

SECTION '2' – Applications meriting special consideration

Application No : 10/01762/VAR

Ward:
Cray Valley East

Address : Unit 20 Nugent Shopping Park Cray
Avenue Orpington BR5 3RP

OS Grid Ref: E: 547032 N: 168112

Applicant : Nugent Shopping Park Ltd

Objections : YES

Description of Development:

Variation of condition 1 of ref. 08/03150 to allow the sale of pharmaceutical products within Phase 2 of Nugent Shopping Park

Proposal

The application seeks to vary condition 1 of planning permission reference 08/03150, which is a variation of 06/00492, which in turn is a variation of 05/03387 granted for two retail units with servicing and car parking. The applications to vary the original permission have been concerned with conditions restricting the goods that may be sold from the units. This application seeks to lift the restriction on the sale of pharmaceutical products, cosmetics and toiletries, toys and cameras from unit 20. The application does not seek to alter the amount of retail floorspace or the number of units.

The application is accompanied by a Retail Statement which includes the following points:

- Boots has 4 formats of store as follows:
 - o High Street and community stores (2,120 stores) located in town and district centres and major locations – these carry a smaller selection of the Boots range and there is an emphasis on their role as a pharmacy
 - o Health Centre Pharmacies (208 stores)
 - o Retail Park Sites (149) – these have more circulation space, larger display areas and sell bulky goods more appropriate to a car trip
 - o Airports and Railway Stations (43)
- supermarkets have entered health and beauty market in recent years and increased their market share partly through out of town stores

- new formats allow Boots to respond to increase in out of town supermarkets and recapture market share it has lost
- it would not make commercial sense to locate a second store in Orpington town centre as both would serve the same catchment whilst increasing the size of the existing store would not enable it to compete with supermarkets or draw additional trade to the town centre
- analysis demonstrates there are no sequentially preferable sites within the catchment to accommodate the proposals even if flexibility is shown in format and scale
- Nugent Shopping Park is existing successful retail destination which significantly improves retail offer to Orpington and St. Mary Cray
- application for Phase 2 of Nugent was accompanied by a retail assessment which demonstrated that there would be sufficient capacity to support the retail floorspace within the catchment and that there would be no harm to the vitality and viability of Orpington town centre
- proposals relate to a scheme which has now been constructed and no additional floorspace is proposed
- analysis demonstrates that overall Orpington town centre appears relatively healthy – the Council are improving environmental quality of town centre whilst vacancy rates are comparable with the national average and the yield has remained stable for the past few years
- Tesco Extra has significantly strengthened the town centre
- levels of trade diversion from town centre that would result from proposal are negligible and role and function of centre would not be undermined
- most of trade diversion will be from Boots, Sainsburys and Tesco, which are strong stores and will not be threatened
- long term future of Orpington town centre is positive and based on forecast levels of impact the role and function of the centre would not be undermined as a result of the proposal and there would be no harm to its vitality and viability.

The applicants have indicated that they would be willing to enter into a Section 106 agreement with the Council to secure the retention of the town centre store. They have submitted copies of Section 106 agreements between Boots and Stevenage Borough Council and between Boots and Derby City Council committing Boots to keep their town centre stores open for 2 and 5 years respectively.

The applicant's have also submitted a letter from Boots property division emphasising the following:

- proposed store is intended to complement the existing High Street store
- High Street store returns a significant annual profit
- High Street store offers 900 sq m trading floorspace compared with 700 sq m at the Nugent unit
- Boots average market share is 25% but around Orpington it is 17% and store will claw back sales from supermarkets in surrounding towns

- proposed store will include a pharmacy open until 7pm which will provide an important local service
- Boots have demonstrated a commitment to town centres across the country through its involvement in town centre management schemes.

The applicants have submitted a note on the impact of Boots out of centre stores as follows:

- Ashford, Kent – out of centre store opened in August 2005 and town centre store remains open and has received £250,000 investment
- Cambridge – out of centre store opened in November 2000 and two town centre stores remain open and have received £2,246,000 investment
- Basildon – out of centre store opened in November 2000 and town centre store remains open and has received £460,000 investment
- Chelmsford - out of centre store opened in November 2006 and three town centre stores (including one optician) remain open and the optician store has received £650,000 investment
- Canterbury – out of centre store opened in September 2000 and new town centre store replaced three existing stores in 2004 and has received £4.6m investment
- Bexhill - out of centre store opened in April 1999 and town centre store remains open and has received £460,000 investment
- Stevenage – out of centre store opened in September 2004 and three town centre stores (including one optician) remain open and the optician store has received £530,000 investment
- Torquay – out of centre store opened in April 2006 and two town centre stores remain open and one has received £160,000 investment
- Yeovil - out of centre store opened in September 2004 and two town centre stores (one optician) remain open and one has received £1m investment
- Telford - out of centre store opened in December 2004 and two town centre stores (one optician) remain open and the main store has received £450,000 investment
- Solihull- out of centre store opened in November 2004 and two town centre stores (one optician) remain open and the main store has received £840,000 investment
- Swindon - out of centre store opened in February 2003 and three town centre stores (one optician) remain open and one store has received £790,000 investment
- Cheltenham - out of centre store opened in December 2004 and its town centre store remains open and has received £1.5m) investment
- Shrewsbury - out of centre store opened in December 2004 and two town centre stores remain open and one has received £2.5m investment.

Comments from Local Residents

Nearby residents were notified of the application and representations were received which can be summarised as follows:

- original restrictions attached to planning permission ref. 05/03387 were intended to prevent adverse impacts on Orpington town centre and continual easing of these restrictions is undermining its vitality and viability
- prevailing economic conditions are difficult, hitting town centres, and it is incumbent on Council's to ensure that their vitality and viability is not risked
- proposal would threaten the retail strategy of the Local Plan and PPS4, in particular by allowing a proliferation of similar cases resulting in cumulative harm
- dangerous precedent
- vacant units in Walnuts Centre proving difficult to fill and Council must support town centre by directing retail development to sequentially preferable sites
- no enforceable comfort being offered that Boots would remain in Orpington Town Centre
- Council needs to demonstrate support for Orpington Town Centre and give confidence to retailers.

Any further responses to consultations will be reported verbally at the meeting

Planning Considerations

Planning permission was originally granted for the Nugent Shopping Park in September 2004 (ref. 03/01807) and for an extension to Block C in January 2006 (05/03387). Condition 24 of the original planning permission placed restrictions on the amount of unrestricted retail floorspace and on the sale of the following:

- (a) food and drink other than for consumption on the premises
- (b) men's and women's fashion clothing and footwear
- (c) fashion accessories
- (d) jewellery
- (e) cosmetics and toiletries
- (f) pharmaceutical products
- (g) pets and pet foods
- (h) toys
- (i) cameras.

This condition has been the subject of various planning applications to vary its terms, including raising the amount of unrestricted floorspace and relaxing the restriction on the sale of pets and pet foods.

Policy S7 of the Unitary Development Plan requires applicants to show that there is a need for the proposal and that a sequential assessment has been carried out. It also requires the proposal to be easily accessible, of an appropriate size and states that it

should not harm the vitality or viability of existing centres either by itself or in conjunction with other proposals.

Policy EC10 of Planning Policy Statement 4: Planning for Economic Growth (PPS4) requires local authorities to adopt a positive and constructive approach towards planning applications for economic development.

Policy EC14 & 15 of PPS4 require a sequential assessment (under EC15) for planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up to date development plan.

Policy EC16.1 requires an assessment of the impact of main town centre uses which are not in a centre and not in accordance with an up to date development plan. EC16.1 a and b are particularly relevant in that they require the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal to be assessed. They also require an assessment of the impact of the proposal on town centre vitality and viability, including local consumer choice and the range and quality of the comparison and convenience retail offer.

Policy EC17.1 states that planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan should be refused where there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1, taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.

Conclusions

The main issues relating to the application are (i) the effect that it would have on the character of the area in terms of the retail function of Nugent Shopping Park and; (ii) whether it would harm the vitality and viability or attractiveness of Orpington Town Centre.

The variation of Condition 1 of 08/03150 will enable products such as cosmetics and toiletries, pharmaceutical products, toys and cameras which are appropriate to the town centre (and currently sold in other town centre units) to be sold at the out of centre Boots store thereby potentially impacting the vitality and viability of the town centre.

The retail statement states that the proposed store at Nugent will complement the existing store in Orpington High Street. It states that Boots are prepared to enter into a S106 agreement to confirm that the town centre store will continue to trade. Examples of such agreements from Stevenage and Derby have been submitted by the applicant. Any legal agreement would need to be very carefully drafted to ensure that its provisions are enforceable and not ineffective. The application documents and

correspondence indicate conflicting figures regarding the amount of trade that will be diverted to the Nugent store, but it is clear that there will be some diversion of trade. If the existing High Street Boots store is not able to cope without the diverted trade it may not be possible for the Council to ensure that the existing High Street store remains trading if it is no longer viable.

Boots have provided evidence that other out of centre stores have not resulted in town centre stores closing and that they have continued to invest in their town centre stores. The fact that Boots are willing to enter into a Section 106 agreement would appear to indicate that they have no current intention of closing the town centre store. However, if permission is granted it may set a precedent for the further relaxation in restrictions on goods that can be sold at the Nugent Shopping Park whilst the diversion in trade to the Nugent may impact on the vitality and viability of Orpington Town Centre. Members are requested to give careful consideration to the planning history of the site, the recent permissions to vary numerous conditions attached to the original permission and the potential impact that varying a further condition will have on Orpington Town Centre. Consideration should also need to be given to any economic benefits of the proposal in accordance with PPS4.

Background papers referred to during the production of this report comprise all correspondence on file ref. 10/01762, excluding exempt information.

RECOMMENDATION: MEMBERS' VIEWS ARE REQUESTED

- 0 D00002 If Members are minded to grant planning permission the following conditions are suggested:
- 1 The scheme hereby permitted shall comprise not more than 2,480 sq m (gross) of non-food Class A1 retail floorspace (including the mezzanine floor area) which shall be subject to the following restrictions unless agreed by the Local Planning Authority:
1. Not more than 750sq.m of retail floorspace shall be used for the sale of pets and pet food.
 2. Unit 19 shall not be used for the retailing of any of the following goods:-
 - a. Food and Drink other than for consumption on the premises
 - b. Men's and women's fashion clothing and footwear
 - c. Fashion accessories
 - d. Jewellery
 - e. Cosmetics and toiletries
 - f. Pharmaceutical products
 - g. Toys
 - h. Cameras

3. 2. Unit 20 shall not be used for the retailing of any of the following goods:-

- a. Food and Drink (excluding ancillary sales) other than for consumption on the premises
- b. Men's and women's fashion clothing and footwear
- c. Fashion accessories
- d. Jewellery

Reason: In order to comply with Policy S7 of the Unitary Development Plan and in accordance with the terms of the permission granted under application Ref. 06/00492/VAR.

Reasons for permission:

In granting permission the Local Planning Authority had regard to the following policies of the Unitary Development Plan:

S7 Retail and leisure outside existing centres

The development is considered to be satisfactory in relation to the following:

- (a) the town centres and shopping policies of the Unitary Development Plan
- (b) the policies contained within Planning Policy Statement 4: Planning for Sustainable Economic Development
- (c) the vitality and viability of Orpington town centre

and having regard to all other matters raised.

INFORMATIVE(S)

1 RDI16 Contact Highways re. crossover

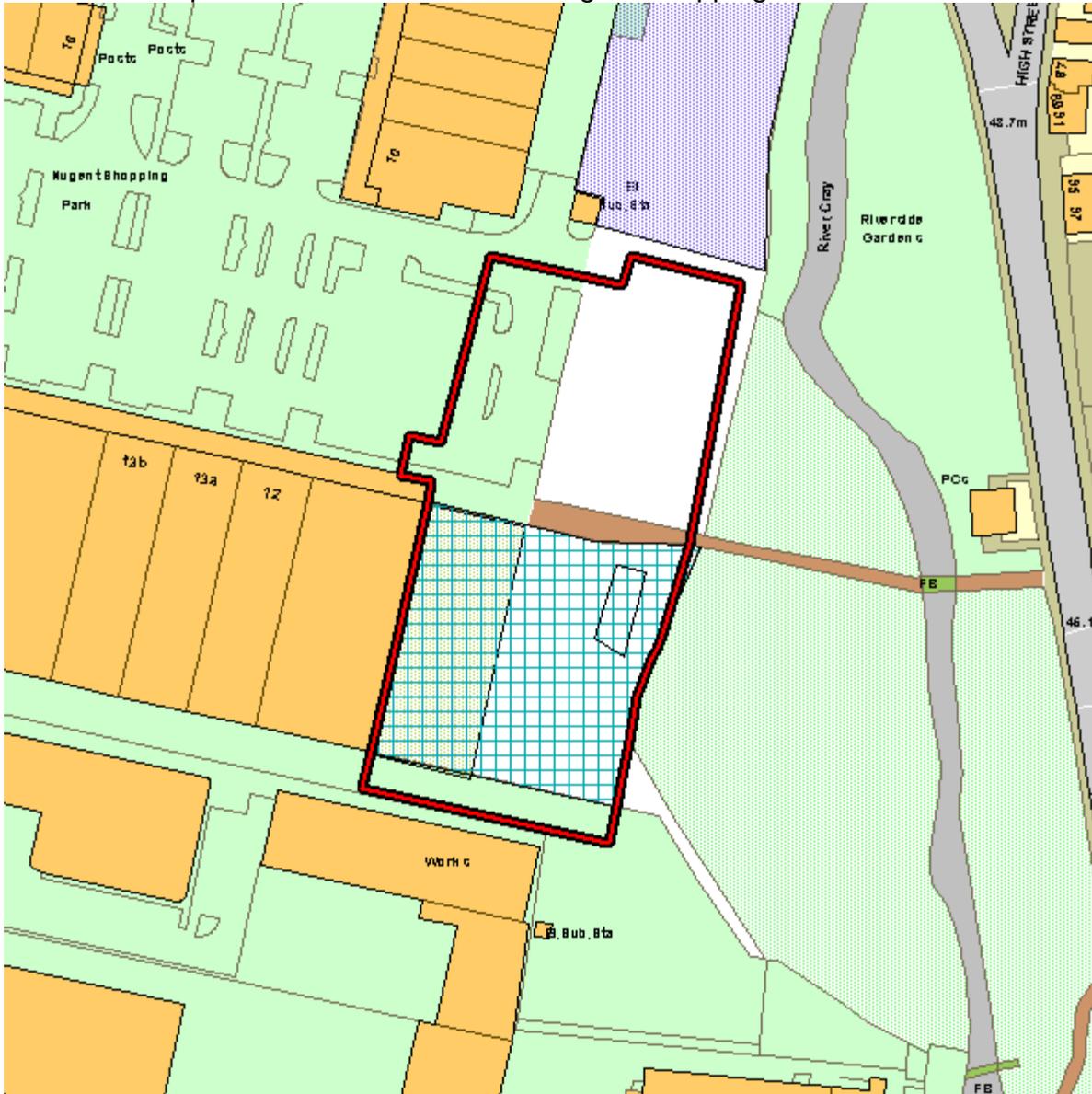
D00003 If Members are minded to refuse planning permission the following grounds are suggested:

1 The proposed relaxation of restrictions on goods that can be sold at the Nugent Shopping Park would be likely to undermine the vitality and viability of Orpington Town Centre contrary to Policy S7 of the Unitary Development Plan,

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