SECTION 195(1) OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)
PLANNING APPEAL ON BEHALF OF RAM CAPITAL LIMITED
BRADBEERS RETAIL PARK, TOLBAR WAY, HEDGE END, SOUTHAMPTON, SO30 2QY
APPEAL ON THE GROUNDS OF EASTLEIGH BOROUGH COUNCIL REFUSING TO GRANT A CERTIFICATE OF LAWFUL USE

APPLICATION REFERENCE: U/12/71277

GROUNDS OF APPEAL

The Application

An application was made to apply for a Certificate, under Section 192 of the Act, to confirm that the retail sale of all goods from up to 49% of each unit at the Bradbeers Retail Park pursuant to Planning Permission: Z/28673/11, is lawful. The application was registered on 1 August 2012 under the Reference: U/12/71277.

Eastleigh Borough Council (the LPA) refused the application on 25 September 2012. The Refusal Notice states that the proposed retail sale of all goods from 49% of the floorspace would be in breach of Condition 8 of Planning Permission: Z/28976/11.

Lawful Effect of Condition 8 of Planning Permission: Z/28976/11

The Condition which controls the use of the floorspace at the Units at the Appeal Site states:

> *'The principal goods sold from the retail warehouses must be restricted to any of the following goods: DIY materials and building supplies, furniture and carpets, domestic electrical appliances, auto accessories, garden equipment and materials, boats'*

The Collins English Dictionary defines the word 'principal' in the following way:

> *'First in importance, rank, value, etc; chief'*

The definition is clear that the term 'principal' refers to the largest or dominant amount in any given context. The meaning of the term 'principal' is widely understood and is considered to be clear and precise.

In the context of this application, Condition 8 therefore requires each unit to be used principally or primarily for the sale of the range of goods listed. It follows, that if at least 51% of the sales area of any unit is used for the sale of the goods listed within the Condition, then it must be the case that the Condition is complied with.

The inverse position of this principle is that up to 49% of the sales area of any unit can be used for the sale of any goods.

It follows that the proposed use would comply with the controls imposed by the relevant Condition and is therefore lawful.

Enforcing the Condition

The Condition is not explicit in respect of how the Condition should be interpreted or enforced in respect of determining a measurement for the term 'principal'.

It is our view that the only proper measurement for the term 'principal goods sold from the retail warehouses' can relate to the floor area used for the retail sale and display of the defined goods. The planning system and its relevant regulations and statutes are based upon the control of land uses and the condition imposed should be interpreted in this common way unless expressly stated otherwise.

Defining the term by floor area would enable the applicant, the LPA and any reasonable reader of the Planning Permission to be able to understand the restriction and assess whether any operation, at any given time, is in compliance with its terms.

Summary and Conclusions

The Appellant will provide evidence to demonstrate that, provided 51% of the net sales area of any unit is used for the sale of goods listed in Condition 8, then the remaining 49% can be used for the sale of any goods (i.e. Open A1).

It follows that the use is lawful and the LPA was wrong to refuse the original application. The Appeal should be allowed and the Certificate issued in accordance with the terms of the original application.