

BC/KS/P19-2943

13 December 2022

Development Management
London Borough of Hillingdon
Civic Centre
High Street
Uxbridge
Middlesex UB8 1UW

Dear Sir/Madam,

Town and Country Planning Act 1990 (as amended)
Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (as amended)
The Chimes Shopping Centre, High Street, Uxbridge, UB8 1LA
Application to modify Section 106 Agreement

Pegasus Group have been instructed by abrdn on behalf of the Landlord of The Chimes Shopping Centre, Metropolitan Retail JV (Jersey) Unit Trust ('the Applicant') to submit an application to modify the Section 106 agreement associated with planning permission ref. 42966AH/96/1862 granted 11 November 1997 relating to The Chimes Shopping Centre, High Street, Uxbridge, UB8 1LA ('the Application Site').

The modification seeks to amend the wording to the restrictions on retail use (Class A1) in light of the changes to the Town and Country Planning (Use Classes) Order 1987; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use. The Town and Country Planning (Use Classes) (Amendments) (England) Regulations 2020 (The 'Regulations') were introduced by the Government on 20th July 2020 and took effect on 1st September 2020.

Accordingly, the following documentation has been submitted:

1. Application Form, including relevant Ownership Certificate;
2. A map identifying the land to which the obligation relates; and
3. Justification for the proposed modification (contained within this cover letter).

The application fee of £246 will be paid under separate cover.

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Legislative Background

The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) were introduced by the Government on 20 July 2020. The Regulations made substantial changes to the Town and Country Planning (Use Classes) Order 1987 and came into effect on 1 September 2020.

The Regulations introduced three new use classes:

- (a) Class E (Commercial, Business and Service) – including retail, restaurant, financial/professional services, indoor sports, medical and nursery uses, office, research/development and light industrial uses which can be carried out in a residential area without detriment to amenity, along with “any other services which it is appropriate to provide in a commercial, business or service locality”;
- (b) Class F.1 (Learning and Non-residential Institutions) – including non-residential educational uses, and use as an art gallery, museum, library, public hall, religious institution or law court; and
- (c) Class F.2 (Local community) – including use as a shop of no more than 280 sqm mostly selling essential goods, including food, to visiting members of the public and that is at least 1km from another similar shop, and use as a community hall, area for outdoor sport or recreation, swimming pool or skating rink.

In short and relevant to this application, Use Classes A1, A2, A3, B1, and parts of D1 and D2 are subsumed into new Use Class E. The Regulations also state that changes within this new Use Class E do not constitute development and will therefore not require planning permission.

Proposal

This application seeks to modify the Section 106 agreement associated with The Chimes Shopping Centre, Uxbridge in light of the introduction of the amendments to the Use Classes Order which came into effect on 1st September 2020; namely the introduction of Class E Commercial, Business and Service use and associated revocation of Class A1 Retail use.

As currently drafted, the extant S106 is neither up to date (the use classes contained in the S106 Agreement have been revoked by the Regulations and no longer exist in planning law), nor does it reflect current government thinking on the need for town centres to be able to respond and meet changing demands the retail sector.

The current wording of the S106 could have a negative impact on the vitality and viability of the town centre as a whole, if it is not brought up to date to reflect the current challenges faced by the retail sector.

Specifically the modifications sought are in relation to Clause 12.1 (Restrictions on Use) and the associated definition of ‘Retail Floorspace’ set out in Clause 4.1.

Clause 12.1

Clause 12.1 states that:

"12. RESTRICTIONS ON USE

- 12.1 *Not less than eighty per centum (80%) of the Retail Floor Space shall be used as retail space within Use Class A1 of the Town and Country Planning (Use Classes) Order 1987 PROVIDED THAT for the purposes of this clause space used for purposes ancillary to retail use within such Use Class A1 shall itself be treated as being used for purposes within such Use Class A1 PROVIDED ALSO THAT for the avoidance of doubt this obligation shall not be construed as a positive obligation to trade.*
- 12.2 *No more than twenty-five per centum (25%) of the floor space of any unit forming part of the Retail Floor Space and having a floor area exceeding fifteen hundred (1500) square metres shall be used for any of the following purposes: -*
 - 12.2.1 *Financial services*
 - 12.2.2 *Professional services (other than health or medical services)*
 - 12.2.3 *Any other services (including use as a betting office) which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public;*
 - 12.2.4 *For the sale of food or drink for consumption on the premises or of hot food for consumption off the premises*

Provided that each such use shall be ancillary to the principal retail function of that unit.
- 12.3 *The uses falling within Use Class A1 of the said order carried on in the retail units situated at the date hereof on part of the High Street frontage of the Site shall not be changed to a use falling outside that use class other than in accordance with a grant of planning permission unless such units have the benefit of a certificate of lawful use within the meaning of Section 191 of the 1990 Act."*

We propose the following amended wording (changes shown in red):

"12. RESTRICTIONS ON USE

- 12.1 *Not less than eighty per centum (80%) of the **Retail Commercial** Floor Space shall be used as **retail commercial, business and service** space within Use Class **E A1** of*

the Town and Country Planning (Use Classes) Order 1987 (as amended) PROVIDED THAT for the purposes of this clause space used for purposes ancillary to ~~retail commercial, business and service~~ use within such Use Class E A1 shall itself be treated as being used for purposes within such Use Class E A1 PROVIDED ALSO THAT for the avoidance of doubt this obligation shall not be construed as a positive obligation to trade.

12.2 ~~No more than twenty-five per centum (25%) of the floor space of any unit forming part of the Retail Floor Space and having a floor area exceeding fifteen hundred (1500) square metres shall be used for any of the following purposes:-~~

~~12.2.1 Financial services~~

~~12.2.2 Professional services (other than health or medical services)~~

~~12.2.3 Any other services (including use as a betting office) which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public;~~

~~12.2.4 For the sale of food or drink for consumption on the premises or of hot food for consumption off the premises~~

~~Provided that each such use shall be ancillary to the principal retail function of that unit.~~

12.3 The uses falling within Use Class E A1 of the said order carried on in the ~~retail commercial, business and service~~ units situated at the date hereof on part of the High Street frontage of the Site shall not be changed to a use falling outside that use class other than in accordance with a grant of planning permission unless such units have the benefit of a certificate of lawful use within the meaning of Section 191 of the 1990 Act."

Clause 4.1

Clause 4.1 of the S106 agreement sets out the definitions of specific expressions within the agreement, and defines Retail Floor Space as follows:

""Retail Floor Space": means the aggregate of the area of the floor space within the Development designed for retail purposes (and specifically excluding the multi-screen cinema 219/221 and 222 High Street the Timber Framed Building and the Creche)"

It is proposed to amend this to Commercial Floor Space, to be defined as follows:

""~~Retail Commercial~~ Floor Space": means the aggregate of the area of the floor space within the Development designed for ~~retail commercial, business and service~~ purposes (and

specifically excluding the multi-screen cinema 219/221 and 222 High Street the Timber Framed Building and the Creche”

The Need for Change

The introduction of Class E has brought significant benefits to town centres which are now able to react far more quickly to changing market demands. Recent high profile retail failures, such as Debenhams, has highlighted the need for town centres to respond with agility in the face of increasing voids and a narrowing pool of potential retail occupiers.

Indeed, the Explanatory Memorandum of the Regulations stated at paragraph 7.1:

“The current Use Classes Order was introduced in 1987 and has been amended a number of times since. However, the government considers that it requires a complete overhaul to better reflect the diversity of uses found on high streets and in town centres and to provide the flexibility for businesses to adapt and diversify to meet changing demands. This is particularly important at the present time as town centres seek to recover from the economic impact of Coronavirus. Modern high streets and town centres have changed so that they now seek to provide a wider range of facilities and services, including new emerging uses, that will attract people and make these areas viable now and in the future.”

Class E brings together the former A1 (shops), A2 (financial and professional services), A3 (restaurant and cafes) and B1 (business) as well as parts of classes D1 (non-residential institutions) and D2 (assembly and leisure) into one single use class to allow for changes of use without planning permission.

Whilst the planning system allows for such changes, the S106 Agreement has the potential to engage and preclude changes from retail to other ‘town centre uses’ within the Chimes shopping centre. This could have a longer-term negative effect on the vitality and viability of the centre as a whole.

The UK retail market has been going through a period of significant structural change for the last 5 to 6 years, which was accelerated by the Covid pandemic. The percentage of retail sales made online has grown from 10.7% in October 2012 to 26% as of October 2022 (source:ONS). This has resulted in a number of significant business failures in the retail sector, notably BHS, Arcadia (TopShop, Top Man, Dorothy Perkins and Burtons) and Debenhams. Retailers are now actively reducing their physical store footprint across the UK when leases come to an end. There are therefore fewer retailers looking for stores in towns such as Uxbridge when they have flagship stores in close proximity such as Westfield London and Brent Cross, as well as strong online channels. There is therefore a smaller pool of retailers to fill an ever-growing number of vacant shops. Non-traditional retail uses are therefore required to fill this space in order to maintain vitality and vibrancy of town centres.

Within The Chimes there are now 18 vacant units comprising some 32% of the lettable floorspace. The former Debenhams store comprises some 18% of this void and has been vacant since May 2021. Whilst most of the smaller unit shops are only ever likely to be occupied by traditional



retailers there are new emerging concepts such as Therapie which provide beauty treatments that are not traditional retail.

The need to be agile and able to accommodate new 'town centre' concepts is important for the future prospects of The Chimes. The need to update the S106 to reflect contemporary planning law is critical to the trading success of The Chimes as well as the town centre as a whole.

I trust that the above and enclosed is sufficient to allow the registration of this application and look forward to receiving confirmation of this in due course. If you require any additional information, then please do not hesitate to contact me.

Yours faithfully,

Barry Cansfield
Senior Director
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