Development Control – Delegated Officer Report

Application Number:
AWDM/0104/12

Recommendation – APPROVE

Site: **Tesco, Holmbush Centre, Upper Shoreham Road Shoreham-by-Sea BN43 6TD**

Proposal: **Application for variation of condition 7 of planning permission ADC/0049/06 to enable continued use of former lobby at front of store by Virgin Holidays**

The Application

The application relates to the exit lobby projection (49sqm) midway along the front elevation of the Tesco superstore. This lobby was only open for use by customers exiting the store for a limited period of time. It was recently opened as a Virgin Holidays shop, accessed internally, and this retrospective application accordingly seeks relaxation of the restrictive condition quoted below.

The planning permission ADC/0049/06 for the superstore as enlarged (which was a revised scheme following the original permission SU/12/04) is subject to a condition stating:-

> *07. The gross floorspace of the Tesco superstore as proposed to be extended shall not exceed 9,910 square metres (of which not more than 2,100 square metres shall be used for the display and sale of non-food comparison goods) and it shall not be further extended by internal changes such as the insertion of mezzanine floors nor subdivided into smaller shops or units without permission from the LPA on an application in that behalf.*

The accompanying Planning Statement, from consultants DPP, in support of the application states that Tesco identified the use of the lobby by a Virgin Holidays concession as an opportunity to further enhance the customer experience at their superstore and to make better use of under-utilised space. The only external change is some adverts on the glazing and it has not involved any extension of the building, nor has it increased the amount of comparison goods floorspace. Given its small size with only internal access (the doors being replaced with emergency escape ones only), they state it is ancillary to the wider function of the premises as a superstore. They refer to its hours of opening being 9am-8pm Mon-Fri, 9am-7pm Sats and 10am-4pm Suns as compared to 24 hour opening of the superstore (except weekends). They conclude that it does not detract from the vitality or viability of existing town centre shopping areas, therefore not contravening the reason for imposing Condition 07.

Consultations and Representations

Third Parties: A customer of Tesco objects on grounds that the closure of the exit lobby, situated moreorless central to the carpark, causes inconvenience to shoppers because the main entrance is the only other exit and is to one side. The 2m wide exit route from the check-outs becomes congested at times and for a store of this size he considers it dangerous and would restrict quick evacuation should the need arise.

Relevant Planning Policies and Guidance

The South East Plan (GOSE 2009): SCT1-4, TC2-3
Adur District Local Plan 1993-2006 (1996) (saved policies): AG1, AS3
Adur Retail Study (for ADC by DTZ 2006)
Adur District Council Retail Study Update (DTZ July 2009) and Shoreham Harbour Regeneration – Retail Capacity & Impact Implications Study (DTZ August 2009)
PPS1 'Delivering Sustainable Development' (ODPM 2005)
PPS4 'Planning for Sustainable Economic Growth' and Practice Guidance 'Planning for Town Centres' (DCLG 2009)

Planning Assessment

There are no directly applicable policies of the Adur District Local Plan, as AS3 only applies to preventing the enlargement of the whole superstore site. TC3 of the SE Plan refers to new, expanded or intensified out-of-town shopping centres so as not to undermine town centres.

The condition 07, insofar as it prevents subdivision into smaller shop units, was carried over from the original permission SU/12/04 for the Tesco enlargement. It followed advice in para 3.31 of PPS6 which applied at that time. This suggested that conditions should be imposed to specify the maximum overall floorspace, etc and "*to prevent developments from being sub-divided into a large number of smaller shops or units*" in order to "*ensure the character of a development cannot subsequently be changed to create a form of development which the LPA would originally have refused*". PPS4 has now replaced this and its Policy EC19 has amended the above to state that LPAs should implement their policies and pro-actively manage impact by imposing conditions to, amongst other things, "*prevent developments from being sub-divided into a number of smaller shops or units, or to secure the provision of units suitable for smaller business, by specifying the maximum size of units*".

PPS4 still has the objective to maintain the viability and vitality of town centres as shopping areas. In this context, it has been put to the applicants that the Virgin Holiday shop could be disaggregated from the Tesco superstore and relocated to a small shop unit in a nearby town centre such as Southwick, Shoreham or Lancing.

However, the Virgin concession only utilises a very minor amount (0.49%) of existing gross floorspace within the Tesco superstore. The applicants contend that it is not a separate unit or shop as it has no separate external entrance

and, if it were operated by Tesco, it would not contravene any restrictive condition. They point out that its very small size (49sqm) is well below the extension threshold of 200sqm in Policy EC14 of PPS4 that requires a sequential test. They contend that it is not independent and is 'clearly ancillary to the wider Tesco superstore' stating that it cannot be accessed unless the Tesco superstore is open because it has no external means of access, that it is not closed off to the rest of the superstore at anytime (even when shut), and the staff working in it use the main superstore facilities (lockers and staffrooms). On this basis, they maintain that the 'town centre first' approach of PPS4 does not apply.

They also refer to the draft NPPF (para 74) supporting the application because it states '*In considering applications for planning permission, LPAs should apply the presumption in favour of sustainable development.*' Para 72 states the Government's objectives are to "*plan proactively to meet the development needs of business and support an economy for for the 21st century*" but also to "*promote the vitality and viability of town centres, and meet the needs of consumers for high quality and accessible retail services*". Paras 76-80 give more detailed advice and refer to applying a town centre first sequential approach to retail uses not in an existing centre and not in accord with an up-to-date Local Plan and to assessing the impact of a proposal on town centre vitality and viability but, like PPS4, contain nothing of directly specific relevance to the present application. The reference to restrictive conditions is removed.

Taking account of the above, it is considered that it would be extremely difficult to substantiate refusal of this application for a single, non self-contained concessionary use of a minor amount of existing floorspace. On its own, it would clearly have no measurable impact on any town centre.

With regard to the customer objection, prior to Virgin occupying it, this exit lobby was closed most of the time and only used at peak periods (ie. Christmas time). At other times, its sole use was as an emergency exit and this remains the case (the layout of the Virgin concession being arranged to ensure a clear throughway).

Recommendation

APPROVE for the reason:-

The Virgin concession utilises only a very minor amount of existing floorspace and is not fully self-contained, having no separate external entrance. It is well below the extension threshold of 200sqm for a sequential test required by policy EC14 of PPS4. On this basis, it is considered that it is of a sufficiently complementary and ancillary nature as not to contravene the 'town centre first' approach of PPS4 and not to result in any material harm to the viability and vitality of existing town centres.

Subject to:-

1. This permission relates solely to the relaxation of condition 07 of permission ADC/0049/06 to enable the use of this exit lobby as a concession by Virgin Holidays only and condition 07 shall otherwise continue to apply to the superstore premises. *R. Permission is granted solely having regard to the small scale and ancillary nature of the use, taking account of PPS4.*
2. Access to the Virgin Holidays concession shall be solely internally through the existing superstore and there shall be no external access whatsoever (except for purposes of emergency escape). *R. as above*

Case Officer: Keith Morgan

Date: 15 February 2012