

Agenda Item A9	Committee Date 12 December 2016	Application Number 16/01239/VCN
Application Site Former Frontierland Site Marine Road West Morecambe Lancashire		Proposal Redevelopment of former amusement park to form retail units, restaurants, family pub/restaurant, hotel, associated car parking, landscaping and public art and new access (pursuant to the variations of condition 2, 3 and 4 on planning permission 16/00159/VCN to amend the approved plans, use classes and retail floorspace)
Name of Applicant Opus Land North (Morecambe) Ltd & Wm Morrison Supermarket		Name of Agent Gareth Glennon
Decision Target Date 6 January 2017		Reason For Delay N/A
Case Officer		Mr Mark Potts
Departure		Yes
Summary of Recommendation		Approval

1.0 The Site and its Surroundings

- 1.1 The application site relates to the former Frontierland amusement park previously operated by Blackpool Pleasure Beach Company. The site relates to an irregular shaped parcel of previously developed land extending approximately 3.1 hectares in area located off Marine Road West, approximately 650m south west of the Primary Shopping Area in Morecambe. Some former buildings, most notably the Polo Tower, remain on the site. The topography within the site is generally flat, although the land levels rise sharply towards the south eastern corner of the site, gradually lowering towards the seafront. The front portion of the site occupies an elevated position above Marine Road West with Highfield Crescent occupying a position approximately 3-4m higher than the main part of the site.
- 1.2 The site is predominantly surrounded by two different land uses: retail to the north and east comprising the Morrison's retail park and Aldi supermarket; and residential to the south (the West End). The site is located relatively close to other retail/leisure uses including the cinema, super bowl and the Market Hall on Central Drive. The rear elevations of Aldi, Morrison's and DW Sports (which includes a health and fitness facility) face onto the site. The service yard to the adjacent retail park abuts the site along its eastern boundary. Some of the residential properties on the south boundary directly face into the site (the frontages of the properties on Highfield Crescent) whilst the side elevations of the end terraces on Cedar Street and Grove Street flank the site at an elevated position.
- 1.3 This road is a wide carriageway enjoying a 30mph speed limit and separates the site from the promenade. An existing vehicular access to the site is provided off this adopted highway positioned approximately circa 25m south of the Aldi junction. Marine Road West (and the promenade) forms part of the strategic cycle network, which connects to the route along Central Drive then connects to the off-road route which runs along the railway line back towards Lancaster and beyond. This road is also a strategic bus route providing the main through-route between Carnforth and Heysham.

The bus station and railway station are both located on Central Drive approximately 500m (as the crow flies) from the application site (site frontage).

- 1.4 To the south the application site abuts part of the West End Conservation Area. The residential properties fronting the site on Highfield Crescent form the northern boundary of this designation. The site's frontage also forms a backdrop (when viewed from the promenade) for the iconic Grade II* Listed Midland Hotel located to the north of the site situated on the seafront. Other nearby Listed buildings include the Platform (Grade II, 200m due north east) and the Winter Gardens (Grade II* 440m due north east). There are also two groups of trees established along the southern boundary of the site that are subject to a Tree Preservation Order.
- 1.5 The site falls within a Tourism Opportunity Area outside of the defined Town Centre of Morecambe (saved Local Plan). It is also located within the area covered by the Morecambe Area Action Plan (MAAP), which provides a spatial plan (different to that of the saved Local Plan) for Central Morecambe in order to provide opportunities and facilitate its regeneration.
- 1.6 Other important off-site designations includes the promenade which forms part of a wider Informal Recreation Area, and Morecambe Bay which enjoys a number of different nature conservation designations (SPA – Special Protected Area, SAC – Special Area of Conservation, RAMSAR – Wetlands Convention, and SSSI – Site of Special Scientific Interest) are protected by European legislation.

2.0 The Proposal

- 2.1 The main purpose of the application is to provide for a Marks and Spencer (M&S) Foodhall to occupy Unit 7 (located within Zone 2). Therefore the application seeks to change the use class of the unit from A1 Comparison Retail to A1 unrestricted. The occupation of Unit 7 by M&S Foodhall would necessitate changes internally and the elevations of units within Zone 2. Externally the changes consist of the provision of a larger glazed entrance, together with provision for an external plant room to the north of the building. Changes are proposed to Zone 3 which relate to the internal layouts to suit the proposed tenant. This has had an effect on the external alterations in the form of additional glazing and doors to allow for access. The previous consent allowed for two units, however, the building has now been split into four units. Zone 7 relates to minor design changes concerning the positioning of doors and windows, which has been arrived at due to the need for signage. The application also seeks to ensure that plans which were approved on the original consent are carried across to this permission (which were not contained in the approval of 16/00159/VCN).
- 2.2 Amendments are sought to condition 3 to amend the principal uses of the site from comparison retail to A1 unrestricted to allow for Marks and Spencer (M&S) to operate from the site and the applicant seeks a minor change to the wording of condition 4 to allow for M&S to operate from the site.

3.0 Site History

- 3.1 There has been a number of applications across the site, the most recent relating to the approval for the redevelopment of the site to form retail units, restaurants, family pub/restaurant, hotel, landscaping and new access (14/00388/FUL) which was varied in 2016 under application 16/00159/VCN).

Application Number	Proposal	Decision
14/00388/FUL	Redevelopment of former amusement park to form retail units, restaurants, family pub/restaurant, hotel, associated car parking, landscaping and public art and new access	Permitted
16/00159/VCN	Redevelopment of former amusement park to form retail units, restaurants, family pub/restaurant, hotel, associated car parking, landscaping and public art and new access (pursuant to the variations of condition 2, 3 and 4 on planning permission 14/00388/FUL to amend the approved plans, allow A1 use in zones 3, 4 and 7 and to allow the sale of ancillary convenience goods across the site)	Permitted

4.0 Consultation Responses

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

Consultee	Response
Morecambe Town Council	No observations received during the statutory consultation period.
Lancaster Chamber of Commerce	No observations received during the statutory consultation period.
County Highways	No observations received during the statutory consultation period.
Natural England	No observations to make on the proposal
Lead Local Flood Authority	No observations received during the statutory consultation period.
County Ecologist	No observations received during the statutory consultation period.
Environmental Health	No observations received during the statutory consultation period.
Conservation Officer	No observations received during the statutory consultation period.
Drainage Engineer	No observations received during the statutory consultation period.
Environment Agency	No observations to make on the proposal
Fire Safety Officer	No objection
Lancaster Civic Society	No observations received during the statutory consultation period.
City Council Planning Policy	No objection in principle to the development on the understanding that it is for Marks and Spencer only
Tree Protection Officer	No objection
United Utilities	No observations received during the statutory consultation period.
Historic England	No requirement to consult

5.0 Neighbour Representations

5.1 Two representations have been received. One contains a wish to see a plan of the proposed development, timescale for implementation and how many retail units are proposed to be constructed, with a further one advising of their desire to work on the build of the scheme. Neither of which are planning considerations.

6.0 Principal National and Development Plan Policies

6.1 National Planning Policy Framework (NPPF)

Paragraphs 7, 12, 14 and 17 – Sustainable Development and Core Principles
Section 1 – Delivering Sustainable Development
Section 2 – Ensuring the Vitality of Town Centres
Section 4 – Promoting Sustainable Transport
Paragraphs 56, 57, 58, 60, 61 and 64 – Design
Paragraph 69 – Promoting Healthy Communities (place making)
Paragraphs 109, 117 – 119 – Conserving the Natural Environment
Paragraphs 128, 131 – 136 – Conserving and Enhancing the Historic Environment
Paragraphs 186, 187, 196, 197, 203 – 204 – Decision-taking

6.2 Lancaster District Core Strategy (adopted July 2008)

E2 – Transportation Measures
ER2 – Regeneration Priority Areas
ER4 – Town Centres and Shopping

ER5 – New Retail Development
ER6 – Developing Tourism
SC1 – Sustainable Development
SC2 – Urban Concentration
SC5 – Achieving Quality in Design
SC7 – Development and the Risk of Flooding
E1 – Environmental Capital

6.3 Lancaster District Local Plan – adopted April 2004 (saved policies)

Policy TO2 (Tourism Opportunities)
Policy S1 (District's Retail Hierarchy) ***partially superseded by Core Strategy***
Policy S9 (Morecambe Town Centre – protected retail frontages)
Policy T9 (Providing for Buses in New Developments)
Policy T17 (Travel Plan)
Policy T26 and T27 (Footpaths and Cycleways)
Policy E35 (Conservation Areas and their Surroundings)

6.4 Development Management Development Plan Document

DM1 – Town Centre Development
DM3 – Public Realm and Civic Spaces
DM20-23 – Transport, Accessibility and Connectivity
DM27 – Protection & enhancement of Biodiversity
DM32 – The Setting of Designated Heritage Assets
DM35 – Key Design Principles
DM38 – Development & Flood Risk
DM39 – Surface water Run-off and Sustainable Drainage
DM48 – Community Infrastructure

6.5 Morecambe Area Action Plan (MAAP)

SP1 – Key Pedestrian Routes and Spaces
SP4 – Town Centre
DO6 – Former Frontierland Site
DO5 – Festival Market and Area

7.0 Comment and Analysis

7.0.1 The main issues arising from the application are:

- The principle of development;
- Amendments to conditions to reflect the high quality convenience retailer;
- Proposed design amendments;
- Highways; and
- Other material considerations

7.1 The Principle of Development

7.1.1 The application seeks to incorporate a Marks and Spencer Foodhall on the Bay Shopping Centre in Unit 7 (Zone 2). The Foodhall format is a specialist chain of small and medium sized foodstores selling predominately M&S branded convenience products, as well as very limited non-food goods, clothing and home range. Many also operate an instore café (such as the café located in the Lancaster M&S). M&S food stores of below 370 sq.m sales areas will continue to be known as *Simply Food* stores (such as the one at Forton Motorway Services), with food stores above this size being called a *Foodhall*. The Foodhall would sell a large range of comparison goods as well as its food range. It is anticipated that the proposed store would be likely to sell about 4,500 food lines in total, of which up to 100 would be branded goods and the remainder (98%) would be Marks and Spencer's own brand. The total number of lines is a small proportion of the 20,000+ lines that a food superstore might typically sell. The range of goods limits the average basket size of the stores. Thus, while the stores can meet an element of main food shopping needs, and serve the needs of the

shoppers who wish to use trolleys and carry goods away by cars, they do not meet the same requirements of a wide ranging bulky main food shopping trip as a food superstore (such as Morrison's, Asda or Sainsbury's). As a rule they require stores with ideally a floor area of about 1,400 sq.m (Unit 7 is 1,672 sq.m).

- 7.1.2 Some Members will recall that application 14/00388/FUL established the principle of retail development on this site despite its location away from the town centre and its departure from existing planning policy. Furthermore permission was granted earlier this year to allow for an increase in the convenience element of the scheme (16/00159/VCN), permitting 10% of the total overall space in the comparison retail units to be used for convenience retailing. This demonstrates that some degree of convenience retailing will be acceptable.
- 7.1.3 Members supported the principle of development on the basis that a high quality retail park could be realised, and if this was delivered, it would outweigh any detrimental impacts of it's out of centre location. At the time of considering 14/00388/FUL Members were provided with three possible scenarios that may arise, namely: (i) permission granted for a high quality retail park; (ii) permission granted for a low quality retail park (i.e. with a perceived 'lower-end' of operators/retailers); or (iii) that planning permission was refused. In Officers' opinion the presence of a premier convenience retail operator would provide a strong anchor assisting in the delivery of a high quality retail park and boosting the retail offer that Morecambe offers which is aligned to what was recommended by Officers and supported by Members in 2014.
- 7.1.4 The scheme before Members proposes to increase the levels of convenience retail than previously permitted, seeking to permit the unrestricted use of Unit 7 in Zone 2 for convenience retail in order to facilitate a single operator (the named operator is Marks and Spencer). It has to be remembered that the application is seeking to establish a town centre use in an out of centre location (which planning policy guards against). In these circumstances a Sequential Test is required in support of the planning application. The applicant's initial Sequential Test was lacking in detail as it failed to provide up-to-date availability of the Festival Market Site and on the availability of units in the Arndale Centre. This was brought to the applicant's attention and an updated assessment was received in November 2016 which has demonstrated that based on the "requirements of M&S" that there is no single unit within the Arndale that can accommodate the M&S proposal. The applicant has also provided confirmation from the Council's Estates and Valuation Manager that the Festival Market has not been declared surplus to requirements and is therefore not available. The certainty of providing a named operator as part of this proposal has provided the clarity for the applicant passing the Sequential Test, and the applicant has heavily relied on both the Dundee and Rushden High Court cases to demonstrate that the Sequential Test can be passed. It is important to note that the Dundee Case (which the Rushden Case relies on) involved a named operator and revolved around the definition of what was 'suitable for the development proposed by the applicant'. A crucial element of understanding what is 'suitable for the development proposed' is the understanding of the operational requirements of a named operator (such as the requirement of a floor area of 1,400 sq.m – which in essence rules out the smaller units in the Arndale). For this reason Officers were of the opinion that a planning permission here has to be a personal one (i.e. limited to M&S by means of planning condition), as otherwise the Local Planning Authority would be in essence granting consent for an open planning permission which would permit any convenience operator to make use of the unit. An unrestricted permission would significantly reduce the qualitative arguments over the delivery of a high-quality retail park which provides wider regeneration benefits to the town as a whole. Furthermore an open permission for a foodstore in this location, without a named operator, creates uncertainty over whether more suitable and appropriate premises are available in sequentially preferable locations, such as units in and surrounding the Arndale Centre.
- 7.1.5 Planning permission runs with the land, and it is rarely appropriate to tie this (by planning condition) to the applicant. There are occasions, however, when there may be exceptional circumstances where granting planning permission for development that would not normally be permitted could be justified on planning grounds because of who (in this instance M&S) would benefit from the permission. Officers' views were that for the applicant's proposal to be found acceptable this had to occur, otherwise a lower quality operator could occupy the unit, which in turn would undermine the original decision of Members, and the qualitative arguments in respect of the economic benefits that could be no longer demonstrated.

- 7.1.6 Officers have pushed hard for the applicant to enter into a legal obligation to restrict the planning permission to the Marks and Spencer's brand in Unit 7 for the reasons as contained within the preceding paragraphs (7.1.3 -7.1.5). It should be noted that the planning application has not been made in the name of Marks and Spencer's, although admittedly there is an operator statement contained within the submission (titled "Report on behalf of Marks and Spencer plc"), and there have been articles in the press to this effect (as recent as August 2016). There does therefore seem a commitment to the retailer operating in the town, which the Council fully welcomes in principle. It is therefore puzzling as to why the applicant is not amenable to entering into a legal agreement, as even if they choose to move from the site – a planning application could be submitted to vary the terms of any legal obligation at that juncture (which would be assessed on its merits at that point in time). Officers believe that this is seen as a reasonable suggestion, although recalling that a personal permission is unusual and would not generally be sought (which is echoed by Paragraph 15 of the NPPG).
- 7.1.7 The risk, should Members seek to permit the scheme on the basis of a planning permission without restriction, is that this will result in a planning permission that could be utilised by 'lower-end' retailers (which could be said to go against the grain of a high quality retail park that members sought in 2014). This also brings into question the applicant's sequential assessment, as this has been based on a named operator. If it transpires that the unit would not eventually be occupied by M&S, then the sequential assessment fails to identify the operational needs of another operator (who may reasonably be accommodated within the Arndale Centre or 53-55 Euston Road). Notwithstanding this, it is clear at present that there are no appropriate units of the size proposed by this application which are available within Morecambe.
- 7.1.8 The applicants have not submitted an Impact Test in support of the application, as the proposal relates to a unit with a floorspace of less than the 2,500 square metres threshold set out in the NPPF. Given that no locally set threshold exists (as it was deemed appropriate to use the one set by the NPPF) then the proposed development does not need to be assessed under the Impact Test.
- 7.1.9 On balance the Local Authority are supportive of a high quality retailer such as Marks and Spencer's returning to the town, which would assist with the regeneration of Morecambe. Officers maintain that a legal agreement to restrict the unit was seen as an appropriate mechanism to ensure the aspirations that were agreed in 2014 were realised. It is extremely unfortunate that the applicant is not amenable to this course of action.

7.2 Amendments to conditions to reflect the high quality convenience retailer

- 7.2.1. The applicant seeks to amend the current wording of condition 3 to allow for interested tenants to trade from the site (notably M&S). As part of the application earlier this year permission was granted to allow 10% of the floorspace within the comparison retail units to sell convenience goods and the applicant wishes to include this within the wording of condition 3 (it currently sits within condition 4). For clarity the table below indicates the uses of each zone as approved (16/00159/VCN), and the applicant's proposal should the current planning application be supported.

Zones	Use Class As Approved	Use Class As Proposed
Zone 1 (Units 1 & 13)	A1 Comparison Retail	A1 Comparison Retail (with no more than 10% of the total floorspace within each unit to be used for the sale of convenience retail)
Zone 2 (Units 2-6)	A1 Comparison Retail	A1 Comparison Retail (with no more than 10% of the total floorspace within each unit to be used for the sale of convenience retail)
Zone 2 (Unit 7)	New Condition	A1 Convenience Retail (principal and mezzanine floor area)
Zone 3 (Units 8,9, 13 and 14)	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>

Zone 4 (Unit 10 and 11)	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>
Zone 5	A3/A4 Public House/Restaurant Mixed Use	A3/A4 Public House/Restaurant Mixed Use
Zone 6	C1 Hotel	C1 Hotel
Zone 7 (Unit 12)	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>	A1/A3 selling hot and cold food and drink for consumption on and off the premises <i>(for clarity, this does not include Use Class A5 hot food takeaways)</i>

7.2.2 The applicant also seeks to vary condition 4 which currently reads:

'The maximum permitted gross retail floor area of the development shall not exceed 11,109 sq.m (principal retail floor area 7,359 sq.m and the mezzanine retail 3,750 sq.m) with no more than 10% of the total floor area in each unit dedicated to convenience retail. With the exception of proposed retail unit 3, no retail unit shall have a principal retail floor area of less than 465 sq.m'.

The re-worded proposed condition would read:

'The maximum permitted gross retail floor area of the development shall not exceed 11,109 sq.m (principal retail floor area 7,359 sq.m and the mezzanine retail 3,750 sq.m). With the exception of proposed retail unit 3, no retail unit shall have a principal retail floor area of less than 465 sq.m'.

The re-worded condition essentially removes the restriction of 10% convenience retailing which is now included within the proposed condition 3. On balance this is considered acceptable and ensures that the retail format differs from what is currently on offer in Morecambe Town Centre in order to maintain and enhance the vitality and viability of the town.

7.3 Design Changes

7.3.1 The scheme is in essence the same as previously approved. The most significant of the changes is for a plant enclosure to be located to the north of the proposed M&S unit and this would be screened by a louvre screen and the screening would be visible along Marine Road West. Details of the materials here are required and this can be addressed by means of condition as there is still the need to satisfy conditions associated with materials on this scheme. The other changes are relatively minor, including changes in design to account for signage and subdivision of zone 3 (which has resulted in design amendments), and on balance can be found acceptable.

7.4 Highways

7.4.1 The applicant has submitted a revised technical assessment associated with highways, which demonstrates that via sensitivity testing that the proposal will not have a significant impact on the trip generator and parking accumulation figures that have been previously agreed with the Highways Authority. The observations of the Highways Authority are yet to be received in relation to this scheme but will be reported verbally at the Committee meeting.

7.5 Other Material Considerations

7.5.1 The application has been advertised as a departure from planning policy, which is consistent with similar advertisement of the original planning application and also the Section 73 application. That process also involved referral of the decision to grant permission to the Secretary of State, to allow consideration of whether the application should be 'called-in'. In their written notification to the Council, dated 7 January 2015, the Secretary of State advised that the Government were committed to giving more power to councils and communities to make their own planning decisions. The letter continues by saying that following consideration the Secretary of State *"...is content that the*

application should be determined by the local planning authority". On this basis, and because the amendments being proposed as part of the current application are considered appropriate, then it is considered that no further referral is necessary.

- 7.5.2 An application for the discharge of conditions (16/00020/DIS) relating to application 14/00388/FUL was determined in August this year, and whilst some conditions were approved, there are still a number that are outstanding, with details that are required to be submitted for the Local Planning Authority's consideration. Those conditions that have been approved will be updated on the decision notice should Members support the scheme, whilst those not approved will be imposed again.

8.0 Planning Obligations

- 8.1 The obligations associated with the extant parent consent (14/00388/FUL as amended by 16/00159/VCN) will remain in force with any approval of this Section 73 application and therefore no separate agreement will be required.

9.0 Conclusions

- 9.1 The proposed inclusion of a high quality convenience retailer, whilst a departure from the Development Plan, is supported by Officers as this will act as a catalyst for the regeneration of this site, which is something that will have lasting benefit to Morecambe. It is extremely unfortunate that the applicant is not amenable to the Council's suggestion that a personal planning permission in the name of M&S should be agreed. In approving this application, it would clearly be a risk that a different retailer other than M&S may eventually occupy the unit. Officers remain hopeful that even without this legal mechanism that a high quality retailer will still occupy this unit, and bring lasting regeneration to Morecambe. It is time for the applicants to begin delivering this vision.

Recommendation

That conditions 2, 3 and 4 on planning permission 16/00159/VCN **BE VARIED** as follows*

2. Amended Plans List Approved
3. Amendment to use class condition (as defined in this report)
4. Retail Floor Area (as defined in this report)

NB: All other conditions as imposed on 14/00388/FUL will be carried forward, though updated where necessary to reflect where conditions have been previously discharged in part or full

Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015

In accordance with the above legislation, the City Council can confirm the following, the City Council can confirm that it has made the decision in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The decision has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

Background Papers

None.