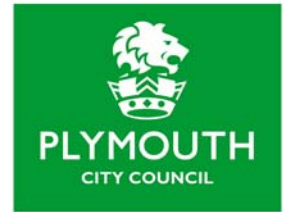


PLANNING APPLICATION REPORT



ITEM: 06

Application Number: 11/00804/FUL

Applicant: AXA P&C

Description of Application: Erection of a new retail unit attached to Block A, the removal of the first three bays and side extension to Block B, installation of a new front elevation, erection of a mezzanine floor, relocation of external sales area and associated car parking and landscaping alterations, (net increase 2,449 Sqm)

Type of Application: Full Application

Site Address: FRIARY RETAIL PARK, EXETER STREET PLYMOUTH

Ward: St Peter & The Waterfront

Valid Date of Application: 20/06/2011

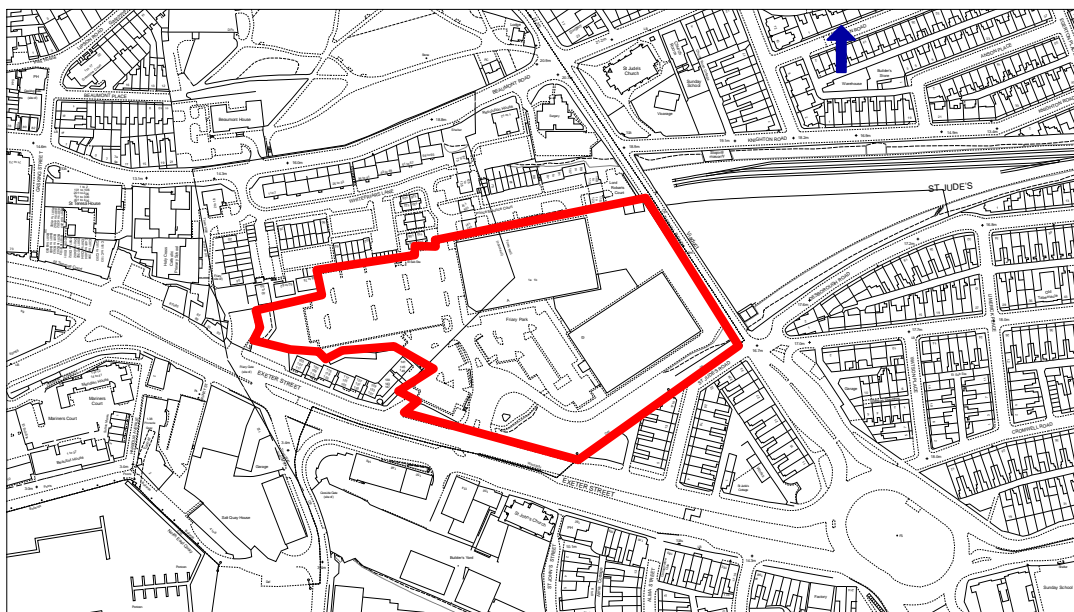
8/13 Week Date: **19/09/2011**

Decision Category: Major Application

Case Officer : Jeremy Guise

Recommendation: Grant Conditionally

Click for Application Documents: www.plymouth.gov.uk



OFFICERS REPORT

Site Description

The application site is a large warehouse type retail shop situated in the north east corner of the Friary Park retail estate. Friary Park is located to the north of Exeter Street and west of Tothill Road Viaduct on the main approach into Plymouth city centre from the east.

Residential accommodation in Prince Maurice Court and Lord Roberts Court is located to the north and older Victorian terraced properties in St Judes Road adjoin the site to the south east.

Proposal Description

Planning permission is sought for the erection of 3,458 square metres of new floor space comprising a new build 660sqm extension to block A (Currently occupied by Dunelm and a pet shop), a 349sqm extension to the side 2,499sqm mezzanine level (shops tradable area) within existing building of block B (Currently occupied by Wicks) together with the removal of 1,009sqm of demolition and reconfiguration of block B.

The extension to block A is shown on its western side into an area that is currently used for car parking. It is shown flush with the front of the building, but it would not be as deep. In terms of design it would appear as a modern, industrial shed type structure, similar in appearance to the existing and be capable of being occupied by a separate retailer. The part of the proposal would involve the loss of 23 parking spaces, reducing the overall number of spaces across the site from 341 to 318 (within these numbers is an increase in the number of disability spaces: from 10 to 18)

The other part of the application involves the reconfiguration of block B. The front three bays of the existing building are shown removed, a side extension added – resulting in a net increase of 349sqm - and an internal mezzanine floor Net (additional gross internal; floor space 2,449sqm).

A Planning and retail assessment; Flood risk assessment; Design & access statement and Transport assessment have been submitted to accompany the application.

Relevant Planning History

- Ref 86/01699/OUT - Outline application to redevelop railway goods yard with (1) non food retail stores, a garden centre, 400 car parking spaces (8 acres) & (2) residential. 16th September 1987.
- Ref:- 06/00706/EXDE - Installation of internal steelwork forming part of a mezzanine floor (2,449sqm total) - Lawful Development Certificate ISSUED (Planning permission not required) 12th July 2006.
- 10/01160/FUL Erection of 2,449 square metres mezzanine level (shops tradable area) within existing building GRANTED CONDITIONALLY 22 Oct 2010

Consultation Responses

Highway Authority – The applicant has submitted a Transport Assessment in support of the application.

Transport have reviewed the previous applications at the site and note that this latest proposal does not increase the overall level of floor space within the retail units currently operating on site.

The latest application proposes to reduce the footprint of Block B, which currently houses Wickes DIY store, but install the earlier granted mezzanine floor. This reduction in footprint area will be replaced at the Western end of Block as a new retail units with the same area. This will result in three units at Block A and one unit at Block B.

An end user of the newly formed unit at Block A is not detailed as part of the application. However, the applicant has suggested the unit will be for retail sales only. A condition to restrict this use and prevent future occupation by any use under either A3 or A5 (food or hot food take- away) should be attached to any grant of consent.

In order to facilitate the above changes the applicant is proposing to alter the car parking layout and access arrangements at the site. This will result in the net loss of 4 spaces but within the previous applications surveys were conducted which showed that the car parks had more than sufficient spare capacity. The improvements will make circulation around the car park better and as such the small loss is considered acceptable.

The most significant changes to the car park layout will be in front of Block B. With the reduction in scale of the unit the land gain will be turned into parking bays with associated vehicular routes. In order to prevent cars driving back through the car park, whilst trying to exit, the applicant is proposing to provide a new link to join the service road. There are no objections to this proposal.

The site is well served by Public Transport and there are bus stops on Exeter Street. One bus stop is located close to the street frontage of Block B. An existing paved link from the service road to Exeter Street exists which provides a desire line or the bus stop. There are a few steps at the boundary of the site due to level differences. By way of the alterations proposed to Block B and the fact that the applicant is proposing cycle storage adjacent to the new access link onto the service road a new desire line is made which can connect to the existing footpath and onto Extern Street. Not only will these provide a link to the bus stop, it will also be a direct link onto the shared cycle lane which runs along Exeter Street.

Transport recommend that the applicant provide a 3m shared footway cycle way on the southern side of the service road to link to the existing footpath (opposite to the southern most point of Block B as far as the footpath link into Exeter Street). This existing footpath will also need to be widened and re-graded to remove the need for the steps. Details should be submitted to and approved in writing by the Local Planning Authority.

There is an aspiration by the City Council, and indeed provision secured through an application at the adjoining site, hence the above request for the link. As such, in order to secure this provision between the newly required link and the adjacent site the applicant is requested to provide rights of access or the Council to secure a future route. Any subsequent works will be funded by a third party or the Council. As this route lies within the red-line boundary it will be assumed that this would be within the applicant's control.

There is currently only an uncontrolled crossing facility is across the junction 'bellmouth' off Exeter Street. The developer will be required to enter into a Section 278 agreement with the Highway Authority to design and implement localized crossing improvements, likely to consist of a tactile paving and coloured surface treatments, at the junction. It is not expected that the cost of such works will exceed £10,000. A negative condition will be required.

The applicant has indicated a willingness to provide a staff travel plan for the site. The above access improvements will enhance sustainable access routes into the site which should help toward any modal shift targets within the Travel Plan.

Conditions are recommended relating to: access /highway improvements (Grampian); cycle storage, Green staff travel plan details and provision for adjoining site

Public Protection Service –

Environmental protection observations

Further to reviewing the previous granted applications referred to within the application and viewing the current drawings there are a couple of areas of concern.

Firstly, the rear loading bay of the proposed addition to Block A may need a restriction. This will depend upon the occupant's business. This area has the potential for noise breakout to nearby residential units. Similarly the bin storage and resultant clearance of the trade waste is also a potential noise creating issue. Lastly the hours of operation of the newly created units should not differ from those of the existing units.

Land quality observations

Additional information, namely, Phase II Site Investigation, Friary Retail Park, and dated June 2009 has been received.

The report provides some assurance that contamination levels on the site are not so significant, that there will not be a remedial solution to them. Objections to the application are therefore withdrawn. Conditions requiring the submission of additional information for a few reasons:

1. The investigation is fairly limited and ground conditions seem to vary considerably so Public Protection Service will be looking for more detailed information in the application areas.

2. The Phase II Site Investigation recommends additional gas monitoring, as ground gas could pose a risk to proposed extensions this monitoring should be carried out in the course of the planning application.

South West Water – Have no objections in terms of capacity within our infrastructure to serve the development proposal, but have requirements in relation to connection to public foul or combined sewer

Police Architectural Liaison Officer (PALO) – The Devon & Cornwall constabulary are not opposed to granting planning permission from the application.

Representations

Neighbours have been notified of the application in accordance with Council guidelines and two site notices posted. This has resulted in receipt of one letter of representation LOR (after the expiry of the formal consultation period, but before determination).

British Land recognizes that the application does not seek an uplift in retail floor space from that already permitted and therefore this representation should not be seen as a direct objection to the proposals. However, British Land has two main concerns with the proposal: firstly, that the current application will result in smaller retail units that could potentially sell goods that are usually found within City Centers, this is particularly the case with Block B; and secondly, that the existing conditions allow footwear to be sold from Block A and all comparison goods could potentially be sold from Block B.

In order to ensure that the proposal does not have an adverse impact on the city Centre, British Land strongly considers that additional conditions should be imposed to control the form and quantum of out-of-centre development. These should include:-

- *The minimum size of units permitted at these locations should be limited and any further subdivision of units should be restricted; and*
- *The range of goods which may be sold should be restricted to bulky goods for both Block A and Block B, for the avoidance of doubt, this does not permit the sale of clothing and footwear.*

In addition, a planning obligation should be entered into to ensure that the new unit at Block A and extension to Block B is not constructed until the floor space associated with Block B has been removed as per the previous application.

British Land is committed to the protection of the City Centre and its growth and improvement. Therefore, any planning application for out-of-centre retail development should be subject to appropriate conditions and restrict the form and quantum of new development so as not to harm the city centre.

Analysis

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has

been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

The key issues in this case are:-

- The impact of the additional retail floor space upon the city's shopping hierarchy (Policies CS01 and CS07 of the Adopted Core Strategy)
- The adequacy of the proposed parking and impact of the proposal upon the surrounding road network (Policies CS28 of the Adopted Core Strategy)
- The impact upon the amenities of surrounding property (Policy CS32 and CS34 of the Adopted Core Strategy)
- Community contributions (Policy CS33 of the Adopted core Strategy)

The impact of the additional retail floor space upon the city's shopping hierarchy

Shopping provision in relation to retail parks is set out in Policy CS07/6 (Plymouth Retail Hierarchy) which states:-

"Laira Embankment area. To deliver a new retail destination of appropriate scale, quality and accessibility, which delivers improvements to this city centre location and enables the delivery of strategic transport measures on Plymouth's eastern corridor. This will be part of a wider mixed use regeneration initiative for the East End. The development will involve the closure of the existing Friary retail park and abandonment of existing retail warehousing planning consents in the Laira Bridge area."

This application proposal would consolidate and extend the existing Friary retail park and is, on the face of it, contrary to Policy CS07 and Proposal SH05, Friary Park of the Sutton Harbour Area Action Plan (AAP). Previously, in connection with 10/01160/FUL, it was accepted that the existence of a Certificate of Lawful Development for a similar quantum of development acted as a significant 'fallback' position in any assessment – it was not considered that there are sufficient grounds to withhold planning permission. The applicants are now seeking to push the logic of that interpretation further. Essentially, in this proposal, the net figure retail floor space is not increased over and beyond the existing plus previously approved mezzanine, but its distribution and configuration across the retail park is different. Instead of being provided as mezzanine, 660sqm is a new retail unit and 349sqm is ground floor trading space.

The issue is what demonstrable harm arises from allowing the proposal. The Proposal SH05 commitment in the AAP remains in place, until 2021, but currently there is no delivery mechanism. The proposed development does not preclude future comprehensive redevelopment of the retail park.

The nature of the retailers operating from the Friary Retail Park, means that it will not be in direct competition with city centre retail functions. To ensure that neither the city centre's role as the primary comparison shopping and retail destination is weakened by the proposed development, or that the site attracts the volumes of traffic and ancillary uses associated with food retail, it is proposed to impose a condition restricting the goods on sale to prevent sale of food products. The nature

of the retailer in the proposed new unit is not known, but extension of the condition to prevent food sales is considered appropriate.

A more restrictive conditional regime, as suggested in representations, is not supported. Whilst the first suggested condition could be supported in policy CS07 terms it goes beyond the scope of the application in seeking to restrict subdivision of parts of the retail park outside the red line and does not satisfy the requirements of Circular 11/95 on use of conditions in terms of enforceability. Within Block B it would be impossible to have part of the ground floor in the NW and the mezzanine operating under a more restrictive regime than the rest of the building.

The likelihood of implementation of a hybrid scheme (which extends floor space without removing existing space shown as removed / or implementing a larger mezzanine) being implemented is considered slim, as essentially, with the exception of the extension to Block A, the proposal is mutually exclusive with existing space. It does not warrant a legal agreement, but it is considered prudent to require the proposal to be fully completed prior to occupation of any of the approved space.

The adequacy of the proposed parking and impact of the proposal upon the surrounding road network

The nature of the use is not likely to attract significant additional traffic. Existing access and parking arrangements are adequate to cope with any additional demand generated by this development.

The impact upon the amenities of surrounding property

Friary Retail Park is relatively self-contained, with its own access, and the proposed additional floor space is located within an existing building. The impact will be limited. Whilst disturbance to shift workers from deliveries is regrettable, it would not be reasonable to try and control deliveries to this floor space during the hours of the normal working day. Distinguishing between deliveries of goods for sale at this floor space, and goods being delivered for sale at the existing floor space would be impossible, making any such condition unenforceable and therefore not sound.

Community contributions / Section 106 Obligations

Given the extant Certificate of Lawfulness there is no scope for seeking a tariff contribution from this application.

Equalities & Diversities issues

The increase in the number of parking spaces suitable for use by people with disabilities is welcomed.

Conclusions

The proposal frustrates the implementation of Proposal SH05 in its objective to secure the closure of the existing Friary Retail Park and mixed use redevelopment, but, in the absence of an effective delivery mechanism, the case for refusal in terms of demonstrable harm is not strong.

Conditional restrictions on sales, opening hours and delivery times, similar to those imposed on the original appeal approval, are considered to be a necessary safeguard

to ensure that the proposal does not have a major impact upon the city's existing retail hierarchy or attract excessive vehicle movements into the retail park.

Recommendation

In respect of the application dated **20/06/2011** and the submitted drawings 10752/TP/01Rev-; 10752/TP/02Rev-; 10752/TP/03Rev-; 10752/TP/04Rev-; 10752/TP/05Rev-; 10752/TP/06Rev-; 10752/TP/07Rev-; 10752/TP/08Rev-; 10752/TP/09Rev-; 10752/TP/10Rev-; 10752/TP/11Rev-; 10752/TP/12Rev- & 10752/TP/20, it is recommended to: **Grant Conditionally**

Conditions

DEVELOPMENT TO COMMENCE WITHIN 3 YEARS

(1) The development hereby permitted shall be begun before the expiration of three years beginning from the date of this permission.

Reason:

To comply with Section 51 of the Planning & Compulsory Purchase Act 2004.

IN ACCORDANCE WITH APPROVED PLANS

(2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10/0572-TPI01 & 10752-HP001 – A.

Reason:

To ensure that the development accords strictly with the submitted plans hereby approved in accordance with policy CS34 of the Plymouth Local Development Framework Core Strategy.

RESTRICTION ON SALES

(3) The whole premises, both the existing floor space and the proposed, shall not be used for the sale of food other than confectionary, intended to be consumed off the premises.

Reason:

To ensure that the proposed development does not adversely impact on traffic movement/ parking or the vitality of the city centre in accordance with Policies CS07 and CS28 of the Adopted Core Strategy.

RESTRICTION ON OPENING HOURS

(4) The whole premises, both the existing floor space and the proposed, shall not be open for the sale of goods between 20.00 hours and 08.00 hours each day.

Reason:

In order to ensure that disturbance to local residents is minimised in accordance with policies CS22 and CS34 of the adopted core strategy.

RESTRICTION ON DELIVERY HOURS

(5) No deliveries shall be made to the premises between 18.00 hours and 07.00 hours each day.

Reason:

In order to ensure that disturbance to local residents is minimised in accordance with policies CS22 and CS34 of the adopted core strategy.

EXTERNAL MATERIALS

(6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development 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.

Reason:

To ensure that the materials used are in keeping with the character of the area in accordance with Policy CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

LAND QUALITY

(7) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 8 to 11 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition 11 has been complied with in relation to that contamination.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

SITE CHARACTERISATION

(8) An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The

report of the findings must include: Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archeological sites and ancient monuments;

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

SUBMISSION OF REMEDIATION SCHEME

(9) A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental

Protection Act 1990 in relation to the intended use of the land after remediation.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

IMPLEMENTATION OF APPROVED REMEDIATION SCHEME

(10) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the

effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

REPORTING UNEXPECTED CONTAMINATION

(11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 9, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the

Local Planning Authority in accordance with condition 10.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

GRAMPIAN (ACCESS/HIGHWAY IMPROVEMENTS)

(12) No development shall commence on site until the proposed access and improvements to the existing highway shown on the approved plans have been completed.

Reason:

In the interests of highway and pedestrian safety in accordance with Policy CS28 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

CYCLE STORAGE

(13) The secure area for storing cycles shown on the approved plan shall remain available for its intended purpose and shall not be used for any other purpose without the prior consent of the Local Planning Authority.

Reason:

To ensure that there are secure storage facilities available for occupiers of or visitors to the building. in accordance with Policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

GREEN STAFF TRAVEL PLAN DETAILS

(14) The uses hereby permitted shall be carried out in accordance with details of a Green Staff Travel Plan which shall be submitted to and approved in writing by the Local Planning Authority prior to the development opening for trade. The Green Staff Travel Plan shall include the following elements:-

- The provision of secure and convenient cycle parking facilities
- The provision of shower and changing facilities for staff
- Measures to regulate the management and use of car parking areas to be permitted
- The appointment of a suitable on-site co-ordinator to monitor and record occupiers' progress in meeting the objectives of the plan. An initial survey of staff travel patterns to/from the site shall be carried out and the results, together with proposed targets for staff cycle and public transport usage and car sharing, submitted to the Local Planning Authority within six months of the development opening for trade. A report shall be submitted to the Local Planning Authority every two years monitoring the progress of the plan and achievement of the identified targets
- Measures for enforcement of the plan, should agreed objectives and targets not be met.

Reason:

In the opinion of the Local Planning Authority, such measures need to be taken in order to reduce reliance on the use of private cars (particularly single occupancy journeys) and to assist in the promotion of more sustainable travel choices in accordance with Policy CS28 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

PROVISION FOR ADJOINING SITE

(15) In relation to the land immediately adjoining the boundary of the site, adequate allowance shall be made and shown on the plans required by condition (3) above to facilitate the construction of vehicular and pedestrian access thereto and the proper connection of all main services for the purposes of residential development.

Reason:

To ensure that the development of the said adjoining land is not prejudiced in accordance with Policies CS28 and CS34 of the Plymouth Local Development Framework Core Strategy (2006-2021) 2007.

COMPLETE PRIOR TO OCCUPATION

(16) The proposed development shall be fully completed prior to the first occupation of any of the approved space.

Reason:- To prevent the possibility of additional floor space, over and above that previously sanctioned and/or approved resulting from this permission.

SECTION 278 HIGHWAYS ACT 1980

(1) No work within the public highway should commence until engineering details of the improvements to the public highway have been approved by the Highway Authority and an agreement under Section 278 of the Highways Act 1980 entered into. The Applicant should contact Plymouth Transport and Highways for the necessary approval.

HIGHWAY PERMITS

(2) This planning permission does not authorise the applicant to carry out works within the publically maintained highway. The Applicant should contact Plymouth Transport and Highways for the necessary approval. Precise details of all works within the public highway must be agreed with the Highway Authority and an appropriate Permit must be obtained before works commence.

CONTACT SW WATER

(3) The applicant is advised to contact South West Water regarding connection to sewer s.

- PPS1 - Delivering Sustainable Development
- CS28 - Local Transport Consideration
- CS32 - Designing out Crime
- CS33 - Community Benefits/Planning Obligation
- CS34 - Planning Application Consideration
- CS22 - Pollution
- CS07 - Plymouth Retail Hierarchy
- CS08 - Retail Development Considerations
- CS20 - Resource Use
- CS01 - Sustainable Linked Communities
- CS02 - Design
- PPS4 - Economic Growth