

3/08/1528/FP – Mixed use redevelopment of part of the McMullen's Brewery site, comprising a foodstore and conversion of the former brewery building to provide elements of the foodstore, including cafe, offices and commercial space, community space, associated car parking and landscaping, riverside walk, re-naturalisation of river bank, bridge link to town centre, re-routing of Hartham Lane and associated provision of new access and servicing points, amended design and additional information.

at McMullen's Brewery Site, Hartham Lane, Hertford, Herts for Sainsbury's Supermarkets Ltd.

Date of Receipt: 26.08.2008

Type: Full

Parish: HERTFORD

Ward: HERTFORD - BENGEO

RECOMMENDATION

That:

- (a) following the resolution of the committee, on 14th January 2009, to grant planning permission in respect of application 3/08/1528/FP, Members endorse the view that it is appropriate and reasonable to require the following matters to be accommodated in a s106 planning obligation agreement pursuant to s106 of the Town and Country Planning Act 1990 relating to the development:
1. That the applicant be required to fund the design competition for improvements to the public realm in Old Cross and Bull Plain to mitigate the impact of the proposed development, in accordance with a specification to be agreed; to undertake consultation on the results of that competition; to meet the costs associated with providing engineering details and costings; and to meet 50% of the costs of final implementation of schemes which may be agreed.
 2. That the applicant be required to submit a planning application seeking permission for the development of a pedestrian bridge at Dolphin Yard (to an agreed specification) within an agreed timescale and be required to provide funding of £60,000 toward the construction of such a bridge if permission is granted.
 3. That the new pedestrian route between the site and Folly Island shall be provided as a public right of way.

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- (b) Members agree to the inclusion of the following elements in a legal obligation pursuant to S106 of the Town and Country Planning Act 1990:-
1. The payment to the Council the sum of £5000 to be used for the extension of an alcohol ban area across the Hartham Common area.
 2. The payment to the Council of £10,000 to provide funding for a public arts project at the entrance to Hartham Common within the vicinity of the site.
 3. The payment to the Highways Authority the sum of £505,000, index linked, for the delivery of sustainable transport measures in the vicinity of the site including improvements to bus stops, Hertford Bus Station, pedestrian and cyclist facilities identified in the Transport Assessment and such schemes as may be identified in the Hertford Transport Plan 2009/2010 to improve access by means of transport other than the private car.
 4. Provision of a Green Travel Plan to include:-
 - Objectives for maximizing the proportion of trips by sustainable modes of transport for staff, store and office, and customers including subsidised taxi services and home delivery schemes.
 - Provision of information for staff and customers.
 - Details of targets, monitoring and management of the plan with an annual report to be submitted to the Council.
 - Monitoring of trip rates for the first 5 years including provisions for further sustainable payments of £50,000 per annum for five years, in the event that predicted trip rates materially exceed those in the Transport Assessment at Table 5.2, in accordance with an agreed methodology
 5. The management and pricing structure of the shopper's car park, to match adjacent public car parks, in order to promote linked shopping trips and general use by town centre shoppers.
 6. The provision of non vehicular public rights of way for pedestrians and cyclists through the site along the alignment of the former Hartham Lane.
 7. The payment to the County Council the sum of £4,000 for the provision of library services.

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8. The payment of £25,000 for the provision of a new pedestrian/cyclist crossing of Port Hill.
 9. The payment to the Council of £25,000 for funding of consultation and traffic regulation orders in connection with a potential residents parking scheme within the wider Port Vale area.
 10. The payment of £15,000 to the highways authority for traffic regulation orders related to parking measures around the site.
 11. Provision of a scheme to be agreed with the local planning authority for the maintenance and management of the community space and interpretation spaces, within the Brewery for the first 5 years of operation.
 12. Contributions of £25,000 towards a Traffic Management Scheme to address increased problems of “rat running” through the Port Hill area of Bengo
- (c) That if members accept the proposed S106 obligations then the application be referred to the Secretary of State with a recommendation to **GRANT** planning permission subject to the following conditions:
1. Three Year Time Limit (1T12)
 2. Samples of Materials (2E12) ..”including rainwater goods”
 3. Sample brickwork panel (2E35)
 4. Materials arising from demolition (2E32)
 5. Cycle Parking Facilities (2E29)
 6. Programme of archaeological work (2E023).
 7. New doors and windows, “add ... roof eaves, shopfront and canopy” (2E34).
 8. Prior to the occupation of the retail store, the repairs and refurbishment of the listed brewery, shall be implemented in accordance with a programme of works to be submitted and as approved in writing with the local planning authority.

Reason: To ensure the repair and enhancement of the listed brewery, to make it ready for occupation for office, community and arts spaces,

and in the interests of the Conservation Area and in accordance with Policies BH6 and BH10 of the East Herts Local Plan Adopted Second Review April 2007

9. Refuse disposal facilities (2E24)
10. Parking provision and retention (3V23). Add.... "The car park shall include the designation of a taxi rank as indicated on plan 2500 SK1008A."
11. Landscape Design (4P12) Add.."The details shall extend to the landscaping of areas of Hartham Common, within the District Council's ownership, to the north of the site, including the enhancement of the recycling bins provision and the implementation of off site works in plan 06055/32"
 - (a) Means of enclosure,
 - (b) Hard surfacing materials
 - (c) Planting plans
 - (d) Schedules of plants
12. Landscape Implementation (4P13)
13. Landscape Maintenance (4P17)
14. Retention of landscaping (4P21)
15. The retail store hereby permitted shall only be open for customers between the hours of 7am to 10pm and for no more than six hours on Sundays and Bank Holidays.

Reason: Having regard to the amenities of nearby residents and in accordance with policy ENV24 of the East Herts Local Plan Second Review April 2007.

16. The use of the retail store hereby permitted shall be solely for Class A1 planning use with ancillary A3 Café use. The net retail sales floor area shall not exceed 2328sqm.

Reason: Having regard to the retail needs tests of the development and to ensure the scale of the use is appropriate to the site, its provisions for car parking and its retail impacts on the town centre in the interest of the appearance of the Conservation Area and in accordance with Policies ENV1 and STC1 of the East Herts Local Plan Adopted Second Review April 2007 and national guidance in PPS6.

17. Prior to the commencement of the use of the store, precise details shall be submitted of the internal ground floor layout of the store and as approved in writing of the local planning authority. Such details shall indicate open areas behind the proposed shop windows within the north and east elevations of the building. No posters, boards, display equipment or other obstructions shall be placed within the identified shop window areas unless as otherwise agreed in writing with the local planning authority. The development shall thereafter be laid out in and occupied in accordance with the approved details

Reason: To ensure that the main building frontages and shop window areas for the new building are attractive and retain transparency in the interest of the appearance of the development in the Conservation Area and in accordance with Policies ENV1, BH6 and STC1 of the East Herts Local Plan Adopted Second Review April 2007.

18. Prior to the commencement of the development, details of a phasing programme for the development of the site; methods for accessing the site and provisions for construction traffic access, wheel washing facilities; associated parking areas and storage of materials shall be submitted to and as approved in writing by the local planning authority. The development shall thereafter proceed in accordance with the approved details.

Reason: To ensure that adequate access for existing users and businesses is maintained at all times and ensure the development proceeds without undue interference to the safe and convenient use of the public highway.

19. Construction and hours of working (6N07).
20. Prior to the first use of the development all highway works, including those specified below, shall be completed in accordance with the approved plans unless as otherwise agreed in writing by the local planning authority
- (a) All access roads, parking areas, and pedestrian links, as shown on the approved plan Dwg No. 2500 SK 1008 Rev A.
 - (b) Amendments to the Hartham Lane / Cowbridge junction as shown on the approved plan Dwg No.62422/A/19 Rev A.
 - (c) Realigned Hartham Lane, including new footways.
 - (d) Pedestrian / cycle link (min 3m wide) and bridge to Folly Island as shown on the approved plan Dwg No. 06055/28 Rev D.
 - (e) Loading facilities for the listed building as indicated on Dwg No.62422/AR/W1

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Reason: To ensure the development makes adequate provision for off street parking and maneuvering of vehicles associated with its use.

21. Existing access closure (3V051)
22. The following visibility splays shall be provided and permanently maintained within which there shall be no obstruction to visibility between 600mm and 2 m above the carriageway level:
 - (a) Dwg No. 62422/A/7 Rev B – 20mph forward visibility at service yard corner.
 - (b) Dwg No. 62422/A/25 Rev A – Visibility splays from existing business access.
 - (c) Dwg No. 62422/A/21 – Visibility splays from revised McMullen access.
 - (d) New store access with realigned Hartham Lane, 2.4m x 43m.

Reason: To ensure adequate visibility for drivers entering and leaving the site.

23. No external loudspeakers (2E253).
24. No deliveries to the site by Articulated HGV deliveries shall take place between 7am and 7pm. The applicant shall provide plans for an agreed approach to the site via Parliament Square and Mill Bridge and in the event of compliance problems shall keep a written record of deliveries by vehicles and delivery time and date for such period as the local planning authority may subsequently request.

Reason: to mitigate the impacts of deliveries on the environment and in the interests of highway safety.

25. Piling Works (2E39)
26. Prior to the first use of the development fire hydrants shall be installed at the site in accordance with details to be previously approved in writing by the local planning authority.

Reason : To ensure the appropriate provision of hydrants for emergency vehicles.

27. Bat protection (2E19)

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28. Breeding Season: Site clearance of buildings, trees and shrub removal should avoid the breeding seasons of 1st March to 30th August unless otherwise agreed in writing with the local planning authority.

Reason: To avoid unnecessary disturbance to breeding birds in accordance with Policy ENV16 of the adopted East Herts Local Plan April 2007.

29. Floor levels for the building shall be set at least 300mm above the 1 in 100 year level plus climate change flood level of 37.57m above Ordnance Datum.

Reason: To reduce the risk of flooding on the proposed development and future occupants/customers in accordance with Policy ENV19 of the adopted East Herts Local Plan April 2007.

30. Prior to the first occupation of the development works for the disposal of surface and foul water shall have been provided on site in accordance with details first submitted to and as approved in writing by the local planning authority.

Reason: In the interests of securing the sustainable and satisfactory drainage of the site and reduce the risks of flooding, in accordance with policies ENV18 and ENV19 of the East Herts Local Plan Second Review April 2007.

31. Prior to the first occupation of the development, directional signage at the site and interpretation boards at the riverside shall be erected in accordance with details to have been submitted and as approved in writing with the local planning authority.

Reason: To assist with increasing the linkage of the site to the town centre and its surroundings and to increase awareness of the history and ecology of the local rivers, and in accordance with Policies ENV1 and BH6 of the adopted East Herts Local Plan April 2007.

32. The development shall be operated incorporating the provisions of the renewable energy systems as detailed within the submitted Energy Statement, and the use of locally sourced supplies (within 10 miles of the site) for the biomass boiler, or by the use of other renewable technologies as otherwise may be agreed in writing with the local planning authority.

Reason: To ensure the energy efficiency of the building and sustainable design within the development in accordance with Policies SD1 and ENV1 of the adopted East Herts Local Plan.

Directives

1. Other legislation (010 L1)
2. Relationship with Listed Building Consent (26LB1)
3. Ownership (020W1)
4. Highway Works (05FC2)
5. The applicant is advised to liaise with the Council's Environmental Health section to ensure the proper legal disposal of asbestos at the site.

_____ (152808FP.TH)

1.0 Background

- 1.1 Members considered a report on the application by Sainsbury's at the 14th January committee. It was resolved in principle that planning permission be granted. The matter was deferred to officers to enable matters to be covered in a legal s106 agreement to be formulated in detail and for an appropriate set of conditions to be identified. The committee resolved to grant the listed building and conservation area consent applications in accordance with the recommendation. A copy of the January report is attached as Appendix A.
- 1.2 The planning conditions and S106 provisions have been negotiated with regard to the submissions of consultees, the planning merits of the scheme, the provisions of local plan policy and the adopted SPD Planning Obligations and the tests of Circular 11/95 and 05/2005 which require provisions to be necessary, reasonable, enforceable, relevant to planning and relevant to the proposed development.
- 1.3 Some of the S106 provisions were outlined in the original 14th January committee report. The offer has been increased in respect of the Sustainable Transport provisions to include additional funding of potentially £250,000 in the event that trip rates exceed those forecast within the submitted Transport Assessment. A contribution of £25,000 towards the Bengeo Traffic Management Scheme to address increased problems of rat running is also agreed. Additionally there are agreed provisions for Parking Regulations, Arts contributions and a new pedestrian /cyclist Port Hill crossing.

1.4 However the applicants have not been able to offer all the measures requested by your officers. There seems to be some misunderstanding in relation to some issues as to whether in principle agreement has been achieved or not. On those matters officers are now seeking the views of Members, with a suggested course of action as set out below. The key areas of difference between the applicant's offer and your officers requests are

- Sainsbury's have offered £20,000 for Old Cross and Bull Plain environmental improvements (however it does not agree to oversee a Design Competition or meet half the costs of implementing a final scheme)
- Sainsbury's have offered £10,000 as a capped amount for designing and making a planning application for the Dolphin Yard footbridge. It will pay £60,000 towards its construction. Officers had asked that it make a planning application for the provision of the bridge along with a separate £70,000 contribution towards its construction.
- Sainsbury's will not agree that the new riverside path and cycleway should be a public right of way. Instead it is being offered as a permissive route.

In detail, these items are as below:

Old Cross/Bull Plain

- 1.5 It has not been possible to finalise or agree details of the suggested Public Realm Design Competition for Old Cross and Bull Plain but officers anticipate this would involve a competition of ideas between qualified Urban Design consultancies with highways expertise, working to an agreed brief, a public exhibition stage, and the working up of detailed plans for the selected winning scheme.
- 1.6 The purpose of the competition would be firstly to explore whether there are better ways to more satisfactorily accommodate the various demands of pedestrians, traffic and conservation being placed on the Old Cross junction within the historic town centre and secondly to enhance the pedestrian links and environment between the Sainsbury's store and the existing town centre (via that route and Bull Plain) and support the economic wellbeing and vitality of the town centre.
- 1.7 Old Cross junction will be subject of significant increased traffic demands as a result of the proposed development. Sainsbury's view is that, as it may not be possible to address traffic capacity issues only environmental improvements can be made. It offers £20,000 towards these. An earlier

offer to fund the design competition, consultation and engineering details and costings, as well as meet 50% of the costs of final implementation for both areas, has now been retracted.

- 1.8 Your officers view is that a Design Competition is an exercise of merit and reasonably related to the proposals given the traffic and environmental impact they will have in the Old Cross area and given the desire to create strong linkages in both the Old Cross and Bull Plain areas. It is recommended that Members endorse this approach and require that funding be provided towards the final costs of implementation of 50% of total costs.

Dolphin Yard footbridge

- 1.9 With respect to the Dolphin Yard footbridge the applicants have been in discussion with McMullens which previously formulated bridge proposals for this location. As a result, Sainsbury's believe there are major technical difficulties in delivering the footbridge. It is offering £60,000 to deliver the bridge if it proceeds, and will pay for the designing of a bridge and making a planning application subject to capping these costs at £10,000. This approach is considered to be unsatisfactory as the LPA would not be able to influence the manner in which the £10,000 funds are spent. Your officers' view is that it is reasonable to require the submission of a planning application, without funding cap, and the provision of funds towards a bridge if permission is granted. Members are asked to endorse this position.

Public Rights of Way

- 1.10 The applicants wish the new footbridge and footpath to be a permissive route to allow them to control its use, and close it during hours the store does not operate. Your officers' view is that the designation of the route as a public right of way should be sought. Members are asked to endorse this position.

Conditions

- 1.11 The proposed planning conditions will, inter alia, provide controls over the store opening times, hours of lorry deliveries and secure additional landscaping provisions within Council owned areas of Hartham Common area and car parks to improve the entrance into this important recreational area and greater visual separation of the new Sainsbury's car park from existing car parks. The conditions also require the provision of the bridge prior to first use of the store though the applicant had requested this be a S106 obligation.

Referral to the Secretary of State

- 1.12 If there is resolution to grant planning permission subject to these conditions and S106 obligations, this will require referral to the Secretary of State under the provisions of (Town and Country Planning (Shopping Direction))(England & Wales)(No.2) Direction 1993. The new store has a Gross Floor Area of 4872 sqm, the threshold for referral is development in excess of 20,000 sqm, or which will create such a floorspace in aggregation with other projects within a radius of 10 miles of a site. It is believed this threshold has been exceeded. Referral is in any event required as the application is a departure from the adopted local plan wherein the land is a designated Employment Area for B1, B2 and B8 uses. The Secretary of State retains powers to call in the planning application.

2.0 Further Consultation Responses/Representation

- 2.1 At the 14th January committee there were a number of late representations reported orally to the committee. These are summarised below with others that have since been received.
- 2.2 County Highways confirm that they sought up to £1.1M for S106 sustainable transport and mitigation measures (not the £1.6M referred to in the 14th January report, see paragraph 3.4 and 7.26). They have justified the amount based on East Herts own Supplementary Planning Document for Planning Obligations. Sainsbury's current suggested contributions are £505,000 for sustainable transport measures in the vicinity of the site including improvements to bus stops, Hertford Bus Station, pedestrian and cyclist facilities identified in the Transport Assessment and schemes arising from the Hertford Transport Plan. This does not provide £100,000 for real time information at the bus station; £100,000 for a traffic management scheme to address Bengo rat running or £200,000 requested for bus services. They comment that the submissions by McMullens in their letter dated January 2009, were not provided earlier for the Transport Assessment, their own recollection is that McMullens lorries are much smaller and they doubt the level of use by articulated lorries.
- 2.3 The County Architects' Panel express some disappointment, they had expected to see an increase in tree planting within and around the car parking areas to avoid coalescence with the Hartham Car Park; they felt the revised arrangement of gables was unconvincing and that plans lacked sufficient information. The question of switching the car park and store locations was raised; the low parking provision for businesses might create problems; the riverside link building seemed a poor substitute for the demolished cottages. They hope negotiations continue to address the problems which were raised.

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- 2.4 The East Herts Landscape Officer considers the proposals disappointing and objects to the landscape treatment of the car park where there has been no concession in the way of land allocation for tree planting and the boundary landscape treatment has followed a *de minimus* approach. Inadequate space is given for tree surrounds, trees will be planted within impermeable hard surfaces surrounded by kerbs, trees will be vulnerable to damage from cars with no distance for vehicle overhang, provision is required for more majestic trees. He also questions how successful the benefits of the riverside treatment will prove.
- 2.5 Hertford Town Council had noted additional information received but maintained its views (objection) on the proposals, they said any sustainable energy provisions do not compensate for the “carbon footprint” caused by increased traffic and congestion.
- 2.6 Hertford Civic Society refer to the additional retail submissions and believe the assumption that such a large slice of business will be attracted away from the existing Tesco store is unreasonably optimistic, the attraction of comparison shopping in other destinations may limit the clawback of Sainsbury’s customers referred to. Protecting the vitality and viability of the existing town centre should be a higher priority than enhanced choice. Their other key objections to traffic congestion, lack of provision for other transport modes and the wasteful use of a valuable site remain.
- 2.7 McMullen & Sons Limited wrote in support of the application which they believe will benefit and support the future vitality of Hertford. It refers to the particular importance of the repair of the Victorian brewery which are a key part of McMullen’s and Hertford’s history and their delight that Sainsbury’s are committed to spending over £2M refurbishing the buildings and they look forward to working with Sainsbury’s for the display of artefacts and items of brewing heritage. They have a strong interest in traffic movements for their continuing operations and consider the additional 4 large Sainsbury’s lorries at night should not be detrimental. They say their own daytime contract bottling and brewing operations were on a substantial scale and involved day time movements of a large number of articulated contractor’s lorries. They believe there is a danger of Hertford going backwards if it does not provide sufficient retail interest with customers being lost to other centres and say it is hard to consider another substantial site that could provide a significant new store that is so well integrated with the town centre.
- 2.8 The East Herts Environment Manager (Open Spaces) highlights many areas for expenditure including improvements to the main entrance to Hartham common along Hartham Lane and for re-siting / re-screening the recycling bins which is an unattractive entrance feature.

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- 2.9 The East Herts Council Parking Manager has written further to previous comments that he would wish to see Sainsbury's offer up to 5 hours parking with each hourly rate to match that of existing East Herts car park to enable the car park to be a wider asset to Hertford. In the circumstances of any existing town car parks being refurbished it would be essential that the 5 hour tariff is available. He is also willing to manage and enforce the car parks under a Traffic Regulation Order.
- 2.10 Chase and Partners , the council's retail advisers, commented additionally that they would be reluctant to take a stronger position without further study, but they doubt there would be a need for both a Sainsbury's store and the proposed Tesco extension. They advise no other retailers ideas for expansion have been formally made as an application, or otherwise made public, and therefore should not be considered in the calculation of need.
- 2.11 3 letters confirming their objections and one new letter have been received which raise similar points of objection. Ekins who own premises at Great Northern Works have advised they support the application and for consideration of linking the two sites (the applicant has informally spoken of a willingness to work with Ekins to secure additional car parking for the new brewery).

3.0 Summary

- 3.1 The proposed conditions and heads of terms for the S106 legal agreement are set out and are mostly agreed in principle with the applicant, although there are some key areas where unfortunately it has not been possible to agree the terms. Significant time has been spent discussing matters with Sainsbury's representatives in advance of the formulation of this report and it is anticipated that matters will further develop prior to the committee meeting. Officers will update Members at the meeting.
- 3.2 In summary, the areas where it has not been possible to reach agreement are:
- the Design Competition for Old Cross and Bull Plain, partly because the applicant doubts the potential outcomes but also as it wishes to have greater certainty over the cost implications.
 - the making of an application for planning permission for the construction of a pedestrian bridge crossing at Dolphins Yard (without financial cap)
 - the status of the footlink to be created as part of the current development proposals (from the site to Folly Island)

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- 3.3 Members are invited to consider the report, and the further representations received, and make their resolution on the balance of policy and other material planning considerations regarding the merits of the application and the provisions for mitigation via S106 and planning conditions. If they resolve to grant permission the matter will require referral to the Secretary of State.