



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 25th November 2010

Subject: APPLICATION 10/04190/OT – Outline application for extensions, for the provision of up to 2,048 sq m Class A1 - retail floorspace and up to 1,850 sq m Class A3 - restaurants and cafe floorspace at White Rose Shopping Centre, Dewsbury Road, LS11

APPLICANT

Land Securities Group Plc

DATE VALID

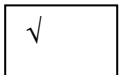
15 September 2010

TARGET DATE

15 December 2010

Electoral Wards Affected:

Morley North



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

DEFER and DELEGATE approval to the Chief Planning officer subject to the conditions specified (and any others which he might consider appropriate) and the submission of an acceptable Travel Plan as well as completion of a legal agreement within 3 months from the date of resolution unless otherwise agreed in writing by the Chief Planning Officer, to deal with the following matters;

- **The removal of the ability to install a mezzanine floor of 200 square metres or less in each individual A1 unit in the White Rose Centre without planning permission.**
- **The first occupation of any A1 use floorspace permitted by this application will be limited to existing tenants who have entered into a lease of part or all of that floorspace for a term of no less than 3 years from the date of grant of the planning permission**
- **Local employment and training initiatives**
- **£40, 000 Metro contribution to pay for real time bus information multistop display within the shopping centre**
- **Travel Plan Monitoring Evaluation fee (£3,335) and implementation**
- **The planning obligations to become effective on grant of planning permission**

In the circumstances where an acceptable Travel Plan is not received or where the Sec.106 has not been completed within 3 months of the resolution to grant planning permission the final determination of the application shall be delegated to the Chief Planning Officer.

The above is subject also to the Secretary of State not wishing to call the application in for his own determination following a referral under the provisions of the Town and Country Planning (Consultation) (England) Direction 2009

1. Outline time limit (3 years)
2. Submission of reserved matters
3. Development in accordance with the approved plans and the s106 agreement.
4. Materials to match existing
5. Details of signage and restriction to vehicular drop off/ collection area to be submitted
6. Prior to commencement of development on any extensions to unit LT01, the additional parking shown on TTHC Plan 2 received 1.11.10 shall be provided and available for use.
7. Details of improvements to the bus station to ensure that low floor vehicles can access the site in a safe and efficient manor shall be submitted and provided prior to occupation of additional floorspace hereby approved.
8. Details of long stay cycle parking to be submitted and approved in writing and implemented prior to occupation of any additional floorspace hereby approved.
9. Submission of phase 1 contamination report
10. Unexpected contamination to be reported
11. Provision of litter bins, in respect of A3 uses.
12. Details of extract ventilation system (A3 uses)
13. Provision of grease trap (A3 uses)
14. No development within 3m of water main

Reasons for approval:

This application proposes additional retail floorspace in an out of centre location which would normally be regarded as unacceptable in terms of national and local planning policy which seeks to direct retailing to Town Centre locations. However, it is considered that on balance this proposal is acceptable when considered in the context of the opportunity it offers to regulate the possible future expansion of the White Rose Centre and protect the vitality and viability of the city centre and other centres by restricting the potential to create additional retail floorspace without planning permission. As such, this application is considered acceptable subject to the completion of a legal agreement.

1.0 INTRODUCTION:

- 1.1 Members will recall that an application (10/00773/FU) for an extension to an existing mezzanine at Unit MSU10 at the White Rose Centre (WRC) was considered at the 8th April Plans Panel meeting. That application was brought to Members as a precursor to the submission of an outline application for additional floorspace at the shopping centre, but which would limit further expansion (insertion of mezzanines up to 200 sq.m) which could be carried out without planning permission in order to overcome concerns relating to expansion of this out of town shopping centre and to restrict piecemeal and incremental expansion. That application was accompanied by a planning obligation to submit the outline application referred to within 6 months of the date of permission. This application before Members today is the outline

application required under the planning obligation relating to application 10/00773/FU.

2.0 PROPOSAL:

- 2.1 The application proposes to extend the shopping centre by up to 3,898 sq.m (2048 sq.m of A1 floorspace and 1850 sq.m of A3). The application is submitted with plans which identify locations around the existing building which could accommodate mezzanine floors or extensions to the existing building. In particular, areas identified for potential extensions include a 3 storey extension to the front of the existing Next store, second floor extension to the unit occupied by Primark and second floor extension to Marks and Spencers as well as extensions out above the service road.
- 2.2 The additional floorspace proposed could be provided in the following ways, all of which are identified on the submitted drawings;
- The installation of a mezzanine floor within existing units (involving no external alterations);
 - Extending existing units in to the existing service yard areas
 - Extending existing units over the top of the existing service yard access road on the west elevation; and
 - Increasing the roof height of existing retail units in order to accommodate the installation of a mezzanine floor.
- 2.3 The applicant advises that the ability to create mezzanine floors within existing units or undertake extensions to existing units will provide flexibility to meet retailers' changing requirements.
- 2.4 The applicant advises that the total floorspace within the WRC is 58,300 square metres gross and the proposed extensions represents an increase in total floorspace of some 6% and an increase in retail floorspace of some 3.2%.
- 2.5 The application is submitted following application 10/00773/FU which approved the insertion of a 452 sq.m mezzanine at unit MSU10. That application sought to address current guidance within Planning Policy Statement 4 and also the impact on Leeds City Centre by offering the submission of a future application which sought to provide control over incremental increases to the centre by submitting a legal obligation which would remove the ability to insert mezzanines of 200 square metres or less per unit without the need to obtain planning permission (the applicant stated that this provision could provide an additional 7, 946 sq.m of additional floorspace).
- 2.6 This application before Members seeks permission for a total of 3, 898 sq.m of additional floorspace, and is submitted with a draft legal agreement under s106 of the Town and Country Planning Act 1990. The draft legal agreement submitted covers the following matters;
- Not to install any mezzanine floors of any size in any A1 unit at the White Rose Centre without obtaining planning permission;
 - The first occupation of any additional A1 floorspace permitted by the planning permission (10/04190/OT) will be limited to existing tenants at the date of the planning permission;
 - Training and employment initiatives for opportunities within the shopping center and in the construction of the development.
 - Travel Plan Monitoring Evaluation fee
 - Public Transport Contribution.

- 2.7 The Plans Panel resolution of 8 April 2010 agreed to approve application 10/00773/FU subject to consultation with Ward Members for Morley North, Morley South and Beeston and Holbeck prior to submission of the future outline application. The applicant has set out in the supporting statement the consultation which has taken place;
- 2.8 Morley Chamber of Trade have been briefed by the applicant on the proposed application for additional floorspace and the promotion of job opportunities was discussed. Land Securities met with Councillor Gabriel and Shaid Mahmood at Beeston One Stop shop to set out the proposals within this outline application.
- 2.9 The applicant attended a meeting of Morley Town Council on 7 September 2010 prior to submission of the outline application at the invitation of Councillor Leadley.

3.0 SITE AND SURROUNDINGS:

- 3.1 The WRC is a substantial retail centre in south Leeds comprising over 100 shop units and 4800 car parking spaces including a Sainsbury's supermarket. It is one of the three main destinations for comparison shopping in the Leeds district along with the City Centre and Owlcotes shopping centre at Pudsey. The centre was built in the 1990's after being refused planning permission by LCC and subsequently allowed on appeal in 1989. This proposal identifies areas of the existing shopping centre which could accommodate extensions either by additional floors and mezzanine levels or extending the footprint of the building to the east and west.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 10/00773/FU - Extension to mezzanine floor and addition of new raised roof to retail units (452 square metres). Approved by way of Plans Panel resolution 8.04.10.
- 4.2 09/03808/FU - Extension to mezzanine floor and addition of new raised roof to retail units. Refused under delegated powers on 24.11.09 for the following reasons;
1. The proposed additional retail floorspace is contrary to local and national planning policy which seeks to direct retailing to Town Centre locations. This proposal has failed to demonstrate through a sequential approach to site selection that there are no suitable Town Centre locations for the development, and as such the proposal is contrary to Policy S9 of Leeds Unitary Development Plan Review 2006, and to Government guidance set out in PPS6 'Planning for Town Centres'.
 2. The proposal will have a small but unacceptable impact on Leeds' city and town centres in terms of trade diversion and put at risk future investment in in-centre retail floorspace and the ability to fill vacant floorspace. The impact will be worsened in combination with further similar out-of-centre proposals which would be more difficult to resist if this proposal were permitted. As such, the proposal would be contrary to UDPR Policies SP7 and S9, to the Yorkshire & Humber Plan Policy E2 and to Government guidance set out in PPS6 'Planning for Town Centres'.
- 4.3 07/01521/FU - Single storey extension to form retail unit to bus terminus – approved 16 May 2007 (44m2 increase in floorspace)

- 4.4 06/04798/FU – Single storey rear extension to shop – approved 9 October 2006 (23m² increase in floorspace)
- 4.5 23/295/94/RM – Reserved matters application for shopping centre – approved 2 December 1994
- 4.6 23/59/87 – Outline application for shopping centre – refused by LCC and then allowed on appeal 30 January 1989

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Following the refusal of application 09/03808/FU discussions took place with officers concerning the proposal and the WRC's requirements for flexibility, together with the works which could be carried out without the need for planning permission and the potential impact of this to other identified centres. Application 10/00773/FU was submitted following those negotiations and approved at Plans Panel East on 8 April 2010 subject to completion of a legal agreement.

6.0 PUBLIC/LOCAL RESPONSE:

- 6.1 The applicant has carried out consultation with Ward Members prior to submission of the application, as set out in paragraphs 2.7 and 2.8 above.
- 6.2 This application has been advertised by way of site notices posted on 24 September which expired on 15th October 2010.

Morley Town Council

- 6.2 The comments of the Town Council state that the permission granted earlier this year at the WRC (10/00773/FU) seemed to be in defiance of national guidance which is meant to prevent the expansion of out of town shopping centres and this decision was based on a barrister's opinion of a Gateshead Metrocentre appeal case where the Inspector asserted that each retail unit within the centre should be regarded as a separate unit for planning purposes. The Inspector's assertion was overruled and the overruling was not challenged, therefore the Town Council state that it seems odd that Leeds City Council Legal Services accepted the Gateshead Inspector's decision as being a 'compelling argument'.
- 6.3 The Town Council question the requirement of the previous application 10/00773/FU being conditional on there being a restart at the Trinity Quarter in the centre of Leeds as the Town Council state that this seems to be against the spirit of new guidance introduced on 06.04.10 (and was in place at the time the decision was issued) which outlawed planning conditions which had little or no direct connection with a particular application. In any case, the Town Council do not consider a restart to be sufficient as it may be short-lived and state that only completion and occupation of Trinity Quarter would be meaningful, this point was made by Councillor Leadley when he addressed the Plans Panel meeting of 08.04.10. The Town Council therefore questions the comment in the supporting statement from Alyn Nicholls Associates which claims that those works are about to recommence and consequently this provision of the obligation is not necessary. The Town Council point out that Trinity Quarter is far from completion and occupation which should be insisted upon before linked expansion at the WRC is allowed.
- 6.4 The Town Council are also concerned a the sheer volume of additional floorspace tentatively identified in the new application which amounts to 26, 025 sq.m overall of

which up to 2, 048 sq.m retail and up to 1, 850 sq.m would be selected, presumably depending on which traders came forward first with requirements for more space. The Town Council are therefore concerned that it might be argued that if the Council accepted the indicated 26, 052 sq.m of floorspace without raising architectural or practical objections, not much of a barrier to implementation of it all would remain other than national policy restricting growth of out of town shopping centres and imaginative revelation of another claimed policy loophole could lead to massive expansion at White Rose.

- 6.5 The Town Council go on to point out that although the trade in is of purported permitted development mezzanine floorspace, not much of the 26, 052 sq.m is mezzanine floorspace. For example the 3 storey curved extension around the main eastern entrance (a total of 3, 845 sq.m) would take up almost all of the proposed 3,898 sq.m. Another first and second floor extension (2T03 and UT13) would make up 3,900 sq.m which is a hairsbreadth beyond the balance of the floorspace applied for.
- 6.6 The Town Council do state that they must emphasis that they are not anti White Rose and that they supported two previous small extensions and the re configuration of Sainsbury's to allow lengthening of the main mall. However the Town Council believe that national policy restricting growth of out of town shopping centres must be upheld to maintain its purpose of protecting city centres and designated town and district centres, such as Morley. The Town Council consider these proposals to be against the spirit of national guidance, and the Town Council state that they are not convinced that the proposals are within the letter of it. The Town Council state that permission should be refused.
- 6.7 A further letter of representation from the Town Council has been received mainly relating to the draft s106 agreement submitted by the applicant. The Town Council points out that the draft agreement does not mention the fete of the remainder of floorspace identified in this application for potential extensions outside the 2,048sq.m and 1850 sq.m A1 and A3 floorspace applied for. The Town Council comment that the continued uninterrupted works at Trinity for a period of 4 months is not sufficient and only the completion and occupation would benefit city centre vitality. This aside, the Town Council acknowledge that the planning link between White Rose and Trinity Quarter seems tenuous in light of 6 April CILS regs.
- 6.8 The legal agreement should become effective from date of signing and issue of decision not commencement of development in case development did not commence and then the debate on the mezzanine issue were to be re opened as this is the main planning justification.
- 6.9 The Town Council would like the S106 to restrict insertion of mezzanines into any unit not just A1. On a separate matter, the Town Council also support concerns of Highways Officers regarding potential loss of 40 parking spaces.
- 6.10 A letter has been received from a local resident making the following comments;
- the White Rose Centre is too dependent on car traffic. Currently 86% of visitors arrive by car with an occupancy of only 1.246 people per car. Only 12% arrive by bus, a mere 2% walk and cycling is nil.
 - The centre is not green and this is not good enough.
 - The proposed extension will increase the number of cars and lorries even further.

- An approval should be dependant on the construction of useable cycleways and footpaths to link the centre to Morley, Churwell and Cottingley as part of a Leeds Cycle Network.
- The current footpaths are a disgrace and unusable, if decent facilities are provided people will walk and cycle to the centre.
- The proposal to provide a rail halt on the Huddersfield line should be revived.

7.0 CONSULTATIONS RESPONSES:

Statutory:

- 7.1 Highways Agency – No objections but recommend that an agreed Travel Plan is secured for the site.

Non-statutory:

7.2 Highways –.

- The extension to the southern wing results in the loss of 40 parking bays as presented. Revised plans have been submitted which re-provide this parking provision by reorganizing the coach parking area and this is considered acceptable.
- The drop off area indicated on the plans should be for private cars as well as taxis, with a limited waiting area applied via condition.
- Service yard tracking plans demonstrate that all remaining service yards would be very tight however the tracking can be accepted for units LT01 to LT05. The angled build out of unit LT06 should be cut back to follow the line of the frontage to unit MSU10 and a revised plan has been requested.
- 40 new long stay cycle stands should be secured through condition

- 7.3 Subject to a revision to the proposed area for potential extension at unit LT06 and conditions recommended, there are no objections to the proposed development however the proposed restrictions to mezzanine floorspace and existing retailers only are necessary in order that the additional development does not increase vehicular trips to a greater level than the could be carried out without planning permission and Highways should be named as a reason for the conditions/ obligations.

Travelwise

- 7.4 The initial travel plan was not considered acceptable as the application relates to an existing use and therefore the applicant was advised that it is considered that a full travel plan is required. The applicant submitted a revised travel on 29 October 2010 and detailed comments have been provided.
- 7.5 A Travel Plan Monitoring and Evaluation fee of £3335 is required and contribution of £40,000 for real time bus information screens within the centre should also be secured, as requested by METRO.
- 7.6 The S106 will also need to set out how further travel plan measures will be funded should the travel plan fail to meet the agreed targets. The Travel Plan should be approved as part of this application and the word initial should be removed from the document.
- 7.7 The tenants can and should be obligated to comply with the travel plan and for larger stores the employer should be expected to become more involved in delivering the travel plan.

- 7.8 A number of detailed queries are raised about existing facilities and survey information relating to customer and staff trips to the centre. It is considered that 40 Long stay secure cycle parking is required for staff.
- 7.9 A staff car parking management strategy should be provided now and included in the travel plan.
- 7.10 The White Rose Shopping Centre should be promoting the home delivery services offered by the retailers. This will reduce the need for customers to have to travel to the centre by car to transport bulky goods.
- 7.11 The travel plan needs to make clear when it will be implemented and further detail is required regarding the monitoring and review of the travel plan. Targets are required and identification of a Travel Plan Co Ordinator and a communication/ marketing strategy is required and in accordance with the SPD.

Public Transport Contribution

- 7.10 The application allows for up an additional 2048sqm of A1 and 1,850sqm of A3 floorspace at the centre. An associated legal agreement will restrict the existing permitted development of mezzanine levels in individual units with a potential of 7,946sqm.
- 7.11 While the relinquishment of PD rights for mezzanine floor levels must be considered in the context of the public transport contribution it does not on its own provide enough justification for a full discount. It is unlikely that all such rights would have been taken up, and it is clear that the alternative smaller extensions put forward represent a more attractive proposition for the centre owners.
- 7.12 In terms of the scale of the proposals and associated increase in public transport trips it is considered that a 3.2% increase in RFA would result in a smaller increase in person trips –assumed to be increase of 1.6%. Based on information from the WRC of staff and visitors and visitor mode splits within the Transport Assessment, It is clear to see that while the percentage increase is small, the large numbers visiting the centre by public transport do generate the need for a contribution.
- 7.13 The 'bus station' area at the WRC is reasonably well used, some of the facilities are not up to current standards. It is understood from Metro, that the installation of 4-5 Real Time Information displays at the bus bays would provide a significantly improved service for PT users and encourage the further use of public transport to the centre. These units would be at a cost of £10,000 each. Normally, as set out in para 4.3.14 of the SPD such measures to improve the initial public transport entry point would be considered part of the basic access provision and integral to the development and therefore not part of the contribution requirement.
- 7.14 In this case however in light of the number of RTI units required and the argument put forward by the applicant relating to the relinquishing of PD rights, whilst either one of these arguments on their own would not justify a full reduction of a PT contribution, in combination there is a real case to be made. Therefore, given these special circumstances, and the similar costs involved it is proposed that subject to the developer fully funding the 4-5 RTI units (Metro to confirm), that the PT contribution is negated in its entirety.

7.15 In light of Metro's comments below, the Public Transport Officer has confirmed agreement that the £40,000 contribution towards multistop real time displays would be acceptable in lieu of a public transport improvements contribution.

METRO

7.16 There have recently been some issues with respect to low floor bus service grounding within the bus station at WRC which needs to be addressed by the shopping centre management company. Prior to commencement of this application METRO suggest that the development is conditioned to make the improvements to the bus station to ensure that low floor vehicles can access the site in a safe and efficient manor.

7.17 Since the centre opened bus information technologies continue to be improved. The bus terminal would benefit form an upgrade to the passenger information in terms of the provision of real time bus information. This will not only benefit passengers but could also provide the centre with commercial benefits if passengers can maximise their shopping time within the centre. METRO suggest that the most appropriate system would comprise of a multistop display (housed within the shopping centre) which Metro are currently developing. The estimated cost of such a display will be no more that £40,000. This funding should be secured to allow the displays to be installed when available.

Yorkshire Water

7.18 The proposed extensions will be located over a water main and could jeopardise Yorkshire Water's ability to maintain the water mains network. The submitted site layout details are not acceptable to Yorkshire Water. If planning permission is to be granted a condition is requested to restrict development located over or within 3m either side of the centre line of the water main which crosses the site. Yorkshire Water point out that it may be possible to divert the water main at the developer's expense, however the cost of these works may be prohibitive and furthermore there may be private connections into the current units which may also require diversion.

7.19 The applicant has now forwarded further correspondence with Yorkshire Water regarding the potential diversion of the water main at the developers cost and Yorkshire Water have confirmed that this is feasible.

Land Contamination

7.19 No objections subject to conditions regarding submission of phase 1 desk top report prior to commencement of development and a phase II investigation/ remediation report where necessary.

Access Officer

7.20 Comments made regarding the access considerations at reserved matters stage.

Environmental Health

7.21 Conditions recommended for the A3 floorspace.

8.0 PLANNING POLICIES:

8.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

Development Plan

8.2 The development plan comprises the Regional Spatial Strategy to 2026 (RSS) and the adopted Leeds Unitary Development Plan (Review 2006). The RSS was issued in May 2008 and includes a broad development strategy for the region, setting out regional priorities in terms of location and scale of development.

8.3 Relevant RSS policies are considered to be;
E2 States that town centres should be the focus for offices, retail, leisure and entertainment.

8.4 The site is not covered by a particular designation within the Unitary Development Plan, the following UDP policies are relevant to the consideration of the application:

GP5 – General planning considerations;
N12 – Urban design principles;
N13 – Design of new buildings;
T2 – New development and highway safety;
T5 – Access for pedestrians and cyclists;
T6 – Provision for disabled people;
S9 - Criteria for out-of-centre retailing proposals.
BD5 – New buildings, design and amenity;
SP7 - Priority to be given to enhancement of the City Centre and town centres

8.5 Supplementary Planning Guidance/Documents
Public Transport Improvements and Developer Contributions SPD.
Draft Street Design Guide SPD.
Travel Plans SPD

8.6 National Planning Policy and Guidance
PPS1 – Delivering Sustainable Development
PPS4 – Planning for Sustainable Economic Growth
PPG13 – Transport

9.0 MAIN ISSUES

1. Retail shopping policy
2. Mezzanines
3. The proposed s106 obligation
4. External alterations
5. Travel Plan

10.0 APPRAISAL

1. Retail shopping policy

a) PPS4 & UDP requirements

10.1 PPS4 provides national guidance on planning for sustainable economic growth. Policy EC14 sets out the requirements for supporting evidence for planning applications for main town centre uses and requires an impact assessment for developments over 2, 500 square metres.

10.2 Policy EC15 requires sequential assessments for planning applications for main town centre uses that are not in a centre and not in accordance with an up to date

development plan. This policy requires applicants to assess sites for availability, suitability and viability, assess all in centre options thoroughly before less central sites, it advises that sites need to be well connected to the centre with easy pedestrian access and applicants need to demonstrate flexibility in scale and reducing floorspace, in layouts and parking requirements.

- 10.3 EC15.2 states that in considering whether flexibility has been demonstrated under policy EC15.1.d, local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site.
- 10.4 Policy EC16 sets out requirements for an impact assessment for planning applications for main town centre uses that are not in a centre and not in accordance with an up to date development plan and policy EC14.4 advises that an assessment addressing the impacts in policy EC16.1 is required for planning applications for retail and leisure developments over 2, 500 sq.m gross floorspace not in an existing centre and not in accordance with an up to date development plan. However sub paragraph EC14.5 then goes on to state that an assessment of impacts in policy EC16.1 is necessary for planning applications for retail and leisure developments below 2, 500 sq.m which are not in an existing centre and not in accordance with an up to date development plan that would be likely to have a significant impact on other centres.
- 10.5 Policy EC17 deals with the consideration of planning applications for development of main town centre uses not in a centre and not in accordance with an up to date development plan and advises that permission should be refused where;
- a) the applicant has not demonstrated compliance with the requirements of the sequential approach,
 - b) there is clear evidence that the proposal is likely to lead to significant adverse impact (set out in policy EC10.2 and EC16.1)
- 10.6 Policy EC17.3 advises that judgements about the extent and significance of any impacts should be informed by the development plan (where this is up to date). Recent local assessments of the health of town centres which take account of the vitality and viability indicators included in Annex D of PPS4 and any other published local information will also be relevant.
- 10.7 In respect of the requirements of Policy EC15 and EC16, this site lies outside the City Centre boundary and is an out of centre location.
- 10.8 In terms of local policy within the development plan, the application should be assessed against policy S9 of the UDP Review 2006 which advises that small retail developments outside defined S1 and S2 centres will not normally be permitted unless;
- i. the type of development cannot satisfactorily be accommodated within or adjacent to an existing centre;
 - ii. it can be demonstrated that it will not undermine the vitality and viability of any S2 of local centre. The policy goes on to advise that it will occasionally be necessary for the applicant to carry out a formal study of impact on nearby centres.
 - iii. It addresses qualitative and/ or quantitative deficiencies in shopping facilities
 - iv. It is readily accessible to those without private transport
 - v. It does not entail housing, employment designated land or green belt

10.9 The policy goes on to outline that development which prejudices the local provision of essential daily needs shopping service levels will not normally be allowed. Furthermore, retail development including change of use, which might threaten the level of provision of essential daily needs shopping to local residents will need to be supported by evidence of its likely impact.

b) Retail capacity

10.10 Whilst under PPS4 guidance there is no strict requirement to demonstrate need, the applicant has looked at the issue of retail capacity. The applicant has used a GVA Grimley retail study 2003 undertaken on behalf of the Council which looked at the scope for retail development within Leeds City generally and the Aire Valley. The applicant states that this provides the most up to date assessment of the capacity for retail development. The study notes that the White Rose Centre is achieving a high sales density and states that this is an indicator that there is sufficient turnover within the White Rose to support its expansion. The applicant states that this highlights the quantitative and qualitative need for development at the White Rose Centre and this should be taken into account as a positive factor in determining the application.

10.11 In terms of capacity for additional floorspace the applicant's retail statement provides a quantitative assessment. The statement advises that the proposals are considered to be small scale in terms of existing shopping provision at the White Rose and will have a limited impact on existing shopping patterns. The applicant refers to the GVA Grimley study which highlighted the extent of over trading at the White Rose Centre and the capacity for further retail development in the future. The GVA Grimley study estimated that an additional 9, 274 sq.m of net comparison floorspace could be justified at the White Rose Centre on the basis of existing levels of over trading. The applicant states that having regard to the GVA Grimley study there is a clear and demonstrable justification to support the floorspace proposed by this application in terms of available expenditure.

10.12 The above information is not a requirement under PPS4 although it could be considered as a material planning consideration. The requirements of PPS4 in terms of the sequential test and impact assessment must also be addressed.

c) Sequential test

10.13 In terms of the sequential test, the applicant states that the development of additional retail floorspace elsewhere would not meet the need arising at the White Rose Centre.

10.14 Nevertheless, the applicant has looked at the following city centre developments;

- The Core (formerly The Headrow Centre) which does contain vacant units
- Eastgate, for which work has been postponed in light of the current economic climate
- Trinity Quarter (between Albion Street & Briggate), in April 2009 construction works were halted and completion of the scheme was not anticipated until the end of 2012. However works have now recommenced and with a projected opening date of Spring 2013.

10.15 The retail statement states that Land Securities are the main partner in the Trinity Quarter redevelopment and would not be promoting this application at the White Rose Centre if it would in any way harm the prospects of the Trinity Quarter. As the White Rose Centre attracts shoppers from Wakefield, Bradford and Huddersfield the applicant has looked at opportunities in these centres.

- 10.16 The White Rose Centre is an existing out of centre location therefore it is considered that the advice in PPS4 with regard to the sequential approach should take account of the agreement put forward by the applicant that would limit the occupation of the additional floorspace to existing occupiers at the extension as well as the extent of works which could be carried out without planning permission.
- 10.17 The guidance in Policy EC17 is that planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan should be refused planning permission where the applicant has not demonstrated compliance with the requirements of the sequential approach or there is evidence that the proposal is likely to lead to significant adverse impacts.
- 10.18 The sequential analysis which the applicant has carried out has only looked at development sites within Leeds city centre and has not provided an analysis of individual vacant units within the City Centre or other town centres such as Morley, Crossgates, Kirkstall, Headingley, Rothwell and Pudsey. It is therefore considered that the applicant's sequential analysis is of limited value. The applicant themselves recognise that there is significant new retail accommodation within the pipeline within Leeds City Centre, Wakefield, Bradford and Huddersfield which are in sequentially preferable locations. However the applicant goes on to state that the proposed development is intended to enable existing occupiers to undertake minor extensions and therefore new locations in surrounding centres will not meet the requirements which the proposed development would satisfy.
- 10.19 Whilst it is considered that the applicant has not been able to comply with the sequential test requirements of PPS4, officers are of the view that this should not mean that the application should be refused (despite the policy guidance in PPS4) as there are other material considerations which need to be taken into consideration in the determination of this application which are addressed in the following section. These relate to the proposed s106 obligation which the applicant has put forward with regard to the removal of the ability to carry out mezzanine extensions of up to 200 square metres without planning permission. This material consideration is individual to this application and as such any grant of permission would not set a precedent for future applications for out of centre development.

d) Impact

- 10.20 PPS4 advises that as well as the sequential test, evidence regarding the impact of the proposal should be considered. The applicant's retail statement has considered the cumulative impact of the proposed 2,048 sq.m of retail floorspace proposed under this application together with the 452 sq.m of mezzanine floorspace at unit MSU10 approved under application 10/00773/FU.
- 10.21 The applicant's retail assessment suggests that the levels of trade diversion which are likely to arise as a result of the development is likely to be less than 0.25% of anticipated turnover at 2014 and this would be unlikely to have any impact on other town centre vitality and viability. In terms of planned investments, the applicant states that the proposed development is intended to enable incremental increases in floorspace by way of the installation of mezzanines or by minor extensions for existing occupiers and that development of this character would not have any effect on the delivery of town centre schemes. Furthermore the applicant points out that they are the developer of the Trinity Quarter scheme and they would not promote the application if there a risk that it would inhibit or disadvantage the Trinity Quarter development. The retail assessment also looks at allocated sites outside of town centres in accordance with the factors set out under policy EC16.1, however there

are no allocated sites located outside of existing town centres in the context of Leeds.

- 10.22 In terms of the matter of scale the applicant considers the proposed development to be 'insignificant' when regard is had to the total amount of retail floorspace within the WRC, the amount of comparison retail expenditure within the WRC, the capacity for additional comparison floorspace at the WRC arising from over trading identified in the GVA retail study 2003 as well as from growth in available expenditure, together with the capacity for additional comparison floorspace arising within Leeds generally.
- 10.23 The applicant also sets out the economic benefit from the creation of jobs associated with the development which (including the 452 sq.m at unit MSU10) are estimated to be 125 jobs within the A1 (retail) floorspace and 142 within the A3 (restaurants and cafes) floorspace, equating to 267 jobs in total. The applicant has also committed to local training and employment initiatives which will seek to match the needs of local people with available opportunities at the WRC as well as benefiting local businesses in the construction and service sector.
- 10.24 The application is submitted with a draft s106 agreement to remove the ability to create additional floorspace, up to 200 sq.m per unit, without the need for planning permission as well as the other matters set out at the start of this report.
- 10.25 The earlier application 10/0773/FU was submitted with Leading Counsel's advice regarding potential expansion through the insertion of mezzanines up to 200 square metres at A1 retail units within the centre where this can be done without altering the building, and this advice also forms part of the Planning and Retail Statement for this application. An assessment of the WRC and units which could accommodate mezzanines up to 200 sq.m, concluded that this provision could result in incremental increases in floorspace amounting to some 7, 946 square metres of floorspace. The applicant recognises the Council's concerns regarding incremental uncontrolled increases in floorspace and therefore this application is based on an agreement to restrict the ability to insert mezzanine floorspace without planning permission. The total additional floorspace proposed in this application is 3,898 sq.m (4, 350sq.m inc approved mezzanine at unit MSU10) which is significantly lower than the 7, 946 sq.m which could be implemented without planning permission.
- 10.26 As referred to above, Leading Counsel's opinion submitted by the applicant relies on an acceptance that the individual units within the White Rose are individual buildings for the purposes of the provisions governing mezzanine development. Leading Counsel's advice has been considered by the Council's Legal Officer who has advised that it is possible to come to the conclusion that individual units within the White Rose Centre are 'buildings' for the purposes of the controls on mezzanine development. This issue is discussed in more detail in the following paragraphs. On this basis, the proposal by the White Rose Centre to limit the future expansion of the centre to significantly below that which could be undertaken without planning permission, by way of the draft s106 obligation submitted with the application, is a material consideration in considering the impacts associated with this proposal.

2. The Approach to The Mezzanine Issue

- 10.27 This matter was set out in the report for application 10/00773/FU however it is considered that the argument should be set out again in full. Briefly, following legislative changes introduced in 2004 and 2006 an increase in gross retail floorspace of more than 200 sq.m. within a building requires planning permission.

So the key question for the purpose of this application is what constitutes a 'building'?

- 10.28 Section 336 (1) of the 1990 Town and Country Planning Act provides that the interpretation of building ***"includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building"***. Accordingly the section 336 definition suggests that it is possible to have a 'building within a building', and it is also possible for individual retail units within a shopping centre to be regarded as separate buildings.
- 10.29 A 1995 appeal decision concerning the Gateshead Metro Centre is of relevance to the issue of whether individual units within shopping centres can properly be regarded as buildings.
- 10.30 The decision related to appeals against Gateshead Council's refusal to grant Lawful Development Certificates in respect of the erection of a shop fascia sign and the installation of a glazed shop front in a unit which had yet to be occupied and the use of a unit as a 'high class restaurant' within the class A3 of the UCO . The Inspector recommended that both appeals should be turned down. In coming to these recommendations the Inspector approached the question of what constituted the 'building' for the purposes of the appeals in the following way :-
- Whilst the MetroCentre itself was a 'building' for the purposes of the Planning Act this did not preclude each of the units subject of the appeals constituting 'buildings within a building'.
 - The malls, whilst being roofed over, nevertheless acted as general thoroughfares and they functioned as streets; much as a street in a conventional town centre would.
 - In consequence, the distinct impression gained when visiting the appeal site was that each of the units had an interior and an exterior, the latter having a frontage to a mall. When viewing the situation from the inside of each of the units the impression is one of self containment and separation from the adjoining units
 - In the circumstances the units subject of the appeals were buildings; - albeit, buildings within a building when considering the MetroCentre as a whole.
- 10.31 The Inspector's approach to the issue is both logical and persuasive.
- 10.32 However, when making a decision based on the Inspector's decision the Secretary of State then took a different view. He indicated that whilst the definition of building includes part of a building, when deciding whether alterations to part of the building are excluded from the definition of development he considered it so artificial as to be contrary to the ratio of the 'Burdle judgement' to treat every planning unit within the building as a separate building.
- 10.33 In contrast to the Inspector's approach to this issue, the Secretary of State's approach is difficult to follow – the 'Burdle' case referred to deals with the question of planning units rather than what constitutes a building which is the key issue for the purposes of the Mezzanine legislation. Accordingly (and taking into account the fact that the Gateshead decision is a recovered appeal decision rather than a court ruling which would provide a more definitive ruling on the issue), it is perfectly possible to take a different view to that expressed by the Secretary of State in the Gateshead decision on this issue.
- 10.34 In conclusion, the Chief Legal Officer is of the view that whilst there is no case law on this issue which would provide a definitive answer, the interpretation of the legislative provisions relating to mezzanine extensions suggested by Leading

Counsel acting on behalf of the Applicant (namely that each shop unit within the White Rose Centre is a building) is persuasive.

- 10.35 Turning to the comments of Morley Town Council, it is considered that the Chief Legal Officer's views which concur with the advice of Leading Counsel on behalf of the applicant have been thoroughly set out and the key issue is the consideration of what constitutes 'the building' for the purposes of the legislation – as set out above it is considered possible that the individual units can be regarded as 'buildings within buildings' It is also clear that the shops within the White Rose Centre operate independently of each other .
- 10.36 On this basis it is considered that there is the potential for works to be carried out to provide 7,946 square metres of retail floorspace in the White Rose Centre without the need for planning permission and indeed application 10/00773/FU was determined on this basis. The application is accompanied by a draft planning obligation to restrict the insertion of mezzanine floorspace without obtaining planning permission. In terms of A1 provision of 2,042 sq.m (2,500 sq.m inc MSU10 permission 10/00773/FU) proposed in this application , this is significantly below the floorspace which could be created without the need for planning permission and should be given significant weight as this will clearly reduce the ability for uncontrolled incremental expansion of the WRC which could have a far more significant impact on the city centre and other centres including Morley. This obligation is put forward by the applicant to address the Council's concerns regarding uncontrolled incremental expansion at the centre, however the benefit to the WRC of obtaining permission for the proposed floorspace would provide the centre with more flexibility in how to implement the additional floorspace.

3. The Proposed Section 106.

- 10.37 The applicant has submitted a draft section 106 agreement which includes the following clauses;
- Not to install any mezzanine floors of any size in any A1 unit at the White Rose Centre without obtaining planning permission;
 - The first occupation of any additional A1 floorspace permitted by the planning permission (10/04190/OT) will be limited to existing tenants at the date of the planning permission;
 - Training and employment initiatives for opportunities within the shopping center and in the construction of the development.
 - Recommencement of works at Trinity Quarter prior to commencement of development at the White Rose Centre;
 - Submission of a programme and timetable of works (including details of any contract(s) which have been let) for the completion of the development at the trinity quarter, prior to commencement of development at the White Rose Centre;
 - Travel Plan Monitoring Evaluation fee
 - Public Transport Contribution.
- 10.38 From 6 April 2010 a new legal test for the imposition of planning obligations was introduced by the Community Infrastructure Levy Regulations 2010. These provide that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is -
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

- 10.39 Turning to the obligations proposed by the applicant, it is considered that the obligation relating to removal of the ability to create additional retail floorspace without planning permission meets the legal tests set out above and in particular is necessary and directly related to the development.
- 10.40 The comments of Morley Town Council relating to the requirements of the new legislation introduced on 06.04.10 (as set out above) were set out in the officer report to Members for application 10/00773/FU and the direct relevance of this obligation was fully considered when that application was determined.
- 10.41 Morley Town Council have referred to the requirement for the applicant to submit a schedule of programme of works and timetable for completion of works at the Trinity Quarter as the Planning and Retail statement submitted by the applicant infers that this is no longer necessary. This requirement was coupled with the obligation within the s106 agreement that development of the additional floorspace approved under application 10/00773/FU should not be implemented until works have recommenced at Trinity Quarter. The applicant has included the recommencement of works on Trinity Quarter (being contracts let, works begun and being uninterrupted for period of 4 months) together with submission of a schedule of programme of works and timetable for completion of Trinity Quarter within the draft s106 agreement submitted with this current application.
- 10.42 However as work has now recommenced on the Trinity Quarter development, there is no longer considered to be a requirement to restrict the implementation of the proposed extensions to the White Rose Centre. The applicant has also provided a summary of the progress of works at Trinity Quarter, advising that;
- steelwork is well advanced on site with sections reaching 4 storey
 - preparation has taken place to allow the demolition of Provincial House, Albion Street
 - Level 2 in Leeds Shopping Plaza is closed off to enable reconfiguration of existing units
 - Current construction is on schedule to allow for a Spring 2013 opening.
- 10.43 The completion of the Trinity Quarter development will clearly have a positive impact on the city centre in terms of its vitality and viability, however it is not considered that on its own this is a matter which should not be included within the s106 agreement for this application as it is considered that without such an obligation this would not be a reason to refuse planning permission.
- 10.44 The Town Council have also requested that the legal agreement should become effective from date of issue of decision rather than commencement of development in case development does not commence. The draft legal agreement has been altered to this effect and this therefore ensures that no additional floorspace is created using the existing provisions to insert mezzanines up to 200 sq.m prior to commencement of development of works which would be approved under this application.
- 10.45 The Town Council also suggest that the S106 should restrict insertion of mezzanines into any unit not just A1. The provisions of the Town and Country Planning General Development Procedure Order, now Development Management Procedure Order only determine that insertion of mezzanine's above 200 sq.m within a retail use would be development and therefore the White Rose Centre could insert any size of mezzanine into A3 space. However legislation does not class these works as development, and furthermore it is considered that the ability to do

this would be limited and would not create an expansion that would alter the attraction of the centre in terms of impact upon other centres. Officers are therefore not of the view that such a restriction could be justified.

4. External Alterations to the building

- 10.46 The application is accompanied by plans which show the areas at the lower trading level (ground floor) upper trading level and second trading level, which could be extended to provide the 3,898 sq.m floorspace proposed. The detail of these extensions would be considered as part of reserved matters applications to take up specific parts of the floorspace up to the 3,898 sq.m limit and within the parameters of the extensions identified in the submitted drawings. The extensions to the lower trading level would take up existing service areas and some parking provision, there are also extensions proposed which build over the existing service road enclosing this road but still leaving it operational. The extensions to the second floor trading level would involve alterations to the roof of the shopping centre.
- 10.47 The applicant has provided revised drawings which reprovide parking spaces which are potentially lost through the lower ground floor areas of extension, the additional parking is provided by re organising the coach parking. Subject to an amendment to the proposed extension to unit LT06 and provision of 40 long stay cycle spaces, highways do not have any objections to the indicated areas of potential extensions.
- 10.48 The proposed extensions at the upper trading level would involve internal alterations and minimal alterations to the roof and these are also considered acceptable in principle. Extensions to the second trading level would involve notable alterations to the roof form of the WRC but it is considered that these could be achieved in a form which would not detract from the overall design of the existing centre and the detail of these proposals would need to be considered at reserved matters stage. The main views of the alterations to the building arising from the extensions would be seen from within the car park surrounding the building.
- 10.49 Morley Town Council have raised concerns regarding the volume of additional floorspace tentatively identified in the application which amounts to 26,025 sq.m. This application seeks permission for development of up to 2,048 sq.m A1 floorspace and up to 1,850 sq.m A3 within the overall areas of potential expansion that have been identified. The Town Council's concerns are that if the Local Planning Authority accept the overall areas for expansion then this make it difficult to resist future proposals to expand within these areas identified within this application, other than national policy restricting growth of out of town shopping centres. It is considered that whilst all of the areas identified for potential expansion seem reasonable at outline stage, any proposal to take up floorspace within these areas would be subject to a reserved matters application setting out the detail of how this is achieved. Furthermore, this application is only considered acceptable because of the obligation which accompanies the proposal to remove the ability to install mezzanine's up to 200 sq.m without requiring planning permission. This argument is considered compelling in the circumstances of this application, but it is not considered that it could be used again to set a precedent.

5. Travel Plan/ Public Transport improvements

- 10.50 It is considered important that as part of future expansion of the WRC a robust travel plan is adopted by the WRC and the main occupiers. The applicant has submitted a revised travel plan as part of this application, and has agreed to the payment of a travel plan evaluation monitoring fee in accordance with the requirements of the Travel Plan SPD. However the Council's Travelwise officer have advised on a

significant number of matters which need to be addressed as part of the Travel Plan including commitments to specific sustainable travel measures, management of staff parking as well as monitoring and review of the measures within the Travel Plan. The applicant has advised of difficulties in being able to require occupiers of the centre to sign up to the Travel Plan and this matter is being explored further with the Travel Wise Officer and the applicant. Progress on the WRC's Travel Plan will therefore be reported verbally to the Plans Panel meeting.

- 10.51 Metro have proposed the installation of a multistop real time bus information display (housed within the shopping centre) which Metro are currently developing. The applicant has agreed to fund this at a cost of no more than £40,000 and this matter is included within the s106 requirements. The funding of this facility is considered to negate the requirement for a public transport improvement contribution as set out in the comments from the Public Transport Officer.

11.0 CONCLUSION

- 11.1 This application follows on from an application which Members approved on 8 April 2010 for a smaller extension to the centre. The application is submitted using the same broad principles which included Leading Counsel's advice on the matter of potential expansion of the centre without planning permission (with which the City Council's Legal Officer concurs), and furthermore the application is submitted with a draft s106 agreement (which was a requirement of the earlier planning application) to restrict the expansion of the centre to a level significantly below that which could be undertaken without planning permission.
- 11.2 In this instance it is considered that as well as planning policy set out in PPS4, there are other material considerations which must be given significant weight in the consideration of this application. Although this application proposes additional retail floorspace in an out of centre location, it is considered that on balance this proposal when considered in the context of the restriction on the ability to create additional floorspace without planning permission, represents an opportunity to regulate the future expansion of the White Rose Centre which in turn would be beneficial in protecting the vitality and viability of the city centre and other centres. As such, this application is recommended for approval subject to the completion of a legal agreement to cover the matters set out at the start of the report.

Background Papers:

Certificate of Ownership B notice served on White Rose (Leeds) Limited

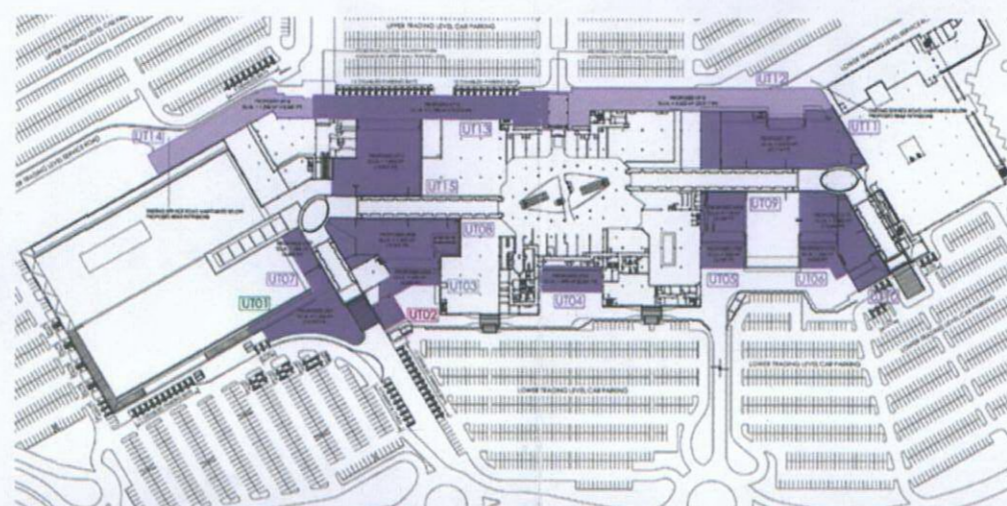


WEST ELEVATION - PROPOSED EXTENSIONS

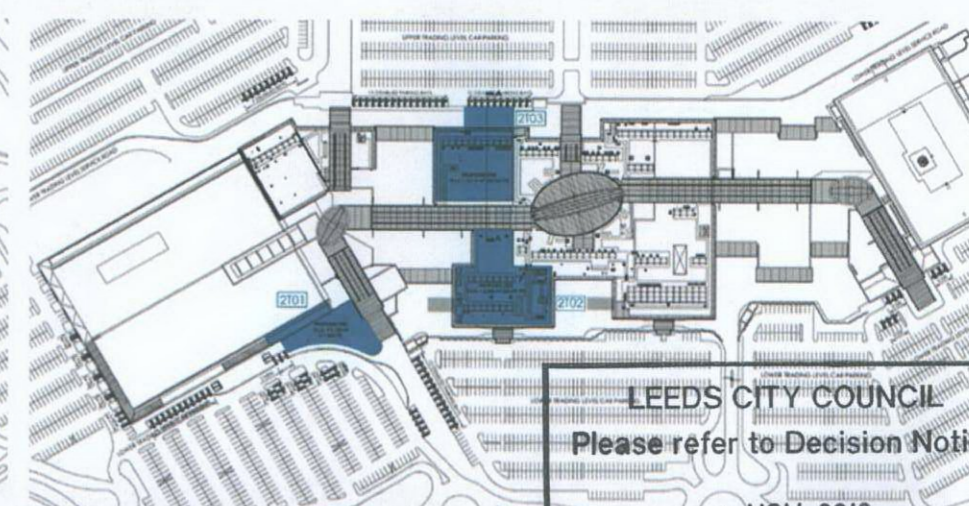
(Image provided by Bing.com)



LOWER TRADING LEVEL



UPPER TRADING LEVEL



SECOND TRADING LEVEL

■ DENOTES POTENTIAL LOWER TRADING (LT) PROPOSED UNIT EXTENSIONS

■ DENOTES POTENTIAL UPPER TRADING (UT) PROPOSED UNIT EXTENSIONS

■ DENOTES POTENTIAL SECOND FLOOR LEVEL (2T) PROPOSED UNIT EXTENSIONS

LEEDS CITY COUNCIL
Please refer to Decision Notice
- 1 NOV 2010

REVISED



EAST ELEVATION - PROPOSED EXTENSIONS

(Image provided by Bing.com)

bowmanrileyarchitects

NOTE: PROPOSED MASSING OF EXTENSIONS ARE INDICATIVE ONLY, NOT TO SCALE

project ref: OUTLINE PLANNING APPLICATION, WHITE ROSE SHOPPING CENTRE, LEEDS, LS11 8LU

drawing title: PROPOSED EXTENSION VISUAL

date: 2010 08 06

rev: A - Updated to reflect CAD drawing amendments

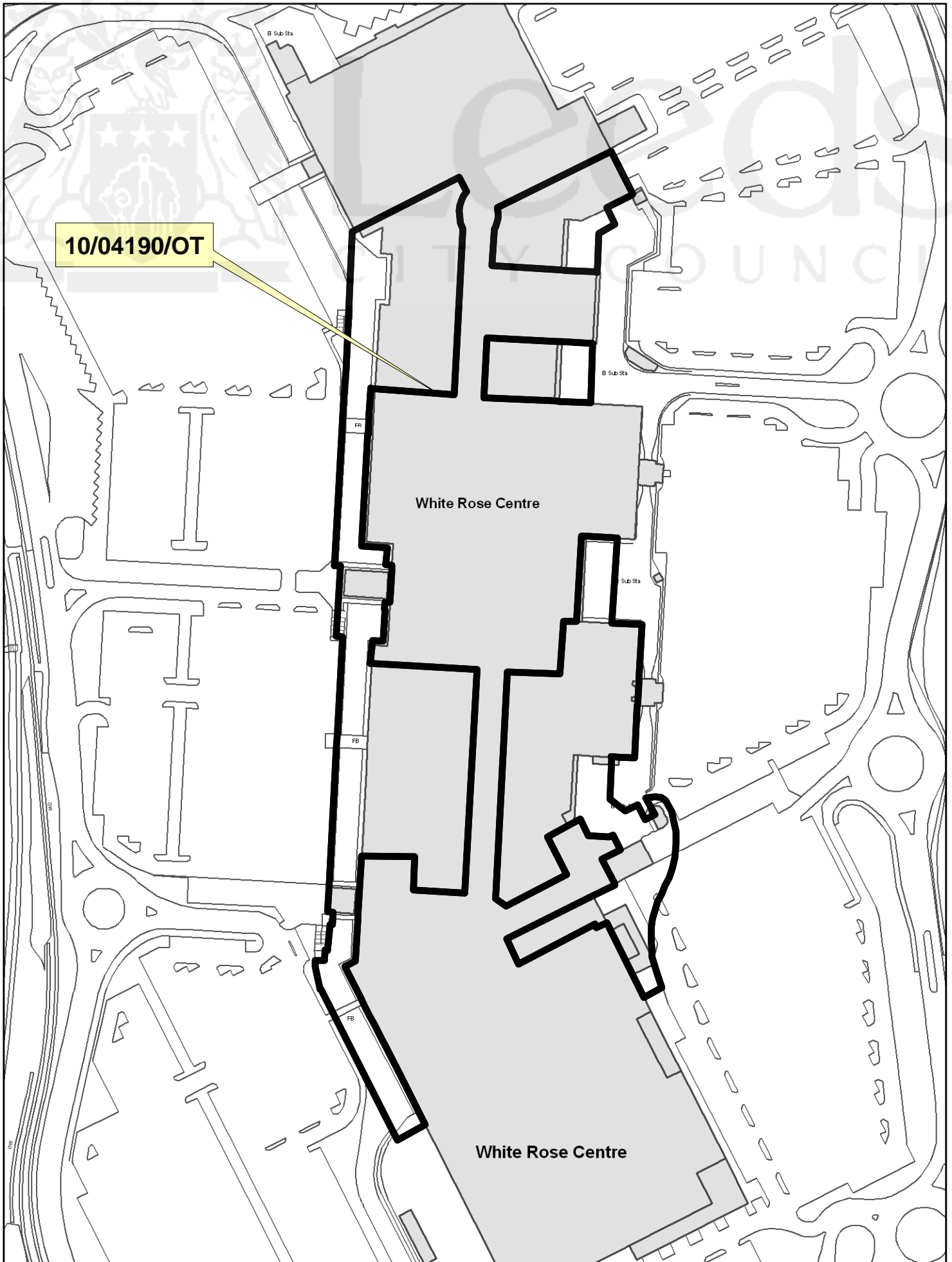
B - Proposed Second Trading Floor added over MSU4

C - UT10 extended on 3D visual to match CAD drawings

D - Extension LT03 reduced to provide an increased service yard

cad ref: G:_P6800\Graphics

drawing ref: 6800 SK 05



EAST PLANS PANEL