

# Variation to Goods Range Restriction

## KEY INFORMATION

**Ward** Lochee

**Address**

Former Units 3, 4 and 6  
The Stack Leisure Park  
Harefield Road

**Applicant**

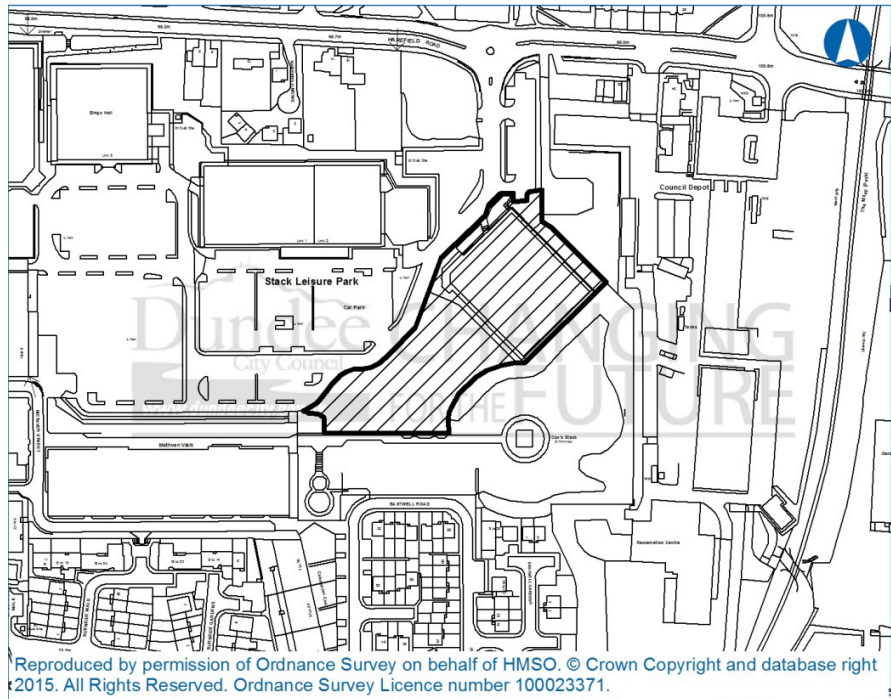
T J Morris Ltd/Sports Direct  
T J Morris C/o Bennett  
Rodney Street  
Liverpool L1 9AR

**Agent**

Ian Gallacher  
GVA Grimly Ltd  
206 St Vincent Street  
Glasgow G2 5SG

**Registered** 12 Aug 2015

**Case Officer** Paul Macari



## SUMMARY OF REPORT

- This application seeks permission under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended to vary planning application ref: 15/00167/FULL to allow for 20% of the net sales floor area of the Class 1 (Retail) element of the development to be used for the sale of ancillary retail goods.
- This application engages national and local retailing policies contained within the Scottish Planning Policy and Dundee Local Development Plan.
- No objections have been received.
- More details can be found at <http://idoxwam.dundee.gov.uk/idoxpa-web/applicationDetails.do?activeTab=documents&keyVal=NSZ8DNGCI9H00>.

## RECOMMENDATION

The proposal is contrary to the requirements of the Development Plan. There are material considerations that justify approval of planning permission. Therefore, it is recommended that the application is **APPROVED** subject to conditions.

# 1 DESCRIPTION OF PROPOSAL

1.1 This application seeks permission under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended to vary planning application ref: 15/00167/FULL to allow for 20% of the net sales floor area of the Class 1 (Retail) element of the development to be used for the sale of ancillary retail goods.

1.2 This application was made under section 42(1) of the Town and Country Planning (Scotland) Act 1997, as amended, which applies to the determination of applications to develop land without compliance with conditions attached to a previous planning permission. In these circumstances, Section 42(2) states that the planning authority shall consider only the question of the conditions subject to which permission should be granted.



**Figure 1 – Photograph of Former Night Club Building**

1.3 Condition 4 of planning application ref: 15/00167/FULL states:

"The Class 1 (Shops) element of the development hereby approved shall be restricted to the selling of sports wear, sports footwear and sports goods only."

1.4 The applicant proposes to vary the wording of Condition 4 to:

"The Class 1 (Shops) element of the development hereby approved shall be restricted to the selling of sports wear, sports footwear and sports goods, aside from 20% of the net sales floor area to be used for ancillary retail goods."

1.5 This application is required to allow Sports Direct to occupy the existing vacant unit and implement the planning permission ref: 15/00167/FULL previously approved by the Development Management Committee.

1.6 The ancillary goods proposed include the following items:

- 1 Clothing;
- 2 Footwear;
- 3 Stationery;
- 4 Books, magazines and newspapers;
- 5 Domestic appliances;
- 6 Audio -visual, photographics and optical goods;
- 7 Jewellery, watches and clocks;
- 8 Recreational goods; and

- 9 Other miscellaneous goods”.
- 1.7 The ancillary range of goods proposed equate to unrestricted Class 1 (Retailing) within 20% of the net sales floorspace of the approved gym and sports shop.
- 1.8 In accordance with the Council's Scheme of Delegation this application is being reported to the Development Management Committee at the request of the Executive Director of City Development. Members should note that in granting planning permission, the original permission would be re-issued and include all other relevant conditions as originally appended; the permission would remain extant for a further 3 years.

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## 2 SITE DESCRIPTION

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- 2.1 The application site is a vacant unit that was previously in use as a nightclub, known as "The Venue". The unit has been vacant for approximately 10 years. The unit itself is a large rectangular building finished in brick with decorative panels, a corrugated metal roof and a large entrance canopy to the front, with delivery access to the side.
- 2.2 The unit is contained within The Stack park, which is undergoing re-development as a mixed used leisure and retail park, with potential for new residential accommodation as well. The existing buildings are clustered around a large central car parking area that serves the entire site. Currently, the following units are trading and operating at The Stack: Home Bargains, Aldi, Gala Bingo, and The Range. There are 2 former restaurant units which were recently demolished to the south of the application unit and this vacant area of ground forms part of the application site. The leisure park is accessed from Harefield Road to the north and there are pedestrian links connecting the site to the surrounding area, including along Methven Street to the Lochee District Centre.
- 2.3 The surrounding area accommodates a variety of uses including residential flats to the south (converted mill building), City Council Depot to the east, residential to the north and residential/commercial/retail to the west. The site is contained within the Lochee Conservation Area and there are a number of listed buildings within the vicinity.

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## 3 POLICY BACKGROUND

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

**DUNDEE LOCAL DEVELOPMENT PLAN**

Policy 22: The Stack

Policy 24: Location of New Retail Developments

**SCOTTISH PLANNING POLICY, PLANNING ADVICE NOTES AND CIRCULARS**

Scottish Planning Policy - Promoting Town Centres and Supporting Business and Employment

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

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## 4 SITE HISTORY

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- 4.1 12/00374/FULL - application for planning permission for Change of Use from Leisure to Class 1 Retail plus sub-division of the vacant former Megabowl unit. Associated alterations internally and externally to the building plus alterations to the car park and external works. This application was approved subject to conditions and Home Bargains now occupy one of the units.
- 4.2 12/00783/FULL - application for planning permission (under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) to remove Condition No 6 of Consent ref 12/00374/FULL to Permit open Class 1 Retail Use suitable for Food Retail at the former Megabowl Unit. This application was approved subject to conditions and the other sub divided unit is now occupied by Aldi.
- 4.3 15/00167/FULL- application for planning permission for a part change of use of vacant Class 11 unit to ground floor Class 1 (Retail) and mezzanine level Class 11 (Gym), with associated ancillary uses, access, landscaping, car parking, servicing and other associated development. This application was approved by the Development Management Committee on 16 March 2015.

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## 5 PUBLIC PARTICIPATION

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- 5.1 The application was subject to the relevant statutory neighbour notification procedures and no public comments were received.

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## 6 CONSULTATIONS

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- 6.1 No consultation responses were received.

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## 7 DETERMINING ISSUES

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- 7.1 **Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.**

### THE DEVELOPMENT PLAN

The provisions of the development plan relevant to the determination of this application are specified in the Policy Background section above.

### DUNDEE LOCAL DEVELOPMENT PLAN

- 7.2 **Policy 22: The Stack** - is supportive of mixed use developments including housing, retail and leisure. Any development within the Stack will need to demonstrate that it will complement the role of Lochee District Centre and strengthen the pedestrian link to it along Methven Street. Any retail development in the Stack will need to ensure that it is complementary to the District Centre. Any development on this site will be considered on the basis of an agreed Masterplan prepared by the owners.

- 7.3 Planning application ref: 15/00167/FULL established the principle of additional retail floor space within the Stack contrary to the requirements of Policy 22 and the approved Stack Masterplan. Condition 4 of planning application ref: 15/00167/FULL seeks to restrict the range of goods that could be sold from the new retail unit to minimise any impact on the vitality and viability of Lochee District Centre.
- 7.4 The proposal is to introduce unrestricted Class 1 (ancillary) retailing into 20% of the net sales floor area of the sports shop approved by planning application ref: 15/00167/FULL. The net sales floor area of the building amounts to 2,787m<sup>2</sup> with 20% of the net sales floor area amounting to 557m<sup>2</sup>. This would be equivalent to a small retail warehouse unit on a retail park.
- 7.5 The proposal does not seek to form a separate retail unit within the existing building for the sale of a range of unrestricted Class 1 goods. Rather it seeks to allow for these goods to be sold through the proposed store as ancillary to sports goods and clothing.
- 7.6 Nonetheless, the proposal for unrestricted Class 1 retail goods of 557m<sup>2</sup> at this location has the potential to draw trade from existing shops in the District Centre, therefore adversely impacting on its vitality and viability.
- 7.7 Although a separate store of 557m<sup>2</sup> is not proposed through subdivision or a concession, if it were to be formed it would have a greater potential impact on the District Centre than an allowance of floorspace for ancillary goods spread across the proposed store. On balance it is considered that the potential impact can be limited by imposing conditions preventing the subdivision or sub-letting of the building into smaller or concessionary retail units that should otherwise be located within Lochee District Centre. Condition 14 of planning application ref: 15/00167/FULL seeks to enhance the pedestrian link between the Stack and Lochee District Centre. Providing Members are minded to approve planning permission Condition 14 will again be incorporated into the decision notice to enhance the pedestrian link between the Stack and Lochee District Centre.
- 7.8 **The proposal can be conditioned to satisfy Policy 22.**
- 7.9 **Policy 24: Location of New Retail Developments** - is supportive of proposals for new retail developments that protect and enhance the vitality and vibrancy of the City Centre and District Centres of Dundee. Policy 24 adopts a sequential approach to assessing new shopping provision with first preference being the location of such facilities in the City Centre and District Centres. Proposals for new retail developments in Dundee must therefore satisfy the following criteria:

1 Site Availability

The proposal involves the introduction of unrestricted Class 1 (Ancillary) retailing into 20% of the net sales floor area of the sports shop approved by planning application ref: 15/00167/FULL. Planning permission is required as a result of Condition 4 of planning permission 15/00167/FULL which restricts the range of goods that can be sold from the premises to sports wear, sports footwear and sports goods only.

In terms of Criterion 1, Policy 22 has identified the potential for retail development within particular units located at The Stack. This site is not identified for retail use by the Stack Masterplan and is outwith the District Centre. As indicated above planning permission has been granted for new retail floorspace at this location. The application does not seek to form a new retail unit or additional floorspace. The proposal seeks an allowance of existing floorspace to be used for the sale of ancillary goods across the store up to

557m<sup>2</sup>. As the proposal is not for a new unit or additional floorspace it is considered that it does not raise any issues in terms of Criterion 1.

## 2 Impact on Existing Centres

In terms of Criterion 2, the proposal by virtue of the level of unrestricted floor space proposed is unlikely to significantly impact on the vibrancy and viability of the city centre. The level of unrestricted retail floor space proposed has the potential to impact on the vitality and viability of Lochee District Centre. However, as outlined in the consideration of the proposal in terms of Policy 22 the level of impact can be limited through imposing conditions restricting the subdivision or sub-letting of the building into smaller or concessionary retail units that should otherwise be located within Lochee District Centre. Consequently, this proposal can be conditioned to satisfy Criterion (2).

## 3 Deficiency in Shopping Provision

In relation to Criterion (3), there is no identified deficiency in shopping provision within Lochee District Centre. Consequently this proposal is contrary to Criterion (3).

## 4 Accessibility by Modes of Transport (other than be car)

The site is readily accessible by public transport and not just reliant on the car. Consequently the proposal complies with Criterion (4).

7.10 **The proposal is contrary to Policy 24.**

7.11 **It is concluded from the foregoing that the proposal does not comply with the provisions of the development plan.**

## **OTHER MATERIAL CONSIDERATIONS**

The other material considerations to be taken into account are as follows:

### **A - SCOTTISH PLANNING POLICY (2014)**

7.12 Scottish Planning Policy (SPP) is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed across the country, including on subjects such as economic development and town centres.

7.13 Town Centres - this section of SPP promotes the use of the retail sequential approach to apply to all new retail developments, which includes the preference for all comparison retail to be located firstly to town centres. Under section 7.3 of SPP, out of centre locations for retail developments shall only be considered appropriate where specific criteria are met. The proposal does not seek to form a separate retail unit within the existing building for the sale of a range of unrestricted Class 1 goods. Rather it seeks to allow for these goods to be sold through the proposed store as ancillary to sports goods and clothing. In this instance by imposing planning conditions preventing the subdivision of the sports shop into smaller or concessionary retail units, the scale of unrestricted retailing proposed is not of a level of significance to adversely impact on the viability and vitality of the City Centre as a regional shopping destination or Lochee District Centre as a local shopping destination.

7.14 Business and Employment-under Section 9.3 of SPP, one of the policy principles is to "give due weight to net economic benefit of proposed development". As demonstrated by planning application ref: 15/00167/FULL, the proposed gym and sports shop would involve approximately £5million investment and the creation of 96 jobs (81 direct and 15 indirect) in

the local area. In addition the proposal would also lead to the further regeneration of the Stack with a sustainable economic use. This is considered to be a positive aspect of the development and would contribute significantly to the local economy of the Lochee area. Failure to support the current proposal would undermine the security established by planning application ref: 15/00167/FULL jeopardising local job creation and sustainable economic development in a time of austerity.

## **B - CIRCULAR 4/1998 - THE USE OF CONDITIONS IN PLANNING PERMISSION**

7.15 The circular also provides guidance on the use of conditions in granting planning permission. Circular 4/1998 stipulates that while the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. The Circular demonstrates that conditions that are fair, reasonable and practicable satisfy 6 tests:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

7.16 Condition 4 of planning application ref: 15/00167/FULL as originally imposed meets all of the above tests. It seeks to control the range of goods that can be sold from the proposed gym and sports shop to minimise any impact on the viability and vitality of Lochee District Centre. The proposed non-compliance with Condition 4 of application ref: 15/00167/FULL to introduce unrestricted Class 1 (Ancillary) retailing within 20% of the net sales floor area of the approved gym and sports shop does not undermine the necessity, purpose, or relevance of the original condition provided that a further condition is added to ensure that the extent of non compliance is restricted to the original planning unit approved by planning application ref: 15/00167/FULL. As such the proposal will not undermine the necessity, purpose or relevance of the original condition. Therefore, the proposals adhere to the requirements of Circular 4/1998.

7.17 **It is concluded from the foregoing that the material considerations support the approval of planning permission.**

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## **8 CONCLUSION**

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8.1 The proposal is contrary to the requirements of the Development Plan. There are material considerations of sufficient weight that justify the approval of planning permission. Therefore, it is recommended that planning permission be granted subject to conditions.

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## 9 RECOMMENDATION

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- 9.1 It is recommended that consent be GRANTED subject to the following conditions:
- 1 The development hereby approved shall only operate as a mixed use Class 1 (Shops) and Class 11 (Assembly & Leisure) development with associated ancillary uses.
  - 2 The operation of the Class 1 (Shops) element shall only operate in conjunction with the approved Class 11 (Assembly and Leisure) use. For the avoidance of doubt, the Class 1 (Shops) element of the development hereby approved shall not operate outwit the operating hours of the Class 11 (Assembly & Leisure) use.
  - 3 The development shall comprise of no greater than 2,787sqm of Class 1 (Shops) gross internal floor space.
  - 4 The Class 1 (Shops) element of the development hereby approved shall be restricted to the selling of sports wear, sports footwear and sports goods, aside from 20% of the net sales floor area to be used for ancillary retail goods.
  - 5 Development shall not begin until the investigation and risk assessment proposed in the submitted Stage I Desk Study are completed and, if necessary, a remediation strategy to deal with any contamination at the site has been submitted to and approved in writing by the planning authority. The strategy shall contain proposals to deal with contamination to include:
    - a the nature, extent and type(s) of contamination on the site;
    - b measures to treat/remove contamination to ensure the site is fit for the use proposed and does not contain any significant pollution linkages;
    - c measures to deal with contamination during construction works; and
    - d verification of the condition of the site on completion of decontamination measures.
  - 6 Before any unit is occupied the remediation strategy, if required, shall be fully implemented and a verification report with relevant documentation demonstrating that the objectives of the remediation strategy have been achieved shall be submitted to and approved by the planning authority.
  - 7 The total noise from the mechanical and electrical plant/services shall not exceed NR45 during daytime and shall not exceed NR35 during night-time, as measured 1 metre external to the facade of adjacent residential property. NR45 is applicable for the period 07.00 to 23.00 hours and NR35 is applicable for 23.00 to 07.00 hours.
  - 8 All deliveries, including loading, unloading or lay-up shall be between 07.00 to 21.00 hours Monday to Saturday and 09.00 to 16.00 hours Sunday.
  - 9 Music shall be so controlled as to be inaudible within any adjacent residential property with windows open in a typical manner for ventilation.
  - 10 Prior to the commencement of development on site, full drainage design proposals and calculations/modelling for the development to be submitted for written approval by the Planning Authority and the development shall be completed in accordance with the approved details prior to the operation of the unit. All details shall comply with Sewers



for Scotland 2, CIRIA C697, The SUDS Manual and The Water Environment (Controlled Activities) (Scotland) Regulations 2011 with cognisance taken of GBR 10. The applicant shall also submit evidence of Scottish Waters Technical Approval to connect prior to the commencement of development on site.

- 11 Prior to the commencement of development on site, copies of completed/signed Dundee City Council 'Design Compliance, "Independence Check" and 'Future Maintenance' Certificates shall be submitted to the Planning Authority for written approval.
- 12 Prior to the commencement of development on site, full details of all new and replacement finishing materials shall be submitted to the Planning Authority for written approval. For the avoidance of doubt, this shall include all new and replacement external finishing materials, including materials used for the car park.
- 13 Prior to the commencement of development on site, a scheme of landscaping shall be submitted to the Planning Authority for written approval, including details of new planting, soft landscaping and provision for bicycle parking facilities. The approved landscaping scheme shall be fully implemented prior to the operation of the unit. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of this condition.
- 14 Prior to the occupation of the development hereby approved, the environmental improvements to enhance the connectivity between the Stack and Lochee District Centre as detailed in the Masterplan dated June 2013 shall be completed in full.
- 15 The mixed use development of a Class 11 (Gym) and Class 1 (Shop) hereby approved shall operate as one planning unit and shall not be subdivided or part of the net retail floor space let to any other organisation other than the applicant.

#### **REASON(S)**

- 1 In the interests of ensuring the vitality and vibrancy of The Stack as a mixed use retail and leisure destination.
- 2 In order to ensure that the Class 1 (Shops) element of the development hereby approved does not operate in isolation to the Class 11 (Assembly Leisure) element, in accordance with the Stack Masterplan (2013).
- 3 In order to control the amount of floor space for Class 1 (Shops) use associated with the development hereby approved, in the interests of preserving the retailing role of the City Centre and District Centres in Dundee.
- 4 In order to control the range of goods sold on site and in the interests of preserving the retailing role of the City Centre and District Centres in Dundee.
- 5 In order to ensure that any potentially contaminated land is suitably addressed.
- 6 In order to ensure that any potentially contaminated land is suitably addressed.
- 7 In order to ensure that surrounding residential amenity is preserved.
- 8 In order to ensure that surrounding residential amenity is preserved.

- 9 In order to ensure that surrounding residential amenity is preserved.
- 10 In order to ensure that surrounding residential amenity is preserved.
- 11 In order to ensure that the site is drained in a sustainable manner which complies with Dundee City Council specifications.
- 12 In the interests of ensuring all external works are completed to a high standard that preserves the character and appearance of the surrounding Conservation Area.
- 13 In the interests of ensuring all landscaping works are completed to a high standard that preserves the visual amenity of the surrounding area.
- 14 In the interests of maintaining and enhancing connectivity between the Stack and Lochee District Centre.
- 15 In the interests of controlling the retail use of the premises.