
APPLICATION DETAILS

Application No:	18/0742/FUL
Location:	Gateway Middlehaven, Between A66 and Riverside Stadium, Cargo Fleet, Middlesbrough
Proposal:	Alterations to the elevations of the existing building and removal of existing lobby and concession block
Applicant:	Sainsbury's Supermarket Limited
Company Name:	Sainsbury's Supermarket Limited
Agent:	Mr Gary Morris
Company Name:	WYG
Ward:	Central
Recommendation:	Refuse

SUMMARY

The application is for the alteration of the external elevations of the building at Gateway Middlehaven and the removal of the existing lobby area.

A further application is also being considered by the Local Planning Authority for the subdivision of the premises and as the two applications are closely linked it is considered appropriate to that these should be determined together.

It is the officer view that, in isolation, the proposed works would be not be considered harmful to the appearance of the existing building or the surrounding area. However, when the consequence of the proposed alterations is taken into consideration, the proposals would lead to separate entrance doors to new retail units. These new individual and separate retail units would detrimentally impact upon the vitality and viability of the town centre, adversely affect the inward investment into the town, and jeopardise the Council's own regeneration objectives. The officer recommendation is to refuse the application.

SITE AND SURROUNDINGS AND PROPOSED WORKS

The application site is positioned to the northeast of Middlesbrough town centre, in an area identified as Greater Middlehaven. The site is located on the northern side of the A66, to the south of Cargo Fleet Road, to the east of Marsh Road, and to the west of Shepherdson Way.

The site is at the eastern entrance to the Middlehaven regeneration area, and known as Gateway Middlehaven.

The existing site contains a large single building which has approval for use as 3 retailing premises, a large foodstore and two smaller retail units. The overall development has a large expanse of car parking to the front of the stores, servicing arrangements to the rear and petrol filling station to the southern edge of the wider site. Although the buildings on site form part of planning permission granted in January 2015, none of the stores have ever been occupied since constructed. Immediately adjacent to the site is a small development of three units, which are occupied by a Marston's public house, a Costa coffee shop, and a KFC restaurant.

The application seeks consent for alterations to the elevations of the existing building, and the removal of the existing lobby and concession block. On the front elevation of the building, these alterations include new entrance doors and fire exit doors. On the rear elevation of the building, the application seeks consent for new personnel and unloading bay doors.

The new entranceways on the front elevation would be created within the existing curtain walling panel. The existing entrance lobby would be infill cladded to match the existing building.

PLANNING HISTORY

M/FP/0773/13/P

Planning permission was initially granted in February 2014 (ref. M/FP/0773/13/P) for the **'Erection of a foodstore with associated petrol filling station, car parking, landscaping and boundary treatments, access and a bus terminus'**.

The foodstore comprised 11,528 sq.m. gross / 7,432 sq.m. net of Class A1 retail floorspace. Condition 15 attached to that permission limited the amount of floorspace to (4,008 sq.m. for convenience goods and 3,344 sq.m. for comparison goods. Following the discharge of pre-commencement planning conditions, work began on site to implement the permission in September 2014.

M/FP/1262/14/P

A further application to subdivide the previously approved scheme due to changing market and economic conditions, submitted in December 2014 (ref. M/FP/1262/14/P) and approved in January 2015 for;

'Re-arrangement of previously approved foodstore building layout M/FP/0773/13/P to provide up to 2 no. additional retail units (A1) with associated external changes, including revisions to service yard, car parking and landscaping'.

Condition 1 lists the approved plans for the development, which show a single large foodstore unit and two adjoining smaller retail units. Conditions 15 and 16 restrict the operational floorspace of the development and the convenience/comparison goods split, but there are no conditions explicitly preventing the subdivision of the units. Taken together, the 2015 planning permission related to a development of 4,512 sq.m. (net) of Class A1 comparison retail goods, and 3,000 sq.m. (net) of Class A1 convenience retail goods.

It is noted that the form of development granted by M/FP/1262/14/P was extensively completed but never occupied by the intended operator.

18/0478/FUL

Re-arrangement of the approved 3 no. retail units (including foodstore) to provide up to 5 no. retail units (A1), creation of outside garden centre on the northern side of building used in conjunction with adjacent unit, change of use of 1,305sqm of existing internal floorspace to gymnasium (D2), alterations to external elevations including new entrances to all units, 4.8-metre high fencing around garden centre, new car parking area, and new access steps and ramps.

Under Consideration

18/0673/FUL

Ancillary garden centre area to the side of existing retail unit and erection of associated 4.8m high boundary fence

Under Consideration

18/0676/AMD

Non material amendment to M/FP/1262/14/P to make various alterations to the elevations of the store

Refused 12th November 2018

PLANNING POLICY

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, Local Planning Authorities must determine applications for planning permission in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Section 143 of the Localism Act requires the Local Planning Authority to take local finance considerations into account. Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires Local Planning Authorities, in dealing with an application for planning permission, to have regard to:

- The provisions of the Development Plan, so far as material to the application
- Any local finance considerations, so far as material to the application, and
- Any other material considerations.

Middlesbrough Local Plan

The following documents comprise the *Middlesbrough Local Plan*, which is the Development Plan for Middlesbrough:

- Housing Local Plan (2014)
- Core Strategy DPD (2008, policies which have not been superseded/deleted only)
- Regeneration DPD (2009, policies which have not been superseded/deleted only)
- Tees Valley Joint Minerals and Waste Core Strategy DPD (2011)
- Tees Valley Joint Minerals and Waste Policies & Sites DPD (2011)
- Middlesbrough Local Plan (1999, Saved Policies only) and
- Marton West Neighbourhood Plan (2016, applicable in Marton West Ward only).

National Planning Policy Framework

National planning guidance, which is a material planning consideration, is largely detailed within the *National Planning Policy Framework* (NPPF). At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11). The NPPF defines the role of planning in achieving economically, socially and environmentally sustainable development although recognises that they are not criteria against which every application can or should be judged and highlights the need for local circumstances to be taken into account to reflect the character, needs and opportunities of each area.

For decision making, the NPPF advises that local planning authorities should approach decisions on proposed development in a positive and creative way, working pro-actively with applicants to secure developments that will improve the economic, social and environmental conditions of the area and that at every level should seek to approve applications for sustainable development (paragraph 38). The NPPF gives further overarching guidance in relation to:

- The delivery of housing,
- Supporting economic growth,
- Ensuring the vitality of town centres,
- Promoting healthy and safe communities,
- Promoting sustainable transport,
- Supporting the expansion of electronic communications networks,
- Making effective use of land,
- Achieving well designed buildings and places,
- Protecting the essential characteristics of Green Belt land
- Dealing with climate change and flooding, and supporting the transition to a low carbon future,
- Conserving and enhancing the natural and historic environment, and
- Facilitating the sustainable use of minerals.

The planning policies and key areas of guidance that are relevant to the consideration of the application are:

DC1 – General Development
CS5 – Design
CS13 – A Strategy for the Town Centre

Emerging Local Plan Policy
CITY 1, CITY 4, EG1 and EG6

The detailed policy context and guidance for each policy is viewable within the relevant Local Plan documents, which can be accessed at the following web address.
<https://www.middlesbrough.gov.uk/planning-and-housing/planning/planning-policy>

CONSULTATION AND PUBLICITY RESPONSES

The application was subject to the standard notification of neighbouring sites. Following the consultation period, there were no comments, objections or other representations received.

There were no internal technical consultees or statutory consultees as part of the application.

Public Responses

Number of original neighbour consultations	4
Total numbers of comments received	0
Total number of objections	0
Total number of support	0
Total number of representations	0

PLANNING CONSIDERATION AND ASSESSMENT

The application is based on the approved layout plan showing 3 units for the overall building and seeks to remove the existing lobby area at the front of the building (serving the foodstore part of the building) and provide additional doorways for customer access, effectively creating 5 accesses across the building frontage. This proposal does not serve the approved uses but instead would support the sub-division of the premises either via the proposals being sought under application 18/0478/FUL or future works undertaken as permitted development. The proposals under application 18/0478/FUL for the wider sub-division and associated works, includes works to the elevations that are covered by this proposal. It is considered necessary to not only consider these proposals in isolation, but also the consequences, or possible consequences, of those external alterations as they have the ability to influence the consideration of the fall-back position for retailing at the site.

With regards to the considerations relating to the linked consequences of this proposal, the content, considerations and recommendation of the report under application 18/0478/FUL are directly relevant and provide the context for the basis of this report. Rather than repeat the report content of application 18/0478/FUL within this report, it is the intention of this report therefore to rely on the planning considerations of application 18/0478/FUL.

The primary issues to consider with the application are the proposed impacts of the alterations in isolation as well as the implications of their implementation.

The application site is the approved building intended for a Sainsbury's foodstore and additional retail units. This building sits vacant within the Gateway Middlehaven site, served by a large car park to the west.

An application for a non-material amendment seeking the removal of the existing lobby/concession area and insertion of new sets of entrance doors was recently refused by the Council. It was the view of the Council that these alterations were material changes to the implemented development. In light of which, the current application was submitted for consideration.

Development in Isolation

The relevant policies in the Development Plan regarding this application are Policy DC1 (General Development) and CS5 (Design) of the Core Strategy. In general terms, these policies seek to achieve high quality development which minimises the impact on neighbouring occupiers.

In their context, the scale of the new doors on the large building would be in keeping with the appearance of the host premises and are sufficient distance from other premises to prevent any undue impacts on the general amenities of the local area / surrounding uses.

Implications of Implementation

Permission has been granted for the provision of 3 premises at the site (foodstore and 2 retail units). On that permission there were conditions limiting the extent of floorspace and preventing the creation of additional floorspace but no conditions preventing the sub-division of the premises. As such, once the previous permission is implemented, the 3 units could be sub-divided further without the need for planning permission. To benefit from this ability to sub-divide the premises without the need for planning permission it is considered that the units would first need to be brought into use within the terms of the controlling conditions.

There is case law relating to the point at which an application has been implemented and officers consider that, where it relates to a new building, to establish the use of the building, the premises would need to be occupied and operate as a use in its own right for a period of time sufficient to define a clear commencement to the operation of the premises. The likelihood of whether the building would be genuinely operated as approved (given an application has been submitted for further sub-division) is questionable and the weight which can be given to the fall-back position of the further sub-division being achievable under permitted development rights is therefore considered to be limited.

Importantly for this application, the proposed alterations to the frontage, if approved, would signal the unit operating as further subdivided units and in the instance that the overall application to subdivide the premises (18/0478/FUL) is not approved, then the shopfront alterations, would serve to strengthen the fall-back position as there is no current permission for 5 entrances to be provided to the building frontage.

In making a recommendation on the main application (18/0478/FUL), it is considered that further subdivision of the premises should not take place as this will have a negative impact on the Town Centre in terms of its vitality and viability and on the regeneration aspirations for Middlesbrough. Approving a scheme which would support the sub-division of the premises in view of this is therefore considered to be contrary to existing and emerging policies of the Local Plan and the recommendation of this report is to refuse permission.

However, should the main application to further sub-divide the premises, under application 18/0478/FUL be approved by committee, contrary to officer recommendation, then it would be appropriate to also support this proposal to undertake shop front works to align with the provisions sought by application 18/0478/FUL.

Conclusion

When taken in isolation, the development would be considered to have very limited impacts on the buildings appearance and the amenity of the surroundings. However, owing to the consequences of such development, it is considered that the application to alter the elevations of the existing building is unacceptable development as it will support a proposal to further sub-divide the premises which itself is considered as being contrary to policy as it will undermine the vitality and viability of the town centre, Middlesbrough's aspirations for regeneration and threaten the inward investment into the local area.

RECOMMENDATIONS AND CONDITIONS

Refuse for the following reason:

In the opinion of the Local Planning Authority, the proposed alterations to the elevations of the existing building and removal of the existing lobby and concession block is considered to be unacceptable development by reason of the potential consequences of the development. The alterations to the external elevations would have the potential to strengthen a fall-back position for the subdivision of the building, which would be significantly harmful to the vitality and viability of the town centre, adversely affect inward investment into the local area, as well as to undermine the Council's own regeneration objectives, contrary to Local Development Plan Policy CS13, Emerging Local Plan Policy CITY 1, CITY4, EG1, EG6 and the guidance contained within the core planning principles of the NPPF (paragraphs 89 and 90).

Case Officer: Peter Wilson

Committee Date: 11th January 2019

