REPORT TO DEVELOPMENT MANAGEMENT COMMITTEE
5 June 2019

REFERENCE: HW/REMVAR/18/00480 OFFICER: Marcus Shingler

APPLICANT: Credit Suisse Asset Management

LOCATION: 5 The Oaks Retail Park, Howard Way Harlow

PROPOSAL: Variation of Condition 3 (Goods Restriction) of Planning Permission HLW/342/88 (Dated 14 March 1989) (To Enable Sale of Food and Drink, and Ancillary Comparison Goods).

LOCATION PLAN:

REASON FOR COMMITTEE: The application is considered to be of significant public interest.
Application Site and Surroundings

The application site relates to an existing retail warehouse unit (Carpet Right) on the established Oaks Retail Park in Harlow, which features a range of retail warehousing, A1 and restaurant (A3) uses. Currently the park is occupied by B&Q, Topps Tiles, Halfords, Carpet Right, Home Bargains, Jollyes, Carphone Warehouse and McDonalds. The former Maplins unit is currently vacant.

The unit is part of a terrace of units, and has a ground floor area of 1,049 m². GIA. Car parking is provided to the west of the units, and access is provided via a roundabout which connects to Howard Way, which lies further to the west.

The site is located on part of land identified as Retail Warehouse Park RTCS19/2 on the Adopted Replacement Harlow Local Plan (ARHL) Proposals Map. There are a number of retail parks nearby, namely the Queensgate Centre, the Harlow Retail Park and Princes Gate on the opposite side of Howard Way.

The Oaks and other retail parks are generally restricted to selling certain types of goods, either by condition or by legal agreement. The following restrictive goods condition was imposed on The Oaks Retail Park under reference HLW/342/88:

“The range of goods to be sold from the retail warehouses shall be restricted to D.I.Y goods, furniture, floorcovering, leisure and garden products, motor accessories and electrical and any other non-food bulky goods as may be agreed with the Local Planning Authority.

Reason: To comply with the Council’s policy for retail warehouses.”

In 2009 an application was granted to vary the above condition (reference HW/PL/09/00224) to allow for the sale of a wider array of goods, including homewares products, domestic decorative products and ancillary cafe related products Unit 4B). A further variation was allowed under reference HW/PL/14/00451 to facilitate occupation of the adjacent unit 6 at The Oaks by Home Bargains.

Although some units have had restrictions lifted to provide for the needs of specific occupiers, the retail parks generally feature retailers which can be considered to be of a bulky goods nature.

Details of the Proposal

The application seeks planning permission for the variation of condition 3 (goods restriction) of planning permission HLW/342/88 to enable the sale of food and drink, and ancillary comparison goods.

The proposed variation is as follows (amended section in bold):

“Notwithstanding the provisions of the Town and Country planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), the range of goods to be sold from the retail warehouses shall be restricted to D.I.Y. goods, furniture, floorcovering, leisure and garden products, motor accessories and electrical and any other non-food bulky goods as may be approved in writing by the Local Planning Authority. An exception shall be Unit 5 (as defined on drawing EX864417) which shall also be used for the sale of food and drink.”
It is proposed that the unit be occupied by Food Warehouse, part of the Iceland group that trade only in out of centre stores. The Food Warehouse is an innovative store format, offering bulk-buy deals and homeware offers alongside a range of frozen, fresh and chilled foods. The chain is relatively new, formed in 2014 and currently has 90 stores operating across the UK.

There is no operational development proposed by the application.

**RELEVANT PLANNING HISTORY:**

HLW/342/88 – Retail Park Development comprising 106,806 sq.ft. of non-food retail warehousing, 7,200 sq.ft. garden centre and a 5,600 sq.ft. restaurant. APPROVED 14.03.1989

HWPL/09/00094 – Variation of condition 3 of original planning permission HLW/342/88 to permit sale of pet related products. APPROVED 01.06.2009

HW/PL/09/00224 - Variation of condition 3 of original planning permission HLW/342/88 to permit sale of goods to DIY, furniture floor coverings, leisure and garden products, motor accessories and electrical and any other non-food bulky goods, fabrics, soft and hard furnishings, homeware products, domestic decorative products and ancillary café related products. APPROVED 13.11.2009

HW/PL/12/00218 - Use of Units 7A and 7B of the Oaks Retail Park for the unrestricted use within Class A3/5 in accordance with the Use Class Order 1987 (as amended). APPROVED 26.11.2011

HW/PL/14/00451 - Application for variation of condition 3 (goods restriction) following a grant of planning permission under planning reference HLW/342/88 to facilitate re-occupation by Home Bargains. APPROVED 11.12.2014

**CONSULTATIONS:**

**Internal and external Consultees**

**Essex County Council - Development and Flood Risk**

No objections. Standard informatives recommended. (NB: There are no physical changes as a result of the proposed variation of condition and thus suggested informatives are not required in this instance).

**Essex County Council – Highways**

No objections to the proposals.

**Neighbours and Additional Publicity**

Number of Letters Sent: 3
Total Number of Representations Received: 0
Date Site Notice Expired: 13.12.2018
Date Press Notice Expired: 20.12.2018
Summary of Representations Received

No responses received.

PLANNING POLICY:

SD3: "Sequential Test" land allocation should have regard to the promotion of sustainable development; social inclusion, quality of life and wellbeing; preference given to previously developed land and existing buildings; facilitation of regeneration and there should be no loss of BAPs or damage to valuable ecology or biodiversity.

T3: "Transport Impact Assessments" major developments generating the equivalent of 50 passenger car units or more per hour will be required to produce a TIA, developments will be refused where significant impacts are identified and not mitigated against.

T4: "Green Commuter Plans" a green commuter plan will be required where an application: generates 30+ staff employments; 10+ additional parking spaces; extensions to existing premises where 10+ additional staff generated results in 30+ staff being employed; other instances where the location and/or nature of the development are particularly sensitive.

T9: "Vehicle Parking" parking shall be provided in accordance with the adopted vehicle parking standards. Justification is required for the amount of car parking proposed on an operational need and, if applicable, a Green Commuter Plan.

RTCS1: "Sequential Approach" proposals for retail and other development which attract large numbers of people will be determined on a sequential basis by applying the descending order of preference. The need and capacity for development and how well the site is serviced by public transport and by means other than the car will be taken into account. Within areas of large scale new housing development, appropriate provision will be made for local shopping and associated services provided this does not undermine the vitality and viability of the town centre, or any nearby neighbourhood centre or hatch. Development must be appropriate to the function, size and character of the centre concerned.

RTCS3: "Town Centre and Regeneration" permission will be granted for proposals that strengthen the role of the town centre by: improving the range and quality of facilities including retailing, employment, leisure, entertainment and culture to encourage a vital and vibrant town centre environment; increasing diversity, quality and inclusive nature of employment opportunities, leisure, social, educational and cultural facilities, to meet the needs of the local population; managing road traffic and improving access and road safety, while improving facilities for passenger transport users, pedestrians, cyclists and those with special needs and providing car parking where appropriate; enhancing the town centres character and appearance; improving facilities for disabled people, elderly people and carers with babies and children; providing mixed use development including residential or other suitable uses on vacant or underused upper floors; retaining key facilities.

RTCS4: "Town Centre and Regeneration" permission will be granted for proposals that will produce and improvement in the environmental quality of the town centre, or otherwise be of benefit to those working, visiting or residing within the centre.

RTCS19: "Retail Warehouse Parks" proposals will not be permitted if they involve: subdivision of units; sale of items other than DIY goods, furniture, floor coverings; leisure and garden products, motor accessories and electrical goods; the change of use from A1 to any other use.
Harlow Local Development Plan – Pre-Submission Publication (2018)

Harlow Council is in the process of submitting a new local plan for examination. On 19th October 2018 the Harlow Local Development Plan Pre-Submission Publication (the “Emerging Local Plan”) was submitted to the Secretary of State. Paragraph 48 of the NPPF sets out that weight may be given to relevant policies in emerging local plans according to the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given). It is considered that the policies within the emerging Local Plan are consistent with the policies in the NPPF and that weight should be given to relevant emerging Local Plan policies at this stage. Relevant policies are discussed within the Planning Assessment section.

PLANNING STANDARDS:

National Planning Policy Framework 2019- sets out the Government’s key economic, social and environmental objectives and the planning policies to deliver them. These policies will provide local communities with the tools they need to energise their local economies, meet housing needs, plan for a low-carbon future and protect the environmental and cultural landscapes that they value. It seeks to free communities from unnecessarily prescriptive central government policies, empowering local councils to deliver innovative solutions that work for their local area.

Supplementary Planning Documents/Current Planning Guidance

The Essex Parking Standards: Design and Good Practice (2009)
National Planning Practice Guidance (PPG)

PLANNING ASSESSMENT:

No operational development is proposed in this instance. There are thus no design or amenity issues to be considered in this case.

The key issues for consideration therefore in the determination of the application are the principle of development; the proposals adherence to the sequential approach; the impact on the vitality and viability of the town centre; and the quality of access, level of parking provision and impact on highway safety.

Summary of Main Issues

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The ARHLP represents the main body of the Development Plan and should therefore form the starting point for all decision-making. The National Planning Policy Framework (NPPF) presents the current national policy position regarding retail development and is considered to be an important material consideration.
Paragraph 86 of the NPPF states that “local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan”.

Further, at paragraph 89 the NPPF states that “when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 m² of gross floorspace). This should include assessment of:

a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme)."

Paragraph 90 of the NPPF advises that where an application fails to satisfy the sequential test or would be likely to have a significant adverse impact, it should be refused permission.

ARHLP policy RTCS1 requires that proposals for retail and other development which attract large numbers of people will be determined on a sequential basis. The town centre is the most sequentially preferable location for retail development. The NPPF echoes the requirements of policy RTCS1 and generally suggests that town centres should be promoted at the heart of communities and as centres for growth. The NPPF is also reflective of ARHLP policies RTCS3 and RTCS4 which encourage proposals which strengthen the town centre and produce improvements in its environmental qualities. It is considered that these policies are compliant with the NPPF and are therefore up-to-date policies. These policies are reinforced by emerging Local Development Plan policies SD1 (Sustainable Development), RS1 (Retail Hierarchy), RS2 (Future Retail Floorspace), RS3 (Protecting and Enhancing Existing Retail Centres) and PR5 (The Sequential Test and Principles for Main Town Centre Uses).

The NPPF states that local planning authorities should apply the sequential test and should require an impact assessment if development exceeds 2,500m² in floorspace where there is no locally set value.

The retail park is located in an out of centre location and the application proposes retail development and a sequential assessment must therefore be undertaken.

The total floor space of the unit would not exceed 2,500m² (1,252m² gross), however the local planning authority must still be satisfied that the impact on the vitality and viability of the town centre would not be significantly adverse.

The unit is located within a designated retail warehouse park. ARHLP policy RTCS19 specifically relates to development proposals on retail parks. This policy specifies that proposals for development will not be permitted if they involve any of the following i) the subdivision of units, ii) the sale of items other than those stipulated in the policy, iii) the change of use from class A1 to any other use. The proposed development would not conform to the requirements of part ii) of policy RTCS19 but parts i) and iii) would be met.

The proposal is considered to be in a degree of conflict with one of the requirements of
ARHLP policy RTCS19, however the ARHLP must be read as a whole and RTCS1 and the NPPF suggests that town centre uses are suitable within out-of-town locations provided that there are no sequentially preferable sites for such development and for the latter, also that the retail impact of the development is not harmful on higher order centres.

Determining the sustainability of the proposal is an important material consideration as set out in the NPPF. There should be no presumption in favour of the development if it is found to be unsustainable. Concerns regarding a proposal may assume more weight in the overall balance in such circumstances.

In general the location of a retailer in an out of town retail park is unlikely to have a positive impact on the environment or society. However it is noted that such a proposal could have economic benefits. It is considered that if the proposal passes the sequential test such that it is not possible for the development to be located in a more sustainable location (on the basis that sequentially preferable sites i.e. edge of centre, neighbourhood centre etc are also more sustainable locations than out of centre), the proposal should not be considered unsustainable in the planning balance.

It is considered that subject to all other material planning considerations being satisfactorily addressed, the principle of development should be considered to be acceptable.

Sequential Test/Vitality and Viability

The applicants have submitted a retail impact assessment to accompany the application. Initially, the proposed occupier was unknown but it has subsequently come to light that it is proposed to be Iceland operating under their Food Warehouse brand. The format of Iceland Food Warehouse stores differ from traditional Iceland stores, such as those currently trading within the area. Fundamentally, their primary function is the sale of bulk buy frozen food products, but whereas the more traditional Iceland stores generally comprise around 465 m² of floorspace. In contrast, the Food Warehouse trade from between 929-1,394 m² and are based on a top quality ‘warehouse style’ fit out. The larger floorspace means that extended product ranges can be provided when compared with smaller Iceland stores, including the introduction of premium quality lines.

Importantly, the business model of the prospective tenant means that these new format stores need to be in locations where a number of key criteria are met. This includes the requirement for sufficient at-grade customer car parking to be provided immediately adjacent to the store. Shoppers to Iceland Food Warehouse stores spend more than shoppers to the smaller traditional Iceland stores placing greater emphasis on a need for sufficient parking. The average spend of a shopper to a Food Warehouse store is more than double that of the smaller format stores and achieve a comparable average spend to large supermarket operators, such as Asda and Morrisons. The business model also relies on selling bigger packs to reduce prices. This includes the ‘Case Saver’ deals, which provide the opportunities for shoppers to buy whole cases of products. This places a further need for sufficient car parking to be provided.

The Council has engaged independent consultants to review the voracity of the retail impact study on the basis of both the initial assessment and the further information submitted by the applicants. The Council’s independent consultants considered initially that the applicant had not carried out a fully compliant sequential assessment, since the study relied on sites becoming available within one year, which was considered to be an unreasonably short timeframe, the fact that the study dismissed potential to be accommodated on the Odeon Cinema site due to lack of parking and unavailability and
finally that the study did not consider other vacant premises/sites in the town centre, most notably the former BHS unit in the Harvey Centre. Unit 58-60 The Harvey Centre (the former Argos unit) was also highlighted by the Council.

The applicant’s consultant has since submitted further information to the Council, which has again been independently assessed. It is still considered that a one year timeframe is too short a period for considering available sites and that this has been supported at appeals by various Inspectors. The applicants however, maintain that the timeframe for considering availability should not prejudice proposals that can come forward in a short period, particularly as in this case the proposals seeks a modification to an existing planning permission.

The applicant’s consultant infers in their submitted study that mid-sized food retailers require adjacent access to car parking and direct access for servicing in order to successfully operate. The Council’s independent consultants do not concur with this view, indicating that there are many mid-sized food retailers that operate without dedicated or adjacent parking or servicing.

Further assessment of available sites has been undertaken by the applicant’s consultant and reviewed by the Council’s consultant.

It has been concluded that Unit 58-60 The Harvey Centre (the former Argos unit) should be discounted as being too small to accommodate Food Warehouse.

The potential to accommodate the proposal within the former Odeon cinema site has been considered. The site is located in Westgate Square and has been vacant since 2005. The applicant has been in contact with the leaseholder of this site, who according to the applicant’s, are not seeking to dispose of their interest and that any redevelopment proposition would require a satisfactory deal to be agreed with the ultimate owners of the site. There appears to be no publicly available material suggesting that the site is being marketed either as a letting opportunity or for redevelopment and therefore based on this evidence it is concluded that the Odeon cinema site is not available to accommodate the proposal.

The former BHS could accommodate the proposed tenant. Whilst the Council’s consultant states that the unit would be likely to be unattractive to Food Warehouse, mainly because the unit does not offer at-grade car parking and the existing Iceland store is located nearby such that it is unlikely that the retailer will support both formats in close proximity to each other, taken in isolation it is not considered that these reasons mean that the unit is unsuitable.

However, it is evident that Iceland Food Warehouse operates differently to other food retailers in that they offer a high proportion of products sold in bulk and across freezer compartments. In addition, a review of the Food Warehouse portfolio confirms that the retailer only operates from retail warehouse format units. Therefore, taking into account the specific locational and operational factors associated with this particular proposal for a Food Warehouse, it is considered that on balance the former BHS unit is not suitable for accommodating a Food Warehouse. The Council has specifically asked its consultants whether weight should be given to the fact that Food Warehouse only operates from retail warehouse units for the purpose of the sequential test and they consider that it should and that refusal of the proposal in these particular circumstances would be difficult to justify.

In conclusion the applicant has satisfied the sequential test in respect to paragraphs 86 and 90 of the NPPF.
In terms of impact on vitality and viability, the Council’s independent consultant has suggested there will inevitably be some trade diversion from the town centre as a result of the proposed development and that it may impact on the existing Iceland store, given that the Food Warehouse will not only stock bulky goods but also single items. However, given the modest level of floorspace involved, Officers consider that the impact would not be likely to threaten the viability of this or other town centre food stores. Indeed, it must be emphasised that the NPPF specifically omits development under 2500m² from the requirement to provide a retail impact assessment.

To further reduce the impact, conditions are incorporated within the recommendation that reflect the specific trading format of Food Warehouse and other similar predominantly frozen food retailers. This will ensure that the unit is not occupied in the future by a mainstream grocery retailer, wherein the impact on Harlow town centre and the neighbourhood centres could be greater. Additionally, the Council’s consultants also conclude that the proposal will not have a significant impact on existing, planned or committed investment in Harlow town centre.

Subject to conditions, the proposal would accord with ARHLP policies RTCS1, RTCS3, RTCS4 and RTCS19 and with emerging Local Development Plan policies SD1, RS1, RS2, RS3 and PR5.

Access, Parking and Highway Safety

Any access parking and highway safety issues must be considered with regard to the fact that the unit could lawfully be occupied by a bulky goods retailer without a new planning permission. The existing access to the highway would not be altered by this proposal the existing access is considered to be adequate.

The unit would be serviced by the yard to the rear. There is no reason to suggest that the service yard is inadequate for the proposed use as the retail park is designed to be occupied by bulky goods retailers.

The transport statement identifies approximately 353 parking spaces and 8 cycle spaces at the retail park. Parking beat surveys recorded a peak occupancy of 67% of the car parking at weekends and 51% on weekdays. An examination of the database suggests that the proposed development will not result in the car park reaching capacity and that the highway network would not be significantly adversely affected.

The Essex County Council Highways Officer has raised no objections to the proposal.

Officers are therefore satisfied that there would not be any access, parking or highway safety issues resulting from the development.

The proposal accords with the relevant ARHLP transport policies (T3, T9) and emerging Local Development Plan policies IN2 and IN3.

Other Matters

For avoidance of doubt it is considered appropriate to impose an informative that clarifies that the permission relates solely to the variation of condition 3 and does not change any other aspect of the earlier granted permission. All other restrictions should remain in effect.
CONCLUSIONS:

The proposed development is considered to be acceptable in principle. There are no concerns regarding access, parking provision or highway safety. The applicant is considered to have demonstrated compliance with the sequential approach to development and adequately assessed the retail impact of the proposal. It is concluded that there are no sequentially preferable locations for the development and that the development will not have an adverse impact on the vitality and viability of the town centre. The proposal is considered to accord with national policies and those of the Development Plan and the emerging Local Development Plan.

It is recommended that the application be granted, with Condition 3 varied to limit the retailers which could occupy the unit to those which predominantly sell frozen food, and other limitations such as limiting the use of floorspace, the installation of mezzanine floorspace and the subdivision of the unit, to ensure that the impacts of the proposal are minimized.

RECOMMENDATION:

That Condition 3 of the decision notice under planning application reference HLW/342/88 shall be varied to read;

1. Notwithstanding the provisions of the Town and Country planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), the range of goods to be sold from the retail warehouses shall be restricted to D.I.Y. goods, furniture, floorcovering, leisure and garden products, motor accessories and electrical and any other non-food bulky goods as may be agreed with the Local Planning Authority.

The first exception to this shall be unit 5, which shall be used by a frozen food retailer only (as defined by the Competition Commissions report 'The Supply of Groceries in the UK Market Investigation' 2008) and for no other retail use within Class A1 of the Use Classes Order, 1987 (as amended) and shall be in accordance with the following stipulations;

1. The sales area (convenience and comparison goods) shall not exceed 944 sq.m
2. The ancillary space shall not exceed 308 sq.m,
3. The unit shall not be sub-divided into smaller units nor shall any further mezzanine space be inserted without the prior written consent of the Local Planning Authority.
4. The mezzanine floor space shall not exceed 203 sq.m and
5. The food store shall not provide any of the following services without the prior written consent of the Local Planning Authority;
   a. Fresh meat counter
   b. Fresh fish counter
   c. Delicatessen/cheese counter
   d. Hot Food
   e. Post office services but not including the sale of books or postage stamps

The second exception to this shall be unit 6 (as defined and edged in red of drawing Q50147/Q01 from Planning Permission reference HW/PL/14/00451) which may also
be used for the sale of pet food and pet products; household products and medicines (from an areas of no more than 232 sq.m); health and beauty products and medicines (from an area of no more than 232 sq.m); games and toys (from an area of no more than 232 sq.m); and food and drink (from an area of no more than 697 sq.m).

**REASON:** The application is justified on the basis of the provision of a frozen food retailer on the site and the Council is concerned to ensure control is retained over the use of the development for this purpose in the interests of the vitality and viability of existing centres, and to comply with Policies RTCS1 and RTCS19 of the Adopted Replacement Harlow Local Plan (2006) and in the interests of the amenity of neighbouring properties.

**INFORMATIVE CLAUSES**

1. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address these concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

2. The proposed development is acceptable in principle and raises no access, parking or highway safety concerns. The application accords with the sequential approach for retail development. There would not be a significant adverse impact on the vitality and viability of the town centre. The proposal is considered to be in accordance with national policies and the Development Plan. Variation of condition 3 of HLW/342/88 is therefore considered to be appropriate.

3. This permission shall enure solely for the variation of the terms of condition 3 of the decision notice under planning application reference HLW/342/88 in relation to unit 5 of the retail park as defined and edged in red on drawing number EX864417. The terms of the conditions and restrictions imposed upon and associated with HLW/342/88 shall otherwise remain unaltered, extant, applicable and of effect.