



**NORTH SOMERSET COUNCIL**

**APPEAL STATEMENT**

**TOWN AND COUNTRY PLANNING ACT 1990  
PLANNING & COMPULSORY PURCHASE ACT 2004**

**VARIATION OF PLANNING PERMISSION 13/P/0237/F (APPLICATION FOR VARIATION OF CONDITION 4 OF PLANNING PERMISSION 09/P/2150/F TO ALLOW FOR THE SALE OF MEMORY CARDS FOR CAMERAS AND CAMPING EQUIPMENT) TO CLARIFY HOW CLOTHING AND FOOTWEAR CAN BE SOLD WITH THE REMOVAL OF "GARDENING CLOTHES" FROM 1<sup>ST</sup> SCHEDULE, "OUTDOOR CLOTHES" FROM 2<sup>ND</sup> SCHEDULE AND "LADIES, MENS AND CHILDRENS FASHION CLOTHING AND FOOTWEAR" FROM 4<sup>TH</sup> SCHEDULE AND ADDING "LADIES, MENS AND CHILDRENS CLOTHING AND FOOTWEAR" TO 3<sup>RD</sup> SCHEDULE RESTRICTED TO 815M<sup>2</sup>**

**CADBURY GARDEN & LEISURE, SMALLWAY, CONGRESBURY, BS49  
5AA**

**WRITTEN STATEMENT**

**PLANNING INSPECTORATE REFERENCE: APP/D0121/A/13/2218749  
LOCAL AUTHORITY PLANNING REFERENCE: 13/P/1741/F**

**13 June 2014**

## **1. INTRODUCTION**

- 1.1 This statement has been prepared on behalf of North Somerset Council to justify the refusal of the full planning application for the variation of condition 4 of planning permission No. 13/P/0237/F (application for variation of condition 4 of planning permission 09/p/2150/F to allow for the sale of memory cards for cameras and camping equipment) to clarify how clothing and footwear can be sold with the removal of “gardening clothes” from 1<sup>st</sup> schedule, “outdoor clothes” from 2<sup>nd</sup> schedule and “ladies, men’s and children’s fashion clothing and footwear” from 4<sup>th</sup> schedule and adding “ladies, men’s and children’s clothing and footwear” to 3<sup>rd</sup> schedule, restricted to 815m<sup>2</sup>.
- 1.2 The planning application was decided as an officer delegated matter on the 31<sup>st</sup> October 2013. The delegated report is attached in Appendix A. In addition the decision notice with the reason for refusal has been copied to the Inspector.

## **2. APPEAL SITE LOCATION**

- 2.1 The site is located on the northern fringe of the village of Congresbury. It is outside the settlement boundary for the village. Residential properties adjoin the site to the south and west. To the north there is a similar but smaller business and open countryside beyond. The land in this area is generally level although it rises gently towards Cadbury Hill to the North.

## **3. PROPOSAL**

- 3.1 The retailing of goods from this garden centre is controlled through a condition originally imposed by an inspector when granting permission for a large extension to the buildings on appeal, under reference 95/1689 (see a copy of the decision letter in Appendix B). The

condition specifies the range of goods that can be sold and divides the products into categories on the basis of how closely they are related to the core garden centre activities on site; the retailing of plants and plant products. Goods such as plants, pots, compost etc are unfettered by the condition and can be sold from anywhere within the centre. These are grouped into 'Schedule 1'. Other goods are grouped into three further schedules. Schedule 2 lists goods that can be sold but restricts the specified range to a limit of 1200m<sup>2</sup> of floor area within the centre. Schedule 3 lists further specific types of goods (such as Christmas decorations) and specifies maximum floor spaces that can be devoted to their sales for each of these. Finally Schedule 4 lists a number of goods that should not be sold from the centre. This includes products such as perfumery and cosmetics, computers luggage and leather goods. Planning permission No. 13/P/0237/F is included in Appendix C for information. Condition 4 of this notice is the most up to date version of the condition.

- 3.2 The proposal seeks to address a difficulty identified by the appellants in interpreting this condition specifically in relation to clothes sales. The condition lists clothing in three of the above schedules. 'Gardening clothing' comes into category 1 and is unrestricted. 'Outdoor clothing' is specified as a Schedule 2 item and can be sold but only within the 1200m<sup>2</sup> floorspace limitation. Finally 'Ladies, men's and children's fashion clothing' appears on the list under Schedule 4 and should not therefore be sold from the centre.
- 3.3 The effect of the proposal would be to remove these sub divisions for clothing and then add a further category to Schedule 3; specified as "ladies, men's and children's clothing and footwear" and restricted to 815m<sup>2</sup> of floorspace.
- 3.4 The LPA has no objection to the sale of memory cards and camping equipment, this having been granted planning permission under reference 13/P/0237/F (see Appendix C).

#### **4. RELEVANT PLANNING HISTORY**

4.1 See delegated report in Appendix A.

#### **5. NATIONAL PLANNING GUIDANCE**

5.1 The authority refers to Section 38(6) of the Planning and Compulsory Purchase Act 2004.

5.2 The framework within which the Local Planning Authority determined the planning application conforms to the guidance contained in 38(6) of the Planning and Compulsory Purchase Act 2004 states that:

*“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.*

#### **5.3 National Planning Policy Framework (NPPF)**

The NPPF contains relevant guidance and the following sections and paragraphs are of particular relevance:

- 2 Ensuring the vitality of town centres
- 3 Supporting a prosperous rural economy
- 4 Promoting sustainable transport

#### **6. DEVELOPMENT PLAN POLICIES**

6.1 See delegated report: Appendix A

6.2 Core Strategy - High Court Challenge

In March 2013 a judgment following a legal challenge to the Core Strategy concluded that the Inspector who undertook the examination

was found to have 'failed to give adequate or intelligible reasons' for his conclusion that the North Somerset housing requirement made sufficient allowance for latent demand i.e. demand unrelated to the creation of new jobs. Policy CS13 which relates to the housing requirement was remitted back to the Planning Inspectorate for re-examination. In addition, Policies CS6, CS14, CS19, CS28, CS30, CS31, CS32, CS33 were also remitted on the grounds that should the housing requirement be increased, then this may have consequences for one or more of these policies. The judge was clear that there is nothing unlawful about these policies per se and that they can still be accorded appropriate weight in decision making. All other policies remain adopted.

It is considered that the above proposal is not materially affected by this re-examination.

### 6.3 Other material policy guidance

Supplementary Planning Documents (SPD) and Development Plan Documents (DPD):

None of relevance

## 7. **CASE FOR THE LOCAL PLANNING AUTHORITY**

7.1 Policy RT/7 of the NSRLP (Saved Policy) requires that the majority of the sales area of garden centres be devoted to the sale of produce grown on the site, to produce grown elsewhere or garden related ancillary goods.

7.2 Policy CS21 of the CS states that the focus for future retail development within North Somerset will be Weston-super-Mare through the regeneration of town centre sites to improve the quantity and quality of provision in accordance with para 23 of the NPPF. The

policy identifies Congresbury and Yatton village centres as local centres outside Weston-super-Mare. It states that proposals for town centre uses will be supported provided that they are of an appropriate scale to the size and role of these centres, that they support the creation of comfortable safe and accessible shopping environments and that they improve the mix of town centre uses in each centre.

- 7.3 It is considered that the effect of the proposed change to the condition applied for would be to allow unfettered retailing of a much wider range of fashion clothing and footwear from the 815m<sup>2</sup> of floor space identified. Whilst it is accepted that garden clothing can be sold from the whole centre and that outdoor clothing is subject to the larger 1200m<sup>2</sup> floors pace restriction, these categories are self limiting to the extent that there are only so many brands of wellingtons, garden gloves and waterproof jackets that could be put on display. Opening up this amount of floor space to fashion clothing could have the effect of turning this area of the centre into a series of 'high street' concessions selling items which should be sold in town centres and not in the open countryside separated from any villages or towns.
- 7.4 The Local Planning Authority recognises that there is some ambiguity in the interpretation of the existing condition. For instance many items of clothing may well be capable of being classed as 'outdoor' as well as 'fashion' items. However the solution advocated by the agent is not considered to be an appropriate way of introducing greater clarity in this respect. The 815m<sup>2</sup> floor space proposed for this use is a substantial quantum of space akin to a medium sized 'out of town' outlet store. At such a size the facility would have the effect of undermining the Council's efforts to reinforce the vitality and viability of adjoining shopping centres and the town centres in the District conflicting with the policies quoted in the reason for refusal.
- 7.5 The LPA would point out that the original conditions were allowed on appeal following a public inquiry and the LPA accepted that some

retailing could be allowed but given the position, this must be restricted and not be open and unrelated to the site

## **8. COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL**

- 8.1 In Section 4 of their Statement the agents state at para 4.7 that the number and range of goods being sold are appropriate to the character of a garden centre and in compliance with the goods allowed for sale within the current schedules. However the LPA considers that items sold from the concessions such as the Edinburgh Wool Mill and Cotton Traders cannot strictly be considered 'garden' or 'outdoor' clothing. These are more akin to the items sold in 'fashion' stores that are found in High Street locations. As such the LPA could argue that they are prohibited under schedule 4 of the existing condition.
- 8.2 The LPA notes that the agent argues that the growth of clothing and footwear sales is in response to increasing demand by customers (Para 4.10 of the statement refers). The LPA however considers that the business has chosen to evolve in this direction to exploit its position being located in the countryside and benefiting from its own large car park. Thus many of its customers arriving in their private cars, find this a more convenient destination than adjoining town centres where parking is constrained and has a cost. Allowing the appeal on this basis would however conflict Council policy as cited above.
- 8.3 The case is made that allowing this appeal will consolidate and regularize the position with regard to the sale of clothing and footwear (Para 4.11). Whilst this may be the case the LPA considers any benefit to be outweighed by the breach in its retail policy.
- 8.4 In Para 5.4 the agent argues that it is disingenuous for the LPA to suggest that this garden centre could sell 'high heel stilettos or business suits' if the appeal were allowed. The LPA would contend that this could well be a consequence of allowing the appeal. Whilst the present business seems happy to have evolved in the manner of a

garden centre with 'additions' there is no certainty that this would always be the case. Retailing is a dynamic industry. 815m<sup>2</sup> is a substantial quantum of space and the consequence of an allowed appeal could in future allow the evolution of the business in a direction that could result in the 'fashion clothing' being a much more significant component of the retail offer on the site, to the detriment of the LPA's retail policies cited above. Furthermore this would be contrary to the original appeal decision which restricted retail sales which did not relate to this condition.

- 8.5 In Para 5.6 of his statement the agent states that allowing this appeal will not have an adverse effect on the vitality and viability of Congresbury or other retail centres. He goes on to state that it would 'only increase local consumer choice' and will 'encourage more trade in the village centre and wider area'. Further this will be in compliance with para 27 of the NPPF. The LPA would however point out that this is not a sustainable location in principle having regard to Council policy and Government advice in the NPPF (particularly Para 37) when read as a whole. This is a location on the edge of a village in the rural part of the District located at some distance from the larger settlements with their retail centres. It is remote from any public transport hubs in a location where there is a reliance on the private car for access. The LPA would point out that there are vacant large retail units in the town centre of Weston super Mare such as the former T J Hughes building in the High Street which are in a more sustainable location than the appeal site. The LPA cannot accept this argument for this reason.
- 8.6 In Paras 5.7 and 5.16 the agent argues that the proposal would benefit local town and villages such as Congresbury by adding to its self containment and decreasing out commuting and providing local jobs. The LPA would consider that the 'benefits' of reduced out commuting in particular would be outweighed by the numbers of customers attracted to the centre from further afield. It is well known that such centres have an extensive hinterland (this business advertises on regional TV stations) and that customers will travel great distances to access them.



This would reinforce existing unsustainable travel patterns given the tendency for such trips to be made by the private car.

- 8.7 Whilst the centre would provide job opportunities for local people and performs a social role (as argued in Para 5.19 of the agent's statement) the centre is considered an inappropriate location to expand a retailing operation that would permit the expansion of fashion clothes and footwear retailing. Such retailing is more appropriately located in town centres where it would be located at a public transport hub and be capable of access using more sustainable transport modes. The effect of the existing condition (however difficult it is to interpret) prohibits fashion clothing and footwear. It is considered that this prohibition should be maintained. Furthermore the LPA would point out that it could result in the loss of employment in established retail centres by making them less attractive and resulting in a growth in the level of vacant retail units.
- 8.8 In Para 5.23 the agent states that allowing this appeal would be justified through Para 21 of the NPPF which encourages Local Authorities to adopt a flexible approach to economic growth. The agent states in Para 5.24 that the effect of the refusal of this application is to restrict competition, preserve existing commercial interests and prevent innovation. However the LPA would point out that Para 21 of the NPPF encourages 'sustainable economic growth' and it is our view that the proposal is not sustainable for the reasons outlined above. The LPA is not trying to preserve existing commercial interests; it is trying to reinforce the role of our existing town centres to ensure that they can function as attractive centres for the benefit of the District as a whole.
- 8.9 The LPA would point out that there are a number of garden centres in the District, all of whom operate under similar restrictions to Cadbury. Any extension of the range of goods that can be sold here will make it difficult to resist similar relaxations being granted permissions in these other centres. The cumulative impact on the Council's retail policies

would be to diminish our ability to promote sustainable retail development in our town centres and would cause significant harm.

## **9. CONCLUSION**

- 9.1 The granting of permission for this proposal would result in the consolidation of fashion clothing and footwear retailing from a large quantum of floor space within this garden centre. The effect will be to further expand the range of goods that can be sold from the centre to the extent that the operation begins to adversely affect the viability and vitality of town and village centres in the District.
- 9.2 The Local Planning Authority would therefore consider that this planning application was refused for a soundly based planning reasons and would therefore request that the appeal be dismissed.
- 9.3 The LPA do not object to the sale of memory cards and camping equipment, this having been granted planning permission under reference 13/P/0237/F

## **10. SUGGESTED CONDITIONS**

10.1 If it proposed to allow this appeal and grant planning permission for the variation of condition 4 of planning consent 13/P/0237/F it is suggested that conditions 2 and 3 of this decision notice also be added to the inspector's decision letter. For ease of reference these are repeated below:

2. No external lighting shall be erected on the site unless it is in accordance with details, which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to preserve the rural character of the area and preserve the living conditions of neighbouring residents as required by policies GDP/3 and ECH/7 of the North Somerset Replacement Local Plan and CS12 of the Core Strategy.

3. The existing cafeteria granted planning permission at appeal on 12 October 1998 shall only be open during the normal trading hours of the garden centre unless otherwise first agreed in writing by the local planning authority.

Reason: In order to prevent the establishment of a separate use at this site in the interest of limiting the need to travel and preserving the viability and vitality of existing town and local centres as required by policies RT/1 and RT/6 of the North Somerset Replacement Local Plan and policy CS21 of the Core Strategy.

**MC/13/P/1741/F  
13/6/14**

# APPENDIX A



## **NORTH SOMERSET COUNCIL DELEGATED PLANNING APPLICATION REPORT SHEET**

**Target Date:** 15 November 2013

**Application No.** 13/P/1741/F      **Application Type:** Full Planning Permission  
**Case Officer:** Mike Cole

**Proposal:** Variation of condition 4 of planning permission 13/P/0237/F (Application for variation of condition 4 attached to planning permission 09/P/2150/F to allow for the sale of memory cards for cameras and camping equipment) to clarify how clothing and footwear can be sold with the removal of "gardening clothes" from 1st schedule, "outdoor clothes" from 2nd schedule and "ladies, mens and childrens fashion clothing and footwear" from 4th schedule and adding "ladies, mens and childrens clothing and footwear" to 3rd schedule restricted to a total flood area of 815m2..

**Location:** Cadbury Garden and Leisure, Smallway, Congresbury, BS49 5AA

### **Planning History/Background – most recent applications**

13/P/1552/F: Variation of condition 4 of planning permission 13/P/0237/F (and the amendment of attached Schedule 3) to include the sale of chiropody products and provision of a chiropody treatment room (to be restricted to the 35 sq.m sales area), Refused.

13/P/0237/F: Variation of condition to allow sale of camera memory cards and camping equipment, Approved.

10/P/2145/F: Variation of condition to allow a butcher's concession to operate, Withdrawn

07/P/0896/F: Variation of schedule 1 of condition 12 to include sale of conservatory furniture and hot tubs, Approved

95/1689: Demolition and replacement of existing buildings and erection of new buildings, construction of cafeteria, garden machinery and food produce shop, Refused but allowed on appeal with restrictions on the range of goods that can be retailed.

0965/86; Retail sale of plants, Approved with conditions

### **Monitoring Details (if applicable)**

### **Policy Framework**

The site is outside the settlement boundary for any settlement.

### **Development Plan**

#### **North Somerset Core Strategy (adopted April 2012)**

CS20 Supporting a successful economy

CS21 Retail hierarchy and provision

CS33 Infill villages, smaller settlements and the countryside

#### **Core Strategy - High Court Challenge**

In March 2013 a judgement following a legal challenge to the Core Strategy concluded that the Inspector who undertook the examination was found to have 'failed to give adequate or intelligible reasons' for his conclusion that the North Somerset housing requirement made sufficient allowance for latent demand i.e. demand unrelated to the creation of new jobs.

Policy CS13 which relates to the housing requirement was remitted back to the Planning Inspectorate for re-examination. In addition, Policies CS6, CS14, CS19, CS28, CS30, CS31, CS32, CS33 were also remitted on the grounds that should the housing requirement be increased, then this may have consequences for one or more of these policies. The judge was clear that there is nothing unlawful about these policies per se and that they can still be accorded appropriate weight in decision making. All other policies remain adopted.

It is considered that the above proposal is not materially affected by this re-examination.

**North Somerset Replacement Local Plan (saved policies) (adopted March 2007)**

Three NSRLP policies were not saved in March 2010. The Core Strategy supersedes some but not all of the remainder. It does not supersede the following policies:

RT/7 Garden centres, nurseries and farm shops in the open countryside

**Other material policy guidance**

**Supplementary Planning Documents (SPD) and Development Plan Documents (DPD)**

Travel Plans SPD (adopted November 2010)

**National Planning Policy Framework (NPPF) (issued March 2012)**

The NPPF contains relevant guidance and the following sections and paragraphs are of particular relevance:

**Affordable Housing (if applicable)**

(If solely affordable site, please indicate)

**Consultation Summary**

Copies of representations received can be viewed on the council's website. This report contains summaries only.

**Drainage:** No comments

**Policy:** This application is proposing a town centre use within a garden centre business located in the countryside. Policy CS21 of the Core Strategy states that retail proposals should be located in Weston-super-Mare, the four main towns, identified district or local centres and within the settlement boundaries of service centres. This application is not located within any of these centres. The current restriction on the type of clothes sold is to ensure that any clothing sold is related to the main use and will not harm the vitality or viability of existing town or local centres. Therefore, on balance I would advise that this application is unacceptable in planning policy terms.

## **Parish/Town Comments**

Recommend Approval

## **Neighbour's Views**

No comments received.

## **Conclusions**

Proposals involving retailing from garden centres such as this are judged against policy RT/7 of the NSRLP. This requires that the majority of the sales area relates to the sale of produce grown on the site and the sale of any other goods relates either to produce grown elsewhere or garden related ancillary goods.

In a planning and retail statement that accompanies the application the agent argues that the present condition restricting clothing sales is ambiguous in that it allows unrestricted sales of 'garden clothing, specifies a floor space limitation on the sale of 'outdoor clothes' and prohibits the sale of 'fashion clothes' altogether. The proposed change would have the effect of removing the designation of 'garden', 'outdoor', and 'fashion' from the condition and instead have a generic category defined as 'clothing and foot ware' which would be retailed from a restricted floor space of 815m<sup>2</sup>. This it is argued would regularise what is essentially the existing sales activity from the site, making future monitoring and enforcement of the condition simpler for both the applicant and the Council.

The case put forward by the agent has been carefully considered. It is however felt that whilst the enforcement position would be clearer, the result of granting permission would be to allow the retailing of any clothing/footware from 815m<sup>2</sup> of floor space, including fashion ranges not at present being sold from the garden centre. This would be unacceptable in policy terms especially given the size of the floor area involved.

The proposal is therefore considered to be unacceptable for this reason.

## **Recommendations**

(Including consideration of the Natural Environment and Rural Communities (NERC) Act 2006 & the Crime and Disorder Act 1998)

*See decision notice for conditions/reasons*

**Refuse** for the specified reason.

## **Reason for Overriding Parish Council comments (if appropriate)**

In recommending this application, I have taken into consideration the relevant policies of the Development Plan and the comments made by the consultees and other interested parties and the:

- Natural Environment and Rural Communities (NERC) Act 2006
- Crime and Disorder Act 1998
- Human Rights Act 1998.

Signed: ..... *RC* .....

Dated:..... *31/10/13* .....



# The Planning Inspectorate

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Messrs Burges Salmon  
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Your Ref:  
PCR/17860.2  
Our Ref:  
T/APP/D0121/A/98/291702/P2

Date: 12 OCT 1998

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 & SCHEDULE 6  
APPEAL BY MR AND MRS K W LLOYD  
APPLICATION NO: 1689/95**

1. The Secretary of State for the Environment, Transport and the Regions has appointed me to determine your client's appeal against the decision of the North Somerset Council to refuse planning permission for the demolition and replacement of existing buildings, new buildings, extensions and infill for a retail garden centre, nursery landscape supplies and construction, cafeteria, garden machinery and food produce shop and covered areas at Cadbury Garden Centre, Smallway, Congresbury. I held a local inquiry on 22-24 September 1998.
2. From the evidence and my inspection of the site, I consider the main issue is whether the proposed restrictions on trade at the garden centre enable planning permission to be given for an extension of retail floorspace in a rural location, having regard to local and national shopping Policy. Other issues arise from the design and scale, landscaping and appearance of the development.

### Background

3. The Cadbury Garden Centre amounts to 7ha of car parking, shops, glasshouses and open sales areas lying between the built up area of Congresbury and the countryside at Cadbury Hill. The existing covered floorspace is about 7864m<sup>2</sup>, largely glasshouses, of which about 6370m<sup>2</sup> is counted as retail floorspace. The proposed redevelopment would comprise about 12,027m<sup>2</sup> of floorspace, excluding covered walkways.
4. The property used to be a nursery garden. Planning permission to change the use to a garden centre was granted in 1982. Subsequent permissions are a matter of record. A garden centre is classed with other premises used for the retail sale of goods under Class A1 of the Town and Country Planning (Use Classes) Order 1987 (and its predecessors). Consequently a planning authority willing to permit a garden centre, but anxious to restrict the retail use to that specific activity, must impose some other form of control (*Wiggins v Arun DC [1997] JPL1041*).



5. When planning permission was granted in 1982 the appellants entered into an Agreement, enforceable by the Council under Section 52 of the 1971 Act, by which sales were to be restricted to 22 items listed in a Schedule to the Agreement. That Schedule, which is also a matter of record, comprises a range of articles normally found on sale in garden centres, and also includes refreshments and light snacks and giftware which might appeal to the outdoor and indoor gardener and be suitable as presents for the flower arranger and plant enthusiast. It is openly acknowledged by both parties that this Agreement has been interpreted very widely by the appellants and has not been enforced by the Local Planning Authority for at least 10 years.

6. Your clients now contend the Agreement of 1982 is of no effect and the use of the land is unfettered Class A1; though this contention has not been tried in the Courts and no procedure is available to settle the question by Lawful Development Certificate. The Local Planning Authority for their part concede the 1982 Agreement is unenforceable, but they adhere to the view that the sale of completely different classes of goods (e.g. computers or carpets) is still restricted. Your clients, while seeking to expand and diversify their garden centre, have no intention of abandoning the core business or transforming it to, say, a super-market. But, if planning permission is to be refused for this development, they assert there is a fall-back situation in which they could sell what they please.

7. Any fall-back alternative is a material consideration. Your clients however, present no evidence of real intention to sell computers and the like and stress the point is merely academic. They are ready to accept constraints on their retail business to overcome objections to the proposed redevelopment. Having seen the extent to which giftware, books, groceries and a wide variety of goods are sold on the premises I can see that your clients' urge to diversify has not been severely restricted in the past. They have been highly responsive to public demand. There is no planning control now which limits the extent of retailing within the 7ha site or the proportions of different goods sold there. So there is a real possibility this trend would continue to the point where 'high street goods' predominate, unless some effective constraint is applied. I would not describe that as a 'fall-back' situation in terms of *Snowden v SSE & Anr [1980] JPL749*, or *New Forest DC v SSE & Shorefield Holidays Ltd*, but it signifies to me that the appellants are in a position of strength, having the option of further diversification always open to them within the existing site.

8. After inspection, I consider the place remains very much a garden centre as the shopping public would perceive it. The core business has still to do with gardening. But further diversification, taking over more of the existing floorspace, could alter the balance by degrees to an ordinary shop largely selling 'high street' goods. That point has not been reached. The S52 Agreement lies on the table, unenforced since 1982. So the predominantly garden-centred use of the premises is largely a consequence of management by your clients, not development control by the Council.

### *Policy*

9. The Avon County Structure Plan (Third Alteration) 1994 is the adopted Structure Plan for the area. A Joint Replacement Structure Plan, currently on deposit, offers advice about major retail development based on PPG6. It says nothing about garden centres. The adopted Local Plan is the Woodspring Rural Areas Local Plan adopted in 1991 which both parties consider outdated in the light of the current PPG6 and PPG13. So, for the purposes of Section 54A of the above Act, the adopted Development Plan is inconclusive.

10. The emerging Woodspring Local Plan (Deposit Version) contains four policies which are material considerations and which the Council pray in aid. The Inspector's Report into objections to the Plan has just been published. The overall objective of the Plan is to steer major development including retailing into settlements and resist such development in the open countryside. The constraints of shopping policies are balanced by other policies supporting employment and the rural economy. One must therefore examine the policy objections to see what weight they carry and what harm development would do.

11. Policy S/4 of the Deposit Draft Local Plan simply says planning permission will not be granted for retail development outside settlement boundaries. The written justification adds that garden centres which propose to sell entirely goods not produced or grown on site will be covered by S/4. The settlement boundary in the Draft Plan excludes the appeal site and adjoining nursery gardens. However, the weight of this Policy is drastically reduced by the Inspector's recommendation that it be deleted from the Plan. It would prevent modest development such as village shops. He suggests an alternative Policy be introduced, but the Council have had no opportunity yet to respond.

12. Policy S/5 says planning permission for the use of land or buildings for the sale of goods from agricultural/horticultural units will be granted subject to criteria about access, the character of the surrounding landscape, and the majority of the retail area to be given over to produce grown on site (the remainder either to be grown elsewhere, or garden-related ancillary goods). The justification, based on open countryside policy, is to control large scale retailing and restrict the range of goods sold. But the Council concede the appeal site is no longer an agricultural/horticultural unit and the Policy does not apply to garden centres. The garden centre is thoroughly established, so the application would not change the use of land. The Policy is therefore not very relevant, though it introduces the principle of restricting garden centres to garden-related goods, and the Council concede that the development would comply with it if the range of goods is duly restricted.

13. Policy DCS/4 says planning permission will not be granted for development outside settlement boundaries unless it is appropriate to the rural area. The Council say the proposal conflicts with this Policy because of the amount of floorspace devoted to goods unrelated to gardening. That is a matter of degree, rather than principle. The Inspector moreover recommends substituting a modified Policy - about buildings essential for farm-based diversification - and suggests the Council consider whether there is a need for a separate Policy for new buildings or rural business. So this Policy is not conclusive either.

14. DC/1 is a draft policy with a broad remit. It says development which is not otherwise in conflict with the Plan will normally be permitted subject to criteria including compatibility in overall scale and design with adjacent buildings. I shall consider the scale and design of the proposed development on their merits in due course, but this Policy carries little weight because the Inspector recommends deletion.

15. So the adopted Development Plan policies do not offer conclusive guidance in this appeal and the emergent policies are for the time being in disarray. There is still no specific Policy about garden centres. For the purposes of this decision the background is illuminated by government advice about shopping in PPG6 and PPG13. Notably, the Council's witness offers no evidence of harm to the vitality and viability of town or district centres, no objection on grounds of sustainability, access or the sequential approach to out-of-centre locations. PPG6 explains that the appellant has a rôle in such matters. But both parties confirm, when it is put to them, that planning permission ought to be refused for a large-scale expansion of unfettered A1 retail floorspace on the site, for the very reasons of shopping policy understood by all. A dedicated garden centre can be different, unsuitable for a town

centre. On that basis, your clients' willingness to don the fetters of constraint on their business may be of overriding significance.

### *The scale of development*

16. Recognising circumstances as they are:- a large range of buildings with extensive open areas already in retail use, and the trading restrictions of 1982 outdated and relaxed by default - attention turns to the scale and consequences of the proposed redevelopment. For if this appeal is allowed the retail floorspace would be greatly increased. And such an increase would be unacceptable unless the sale of garden centre goods clearly predominates. On the eve of the inquiry the differences between your clients and the Local Planning Authority on a draft S106 Agreement seemingly narrowed to points of detail about a few types of goods and the precise floorspace allotted to them but, be that as it may, this appeal has to be determined in the absence of such an Agreement.

17. The Cadbury garden centre is a "regional destination garden centre". The catchment is estimated to be about 20 miles radius, or 30 minutes drive time, covering half the Bristol conurbation. This type of business is said to be highly competitive, and expanding. Your clients are among the leaders of garden centre enterprises. They submit that the distinction between garden centres and other kinds of A1 retail businesses are the predominance of goods related directly to gardens; goods largely displayed in the open air; location in the countryside; and the leisure to have a family day out.

18. The application includes proposals to increase the total covered retail floorspace (excluding the café and Christmas Grotto) from 6,370m<sup>2</sup> to 9,720m<sup>2</sup>, coupled with a reduction in the outdoor retail area from 11,109m<sup>2</sup> to 6,495m<sup>2</sup>. The existing buildings, aptly described as a hotch-potch, would be replaced by an attractive range of facilities with a coherent façade and greater convenience for customers and staff. The existing open space, partly given over to spacious displays of sheds, bulky goods, garden layouts and stores, would be re-organised. No evidence of turnover or trading figures is available, but it is self-evident the existing business could become much more intensive in the new premises. But the retail evidence does not demonstrate that intensive garden centre trading, as such, would do any harm.

19. When I visited the centre I found a discrete area given over to giftware and a wide assortment of other goods listed in your schedules, a small café and a few vending points for confectionery &c scattered about. Hitherto, the Council have not sought to measure the proportion of floorspace used to sell garden-related goods versus other scheduled goods. The only evidence is supplied by your clients and is uncontested. As a matter of record, the floorspace trading in 'scheduled goods' is said to be 2,995m<sup>2</sup> [document 23]. I need not therefore rehearse the contested analyses of the evidence leading to your submissions that the ratio of 'scheduled' retail floorspace is currently 22% of the covered retail floorspace; 13.5% of the total retail floorspace including the open air gardens outside; and 17% of the total covered floorspace, if one counts some glasshouses currently empty and recently storm-damaged. These percentages increase in the Christmas season (which is not defined in evidence) to 35%; 21%; and 27% when your clients seek to diversify more to cover the seasonal hiatus in gardening.

20. These proportions are substantial by any reckoning, and the Council's concern about unrestricted growth is well-founded. But the figures confirm garden centred trade does still predominate. The core business and garden centre as a whole is still distinguishable from high-street trading of the type which might threaten the vitality and viability of local centres. Having regard to PPG1 §36-37, I must consider whether a planning condition could preserve

that distinction and overcome any obstacle which might prevent planning permission on grounds of national retail policy.

### *Proposed Constraints*

21. In the light of DoE Circulars 1/97 and 11/97, a draft Section 106 Unilateral Planning Undertaking prepared for the inquiry has been modified into a planning condition to specify a range of goods with four schedules:-

1. Core products or services (i.e. 30 items, varying from seeds to garden sheds - and a café - mutually agreed to be appropriate to a garden centre).
2. Products or services which may only be retailed within a floor area not exceeding 1,200m<sup>2</sup> at any one time (i.e 10 items, varying from stationery to outdoor clothing, which represent a degree of diversification from the core business, unarguably sold at the premises already, and currently beyond control).
3. Three classes of products or services which may only be retailed from a floor area of 1,200 m<sup>2</sup> in the case of Christmas and other seasonal goods, 500 m<sup>2</sup> in the case of food, and 500 m<sup>2</sup> for homecare products.
4. Prohibited goods and services (22 items from pharmacy to tobacco, computers to carpets).

22. In my opinion Schedule 1 defines the core business of a garden centre to which the retailing evidence ascribes no demonstrable harm. Schedule 2 recognises a status quo, established by default over the past 10 years, and sets a limit to the further expansion of shopping other than core business. Schedule 3 defines a range of retail diversification, seasonal and otherwise, which cannot reasonably be prevented by the Section 52 Agreement of 1982 nor otherwise prohibited on any of the existing A1 retail floorspace, unless this appeal is allowed and the condition imposed. Reluctant as the Council are to accept this quantum of floorspace, your clients take their stance upon it because they want to remain competitive; and no cogent evidence is presented to justify a reduction. Schedule 4 is a new element which, in my opinion, essentially fetters the use of the enlarged floorspace and entire area of this Class A1 shopping site.

23. Without such controls I consider planning permission should be refused on grounds of policy in this unsustainable rural location.. So the condition is necessary, relevant to planning and to the development in hand. I find it enforceable and, in answer to my questions, the Local Planning Authority confirm they have the resources and commitment to enforce it. Should they find it expedient to do so, a breach of condition notice may be served under Section 187A of the Act on the person having control of the land. The appellants say they would welcome inspections by the Council, would facilitate their work in checking stock, measuring gross floorspace and circulation and would clear the shelves of any goods beyond the agreed limits. This condition is precise and, having been submitted on behalf of the appellants with the benefit of experience, is reasonable without being onerous.

24. The condition therefore would pass the tests of validity in Circular 11/95. I conclude that this condition enables the grant of planning permission in terms of retail policies, bearing in mind the current use of the land and the potential for future unfettered diversification.

### *Other issues*

25. Neither the Council nor their architects panel object to the design or appearance of the new structure. Design details have been negotiated. Although the existing sheds and glass houses on site do not look out of place in the countryside, I consider the redevelopment would be an improvement when seen close at hand. From the road outside, and the cottages fronting it, the proposed façade would look better than the existing hotch-potch. When seen from distant viewpoints and the footpaths leading to an Ancient Monument on top of Cadbury Hill, the building would be conspicuous in the plain below, but it would be among a cluster of nurseries and buildings on the outskirts of Congresbury and would in no way affect the setting of the Ancient Monument. Provided the finishing materials and roofing materials are controlled by conditions, the appearance of the building would be acceptable. Any archaeological finds should be protected.

26. The existing café in the garden centre amounts to about 254m<sup>2</sup>. I see it is fairly modest in scale. The patio outside is exposed and inhospitable. There are no indoor toilets close by. The arrangements for kitchen staff are inconvenient. The appeal proposals include a cafeteria of 617m<sup>2</sup>, i.e. about 250 settings with 150 outdoors. Although the existing café does no harm in principle, the Council are concerned about the extension in case it develops into a destination in its own right. This risk can be controlled by a condition, agreed by the parties, that the café trades only when the garden centre is open.

27. No objection has been raised by the Highways Authority on traffic grounds. It is agreed that a pedestrian refuge is needed at a suitable crossing point on the B3133. That is the subject of a Unilateral Planning separate Undertaking under Section 106, signed and sealed on the last day of the inquiry.

28. The existing car park, which occupies much of the open foreground of the garden centre, is to be altered, with a reduction in car-spaces from 821 to 726, acceptable to the Council. Traffic circulation on site is important, to prevent queuing on the highway, so the approved layout should be implemented before the new building is occupied.

29. Scale, rather than design, is the basis of the Council's objection under draft Policy DC/1; but if this were their only concern they would not refuse planning permission. Despite the limited weight of that Policy, scale is also a material consideration under PPG1. The proposed building would have a frontage of about 140m and a depth over 130m. It would be far bigger than any horticultural complex nearby. It would be a landmark in Congresbury. But in my opinion the large scale does little harm in this location, because the character of the area is of urban fringe rather than open countryside; and the village and surrounding nursery gardens set the scene.

30. Open spaces on site, towards Cadbury Hill, are already planted with trees. Hedges and mature trees of native species remain in, and on the boundary of, the site. These should be conserved, with appropriate landscaping. As the site occupies a transition zone on the fringes of the settlement and designated Priority Historic Landscape Area, I consider a landscaping scheme essential to enhance the site and soften the appearance of the car park and building. An agreed condition would safeguard newly planted trees for 10 years and, in any event the Council could make a Tree Preservation Order on them if expedient.

31. No quantified evidence of potential noise or light spillage was adduced at the inquiry, but here, in this transition zone, approval should be obtained from the Local Planning Authority.

### *Conclusions*

32. In my opinion the approval of such a large extension of A1 shopping floorspace in a rural location represents a compromise with the objectives of national retail policy. It is justified in this instance only by the extraordinary circumstances of lapsed control leading up to the existing business, and the effective resumption of constraint by planning condition which will limit the business to be predominantly a country garden centre of a type which may reasonably be excepted from the sequential approach to location. It does not therefore create a precedent to be followed in other cases. The other issues do not warrant refusal.

33. My decision is informed by the s106 Undertaking about payment for a pedestrian refuge, which has been sealed. There is mutual understanding between the parties that the Section 52 Agreement of 1982 will be revoked. I appreciate that the development would create employment in the countryside and to that extent would serve the purposes of Development Plan Policy and the objectives of PPG7. A drainage scheme has been submitted and accepted but not yet implemented. I have taken account of all the other matters raised in evidence, including accessibility by buses serving the site, the planning history of the premises and the record of negotiations leading up to the inquiry. They do not override the foregoing conclusions.

### FORMAL DECISION

34. For the above reasons and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the demolition and replacement of existing buildings, new buildings, extensions and infill for a retail garden centre, nursery landscape supplies and construction, cafeteria, garden machinery and food produce shop and covered areas at Cadbury Garden Centre, Smallway, Congresbury in accordance with the terms of the application (No 1689/95) dated 17 August 1995 and the revised plans 3264/001MCD, /101D, /100A, /1012, /102C, /103D, /112A, /115B and CGC1 subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of five years from the date of this permission;
2. no development shall take place until samples of the materials to be used in the construction of the external surfaces and roof of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details;
3. no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development;
4. all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall

be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation;

5. no works or development shall take place until full details of all proposed tree planting, to consist principally of native species, and the proposed times of planting, have been approved in writing by the local planning authority, and all tree planting shall be carried out in accordance with those details and at those times;

6. Before the development hereby permitted commences a scheme shall be agreed with the local planning authority which specifies the provisions to be made for the control of noise emanating from the site;

7. Details of any external lighting of the site shall be submitted and approved by the local planning authority prior to its installation.

8. None of the buildings shall be occupied until the agreed drainage works shown on Drawing No.T227/120 [dated 3/11/95] have been completed in accordance with the approved plans.

9. None of the buildings shall be occupied until the proposed alterations to the parking area and internal circulation of vehicles within the site shown on the drawing 3264/101D hereby approved have been completed in accordance with the approved plan;

10. The cafeteria hereby approved shall only be open during normal trading hours of the garden centre save as otherwise agreed in writing by the local planning authority.

11. the developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow him/her to observe the excavations and record items of interest and finds.

12. The retailing of products and the offering of services from the development hereby authorised shall be limited by the terms of the Schedules numbered 1-4 below and no retailing of other goods, products or services shall take place other than as authorised below:

Products or services listed in the First Schedule may be retailed from the development hereby authorised.

Products listed in the Second Schedule may only be retailed from the development hereby authorised within a floor area not exceeding 1,200m<sup>2</sup> at any one time.

Products listed in the Third Schedule may only be retailed from the development hereby authorised within a floor area not exceeding the limits in area for each item shown in that schedule,

and subject thereto the development hereby authorised shall not be used for the retail purposes or sale of products listed in the Fourth Schedule.

## THE FIRST SCHEDULE

- 1 Fruit Vegetables and Flowers
- 2 All types of plants
- 3 Seeds and bulbs
- 4 Growing Media, peats, composts and Barks
- 5 Fertilizers and Chemicals
- 6 Lawn care products
- 7 Gardening Tools and Equipment
- 8 Plant Containers, Garden Ornaments and Vases
- 9 Garden related Books
- 10 Garden Games
- 11 Aquatic Gardens, Garden pools and accessories
- 12 Floral Art
- 13 Gardening Clothes
- 14 Garden furniture and Barbecues
- 15 Garden Machinery and Services
- 16 Garden related Art and Craft products
- 17 Greenhouses, Garden Sheds
- 18 Construction Materials and equipment necessary for the construction of patios, garden paths, decorative walling, pergolas
- 19 Refreshments, confectionary, ice cream and light snacks (including the provision of a Cafeteria)
- 20 Landscaping services
- 21 Pets corner and Children's play ground
- 22 Exhibitions related to the approved product list
- 23 Videos, CDs, magazines and tapes related to the products listed in the First Second and Third Schedules hereto
- 24 Swimming pools and poolcare products and accessories
- 25 Greenhouse and conservatory heaters and fuel
- 26 Conservatories, carports and replacement windows
- 27 Fish, reptiles, aquatic and vivarium sundries and food
- 28 Pets, petcare, pet accessories and food
- 29 Garden and plant lighting
- 30 Gardening products used in connection with the establishment and maintenance of gardens and allotments

## THE SECOND SCHEDULE

- 1 Stationery, Cards and Giftwrap for all occasions
- 2 Pictures, Frames, Photograph Albums and film
- 3 Candles, candlesticks and accessories
- 4 Picnic-ware, Tableware and Kitchenware
- 5 Ceramics, china, glass, ornaments, cork, copper and brassware, stones and shells (but not including items falling within item 8 to Schedule One)
- 6 Books including non-fiction, fiction, children's books, calendars and diaries (but not including items falling within item 9 to Schedule One)
- 7 Soft and Mechanical Toys and batteries
- 8 Garden and Outdoor Toys, Games and sports equipment (but not including items falling within item 10 to Schedule One)
- 9 Arts and Craft hobby products including needleware and tapestries
- 10 Outdoor Clothes



### THE THIRD SCHEDULE

- 1 Christmas and other seasonal decorations limited to 1200m<sup>2</sup>
- 2 Bakery and Dairy Products Health and Wholefood, health preparations and toiletries Grocery and Delicatessen Products (fresh, dried, tinned and frozen) limited to 500m<sup>2</sup>
- 3 Homecare and Home Improvement products limited to 500m<sup>2</sup>

### THE FOURTH SCHEDULE

- 1 Pharmacy or chemist
- 2 Perfumery and cosmetics
- 3 Ladies men's and children's fashion clothing and fashion shoes
- 4 Jewellery and spectacles
- 5 Cars and motorcycles, spare parts for cars and motor cycles and motor care products
- 6 Camping and caravans
- 7 Computers
- 8 Radios and televisions
- 9 Office equipment
- 10 Domestic electrical appliances
- 11 Plumbing supplies and bathroom fittings
- 12 Wallpaper and paints
- 13 Musical instruments
- 14 Photographic equipment
- 15 Luggage
- 16 Leather goods
- 17 Beds and bedding
- 18 Carpets and curtains
- 19 Children's nursery equipment
- 20 Fitted kitchens and bedrooms
- 21 Off Licence
- 22 Tobacconist or newsagent

35 These conditions require further matters to be agreed by the local planning authority. There is a right of appeal to the Secretary of State if they refuse any such application, fail to give a decision within the prescribed period, or grant a conditional approval.

36. The developer's attention is drawn to the enclosed note relating to the requirements of the Building Regulations 1991 with respect to access for disabled people. This letter only grants planning permission under Section 57 of the Town and Country Planning Act 1990. It does not give any other approval or consent that may be required.

Yours faithfully



Nicholas Hammans  
FRSA FRTPI FIAS PPBEng  
Inspector

ENCLOSURE

APPEARANCES

FOR THE APPELLANTS

Mr Christopher Lockhart-Mummery QC  
instructed by - Burges Salmon, Solicitors, Narrow  
Quay House, Narrow Quay, Bristol  
BS1 4AH.

He called:

Mrs H F Scott  
BA(Hons) DipTP MRTPI - Partner, Malcolm Scott Construction  
Ltd, Grove House, 1 Loves Road,  
Worcester WR1 3BU.

Mr K W Lloyd BSc(Econ) - Appellant  
Congresbury Garden Centre.

FOR THE PLANNING AUTHORITY

Mr Sasha White of Counsel - instructed by the Chief Executive,  
North Somerset Council.

He called:

Mr M Cole DipTP MRTPI - Principal Planning Officer, North Som-  
erset District Council.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Notice of inquiry and consultation list.
- Document 3 - 5 letters from third parties.
- Document 4 - Bundle of 134 sheets of correspondence (agreed).
- Document 5 - Path and Bridleway network.
- Document 6 - Minutes of meeting 12 September 1997.
- Document 7 - Extract of responses to Woodspring Local Plan.
- Document 8 - Extract from Local Plan.
- Document 9 - 10 photographs submitted by Mr Cole.

## DOCUMENTS Continued

- Document 10 - Extract from Inspector's Report on objections to Woodspring Local Plan.
- Document 11 - Location Plan of Appeal Site.
- Document 12 - Aerial Photograph.
- Document 13 - Views of the Appeal Site.
- Document 14 - ACL Diagram C.
- Document 15 - List of planning decisions.
- Document 16 - Committee Reports.
- Document 17 - Agent's covering letter of 8 April 1998.
- Document 18 - Letter to Council dated 23 September 1997.
- Document 19 - Extracts from Policies and Guidance referred to.
- Document 20 - Woodspring Local Plan - Deposit Draft 1994.
- Document 21 - Letter to Mr Cole - with Schedule 23.9.97.
- Document 22 - Mr Lloyd's statement.
- Document 23 - Mr Lloyd's table of floorspace figures.
- Document 24 - Planning decision 024/82 21.3.82.
- Document 25 - S52 Agreement 31.3.82.
- Document 26 - S106 Agreement re: Highways works 24.9.1998.
- Document 27 - Draft S106 Agreement re: restrictions on Sales.
- Document 28 - Draft Planning Condition re: restrictions on sales.
- Document 29 - Wiggins v Arun District Council 1997 [JPL 1041].

## PLANS

- Plan A - 1C - Approved Plans (Revised)
- Plan L - Drainage Plan T227/120 3.11.95
- Plan M - Large elevational overlay.
- Plan N - Comparative footprint - existing and proposed.

# APPENDIX C

## NOTICE OF DECISION Town and Country Planning Act 1990



Jones Lang LaSalle  
40 Berkeley Square  
Bristol  
BS8 1HU

Application Number  
Category

13/P/0237/F  
Full Planning  
Permission

**Application No:** 13/P/0237/F  
**Applicant:** Garden and Leisure Group, Cadbury Garden Centre  
**Site:** Cadbury Garden and Leisure, Smallway, Congresbury, BS49 5AA  
**Description:** Application for variation of condition 4 attached to planning permission 09/P/2150/F to allow for the sale of memory cards for cameras and camping equipment.

North Somerset District Council in pursuance of powers under the above mentioned Act hereby **GRANTS CONSENT** for the above development in accordance with the plans and particulars received and subject to the following condition(s):-

- 1 The development hereby permitted shall be begun before the expiry of three years from the date of this permission.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990

- 2 No external lighting shall be erected on the site unless it is in accordance with details, which have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to preserve the rural character of the area and preserve the living conditions of neighbouring residents as required by policies GDP/3 and ECH/7 of the North Somerset Replacement Local Plan and CS12 of the Core Strategy.

- 3 The existing cafeteria granted planning permission at appeal on 12 October 1998 shall only be open during the normal trading hours of the garden centre unless otherwise first agreed in writing by the local planning authority.

Reason: In order to prevent the establishment of a separate use at this site in the interest of limiting the need to travel and preserving the viability and vitality of existing town and local centres as required by policies RT/1 and RT/6 of the North Somerset Replacement Local Plan and policy CS21 of the Core Strategy.

- 4 The retailing of products and the offering of services from the development hereby authorised shall be limited by the terms of the Schedules numbered 1-4 below and no retailing of other goods, products or services shall take place other than as authorised below:

Products or services listed in the First Schedule may be retailed from the development

hereby authorised.

Products in the Second Schedule may only be retailed from the development hereby authorised within a floor area not exceeding 1,200m square metres at any one time.

Products listed in the Third Schedule may only be retailed from the development hereby authorised within a floor area not exceeding the limits in area for each item shown in that schedule, and subject thereto the development hereby authorised shall not be used for the retail purposes or sale of products listed in the Fourth Schedule.

#### THE FIRST SCHEDULE

1. Fruit, Vegetables and Flowers
2. All types of plants
3. Seeds and bulbs
4. Growing Media, peats, composts and barks
5. Fertilizers and chemicals
6. Lawn care products
7. Gardening tools and equipment
8. Plant containers, garden ornaments and vases
9. Garden related books
10. Garden games
11. Aquatic gardens, garden pools and accessories
12. Floral art
13. Gardening clothes
14. Conservatory furniture, garden furniture and barbeques
15. Garden machinery and services
16. Garden related art and craft products
17. Greenhouses, garden sheds
18. Construction materials and equipment necessary for the construction of patios, garden paths, decorative walling, pergolas
19. Refreshments, confectionary, ice cream and light snacks (including the provision of a cafeteria)
20. Landscaping services
21. Pets Corner and children's play ground
22. Exhibitions related to the approved product list
23. Videos, CDs, magazines and tapes related to the products listed in the First, Second and Third Schedules hereto
24. Swimming pools and pool-care products and accessories.
25. Greenhouse and conservatory heaters and fuel
26. Conservatories, carports and replacement windows
27. Fish, reptiles, aquatic and vivarium sundries and food
28. Pets, pet-care, pet accessories and food
29. Garden and plant lighting
30. Gardening products used in connection with the establishment and maintenance of gardens and allotments
31. Hot Tubs and hot tub care products and accessories.

#### THE SECOND SCHEDULE

1. Stationery, cards and gift-wrap for all occasions
2. Pictures, frames, photograph albums, memory cards and film
3. Candles, candlesticks and accessories
4. Picnic ware, tableware and kitchenware
5. Ceramics, china, glass, ornaments, cork, copper and brassware, stones and shells

(but not including items falling within item 8 to Schedule One)

6. Books including non-fiction, fiction, children's books, calendars and diaries (but not including items falling within item 9 to Schedule One)
7. Soft and mechanical toys and batteries
8. Garden and outdoor toys, games and sports equipment (but not including items falling within item 10 to Schedule One)
9. Arts and craft hobby products including needle-ware and tapestries
10. Outdoor clothes

#### THE THIRD SCHEDULE

1. Christmas and other seasonal decorations limited to 1200sq metres
2. Bakery and dairy products, health and whole-food, health preparations and toiletries, grocery and delicatessen products (fresh, dried, tinned and frozen) limited to 500sq metres
3. Homecare and home improvement products limited to 500sq metres
4. The sale of alcohol shall be restricted to an area of 5 square metres within the area defined for food products in no. 2 of this schedule, and no more than 50% of the sales area shall be used for the sale of alcoholic products which are not locally produced or sourced from the County of Somerset, City of Bristol, and the unitary authority areas of North Somerset and Bath and North East Somerset.
5. Camping equipment limited to 100sq metres.

#### THE FOURTH SCHEDULE

1. Pharmacy or chemist
2. Perfumery and cosmetics
3. Ladies, men's and children's fashion clothing and fashion shoes
4. Jewellery and spectacles
5. Cars and motorcycles, spare parts for cars and motorcycles and motor care products
6. Caravans
7. Computers
8. Radios and television
9. Office equipment
10. Domestic electrical appliances
11. Plumbing supplies and bathroom fittings
12. Wallpaper and paints
13. Musical instruments
14. Photographic equipment
15. Luggage
16. Leather goods
17. Beds and bedding
18. Carpets and curtains
19. Children's nursery equipment
20. Fitted kitchens and bedrooms
21. Tobacconist or newsagent

- 5 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

1:2500 scale OS location plan received 31 January 2013.

Planning and Retail Statement dated 28 January 2013.

Reason: For the avoidance of doubt and in the interest of proper planning

## REASONS FOR APPROVAL AND ADVICE NOTES

### REASONS FOR APPROVAL:

The variation of the schedules of permitted goods for sale in the garden centre would by reason of the scale, type of products and location within the store, not affect the viability of local retail stores nor the vitality of the local centre of Congresbury. As such the proposal accords with Policy RT/6 of the North Somerset Replacement Local Plan and policy CS21 of the Core Strategy.

### ADVICE NOTE

In dealing with the application we have worked with the applicant in a positive and proactive manner and have implemented the requirement in the National Planning Policy Framework (paragraph 187) by publishing local planning guidance on the council's website, offering pre-application written advice and publishing statutory consultee and neighbour comments on the council's website.

Date: 24 May 2013



Signed

Director of Development & Environment

Please contact Mike Cole on 01934 426 357 if you require any further information regarding this decision.

## NOTES RELATING TO A DECISION TO APPROVE PERMISSION

These notes are intended as helpful advice. PLEASE READ THEM CAREFULLY. Make sure everyone has a copy that needs it, including your builder or contractor.

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### Scope of this decision notice

This decision notice grants planning permission only. It should not be taken to imply that the scheme meets the requirements of any other Agency that may be involved. Please make sure that you have obtained all the approvals you need before starting work. If you are in any doubt you should obtain professional advice.

### Building Regulations

Before you start construction work you will almost always need to obtain separate approval under Building Regulations. For this purpose we have also enclosed with this decision notice information about how to submit your Building Regulations application.

### Conditions

This approval is subject to conditions. They are an integral part of the decision and are important because they describe how the council requires you to carry out the approved work or operate the premises. It is your responsibility to comply fully with them.

Please pay particular attention to those conditions that have to be met before work commences. There is a fee for requests for written confirmation that conditions have been complied with. Details of these fees can be found on our website at [www.n-somerset.gov.uk](http://www.n-somerset.gov.uk). When sending us information please include the decision reference number and relevant condition number.

### Appeals

If you are aggrieved by the decision of your Local Planning Authority to impose any of the conditions (or to only approve part of an application for Advertisement Consent), then you can appeal to the Secretary of State for the Environment in accordance with the provisions of TOWN AND COUNTRY PLANNING Act 1990. If you want to appeal against your local planning authority's decision then you must do so **within 6 months** of the date of this notice.

Appeals must be made using a form, which you can get from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Alternatively, your appeal can be submitted electronically using the Planning Portal at [www.planningportal.gov.uk/pes](http://www.planningportal.gov.uk/pes).

The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances that excuse the delay in giving notice of appeal. The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions imposed, having regard to the statutory requirements, to the provisions of a Development Order or to directions given under it. In practice, the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by him.

### Works which affect a Public Highway

Any works/events carried out by or for a developer which affects the public highway in any way must be co-ordinated in accordance with the New Roads and Street Works Act 1991 and the Traffic Management Act 2004 to minimize disruption to users. Developers are required to inform



undertakers of their proposed works, to jointly identify any affected apparatus, and to agree diversion or protection measures and corresponding payment.

Developers are also required to liaise/seek permission of North Somerset Council's Street Works Section (01934 427451 - [streetworks@n-somerset.gov.uk](mailto:streetworks@n-somerset.gov.uk)) at least one month in advance of the works and this must be in line with the requirements of the NRSWA 1991 and TMA 2004. The developer must particularly ensure that undertaker connections/supplies are coordinated to take place whenever possible at the same times using the same traffic management.

### **Public Rights of Way**

The grant of planning permission does not entitle developers to interfere or obstruct any public right of way (PROW). The obstruction of a PROW is an offence. If required an application can be made to North Somerset Council to divert the PROW and should be made well ahead of any development.

It is also an offence to drive a mechanically propelled vehicle without lawful authority on any PROW. The grant of planning permission should not be treated as a grant of lawful authority. Please contact the PROW Team for further advice on 01934 888802.

### **Changes to Plans:**

Should you wish to change your plans for any reason, including the need to meet the requirements of other legislation (for example Building Regulations) it is important that you notify us (i.e. 'the planners') before carrying on with work. Amendments to your approved plans may require a fresh application and could even prove to be unacceptable. Details of how to seek formal approval of amendments to a planning approval can be found on our website or by visiting the planning portal.

### **Enforcement:**

The council has powers to enforce compliance with planning permission and there are penalties for failure to comply. In cases where terms and conditions of planning permission are not adhered to and the Council finds it necessary to take enforcement action, it almost invariably results in delay and additional expense to the applicant. In extreme cases, it can mean that newly erected buildings have to be demolished.

### **Street Naming**

When you receive consent for the building of new a development(s)/property or creating additional flats/units within an existing dwelling, for reasons of public safety and for the allocation of an official postal address, please contact the Street Naming and Property Numbering Section, Town Hall, Weston-super-Mare, BS23 1TG; Tel: 01934 634943; email: [strnames@n-somerset.gov.uk](mailto:strnames@n-somerset.gov.uk).

### **Access to further information**

Further guidance on Planning and Building regulation information and services can be accessed on our website and on the Planning Portal at [www.planningportal.gov.uk](http://www.planningportal.gov.uk).

We strongly encourage the submission of planning applications via the Planning Portal. We also provide an online planning service on our website that allows you to monitor and review all applications we receive. This can help you keep you up-to-date with planning matters in your area.

**This publication is available in large print, Braille or audio formats on request.**

**Help is also available for people who require council information in languages other than English.**

**Please contact 01275 888 811.**