

**COMMITTEE:** DEVELOPMENT CONTROL

**DATE:** 23<sup>RD</sup> APRIL 2008

**SUBJECT:** (1) LUTON RETAIL PARK, GIPSY LANE  
REMOVAL OF CONDITION NO.8 (GROSS RETAIL  
FLOOR SPACE) OF PLANNING PERMISSION  
L/17584/A/0 DATED 9<sup>TH</sup> MARCH 1990  
(APPLICANT: STANDARD LIFE INVESTMENTS LTD)  
(APPLICATION NO: 07/01156/ROC)

(2) UNIT 1A LUTON RETAIL PARK, GIPSY LANE  
CONSTRUCTION OF MEZZANINE FLOOR TO  
PROVIDE 758 SQUARE METRES OF ADDITIONAL  
RETAIL FLOORSPEACE  
(APPLICANT :STANDARD LIFE INVESTMENTS LTD)  
(APPLICATION NO. 07/01154/FUL)

**REPORT BY:** DEVELOPMENT CONTROL MANAGER

**CONTACT OFFICER:** JACKIE BARNELL 546317

**IMPLICATIONS:**

LEGAL	COMMUNITY SAFETY
EQUALITIES	ENVIRONMENT
FINANCIAL	CONSULTATIONS
STAFFING	OTHER

**WARDS AFFECTED: SOUTH**

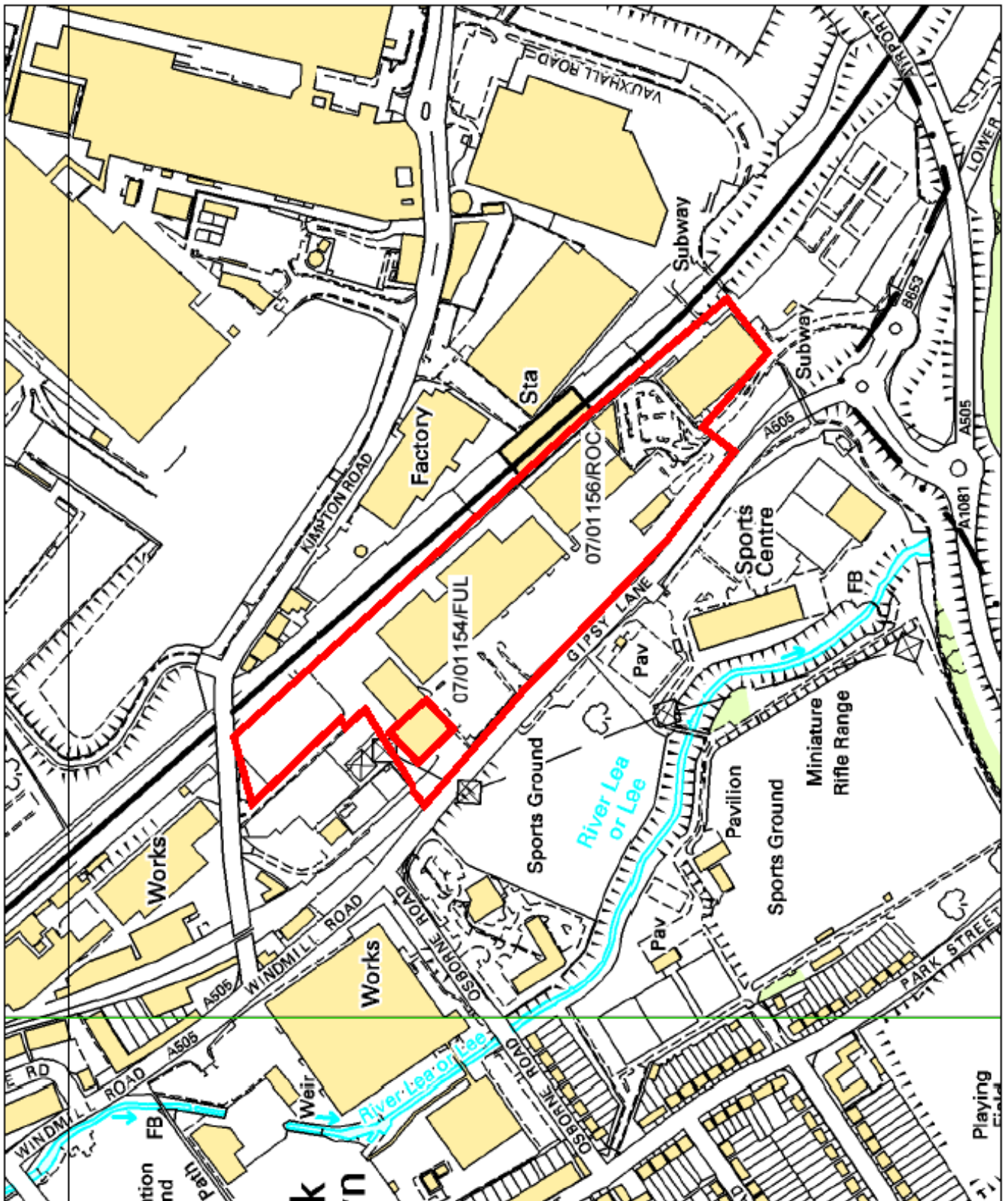
---

**PURPOSE**

1. To advise Members of two current applications for planning permission and to seek their decision.

**RECOMMENDATION(S)**

2. In respect of Application (1), that planning permission be granted subject to the completion of a further deed of variation to the original Section 52 agreement



3. In respect of Application (2) that, following the completion of the deed of variation referred to at paragraph 2 above, planning permission be granted subject to the following conditions:-

- (01) The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this permission.

*Reason: To limit the duration of the permission in accordance with the provisions of Sections 91-96 of the Town and Country Planning Act, 1990.*

- (02) The development hereby permitted shall not be carried out other than in complete accordance with the approved plans and specifications.

*Reason: To define this permission and for the avoidance of doubt.*

## **BACKGROUND**

4. Members will recall that the above applications were first reported to the Committee on 12<sup>th</sup> December 2007. They were deferred to enable further consideration of the issues raised, in particular, the legal implications of varying Condition 08 of the original outline consent. Members were particularly concerned that, if recent changes to the Town and Country Planning (General Permitted Development) Order 1995 were to be reversed, the control over future internal works creating additional retail floorspace might be lost.

## **The Proposals**

5. To recap on the applications as submitted, Application (1) relates to the removal of the condition which limits the total floorspace of the retail park against the background of variations to the floorspace thresholds that have resulted from recent approvals for mezzanine floor additions to units within the retail park and in the context of the legislative changes to the Development Control system. Application (2) relates to the construction of a mezzanine floor to provide 758sq.metres of additional floorspace within Unit 1a, intended to be occupied by fashion retailers "Next".

6. The original planning permission for the retail park was approved in outline form in 1989 at a time when the Council was under great pressure to permit out of centre shopping developments. The grant of planning permission in this case enabled the Council to resist others but, nevertheless, raised concerns regarding the potential impact on the viability of the town centre at that time. Hence, the permission was made subject to a Section 52 (S52) Agreement limiting the goods which could be sold, predominantly to bulky goods e.g. carpets and furniture, which are more appropriately located out of centre, but also included toys, car accessories and DIY. The agreement and the conditions attached to the planning permission also limited the total floorspace that could be used for retail purposes. This general approach proved successful. The development was occupied by retailers in accordance with the restrictions imposed and the impact on the town centre was minimised. Nevertheless there is a complex planning history to the site since the grant of the 1989 permission that is pertinent to the determination of both current applications and this is set out below.

## **REPORT**

### **Planning History**

7. An outline planning permission for the development of a retail park was approved subject to a S52 agreement on 6<sup>th</sup> April 1989.

8. A subsequent full planning permission was granted, again subject to a S52 agreement, on 9<sup>th</sup> March 1990. In both cases, the planning permission included a condition restricting the total amount of floorspace to be constructed and those restrictions were repeated in the accompanying S52 agreement. In the case of the full planning permission granted in March 1990, a condition was imposed to limit the gross retail floorspace to 15,706sq.metres.

9. In November 1991, planning permission was granted for the sub-division of unit 1 to form two separate units of 790sq.metres and 604sq.metres respectively. The sub-divided units became identified as Units 1A and 1B with the former occupying the larger floor area. Unit 1a is the subject site of the current application (2).

10. In October 1998, planning permission was granted for a new access to the retail park and the relocation of car parking to release land for the construction of the Luton Parkway railway station.

11. In December 1998, a deed of variation was completed which amended the access arrangements to the site but, more pertinent to the applications under current consideration, increased the gross floorspace restriction set out in the original S52 agreement to 15,716 sq. metres and provided for part of the gross retail floorspace to be used for the sale of fashion clothing. The area of gross retail floorspace permitted to be used for fashion clothing was restricted to 2,000sq.metres. The floorspace limitation was the subject of a number of caveats including:-

- (I) the need to ensure that the floorspace is not contained in more than two units;
- (II) that any such unit for the sale of fashion clothing does not comprise more than 1,500 square metres of gross retail floorspace;
- (III) that in the event of any such unit comprising more than 1,200 sq.metres, then that unit shall be the only unit permitted to sell fashion clothing at that time; and
- (IV) that any such unit shall be used and operated as a single separate unit and shall only be occupied by one sole occupier.

12. The deed of variation also took the opportunity to amend the definitions of "gross retail floorspace" and "building" from those identified in the original S52.

13. "Gross retail floorspace" is defined in the Deed of Variation as "the aggregate of any uncovered and open-air trading areas in conjunction with the adjacent building and the total floor area of the retail floor units which shall include *inter alia* but not by way of limitation, basements, mezzanines and upper floors designed for exclusive use of the retail units, including lobbies, plant rooms, cloakrooms and amenity rooms and shall be measured from the centre line of party walls and from outside wall faces".

14. "Building" is defined as any building or buildings and/or retail units in existence at the date of this agreement (the 1998 deed of variation) on the land or to be built or constructed or erected at any time in the future on the land.

15. In February 2004, planning permission was granted for a variation to the gross retail floorspace restrictions set out in the 1990 permission to facilitate the construction of mezzanine floors at Units 1A and 1B. The application sought permission to increase the overall floorspace by a total of 920sq.metres, of which 818sq.metres was specified for retail purposes. The application was made by Homestyle Furnishing Group on behalf of the occupiers, Rosebys and Harveys. That permission has never been implemented and the current Application (2) is intended to replace the 818 sq. metres proposed for both Units 1A and 1B with 758 sq. metres in Unit 1B; that would create a total floorspace within Unit 1B of 1595 sq. metres for occupation by "Next".

16. In May 2005, planning permission was granted for a further variation to the gross retail floorspace restrictions set out in the 1990 permission to facilitate the construction of a mezzanine floor at the Halfords store at unit 6. The application sought to increase the gross floorspace by 390sq.metres.

#### Planning Policy

17. The site is within an area where there is no specific land use allocation on the Proposals Map of the Luton Local Plan. Nevertheless, Policy S1 of the Luton Local Plan sets out the Council's strategy that would normally apply to retail development proposals within the Gipsy Lane Retail Park.

#### Consultation Responses

##### *Application (1)*

18. Highway Development Manager: the removal of Condition 8 could lead to growth of the retail park without further parking being provided. If that is the case, a full Transport Assessment will be required for any further floorspace increase since there could be a significant impact on the highway network that may require off site highway improvements in mitigation. If that is the case, a full Transport Assessment will be required for any further floorspace increase since there could be a significant impact on the highway network that may require off site highway improvements in mitigation.

19. Strategic Planning – Retail policy concerns raised in the absence of a detailed knowledge of the site.

20. London Luton Airport – No safeguarding objection.

##### *Application (2)*

21. Highway Development Manager - The floorspace increase falls marginally below the threshold whereby a Transport Statement is required and is therefore deemed to have no impact on the highway network.

22. Strategic Planning – Retail policy concerns raised in the absence of a detailed knowledge of the site.

23. London Luton Airport – No response.

24. Arndale Traders – No response.

25. With respect to Applications (1) and (2), no representations have been received from local third party interests.

## **MAIN PLANNING CONSIDERATIONS**

### **Application (1)**

26. The application has been made against the background of the changes to the gross retail floorspace limits referred to in the planning history above. The application, in part, is intended to resolve discrepancies relating to the floorspace limitations approved in relation to the recent applications for the mezzanine floors at Units 1A, 1B and Unit 6 and the consequential changes required by Deed of Variation to up-date the floorspace limitations set out in the S52 legal agreements relating to the site.

27. In seeking to regularise the discrepancies referred to above, the applicant considers that an opportunity has arisen to review the necessity of including floorspace restrictions in the light of the new controls on internal floorspace in buildings used for retail purposes as introduced in the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006. As from May 2006, internal floorspace increases such as mezzanine floors, of 200 sq.metres or more are classified as development and, as such, require planning permission. The need for planning permission is irrespective of floorspace limitations imposed by conditions attached to planning permissions or clauses within legal agreements.

28. The new controls are intended to bring mezzanine development and other internal floorspace increases within planning control and, thus, to make them subject to the same considerations as other retail extensions. Hence there are sufficient safeguards to control the effect of increasing retail floorspace in out-of-centre locations where there is no need for additional floorspace or where sequentially preferable locations may exist. Similarly, sufficient controls would be available to address the impact that an increase in floorspace may have on car parking provision and the impact of any development on the local highway network, the concerns of which have been raised by the Highway Development Manager.

29. In the circumstances, the floorspace restrictions imposed by the planning permission may now be considered as an unnecessary duplication of the controls now available through recent legislative change. However, it was this conclusion that raised concern in Members' minds at the December Meeting.

### **Application (2)**

30. The application for the construction of mezzanine floorspace represents a consolidation of the floorspace approved in February 2004 at Units 1A and 1B. The current application proposes only to consolidate the floorspace previously permitted; no additional floorspace is sought; indeed, as mentioned in Paragraph 15 above, the total floorspace resulting would be slightly less than approved by the planning permission granted in February 2004 but not implemented (and now expired).

31. The application has been submitted on the basis that it will be dealt with in the context of the floorspace restrictions to be addressed by Application (1) and by the necessary consequential Deed of Variation.

32. The proposal does not increase the quantum of floorspace already accepted by the Council by virtue of the grant of February 2004 permission. The main change is that the floorspace will be consolidated within a single unit rather than split between two units. The retail policy and parking implications associated with the additional floorspace proposed have been addressed in the context of the earlier application and by the 1998 Deed of Variation.

33. The latter is of material relevance having regard to the intended occupier of Unit 1A and to the material difference in the change of retailer from that considered at the time that the mezzanine proposals for Units 1A and 1B were under consideration. The occupiers of the previous scheme were considered to be mainstream furniture retailers and the range of goods that would be sold from the resultant increase in floorspace was not considered prejudicial to the retail strategy at that time. In the case of the current proposal, it is known that "Next" is the intended occupier of Unit 1A. In normal circumstances, the sale of fashion clothes in an out-of-centre location would be seen as having a potentially damaging impact on the viability and vitality of the existing retail centres in the town and thus would be considered unacceptable unless a justifiable need could be demonstrated. However, in this case, the use of the premises for fashion clothes retailing must be considered in the context of the 1998 Deed of Variation, which allows for 2,000sq.metres of gross retail floorspace to be used for fashion clothing sales subject to the caveats dealt with in the Planning History sub-section above. On the basis of the information provided at this stage, the proposal complies with the provisions set out in the Deed of Variation.

34. Further to the deferral of consideration of both of the applications, the applicants' agent has written to offer a changed proposal in respect of the requested variation to Condition 08 of the original permission and parallel variation to the S52 Agreement. They have commented as follows:-

*"as a result of the second amendment to the General Development Procedure Order, planning permission is now required for the construction of more than 200 sq. metres of retail floorspace in any retail unit, including mezzanine floors. Given this amendment, which would require a planning application for any new floorspace over 200 sq. metres, we suggested that Condition 08 and the parallel controls in the S52 Agreement were unnecessary and our application and accompanying Deed of Variation sought to remove these on the basis that your Council would have sufficient control through the amended legislation. However, on 12<sup>th</sup> December 2007 Members indicated that they wished to retain some mechanism of control above that provided by the amended legislation. We therefore propose that Clause 2 of the S52 Agreement (as amended) be reworded to read:*

*Not to use or cause or permit or suffer to be used the land or any part of the land for any retail sales except within buildings which shall not in total have a gross retail floorspace exceeding 19,100 sq. metres **without the prior written consent of the Council.**"*

35. Thus, the Council would still be able to control any additions to the overall floorspace on the retail park that would breach the 19,100 sq. metres limit. It should be noted that an up-to-date survey of the floorspace actually trading at the retail park has shown that there is currently 18,280 sq. metres of floorspace on the retail park. If Application (2) on this agenda is approved and implemented, that would result in a total gross floorspace of 19,038 sq. metres which is below the overall threshold now being proposed.

36. One added suggestion from the applicants is that, in order to facilitate the creation of the floorspace for "Next" in Unit 1B, the current restriction in the S52 Agreement relating to floorspace within a single unit selling fashion clothing should be increased from 1500 sq. metres to 1650 sq. metres (see paragraph 11 above). That would be consistent with the overall suggested package of measures and is, in the circumstances, a reasonable request.

### **CONCLUSION**

37. The applications do not represent an increase in the quantum of the additional gross retail floorspace previously permitted at the retail park. Hence, subject to the satisfactory completion of a further Deed of Variation deemed necessary to the original S52 Agreement, it is recommended that planning permission be granted.

### **LIST OF BACKGROUND PAPERS**

#### **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

- 38. 07/01156/ROC
- 39. 07/01154/FUL
- 40. L/17584/-/0
- 41. L/17584/A/0
- 42. L/17584/C/0
- 43. 03/01595/VARCON
- 44. 05/00201/VARCON
- 45. Section 52 Planning Agreement : Deed of Variation dated 31.12.98.
- 46. Letter from Gerald Eve dated 13<sup>th</sup> February 2008.