

Variation of Planning Obligation Relating to Application D12001 to Include Additional use Inserted Under Schedule II of the Minute of Agreement (Reference Planning Application 22/00472/FULL)

KEY INFORMATION

Ward Lochee

Address
Unit A1
Kingsway West Retail Park
467 Clepington Road
Dundee

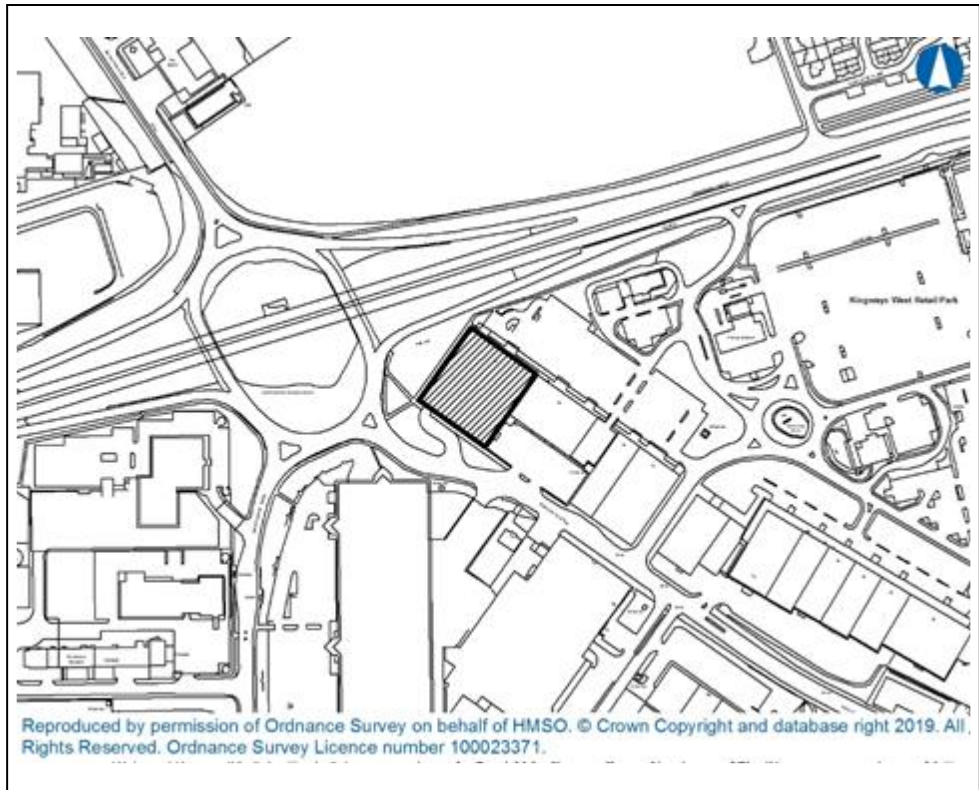
Applicant
Kingsway West S.a.r.l
14-16 Avenue Pasteur
Luxembourg
L2310

Agent
Shepherd & Wedderburn

Registered 23 Aug 2022

Report by Head of Planning & Economic Development

Contact: Craig Swankie



SUMMARY OF REPORT

- The application is for the modification of a S50 Agreement to include an additional use under Schedule II of the Minute of Agreement relating to land at Kingsway West Retail Park.
- The additional use is a multi-use activity leisure centre (Class 11) with ancillary cafe/restaurant and licensed bar relating to planning application 22/00472/FULL.
- The proposal satisfies the requirements of Circular 3/2012: Planning Obligations and Good Neighbour Agreements in terms of the modification of Planning Obligations.
- In accordance with Dundee City Council's scheme of delegation, as the application is to modify a planning obligation it is required to be determined by the Planning Committee.
- More details can be found at: <https://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=RH2ERPGC0CU00>.

RECOMMENDATION

It is recommended that this application be **APPROVED** and the S50 Planning Obligation shall have effect subject to the modifications specified in the application.

1 DESCRIPTION OF PROPOSAL

- 1.1 The proposal relates to planning permission D/12001 for demolition of existing buildings and construction of non-food retail stores, fast food takeaway and parking. Planning permission was granted subject to the completion of a Section 50 Agreement. Upon completion of the Section 50 Agreement, planning permission was issued on 7 September 1987.
- 1.2 The Section 50 was entered into between (1) The Tayside Regional Council (Statutory Predecessors of Dundee City Council) and (2) The Scottish Metropolitan Property Plc dated 18 and 23 June 1987 and recorded in the General Register of Sasines for the County of Angus on 26 June 1987.
- 1.3 The purpose of the Section 50 Agreement is to restrict the range of goods and the floor space of the proposed retail stores at Kingsway West Retail Park as approved by planning application ref: D/12001.
- 1.4 The Minute of Agreement was previously amended in January 2021 to allow leisure use, following Committee approval of application 20/00020/MDPO.
- 1.5 The Applicant seeks a further modification of the Minute of Agreement to amend the wording to refer to a more recently approved leisure use in planning permission 22/00472/FULL, under Schedule II of the Minute of Agreement as follows:

“(f) The use authorised by planning application 22/00472/FULL (and only this use and without prejudice to the foregoing generality no other use within Class 11 of the Town and County Planning (Use Classes) (Scotland) order 1997) shall be permitted in Unit A1 only and no other units on the said land bound by this Agreement, which Unit A1 is outlined in red and marked “Unit A1” on the Unit A1 Plan. Unit A1 Plan in this clause means the plan referred to as the Unit A1 Plan annexed and executed as relative hereto.”
- 1.6 Members should note that the current terminology for Section 50 Agreements and Section 75 Agreements is "Planning Obligation" and this report will use the current terminology hereafter.
- 1.7 The applicant has submitted the following in support of the application:
 - Planning Statement;
 - Paper Apart; and
 - Minute of Agreement.



Figure 1 – Section 50 Agreement Subjects

2 SITE DESCRIPTION

- 2.1 The application relates to Unit A1 which is located in the north-west corner of the Kingsway West Retail Park and is immediately adjacent to the A90 Kingsway West.
- 2.2 The footprint of Unit A1 is 3852m² and this is split between the ground floor (3223m²) and mezzanine level (629m²).
- 2.3 The unit was formerly occupied by Toys R Us and has been vacant since April 2018.
- 2.4 The Kingsway West Retail Park includes approximately 22 non-food retail units, restaurant and drive through outlets. A Tesco Extra is located in the north-east of the retail park.
- 2.5 The retail park is located to the immediate south of the A90 Kingsway West. To the west is Clepington Road and to the south and east of the wider retail park are residential properties.



Figure 2 – Photo of Unit A1

3 POLICY BACKGROUND

3.1 The following plans and policies are considered to be of direct relevance:

TAYPlan 2016-2036

Policy 5: Town Centres First

DUNDEE LOCAL DEVELOPMENT PLAN 2019

Policy 7: Tourism and Leisure Developments

Policy 54: Safe and Sustainable Transport

Policy 56: Parking

SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTICES AND CIRCULARS

Circular 3/2012: Planning Obligations and Good Neighbour Agreements

3.2 There are no other plans, policies and non-statutory statements that are considered to be of direct relevance.

4 SITE HISTORY

- 4.1 Planning permission D/12001 granted permission for the demolition of existing buildings and construction of non-food retail stores, fast food takeaway and parking. Planning permission was granted subject to the completion of a Section 50 Agreement. Upon completion of the Section 50 Agreement, permission was issued on 7 September 1987.
- 4.2 Advertisement Consent (04/00208/FUL) for the erection of an illuminated sign was allowed at appeal.
- 4.3 Advertisement Consent (10/00720/ADV) for the erection of signage was allowed at appeal.
- 4.4 Advertisement Consent (11/00682/ADV) for a fascia sign was dismissed at appeal.
- 4.5 Planning permission (13/00404/MDPO) for the proposed modification of Legal Agreement associated with planning application reference D/12001 to permit clothing and footwear to be sold from not more than 1300m² of the sales area of unit 3 was dismissed at appeal.
- 4.6 Planning permission (19/00908/FULL) for the change of use from retail (Class 1) to an adventure play and activity centre (Class 11) with ancillary café and dining area was approved subject to conditions. This planning permission was not implemented.
- 4.7 Planning permission 20/00020/MDPO for the modification of a S50 Agreement to include an additional use (19/00908/FULL) under Schedule II of the Minute of Agreement relating to land at Kingsway West Retail Park was approved. The Minute of Agreement was subsequently amended in January 2021.
- 4.8 Planning application 22/00472/FULL for a change of use from retail (Class 1) to multi-use activity leisure centre (Class 11) with ancillary cafe/restaurant and licensed bar was approved on 6 October 2022.

5 PUBLIC PARTICIPATION

- 5.1 This is not a planning application and does not require to be notified to neighbouring properties.
- 5.2 In accordance with Regulation 5 of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 this Department has notified the parties with an interest in the S50 Obligation identified by the applicant.
- 5.3 No objections or representations have been received from these interested parties.

6 CONSULTATIONS

- 6.1 No party has been consulted on the application. This is in accordance the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010.

7 DETERMINING ISSUES

APPLICANT'S CASE

- 7.1 The proposal relates to planning permission D/12001 for demolition of existing buildings and construction of non-food retail stores, fast food takeaway and parking. Planning permission was granted subject to the completion of a planning obligation. Upon completion of the planning obligation, permission was issued on 7 September 1987.
- 7.2 The planning obligation was entered into between (1) The Tayside Regional Council (Statutory Predecessors of Dundee City Council) and (2) The Scottish Metropolitan Property Plc dated 18 and 23 June 1987 and recorded in the General Register of Sasines for the County of Angus on 26 June 1987.
- 7.3 The purpose of the planning obligation is to restrict the range of goods and the floor space of the proposed retail stores at Kingsway West Retail Park as approved by planning application ref: D/12001.
- 7.4 The Minute of Agreement was previously amended in January 2021, following approval of planning permission 19/00908/FULL for a Change of use from retail (Class 1) to an adventure play and activity centre (Class 11) with ancillary cafe and dining area and a concurrent application to modify the planning obligation (reference 20/00020/MDPO).
- 7.5 The Applicant seeks a further modification of the Minute of Agreement to refer to the most recently approved leisure development, approved by planning application 22/00472/FULL under Schedule II of the Minute of Agreement as follows:
- “(f) The use authorised by planning application 22/00472/FULL (and only this use and without prejudice to the foregoing generality no other use within Class 11 of the Town and County Planning (Use Classes) (Scotland) order 1997) shall be permitted in Unit A1 only and no other units on the said land bound by this Agreement, which Unit A1 is outlined in red and marked “Unit A1” on the Unit A1 Plan. Unit A1 Plan in this clause means the plan referred to as the Unit A1 Plan annexed and executed as relative hereto.”
- 7.6 The supporting documents state that Unit A1 has remained vacant since April 2018 on the departure of the former occupants Toys R Us. The size of the unit means as a result only a

limited number of occupiers are able to occupy the unit and the Current Minute of Agreement places a further use restriction thereby reducing the selection of suitable occupiers.

- 7.7 Planning application 22/00472/FULL sought permission to change the use of Unit A1 from retail (Class 1) to a multi-use activity leisure centre (Class 11) with ancillary cafe/restaurant and licensed bar.
- 7.8 In respect of application 22/00472/FULL, a sequential assessment undertaken by the applicant demonstrated that there are no sequentially preferable sites in the City Centre and District Centres or Leisure Parks. In line with Scottish Planning Policy's "Town Centre First Principle", Kingsway West is a commercial centre and a sequentially preferable location in the Local Development Plan after the City Centre and District Centres and the edge of town centre. The proposal would bring a large, highly visible, vacant unit back into use in a sequentially preferable location and create a complementary use for the wider site. The proposal was approved subject to conditions in accordance with the development plan.

OBSERVATIONS

- 7.9 Proposals to discharge, modify or enter into Planning Obligations should comply with the following five tests in Circular 3/2012: Planning Obligations and Good Neighbour Agreements - necessity, planning purpose, relationship to the development, scale and kind, and reasonableness.
- 7.10 The Council's assessment of this application with regard to the tests required by Circular 3/2012 is as follows:

A - NECESSITY

- 7.11 The Circular is written for the benefit of planning authorities that are considering whether, in order for planning permission to be granted, a planning obligation is required. However, this is an application to modify an existing planning obligation and there is no option to impose a planning condition. Accordingly, a planning obligation remains necessary in this regard in order to ensure that this restriction will bind successors in title and therefore satisfies this test.

B – PLANNING PURPOSE

- 7.12 The Obligation should serve a planning purpose. The purpose of the planning obligation is to restrict the range of goods and the floor space of the proposed retail stores at Kingsway West Retail Park as approved by planning application ref: D/12001 to ensure they do not jeopardise the vitality and viability of the City Centre and District Centres.
- 7.13 The proposed modification to insert an additional use, namely a change of use to a multi-use activity leisure centre (Class 11) with ancillary cafe/restaurant and licensed bar and no other Class 11 Use of the Town and Country Planning (Use Classes) (Scotland) order 1997 in Unit A1 only, ensures the restrictions of the planning obligation remain in place to protect the vitality and viability of the City Centre and District Centres. The proposed change of use is in accordance with the Local Development Plan.
- 7.14 It is considered that the modifications proposed to the obligation would serve a planning purpose and would satisfy this test.

C – RELATIONSHIP TO THE DEVELOPMENT

- 7.15 The Circular requires that Obligations should "relate directly to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area".
- 7.16 The main aim of the goods restrictions imposed by the existing planning obligations associated with Kingsway West Retail Park are to avoid a potentially damaging diversion of expenditure away from the City Centre and District Centres and to ensure that they continue to provide a valuable and accessible service. The proposed modification inserts a restriction on the use of Unit A1 only. It has no wider effect and therefore this test is satisfied.

D – SCALE AND KIND

- 7.17 The scale and kind test require obligations to be proportionate to the scale of the development and to address any objectionable implications of the development itself.
- 7.18 The application seeks a further modification to an existing planning obligation to insert an additional use in Schedule II of the planning obligation. This is to ensure that only the use authorised by planning application 22/00472/FULL shall be permitted and no other uses in Class 11 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 are permitted in Unit A1 only and no other units in the Kingsway West Retail Park.
- 7.19 The Use Classes (Scotland) Order confirms Class 11 uses include cinemas, concert halls, bingo halls, casinos, dance halls, discotheques, skating rinks, swimming baths and gymnasiums. The planning application 22/00472/FULL is for a multi-use activity leisure centre with ancillary cafe/restaurant and licensed bar. The proposed modification would ensure that no other Class 11 use could occupy the unit and therefore prejudice the vitality and viability of the City Centre and District Centres.
- 7.20 The proposed modification is related in scale and kind to the development and meets this test.

E – REASONABLENESS

- 7.21 The Circular requires that the obligation should be reasonable in the particular circumstances of the case. The annex to Circular 1/2010 confirms that external factors affecting the development need to be taken into account when judging whether an obligation remains reasonable.
- 7.22 As outlined previously in the report, the purpose of the planning obligation is to restrict the range of goods and the floor space of the proposed retail stores at Kingsway West Retail Park as approved by planning application ref: D/12001 to ensure they do not jeopardise the vitality and viability of the City Centre and District Centres.
- 7.23 The proposed change of use has been assessed under planning application 22/00472/FULL. The application proposes a broad type of different leisure uses in one building including 29 full-size Tenpin Bowling Lanes. The range of activity-specific uses proposed dictates and limits the scale and type of unit that could be occupied. A sequential assessment undertaken by the applicant demonstrates that there are no sequentially preferable sites in the City Centre and District Centres or Leisure Parks for the proposed use.
- 7.24 Separately, an assessment following the sequential town centre first approach as set out in Scottish Planning Policy recognises that Kingsway West, as a commercial centre identified in the Local Development Plan, is a sequentially preferable location after the City Centre and District Centres and the edge of town centre as identified in the Local Development Plan.

- 7.25 The change of use would bring a large, highly visible, vacant unit within an established retail park back into use and create a complementary use for the wider site. The use is in a location and of a scale which would not significantly alter the existing pattern of footfall in the area. The change of use from Class 1 to Class 11 removes a substantial amount of retail floorspace from Kingsway West, therefore reducing any diversion of retail trade from other centres. It would not therefore individually or cumulatively prejudice the vitality or viability of the City Centre or District Centres. The planning application 22/00472/FULL accords with the development plan.
- 7.26 The Use Classes (Scotland) Order identifies Class 11 uses to include cinemas, concert halls, bingo halls, casinos, dance halls, discotheques, skating rinks, swimming baths and gymnasiums. The proposed modification would ensure that no other Class 11 use would occupy the unit and therefore prejudice the vitality and viability of the City Centre and District Centres.
- 7.27 The proposed modification is reasonable in the particular circumstances of the case and meets this test.
- 7.28 **It is concluded that the proposed modification complies with the 5 tests in Circular 3/2012: Planning Obligations and Good Neighbour Agreements.**

8 CONCLUSION

- 8.1 It is considered that taking into account all the relevant issues above, the Council's stated aims of maintaining the vitality and viability of the City Centre and District Centres would be served by approval of this application and that the planning obligation should continue to have effect with the modification proposed.

9 RECOMMENDATION

- 9.1 It is recommended that this application should be APPROVED and the planning obligation shall have effect subject to the modifications specified in the application.