

<b>Agenda Item</b> A6	<b>Committee Date</b> 24 August 2009	<b>Application Number</b> 09/00628/RCN
<b>Application Site</b> Former Cinema King Street Lancaster Lancashire	<b>Proposal</b> Removal of condition No.17 on application 08/01129/FUL which limits use to A1 Retail (non-food)	
<b>Name of Applicant</b> Kempsten Ltd	<b>Name of Agent</b> Mr Alan Lamb	
<b>Decision Target Date</b> 25 September 2009	<b>Reason For Delay</b> N/A	
<b>Case Officer</b>	Mr Andrew Drummond	
<b>Departure</b>	None	
<b>Summary of Recommendation</b>	Refusal	

## **1.0 The Site and its Surroundings**

- 1.1 The application site is located on the corner of King Street and Spring Garden Street. The old cinema building is constructed of red brick with faience panels to the King Street façade. The Spring Garden Street elevation is of solid brick, and is only currently broken up by a billboard.
- 1.2 Both King Street and Spring Garden Street are one-way roads, with the former forming part of the city's gyratory systems. On the opposite side of Spring Garden Street is a small, surface public car park, and diagonally across King Street lies the cobbled and 'tree-scaped' triangular area known as Queen Square.
- 1.3 The properties visible from the site to the west and south are predominantly 3-4 storey Georgian terraces built in the eighteenth century with traditional stone and large sash windows. The properties immediately to the north of the site along King Street form a 2-storey terrace that arcs round into Common Garden Street, and are of inter-war construction.
- 1.4 Though there are numerous Listed Buildings in the vicinity of the site, there are no Listed Buildings actually adjacent to the building that currently occupies the site, namely the old ABC cinema and bingo hall. The site falls within the City Centre Conservation Area and within the City Centre as defined by the Local Plan in relation to retail development and uses.

## **2.0 The Proposal**

- 2.1 The purpose of this application is to vary condition 17 attached to planning permission 08/01129/FUL. Condition 17 states:

*"Notwithstanding the provisions of the Town & Country Planning Use Classes Order 2005 (or any other order revoking or re-enacting that Order), the use of the ground and first floors (with the exception of the hotel lobby) shall be limited to Use Class A1 (non-food) and shall not be used for any other purpose without the express consent of the local planning authority."*

The reason for this condition is to ensure that inappropriate uses do not occur within the locality, and for highway safety purposes.

2.2 This application does not seek to change the design, scale, form, floorspace or materials of the approved building.

2.3 It is proposed to use a newly created loading bay on Spring Garden Street to facilitate the servicing requirements of the new development. The applicant believes this loading bay is adequate to serve a variety of A1 uses and therefore is seeking to vary condition 17 which restricts the retail floorspace to A1 (non-food) uses. It is argued that food retailers do not require more deliveries than non-food retail units, and that they would not have a negative impact on highway safety and capacity.

### **3.0 Site History**

3.1 A number of relevant applications relating to this site have previously been received by the Local Planning Authority. These include:

Application Number	Proposal	Decision
08/00146/CON	Demolition of existing bingo hall and cinema complex	Granted
08/01129/FUL	Construction of a 6-storey development with A1 retail use at ground and first floors with a 115 bedroom hotel at second to fifth floors	Granted

### **4.0 Consultation Responses**

4.1 The following responses have been received from statutory and internal consultees:

Consultees	Response
<b>County Highways</b>	<p>They previously expressed the view that the servicing arrangements were not suitable for food retail use because of issues related to the movement of goods across and along the footway and further areas of conflict between pedestrians, cyclist and public transport vehicles.</p> <p>In respect of this latest application the developer has submitted a Technical Note indicating a revised servicing arrangement, and including measures intended to address the issues previously raised. County Highways has carried out an initial road safety review of the Technical Note, with the result that some highway safety problems have been identified:</p> <ol style="list-style-type: none"> <li>1. Concern that HGV's in the loading bay will obscure pedestrians crossing from north to south and lead to potential conflict. Forward visibility for vehicles on Spring Garden Street is reduced to approx 12m. Motorists will be looking to their left to see if vehicles are stopped at proposed signals. Number of pedestrian movements across Spring Garden Street will increase as a result of the development and proposed crossing.</li> <li>2. Vehicles in Spring Garden Street will have to encroach into cycle lane to pass stationary HGV; residual width appears to be in the region of only 2 metres.</li> <li>3. Concern regarding pedestrian/cyclists conflict on south side of Spring Garden Street in cycle lane. There is no footway for pedestrians walking north to south to cross to without crossing over cycle lane.</li> </ol> <p>They conclude that the application does not address the highway issues related to the servicing needs of a food use for the store, and therefore they are unable to support the application.</p>
<b>Engineer/ Cycling Demonstration Town (CDT) Team</b>	<p>The application does not make adequate provision for the cycling aspirations of Lancaster City Council for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The arrows on the cycle lane are the wrong way - the proposal is for the cycle lane to be contraflow for cyclists to get from King Street (proposed Toucan</li> </ol>

	<p>crossing) to Penny Street (this is to compensate for the loss of the cycle lane on the east side of King Street outside the cinema site when the King Street lanes are redesigned), cycling will by then be permitted on the pedestrian section of Penny Street between George Street and Common Garden Street.</p> <ol style="list-style-type: none"> <li>2. Cyclists travelling east to west will go 'with flow' on carriageway with some treatment to get them onto the kerb/footway and hence Toucan at King Street.</li> <li>3. It is unlikely the cycle lane will have red textured surfacing full length as this may attract some opposition from the Council's Conservation Officer, so it will likely only be put down where conflict is expected.</li> <li>4. The cycle lane will be a 1.5m wide mandatory lane - the alternative, if over-running of vehicles is expected, is for an advisory lane but that will be open to abuse from vehicles (particularly unloading and taxis) and potentially be blocked for long periods.</li> <li>5. If the over running is deemed to be unacceptable then the kerb could be built out on the south side of Spring Garden Street, and the footway converted to shared use, ideally to 3.5m overall width - (I am aware the developer is contributing to the Toucan scheme and the contribution would have to be sufficient for these other works to be carried out).</li> <li>6. I would be concerned if the developer's plans compromised the contra flow cycling idea, as it is essential for the success of the Toucan and our east/west links.</li> </ol>
<p><b>Environmental Health Service</b></p>	<p>No objection, but change of use of ground and first floors for a food business would require additional planning conditions for ventilation, odour control and noise control of plant/equipment.</p>

## **5.0 Neighbour Representations**

5.1 No correspondence has been received at the time of compiling this report. Any comments subsequently received will be reported verbally.

## **6.0 Principal Development Plan Policies**

### **6.1 National Planning Policy Statements (PPS) and Guidance Notes (PPG)**

**PPG13** (Transport) - New development should help to create places that connect with each other sustainably, providing the right conditions to encourage walking, cycling and the use of public transport. Places that work well are designed to be used safely and securely by all in the community. The planning system has a substantial influence on the safety of pedestrians, cyclists and occupants of vehicles through the design and layout of footpaths, cycleways and roads. Planning can also influence road safety through its control of new development.

### **6.2 Lancaster District Local Plan - adopted April 2004 (saved policies)**

Policy **T1** (Transport Strategy) - development proposals that would result in a significant adverse effect on the efficient operation of a bus or rail service, or the ease of use of a bus, rail, cycle or pedestrian route will not be permitted

Policy **T5** (Primary Bus Corridors) - development proposals that would adversely affect on the efficient operation of buses within this corridor will not be permitted

Policy **T24** (Cycling Strategy) - development that would prejudice the implementation of any section of the cycle network will only be permitted where an acceptable alternative route has been provided

Policies **T26** and **T27** (Footpaths and Cycleways) - requirements to include cycle and pedestrian links for new schemes.

Policy **R21** (Access for People with Disabilities) - requires disabled access provision.

### 6.3 **Lancaster District Core Strategy - adopted July 2008**

Policy **SC6** (Community Safety) - to encourage high quality pedestrian friendly designs, giving attention to personal safety issues in all new development, avoiding car dominated environments, reducing the impact of traffic, managing Lancaster City Centre to promote vitality and viability and deliver safe high quality public realm.

Policy **E2** (Transportation Measures) - ensuring all major development proposals are accompanied by enforceable measures to minimise the transport impacts of development.

## **7.0 Comment and Analysis**

- 7.1 The application relates to a potential Tesco Express store, and states that a typical Tesco Express has between 3 and 5 deliveries a day. Though the information submitted states that delivery drivers are supposed to notify the store in advance to check that adequate service space is available, there is no guarantee that this would occur, or any practical way to enforce it. The application does not mention the number of deliveries of other retailers or the hotel (laundry services etc), nor waste collections. Furthermore, there is nothing to state how the end operator would liaise with other tenants to co-ordinate their deliveries. Likewise, there is nothing in the submission to state how other tenants would liaise with Tesco Express.
- 7.2 The number and size of deliveries will have 2 impacts. Firstly, the larger the vehicle, the more of the service bay it will accommodate pushing other vehicles to other parts of the network. This could impact on the effective operation of bus services, cyclists' safety and vehicles exiting the surface car park opposite the development. Secondly, the more deliveries there are (and the longer the time required for unloading) will lengthen the disruption to pedestrians using the pavement. The movement of trolleys from the delivery vehicle on Spring Garden Street to a retail unit entrance on King Street creates a clear conflict between deliveries and pedestrians. This reduces pedestrian safety for all pedestrians, including more vulnerable groups such as those with mobility issues. The applicant argues that with the building being set back at the ground floor there is adequate space to accommodate both deliveries and pedestrians safely. However, the issue is more that pedestrians will not be expecting to share any of the footway with delivery trolleys and the only way to minimise the risk to them is to limit the number and size of deliveries required to serve the development. The application does not address any alternative to addressing this problem.
- 7.3 As part of the previous application, improvements are proposed to Spring Garden Street which include the relocation of the cycle path to the opposite side of the road (in line with the City Council's masterplan for the city centre's cycle network), realignment of the kerb at the corner of King Street and Spring Garden Street and the provision of a service bay (2.7m by 27m). Appropriate signage would be erected to support the implementation of the new traffic orders. These improvements would maintain adequate road space for cycles and buses, ensuring effective operation of bus routes and the safety of cyclists, assuming that the service bay can be utilised. If deliveries overlap with each other, there is little flexibility in the road network to accommodate waiting vehicles.
- 7.4 The improvements would also provide further benefit in that they would allow delivery vehicles to manoeuvre without running across, or hanging over, the cyclepath or pavement. However, as stated by the Highway Authority and the City Council's Engineers, the service arrangements created conflicts with the relocated cycle lane and pedestrians crossing the end of Spring Garden Street. The fact that the Highway Authority has undertaken its own safety audit and found the submitted scheme wanting demonstrates that the application does not address the concerns previously raised by County and therefore the rationale for planning condition 17 remains.
- 7.5 The supporting information submitted with the application provides examples of deliveries to other Lancaster retail stores that face onto the city's gyratory system. These include Londis, Simply Baby, Waterstones and Scott Hornby Kitchens & Bedrooms. These are located on different parts of the one-way system. It is argued that the service arrangements for the cinema redevelopment would be significantly superior to those found at the 4 retail locations identified.

- 7.6 It is recognised that there may be historic examples of poor servicing practice elsewhere in the city, but that does not set a precedent for accepting sub-standard arrangements in locations where it can be controlled. Furthermore, none of the examples given are comparable in terms of floorspace. The cinema redevelopment will be providing in excess of 20,000 sq ft of retail space and a 115-bed hotel. County Highways have previously commented that development on this scale would normally be required to provide off-street servicing. The fact that it does not provide off-street servicing means that the on-street arrangement proposed in its place must be controlled.

## **8.0 Conclusions**

- 8.1 In light of the commentary above, condition 17 should not be varied to allow the retail space to be used by food retailers.

## **Recommendation**

That the planning application to vary condition 17 attached to planning permission 08/01129/FUL **BE REFUSED** for the following reasons:

1. The use of the ground and first floor retail space for food retailing would result in an unacceptable level of conflict between pedestrians, cyclists and deliveries, reducing safety for both pedestrians and cyclists.

## **Human Rights Act**

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

## **Background Papers**

1. None.