.

Your sincerely,



Tim Horwood.

Policy Manager