

<b>APPLICATION NO.</b>	<a href="#">P16/V3227/FUL</a>
<b>SITE</b>	Seacourt Tower Retail Park, West Way, Oxford, OX2 0JJ
<b>PARISH</b>	North Hinksey
<b>PROPOSAL</b>	Variation of Condition 2 to be amended as per submitted plans & Condition 14 to allow the sale of convenience items from combined units 5-7 of P16/V2458/FUL.
<b>WARD MEMBER(S)</b>	Debby Hallett Emily Smith
<b>APPLICANT OFFICER</b>	BAPT LTD Stuart Walker

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## **RECOMMENDATION**

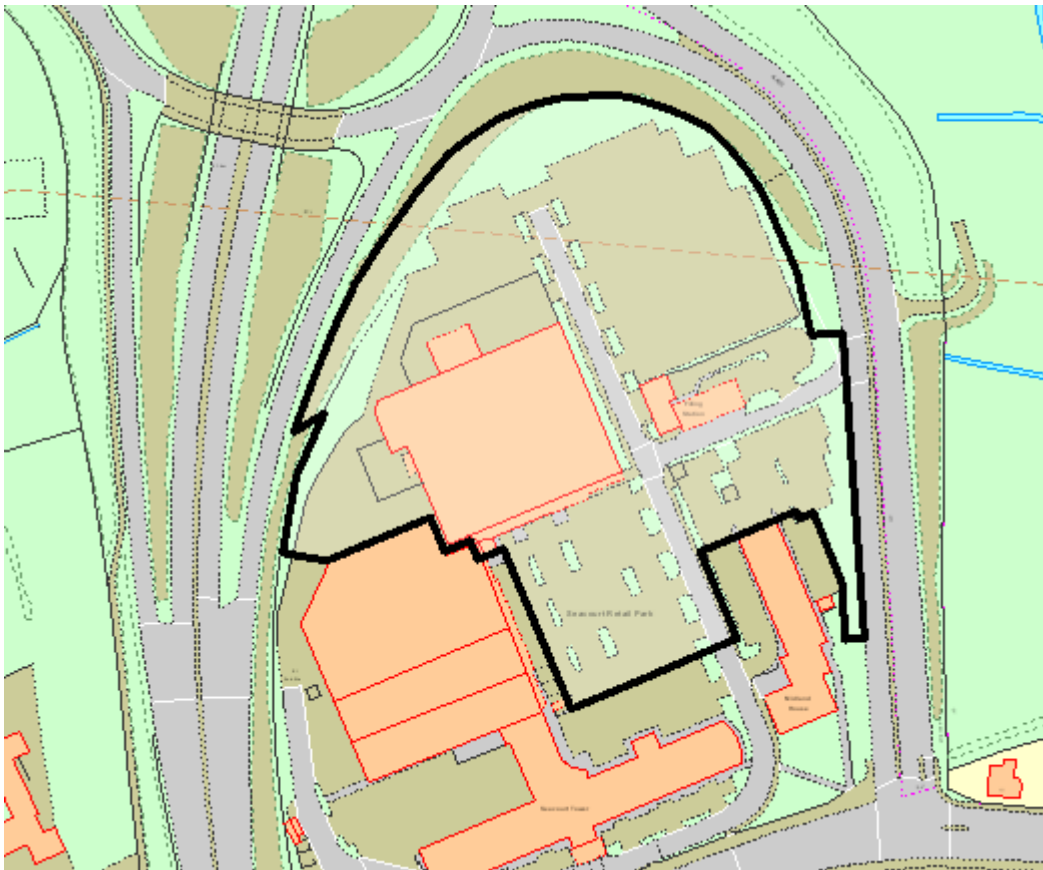
It is recommended that this application to vary conditions 2 and 14 attached to P16/V2458/FUL is approved, subject to:

- I. The completion of a S106 agreement / unilateral undertaking for financial contributions for traffic signage and travel plan monitoring; and
- II. The planning conditions which are still relevant, listed below:
  1. Commencement no later than 28 October 2018.
  2. Approved plans.
  3. Materials in accordance with approved details.
  4. Cumulative floor space shall not exceed 7153 sq m.
  5. No open storage.
  6. Landscaping scheme (submission).
  7. Landscaping scheme (implementation).
  8. Framework travel plan to be submitted prior to occupation.
  9. Vehicle access / egress in accordance with approved layout plan.
  10. Parking areas in accordance with approved layout plan.
  11. Cycle parking in accordance with approved plans.
  12. Lighting details to be submitted.
  13. Development to accord with approved flood risk assessment and drainage strategy.
  14. Retail use restriction.
  15. Land contamination assessment.
  16. Land contamination verification report.
  17. Land contamination remediation strategy.
  18. Arboricultural method statement / tree protection plan.

### **1.0 INTRODUCTION AND PROPOSAL**

- 1.1 This application is submitted under Section 73 of the Planning Act and seeks to vary conditions 2 (approved drawings) and 14 (retail restrictions) of planning permission P16/V2458/FUL.

- 1.2 The application is referred to committee as an objection has been received from North Hinksey Parish Council.
- 1.3 Application P16/V2458/FUL granted planning permission for the partial redevelopment of the Seacourt Tower Retail Park (known as phase 2 and currently occupied by Homebase). The application permitted five new retail units to be used for A1 non-food use, two small units for A3 use and a stand-alone A3 unit on the eastern part of the site.
- 1.4 A site location plan is provided below:



- 1.5 Consent is sought to vary the approved drawings to merge units 5, 6 (the smaller A3 units) and unit 7 (A1 non-food) into one, and to allow the sale of convenience items, principally food and drink, for consumption off the premises. The permitted use of the other new units (nos. 8 – 12) would remain unchanged. The intended operator is Marks & Spencer Plc (M&S).
- 1.6 The proposed new unit would have a retail floor area of 1,264 square metres gross on the ground floor, with 646sqm storage at mezzanine level. A retail assessment supporting the application has been submitted and can be viewed online.
- 1.7 Other than elevational amendments, the application does not include any other alterations and all other aspects of the proposed site layout will remain as approved. The access, parking and servicing implications of the proposed

food use however have been reassessed in a supporting Transport Statement, which can also be viewed online. The application plans are **attached** at Appendix 1.

- 1.8 The proposal will require changes to the wording of condition 14 which currently reads: -

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and the Town and Country Planning (Use Classes) Order 1987 (amended), or any other statutory instrument revoking or re-enacting that Order with or without modification, the sale of food and drink is permitted within Units 5, 6 and 12 only, within Use Classes A1 and/or A3 uses only, and food and drink sales are not permitted within A1 units 7, 8, 9, 10 or 11 hereby approved.

The condition was imposed to ensure that the development does not harm the retail vitality and viability of Botley Shopping Centre.

- 1.9 It is proposed to change the wording of condition 14 to: -

The proposed new retail (A1) units referred to as 8, 9, 10 and 11 that are the subject of this planning permission and shown on plan No. 1827-P-256 Rev D shall not be used for the sale of food and drink. The sale of food and drink is permitted from (A3) unit 12 as shown on drawing 1827-P-255 Rev F and the proposed new retail (A1) unit '5, 6 & 7' shown on plan No. 1827-P256 Rev D. New unit '5, 6 & 7' shall comprise a maximum of 1,264 square metres gross internal retail sales area (ground floor only).

- 1.10 The application site is subject to a S106 agreement securing contributions for the county council. It is intended to re-apply the previously agreed 106 matters to this consent should the committee be minded to approve the application through a deed of variation / unilateral undertaking.

2.0 **SUMMARY OF CONSULTATIONS & REPRESENTATIONS**

- 2.1 A summary of the responses received is set out below. The detailed comments made can be viewed online at [www.whitehorsedc.gov.uk](http://www.whitehorsedc.gov.uk).

North Hinksey Parish Council	<p>Objection.</p> <ul style="list-style-type: none"> <li>• The proposal will be a threat to the viability of the West Way redevelopment.</li> <li>• Traffic generation.</li> </ul>
Neighbours/ individuals	<p>10 letters have been received from local residents. Two were in support of the proposal, one raising comments on flood risk and the requirement for sustainable measures, and seven raising objections. The objector concerns in summary are:</p> <ul style="list-style-type: none"> <li>• The existing retail park provides for 'out of town' retail and should continue to do so.</li> </ul>

	<ul style="list-style-type: none"> <li>• Retail impact on West Way / Elms Parade</li> <li>• Impact on the investment of West Way redevelopment</li> <li>• Loss of petrol station (not material to this Section 73 application)</li> </ul>
<p>Botley Development Company</p>	<p>Objection.</p> <ul style="list-style-type: none"> <li>• The proposal is of significant concern to our committed investment in Botley.</li> <li>• The proposal will alter the role and function of the Application Site from a traditional bulky non-food offer to a town centre style destination.</li> <li>• Our committed investment at the Botley Local Centre will deliver retail floor space that can easily accommodate the proposed Food hall. They have failed to acknowledge the availability of this store and therefore, the applicant fails the sequential test. Paragraph 27 of the NPPF confirms that applications that fail to demonstrate compliance with the sequential test must be refused.</li> <li>• Our review of the Retail Impact Assessment by Planning Potential has identified an array of methodological errors and inconsistencies. Our correspondence confirms that:             <ul style="list-style-type: none"> <li>• The applicant’s own estimate of impact of 7.9% demonstrates a high level of impact that could be described as significant;</li> <li>• The applicant has underestimated the turnover of the proposal by 32%. The revised level of impact based on the applicant’s own trade diversion assumptions would be <b>9.7%</b>, clearly a level that would result in a significant adverse impact on the Botley Local Centre; and</li> <li>• The applicant’s trade diversion assumptions are unrealistic and serve to understate the level of diversion on the Botley Local Centre. An increase in trade diversion of just 5% would increase the impact on the Botley Local Centre to <b>14.5%</b>.</li> </ul> </li> <li>• Furthermore, the application will have a significant adverse impact on planned private sector investment at the Botley Local Centre. It will jeopardise the regeneration benefits and improvements to local consumer choice that will be delivered by the Botley Local Centre scheme. The NPPF is clear that committed planned private sector investments in defined town centres must be protected.</li> <li>• It follows that the council cannot support the proposal and should refuse the planning application.</li> </ul>

<p>Mid-Counties Cooperative</p>	<p>Objection.</p> <ul style="list-style-type: none"> <li>• The co-op is intending to be the anchor foodstore in the redeveloped Botley local centre with a store of some 1394sq m.</li> <li>• The West Way Scheme is reliant on the anchor food store to attract the necessary footfall and the local centre will be weakened if the food hall proposal goes ahead. This in turn makes it less attractive to food retailers.</li> <li>• Midcounties is simply not in a position to state whether it would pull out if the food hall is allowed, but its requirements however might well change and it would have to review its position constantly as events unfold.</li> </ul>
<p>Oxford City Council</p>	<p>Support.</p> <ul style="list-style-type: none"> <li>• The provision of a new food store on the Retail Park on this site would help to meet the needs of local residents and those working in the area, which would reduce their need to travel into Oxford and in principle, be more sustainable.</li> <li>• The City centre and District centres within Oxford have in recent years all significantly improved their food store offer with the provision of small / local stores of a proportionate size to meet the needs of the respective centre. This investment has been significant and added to the vitality and viability of these centres. This proposal, particularly for a food store at the Retail Park should therefore be a positive measure that will add to the diversity and range of services.</li> </ul>
<p>Oxfordshire County Council</p>	<p>Highways</p> <ul style="list-style-type: none"> <li>• No objection subject to previous conditions and financial contributions :-</li> <li>• Towards the cost of providing and installing a new traffic sign on Botley Road on the westbound approach to the signal junction of £3000 and</li> <li>• Towards the cost of monitoring a Travel Plan for the period of five years of £2040</li> </ul>
<p>Environmental Health – Contaminated Land</p>	<p>No objection.</p>
<p>Environmental Health – Protection</p>	<p>No objection.</p>

Drainage Engineer	No objection – previous conditions apply.
Tree Officer	No objection.
Countryside Officer	No objection.
Landscape Officer	No objection.

### 3.0 **RELEVANT PLANNING HISTORY**

3.1 There is an extensive planning history in relation to this site. The most relevant applications in relation to this Section 73 application are:

[P16/V2458/FUL](#) - Approved (06/12/2016)

Variation of condition 2 (approved plans) on Planning Permission P15/V1039/FUL

[P15/V1039/FUL](#) - Approved (28/10/2015)

Part refurbishment and part redevelopment of existing retail park, including revised access, car parking and landscaping. Removal of existing petrol filling station to provide new retail units (A1 use), cafe/coffee shop/restaurant units within Classes A1 and A3. (Amendment to Phase 2 of permission P13/V1994/FUL)

[P15/V0311/FUL](#) - Approved (27/03/2015)

Proposed covered cycle stand

[P13/V1994/FUL](#) - Approved (15/11/2013)

Variation of condition 2 of planning permission P13/V0294/FUL, for units 3 & 4.

[P13/V0294/FUL](#) - Approved (23/05/2013)

Part refurbishment and part redevelopment of existing retail park to allow for phased implementation including revised access, car parking, landscaping and removal of existing petrol station.

### 3.2 **Pre-application History**

None.

### 3.3 **Screening Opinion requests**

None.

### 4.0 **ENVIRONMENTAL IMPACT ASSESSMENT**

4.1 A Section 73 application is considered to be a new application for planning permission under the 2017 Environmental Impact Assessment Regulations.

4.2 The scale of the proposal is below the relevant thresholds and the locality has no recognised specific environmental sensitivity. The proposal is not EIA development.

## 5.0 **MAIN ISSUES**

5.1 The relevant material planning considerations in relation to the determination of this application are:

- The principle of varying conditions
- Changes to condition 2 (approved drawings)
- Changes to condition 14 (retail sales restrictions)

### 5.2 **The principle of varying conditions**

When planning permission is granted, development must take place in accordance with the permission and conditions attached to it, and with any associated legal agreements. New issues may arise after planning permission has been granted, which require modification of the approved proposals, and under Section 73 of the Town and Country Planning Act 1990 an application can be made to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

### 5.3 **Condition 2 – changes to the approved drawings**

This condition agreed the plans by which the development would be implemented. The proposal, to merge units 5, 6 and 7 into one and make elevational changes to the approved building, requires the replacement of the approved drawings to align with this latest proposal. Should the proposal be accepted, the proposed changes to the approved drawing list are acceptable.

### 5.4 **Condition 14 – changes to allow food and drink sales**

The relevant planning considerations in relation to the variation of condition 14 are the retail impact of the proposed food store and its highway impact.

#### 5.5 *Retail impact*

Core Policy 11 of the adopted Local Plan identifies a large opportunity site in Botley centre as being suitable for '*a comprehensive retail-led development*'. The policy states that any proposals for redevelopment should '*support the role and function of Botley as a local service centre, providing a well-integrated mix of shops and services to meet day to day shopping needs of the area*'.

5.6 Core Policy 32 of the adopted Local Plan outlines the considerations for retail development. It confirms that the Market Towns and Local Service Centres are the preferred locations for retail development and that proposals outside of these centres will only be supported if it is demonstrated that they satisfy the *sequential* approach and, where development exceeds 500 square metres gross retail floor space, an impact assessment confirms that there will be no "*significant adverse impacts*" on the vitality and viability of nearby centres. This is consistent with paragraphs 23 – 26 of the NPPF.

5.7 The application is not within a defined centre and is 'out of centre'. In addition, as the floor space proposed exceeds 500sqm, both the sequential and impact tests therefore apply. In response the applicant has provided a retail

assessment which considers the sequential test and the impact test. This assessment has been independently assessed by GVA, a retail consultant, on behalf of the council.

- 5.8 Sequential test: The applicant has been able to demonstrate there are no suitable sites within Botley town centre that could accommodate the quantum of food retail development proposed. The only site in Botley that would benefit from preferential treatment in a sequential test approach is the Botley Central Area site allocation (as defined under policy CP11). It is accepted that there are no units in the existing Central Area that would provide appropriate accommodation for this type of proposal. It is also accepted that the units in the recently approved redevelopment plans, including the anchor food store unit, are unsuitable for the scale and format proposed by the applicant without further modification (requiring a further planning application). Officers therefore accept that the Central Area site is not 'available' as per NPPF paragraph 24 and the proposal passes the sequential test.
- 5.9 Impact Test: There are two strands to the impact test.
- 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; and
  - the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area
- 5.10 In terms of compliance with the first strand, GVA initially advised your officers *"that the application could lead to a 'significant adverse' impact on existing, committed and planned public and private sector investment, on account of its potential impact on the redevelopment of the Botley Centre"*. This was on the basis that the permitting of a food hall on Seacourt Retail Park could *"serve to undermine both operator demand and investor confidence in the re-development of the Botley Centre, remove a potential end-operator from the proposed floor space at the Botley Centre, and potentially deter other operators from committing to a store at the Centre on account of the reduced trading potential of the store (particularly given the existing number of food stores already trading in the nearby area)."*
- 5.11 In response, the applicant confirmed that the Botley Centre store would not meet their operational requirements and stated that the proposed food store in the redeveloped Botley Centre has now been pre-let to the Co-Op and that this *"pre-let is a clear indication that the scale of the proposals at Seacourt are not having any effect on the commercial attractiveness of the redeveloped Botley Centre"*.
- 5.12 GVA advise that *"If this letting has been agreed with full knowledge of the potential M&S Foodhall at Seacourt Tower coming forward then we do not consider the Council could reasonably seek to refuse the application on the grounds of a 'significant adverse' impact arising against existing, committed and planned public and private sector investment. The Council should seek confirmation of this letting from the owners of the Botley Centre."*



- 5.13 The Botley Development Company confirm that whilst there is an intention to enter into a lease, it is not completed yet. Furthermore the Co-op advise that *“Midcounties is simply not in a position to state whether it would pull out if the food hall is allowed, but its requirements however might well change and it would have to review its position constantly as events unfold.”* Officers, however, consider this particular response is unambiguous to reasonably justify refusing the application and defending an appeal on grounds of significant adverse impact on the planned investment at Botley.
- 5.14 In terms of compliance with the second strand of the impact test, GVA have identified that an overall impact of trade diversion in the region of -9.8% is likely to arise on the redeveloped Botley Centre (this includes an impact of -11.71% on the planned Co-Op store). GVA advises *“Whilst we consider these to be high, we would not consider them to represent ‘significant adverse’ impacts, as they are likely to be in-part mitigated by the wider redevelopment of the Botley Centre, which will introduce new non-retail floor space, a hotel, community uses, and a substantial new residential and student population.”*
- 5.15 On balance, officers consider the proposal will not significantly impact ‘committed’ or ‘planned investment’ within the Botley. It is further considered the proposal satisfies the requirements of paragraphs 24-27 of the NPPF, in respect of compliance with the sequential and impact tests.
- 5.16 *Highway impact*  
The county council as highway authority has assessed the proposal and confirms *“The development proposals have not been changed significantly in transport terms and the proposed variations to Conditions are not considered to have a material transport implication.”* Access to the site and parking provision remains unchanged. Overall, there are no concerns about highway safety from this proposal.

## 6.0 CONCLUSION

- 6.1 The proposed variation to Condition 14 is acceptable. It is concluded there will be no significant harm to the vitality and viability of Botley Central Area or to highway safety. The application therefore accords with relevant Local Plan policies and the NPPF.

The following planning policies have been taken into account:

### **Vale of White Horse Local Plan 2031 Part One Policies:**

- CP01 - Presumption in Favour of Sustainable Development
- CP03 - Settlement Hierarchy
- CP06 - Meeting Business and Employment Needs
- CP07 - Providing Supporting Infrastructure and Services
- CP08 - Spatial Strategy for Abingdon-on-Thames and Oxford Fringe Sub-Area
- CP11 - Botley Central Area
- CP32 - Retail Development and other Main Town Centre Uses
- CP33 - Promoting Sustainable Transport and Accessibility
- CP34 - A34 Strategy
- CP35 - Promoting Public Transport, Cycling and Walking

CP37 - Design and Local Distinctiveness  
CP40 - Sustainable Design and Construction  
CP42 - Flood Risk

**Saved Local Plan 2011 Policies:**

DC5 - Access  
DC6 - Landscaping  
DC9 - The Impact of Development on Neighbouring Uses  
S12 - Policies for local shopping centres

**Vale of White Horse Local Plan 2031 part 2**

A publication draft of the Vale of White Horse Local Plan 2031 Part 2 has been subject to public consultation, but has yet to be submitted for Examination. This Local Plan remains at an early stage of preparation and accordingly its policies have limited weight at present.

**Neighbourhood Plan**

North Hinksey Neighbourhood Plan has been drafted and is currently out to consultation. The plan is at an early stage of preparation where policies may change. Accordingly, it has limited weight at present.

**Supplementary Planning Documents/Guidance**

Design Guide – March 2015

**The National Planning Policy Framework (NPPF)**

**Planning Practice Guidance**

**Other Relevant Legislation**

- Planning (Listed Buildings and Conservation Areas Act) 1990
- Community & Infrastructure Levy Legislation
- Section 149 of the Equality Act 2010
- Provisions of the Human Rights Act 1998
- Section 17 of the Crime and Disorder Act 1998
- Natural Environment and Rural Communities (NERC) Act 2006
- The Conservation of Habitats and Species Regulations 2010
- Localism Act (including New Homes Bonus)

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