
NORTH AYRSHIRE COUNCIL

26th September 2018

Planning Committee

Locality	Irvine
Reference	18/00655/PP
Application Registered	26th July 2018
Decision Due	26th September 2018
Ward	Irvine South

Recommendation	Approved with no Conditions
-----------------------	-----------------------------

Location	Riverway Retail Park New Street Irvine Ayrshire
-----------------	---

Applicant	M & G Real Estate
------------------	-------------------

Proposal	Section 42 planning application for non-compliance with planning conditions 4, 5 and 6 of planning permission CH/01/88/0546/L
-----------------	---

1. Description

Planning permission is sought for non-compliance with conditions 4, 5 and 6 attached to outline planning permission CH/01/88/0546/L in order to enable a discount food retailer (The Food Warehouse) to move into Unit 3.

It is intended that Sports Direct would relocate from Unit 3 to currently vacant Unit 1, although this is not dependent on the outcome of the current application. Each of these units are around the same size (approximately 10,000 square feet or 929 square metres). Currently, both Units 1 and 3 are restricted to non-food retail by a condition of the original planning permission. Both units are in the same 'parade' and are approximately 45 metres apart. There are two smaller units each of around 5,000 square feet (465 sq.m) in between. These units were formed by sub-dividing a larger 10,000 square feet unit.

Unit 1 has been vacant for around 3 months following the closure of Next Clearance. At present, this is the only vacant unit within the original phase of Riverway (although there are two vacant units in the second phase, adjacent to Tesco Extra). The conditions attached to the 1988 permission, which relate to the first 7 units running from north to south are reproduced below (NB an eighth unit in this group has recently been formed through sub-division of a larger unit):

C4 - that the proposed development shall be used for non-food retail businesses and for no other purpose.

C5 - that the gross floorspace of the development shall not exceed 90,000 square feet.

C6 - that all retail sales shall be located on the ground floor of any unit.

In the 1988 decision notice, the reason given for conditions 4 and 5 were "to restrict the development to the terms of its justification/special need." The reason for condition 6 was "to meet the requirement of Health and Safety Executive."

Over the thirty years since outline planning permission was granted for Riverway Retail Park, and following the development taking place during 1989/90, there have been a number of applications submitted for the variation of conditions attached to the first phase of development, all of which have been granted.

Following the completion of the original phase of development, consent was sought to expand Riverway in the late 1990s, which included an anchor superstore, Tesco Extra. During the first decade of the 2000s, consents were granted to relax the restrictions placed on the sale of non-food items in some of the original units, helping to attract new tenants such as Marks and Spencer and Lidl (now Home Bargains).

Over time, Riverway Retail Park has grown and evolved significantly, and now offers a diverse range of comparison goods including clothing, sportswear, DIY and gardening products, electrical and electronic goods as well as food and non-food convenience goods. The park also offers a range of restaurants and eating places.

A supporting statement has been provided by the applicant's agent, highlighting the rationale for the proposed change to the historic conditions.

In terms of the adopted Local Development Plan (LDP), Riverway Retail Park is recognised as a commercial centre for comparison goods retailing. The relevant LDP policies are TC 3 and the General Policy.

2. Consultations and Representations

Neighbour notification was undertaken in accordance with statutory procedures. No representations were received. No consultations were required.

3. Analysis

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be granted."

The main determining issue in this case is whether the proposed modifications would conflict with the relevant LDP policy and relevant criteria of the General policy.

Circular 4/1998 sets out the tests for planning conditions, as follows:

- Need for a Condition
- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

Policy TC 3 of the adopted Local Development Plan (LDP) restricts uses at Riverway Retail Park to comparison goods, secondary convenience goods and ancillary other commercial development.

The application before the planning authority proposes non-compliance with conditions attached to a grant of outline planning permission dating from 1988. It is noted that LDP Policy TC 3 supports the use of the retail park at Riverway for both comparison and convenience goods, which is consistent with the long established pattern of use at the site. As noted above, there is already a range of food and non-food products on offer at Riverway, as well as a large anchor superstore (food and non-food) within the second phase of the development. The mix of tenants in the retail park is affected by many economic factors, and in order to remain viable, there have been numerous planning applications made over the years to relax the implications of the 'non-food' limitation that was applied to the first phase in 1988. This has included the introduction of food retailers and comparison goods retailers within the phase 1 area, the effect of which has increased footfall between Rivergate and Riverway.

The Council's overall policy intention is to safeguard town centres from adverse effects caused by out-of-centre retail developments in line with the 'town centre first' principle. As such, it is considered that Riverway has, for some considerable time, functioned as an extension of Irvine town centre and that it offers a range of goods from a modern format that is complementary to the older parts of the centre. As retail patterns continue to evolve and change in response to a variety of new pressures which were not envisaged thirty years ago, it is considered that the 1988 conditions are no longer relevant.

Therefore, in applying the Circular 4/1998 tests for conditions to the current proposal, it is considered that the 1988 conditions are no longer needed, relevant, precise nor reasonable. As noted above, the Council has granted every application for relaxing conditions 4, 5 and 6 on an individual unit basis, introducing food retailers as well as comparison retailers, meaning that there is little, if any, land use planning rationale for continuing to operate an historic restriction on the remaining units in the original phase.

The relaxation on the historic restrictions on the remainder of the first phase at Riverway would enable occupiers to move more freely into the most appropriate unit for their operation, thus providing the owners of the park a more rational basis to organise tenants based on footfall patterns or unit size rather than simply the availability of an unexpected vacancy. This is demonstrated in the current proposal through the intention to relocate Sports Direct from its current location to the former Next Clearance Unit, thus creating some physical separation between an existing and proposed food outlet, for footfall reasons. It is considered that providing such flexibility within the retail park would be in the interests of its long term viability without harming the wider town centre of Irvine.

Similarly, condition 6, which placed a limit on the size of each retail unit for "health and safety" reasons is thought to be related to the consultation zone around the former chipboard factory, the site of which was subsequently redeveloped as the second phase of the retail park. It is considered that the rationale for applying an upper limit to the retail units in phase 1 is no longer relevant for health and safety reasons. As such, condition 6 is not necessary.

In summary, the proposal for non-compliance with conditions 4, 5 and 6 is considered acceptable in terms of Policy TC 3.

In terms of the General Policy, criteria (b) and (d) are relevant.

In terms of (b), the proposal is satisfactory in that the non-compliance with the conditions would have no adverse impact on the amenity of the area. The proposal also has the potential to add positively to the vitality and viability of the town centre by attracting a wide range of tenants into the retail park.

In terms of (d), it is considered that the additional floor area which would be formed is not significant in terms of traffic generation and the availability of parking spaces. The owner of the retail park has placed a time limit on car parking which ensures that there is a turnover of spaces throughout the day. In addition, the nature of the retail park is such that customers will typically spend a relatively short part of the day there. It is not anticipated that this pattern of use would change through the removal of the historic conditions.

There are no other material considerations. Accordingly, it is considered that planning permission could be granted, meaning that the restrictive effects of conditions 4, 5 and 6 from the 1988 outline planning permission would no longer apply. This would accord with the provisions of the current LDP.

4. Full Recommendation

Approved with no Conditions



Karen Yeomans
Executive Director
Economy & Communities

For further information please contact Mr A Hume Planning Officer on 01294 324318.

Appendix 1 – Location Plan

DO NOT SCALE Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. North Ayrshire Council Licence Number 100023393.

