Agenda Item

CAMBRIDGE CITY COUNCIL

REPORT OF: **Head of Planning**
TO: **Planning Committee**
WARDS: **Abbey (but City Wide Implications)**

Request for Variation of Section 106 agreement to allow a wider range of goods to be sold from the Cambridge Retail Park Newmarket Road Cambridge

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1 INTRODUCTION

1.1 When planning permission for retail use was first granted for what is now known as the Cambridge Retail Park, on Newmarket Road, it was subject to restrictions on the goods that could be sold from the site, though there was also a specific floor area which was 'unfettered', allowing a complete range of non-food goods to be sold. The 'allowance' for unfettered non-food sales was made because there was, on the site, before redevelopment, a large unfettered use with the same floor area. The restriction on goods that might be sold was imposed to protect the vitality and viability of the City Centre.

1.2 Since the original agreement was entered into there have been changes to the range of goods that can be sold. The applicants in this case have approached the Council seeking a variation to the section 106 agreement regarding the limitation on goods, to meet the needs of a specific prospective tenant/occupier. Although most of the goods to be sold are covered by the existing agreement, the full range of goods sold is not. This request seeks to encompass all that the prospective tenant/occupier, Dunelm, sells, conscious that a similar arrangement has been agreed on the Beehive Retail previously.

2. RECOMMENDATION

2.1 That the Principal Deed of the section 106 agreement is further varied to allow the sale of 'Selected Home Products', and 'Ancillary Goods and Services' as already defined on the Beehive Retail Park.

3. BACKGROUND

3.1 The Retail Park was developed in phases. The eastern part of the site and the eastern access (immediately opposite the access to Cheddar's Lane and Tesco) was Phase 1; the part closest to Coldham's Lane, with access to both Newmarket Road and the 'Beehive roundabout' and which includes the former MFI site that is the subject of an application for a mezzanine floor that is found elsewhere on this agenda, was Phase 2.

3.2 During the period of about 15 years since the retail provision was begun, the range of goods that can be sold from this site and from the 'fettered' parts of the Beehive Retail on the other (the south-west) side of Coldham's Lane has been extended. Arguments have been advanced for a broadening out of uses on one 'retail park' and where agreed extended to the other when sought, to maintain consistency. Control of the goods that can be sold has been and continues to be limited by a section 106 planning obligation. Although the original list of goods that could be sold on the site (other than in the unfettered space) was more limited, it has been extended and now includes the following:

a) DIY goods including wallpaper and paints;
b) materials for building;
c) garden products;
d) furniture and carpets;
e) electrical goods (which for the avoidance of doubt includes video recorder, computers and computer software and accessories);
f) motoring and motor cycle accessories
g) office equipment and supplies
h) pets, pet products and pet supplies
i) textiles;
j) video hire;
k) bicycles and bicycle accessories
l) catalogue showrooms if operated by Argos Limited or where not less than 70 % of the turnover of each showroom relates to the sale of goods falling within the above.

3.3 The prospective occupier of the unit the subject of the current application 11/0967/FUL, Dunelm, which is also to be heard at this meeting, seeks a variation to the section 106 agreement, because although the majority of the goods sold by the occupier fall within the permitted range set out above, not all do and there is therefore a wish to accommodate the full range. It has been pointed out by the

applicant that a similar accommodation to the relevant section 106 agreement was made on the Beehive Retail Park in 2007; a yet further variation was agreed earlier this year.

3.4 The 2007 variation allowed the widening of, (d) furniture and carpets to (d) furniture and carpets and floor coverings; (i) textiles, to (i) textiles and furnishings (including soft furnishings), and allows 'selected home products', and 'ancillary goods and services' as separate categories. Both are defined and attached as Appendix 1 to this report.

3.5 The 2011 variation at the Beehive Retail Park was for Hobbycraft and allowed 'Arts, Crafts and Hobbies' to be added. This variation to the Principal Deed is attached as Appendix 2, and also saw a change to the previous definition of ancillary goods and services.

4.0 ASSESSMENT

4.1 The Cambridge Local Plan 2006 precludes further retail warehousing development. That assessment was made on the basis of information in a retail study in 2001. It has subsequently been accepted that the information in that study is not very robust and a further retail study, PPS4 (2010) and the Draft National Planning Policy Framework are all material to the consideration of the additional floorspace being proposed. Considering all those matters, the view taken is that the additional floor space proposed will only have a turnover equivalent to 0.06% of the City centre turnover and approval is being recommended. My view is that the 'extras' the applicant seeks to have covered by varying the agreement here, will be a much smaller proportion yet of the city centre turnover and will not have any material impact on the vitality and viability of the City Centre.

4.2 What is proposed here seeks to formalise what is already known to occur, namely that some goods ancillary to or associated with the main activity are sold from premises. Those ancillary/associated goods are of limited scale in terms of retail impact, but are part of a 'package'. The agent for the applicant has advised that to allow the addition of 'selected home products', and 'ancillary goods and services' as separate categories on the Cambridge Retail Park in the same manner as has been approved at the Beehive Retail Park would encompass the full Dunelm product range. It is my view that it would be inconsistent not to allow this variation, but in recognising that I draw comfort from the fact that the change will not do demonstrable harm to the City Centre.

5.0 CONSULTATIONS

5.1 There has been no formal further consultation on the sought variation, though it has been made plain through the planning application 11/0967/FUL that such a change is being sought. Drivers Jonas Deloitte have written in response to that application, expressing concern about: the cumulative impact of the additional retail floorspace coming forward outside the City Centre; the proliferation of unrestricted retail floorspace; and the need for more stringent controls to protect the City Centre.

6.0 CONCLUSIONS

6.1 The great majority of the sales that the particular retailer makes are recognised as falling within the limitations already set out in the section 106 agreement. The wish is to encompass the full range of goods the company sells and I am of the opinion that this can be accommodated without any harm to the City Centre, a view shared by colleagues in the Policy Team. On the basis that including the ancillary items will not do demonstrable harm to the vitality and viability of the City Centre, I do not consider there to be a reasonable basis for opposing what has been put forward and I therefore recommend the section 106 be varied.

7. IMPLICATIONS

(a) **Financial Implications: None**

(b) **Staffing Implications: None**

(c) **Equal Opportunities Implications: None**

(d) **Environmental Implications: None**

Climate Change Impact: Nil

(e) **Community Safety: None**

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Planning Application 11/0967/FUL and Committee report for that application to be heard at the City Council 14 December 2011 Planning Committee meeting

Section 106 Agreement for the Cambridge Retail Park C/99/1121/OP.

Variations to the Section 106 agreement regarding goods that may be sold from the Beehive Retail Park site, dated 1 August 2007 and 7 March 2011.

To inspect these documents contact Sophie Pain on extension 7158

The author and contact officer for queries on the report is Sophie Pain on extension 7158.

Report file:

Date originated: 05 December 2011
Date of last revision: 05 December 2011

APPENDIX 1.

DATED 01st of August 2007

CAMBRIDGE CITY COUNCIL (1)

- and -

THE BEEHIVE CENTRE CAMBRIDGE LIMITED (2)

- and -

ROYAL EXCHANGE TRUST COMPANY LIMITED (3)

AGREEMENT

under Section 106 and Section 106A of

the Town & Country Planning Act 1990

relating to Units 1 – 8

The Beehive Centre Cambridge

07/0288/FUL

APPENDIX 1

Definitions

4. IN this Deed the following words shall have the following meanings except where the context requires otherwise:-

"the Act"	means the Town and Country Planning Act 1990 as amended
"Ancillary Goods and Services"	means for the purposes of clauses 6.3 and 7.2 any items or goods the sale of which is ancillary or incidental to any or all of the items referred to in sub-clauses (a)-(m) in clauses 6.3 and 7.2 and/or the provision of on-site ancillary café facilities provided that: (i) such goods and services must not occupy more than seven per cent (7%) of the internal floorspace in each retail unit which is used for retail sales; and (ii) such goods and services must not include the sale of any clothing or footwear (other than protective clothing or footwear).
"the Application"	means the application for planning permission for the Development registered by the Council with reference number 07/0288/FUL
"the Date of Determination"	means the date when a relevant agreement for lease or lease in respect of Unit 8 (or the relevant part thereof) determines as notified by the Owner under clause 7.8
"the Development"	means a change of use from Retail (Use Class A1) to Retail (Use Class A1) and Assembly and Leisure (Use Class D2), erection of an extension to accommodate a plant room, variation

	Limited as amended by a deed of the same date between the same parties and as further amended by a deed dated 18 October 1995 between the same parties and as further amended by a deed dated 22 December 2003 made between (1) the Council (2) B.L.U. (13575) Limited and (3) Eurohypo AG London Branch
"the Plan"	means the plan attached to this Deed
"the Planning Permission"	means planning permission in the form of the draft attached to this Deed at Schedule 1
"Potential Compliant Occupier"	means a retail operator or trader whose product sales range falls within or accords with clause 7.2
"the Proposed JJB Unit"	means the land and premises which forms part of The Beehive Centre Cambridge as shown edged red on the Plan
"the Remaining Units"	means the land and premises which forms part of The Beehive Centre Cambridge as shown edged green on the Plan
"Review Date"	means either the First Review Date or the Second Review Date
"Second Review Date"	means the date five (5) months after the Marketing Commencement Date
"Selected Home Products"	means any or all of the following types of goods: homewares, lights and light fittings, kitchenwares, bathroom fixtures fittings and accessories and bedding
"the Unit 5 Extension	means an agreement under Section 106 of the Act in respect of an extension to Unit 5 The

APPENDIX 2

DATED 7 March 2011

CAMBRIDGE CITY COUNCIL (1)

- and -

THE BEEHIVE CENTRE CAMBRIDGE LIMITED (2)

- and -

ROYAL EXCHANGE TRUST COMPANY LIMITED (3)

Agreement under Section 106A of the Town & Country Planning Act 1990 relating to Units 1-8 The Beehive Centre, Cambridge

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APPENDIX 2.

SCHEDULE

Variations to the Principal Deed

The Principal Deed is varied as follows:

1. The following definition of "**Arts, Crafts and Hobbies**" shall be incorporated in to clause 4 (Definitions) of the Principal Deed after the definition of "the Application":-

"**Arts, Crafts and Hobbies**" means all or any of the following types of retail sales and/or related activities:

(i) Art products (such as acrylics, oils, watercolours, pastels, canvasses, easels, sketching and specialist art materials)

(ii) Wedding accessories (such as invitations, floral arrangements and ribbons)

(iii) Crafts (components, accessories and storage containers for creative activities such as card making, scrapbooking, ceramics, jewellery making, mosaics, stencilling and rubber stamping)

(iv) Floral products (such as artificial floral stems and sprays, floral foams, mosses, shells, baskets and related materials)

(v) Frames, mounts for frames, glass and accessories

(vi) Children's crafts (such as fun kits and creative activities)

(vii) Models (both for self-build and pre-constructed, such as Airfix, Hornby, Humbrol, Revell and Scalextric, components, paint and accessories, dolls houses and accessories and wargaming products)

(viii) Needlecraft including knitting, haberdashery, cross stitch, kits and accessories

(ix) Papercraft

(x) Hobby and party goods including cake decorating and jigsaws

(xi) Workshops, exhibitions, demonstrations and displays ancillary to any or all of items (i) - (x)

2. The definition of "**Ancillary Goods and Services**" in clause 4 of the Principal Deed shall be deleted and replaced with:

""***Ancillary Goods and Services***" *means for the purposes of clause 6.3 any items, goods or services the sale or offer of which is ancillary or incidental to any or all of the items referred to in sub-clauses (a)-(n) in clause 6.3 and/or the provision of on-site ancillary café facilities provided that:*

(i) *save as set out in sub-paragraph (ii) below, such goods and services must not occupy more than seven per cent (7%) of the internal floorspace in each retail unit which is available for retail sales;*

(ii) *up to eleven per cent (11%) and no more of the internal floorspace available for retail sales in any retail unit which is used primarily for the retail sale of pets, pet products and pet supplies may be given over to a pet care, treatment and grooming facility but provided that such a facility may only be operated by or on behalf of Pets at Home Limited (Company number 1822577) or any subsidiary, subsidiary undertaking or parent undertaking of Pets at Home Limited and any subsidiary or subsidiary undertaking of any such parent undertaking (in each case from time to time), or any successor organisation carrying on the business which currently trades as "Pets at Home" and for these purposes "subsidiary", "subsidiary undertaking" and "parent undertaking" have the meanings given to them in the Companies Act 2006 and provided further that in the event that a pet care, treatment and grooming facility ceases to be operated as aforesaid then the internal floorspace in the relevant retail unit which may be given over to Ancillary Goods and Services shall thereupon revert to seven per cent (7%) of the internal floorspace of that unit which is available for retail sales; and*

(iii) *such goods and services must not include the sale of any clothing or footwear (other than protective clothing or footwear)."*

3. Clause 6.3 of the Principal Deed shall be deleted and replaced with the following:

"*6.3 It is hereby agreed and declared that in respect of the Remaining Units only, clause 2.2 of the Original Agreement and paragraph 2 of the Third Schedule of the Unit 5 Extension Agreement are deleted and shall cease to have effect and shall be replaced with the following covenant from the Owner to the Council:*

Not to sell or display for sale in the Remaining Units any goods merchandise or other things nor offer any services except items which fall within any of the following categories:

(a) *DIY goods including wallpaper and paints*

(b) *materials for building*

(c) *garden products*

(d) *furniture and carpets and floor coverings*

(e) *electrical goods (which for the avoidance of doubt is deemed to include video recorders computers computer software and accessories)*

(f) *motoring and motorcycling accessories*

(g) *office equipment and supplies*