

- (a) **3/08/1268/FP - Redevelopment to provide new retail store, 54 residential units, a D1 community facility, A3 café, car parking, servicing, landscaping and associated ancillary development at Tesco, Ware Road, Hertford for Tesco Stores Ltd.**
- (b) **3/08/1528/FP – Mixed use redevelopment of part of the McMullens Brewery site, comprising new foodstore, conversion of former brewery building to provide elements of the foodstore, including café, offices and commercial space, community space, associated car parking, 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 at McMullens Brewery Site, Hartham Lane, Hertford, for Sainsbury’s Supermarkets Ltd.**

Date of Receipt: (a) 08.07.08
(b) 26.08.08

Type: Full
Full

Parish: HERTFORD

Ward: HERTFORD CASTLE (Tesco) and
HERTFORD BENGEO (Sainsbury’s)

‘D’ RECOMMENDATIONS

that (A) the Committee endorses the investigation and advancement, at the forthcoming Inquiry or Inquiries as appropriate, of a case that includes, in addition to that based on the reasons set out on the refusal notice in relation to the Tesco’s proposals, information surrounding the combined retail need and impact of both sets of retail proposals;

(B) authority be delegated to the Head of Planning and Building Control to further adapt the Council’s case, as submitted to the Inquiry or Inquiries, as appropriate, to ensure that further changes in circumstances are reflected in the Council’s case and that the case submitted is the most appropriate; and

(C) the request submitted to the Planning Inspectorate that the separate Inquiries currently planned in relation to each of the proposals be dealt with at a single co-joined Inquiry be endorsed.

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1.0 Background

- 1.1 This report is to update Members on the position with regard to the above two major development schemes that have been considered by the Committee; to update the Council's position with regard to forthcoming planning inquiries and to seek authority for the Head of Planning and Building Control to further adapt the Council's case, in the light of changing circumstances, in order to make the most appropriate case at the inquiry (ies). It is submitted as an urgent item in light of the need to respond to changing circumstances rapidly in the submission of evidence to the Inquiry (ies).
- 1.2 Members will recall that the proposals at Ware Road, Hertford (the Tesco's proposals) were considered at the meeting of the committee of 24 September 2008. Officers recommended that the proposals be refused and after due consideration, it was resolved that permission be refused for the following reasons:
1. The local planning authority is not satisfied that the proposed new retail store will be able to maintain and increase linked shopping trips between the new store and the town centre. Without evidence to the contrary, the local planning authority considers it likely that such trips will be detrimental to the vitality and viability of the town centre. The proposal does not therefore meet the tests of national planning guidance in PPS6 and is contrary to Policy STC1 of the East Herts Local Plan Second Review April 2007.
 2. The proposed development fails to achieve the high standards of design, including open space and landscaping necessary for new development and appropriate for this sensitive historic site within the Hertford Conservation Area. In particular the scale and massing of the proposed building is inappropriate to the context of the site; and the loss of amenity from existing trees and landscaping is detrimental to the site and fails to preserve or enhance the character of the Conservation Area. The proposal is therefore contrary to Policies BH6, ENV1, ENV2 and LRC3 of the East Herts Local Plan Second Review April 2007 and national guidance in PPS1 and PPG15.
 3. The proposed development by its scale, massing and design, would diminish views and otherwise be detrimental to the setting of the adjacent listed buildings at Christ's Hospital. The proposal is therefore contrary to Policy BH6 and BH12 of the East Herts Local Plan Second Review April 2007 and national guidance in PPG15.

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4. The submitted Transport Assessment fails to demonstrate the impact of the proposed development. The local planning and highway authorities are not persuaded that the development can proceed on the basis of nil detriment and consider that traffic from the development will be detrimental to the use and convenience of the highway; highway safety; the wider environment and amenity of nearby residential areas. The proposal is therefore contrary to Policies TR2 and TR3 of the East Herts Local Plan Second Review April 2007 and the objectives of the Local Transport Plan.
 5. Inadequate provisions are demonstrated to promote walking, cycling and passenger transport options in order to reduce the need to travel by private car and to mitigate the impact of the proposed development. The submitted Transport Assessment and draft Travel Plan has failed to adequately analyse the scope for encouraging these modes. The proposal is thereby contrary to Policies SD1, TR1, TR4 and TR12 of the East Herts Local Plan Second Review April 2007 and the objectives of the Local Transport Plan and national guidance in PPG13.
 6. The application fails to make full provision for affordable housing in accordance with the provisions of the adopted local plan. The application would thereby be contrary to Policies HSG3 and HSG4 of the East Herts Local Plan Second Review April 2007.
 7. The proposed development does not make adequate provision for contributions towards sustainable transport matters, other infrastructure improvements and other County Council Services to mitigate against the impact of the development. It would therefore be contrary to Policies IMPI and HE9 of the East Herts Local Plan Second Review April 2007.
 8. The application fails to make provisions for 10% renewable energy as part of the development. It would thereby be contrary to Policy ENG1 of the East of England Plan 2008.
- 1.3 Officers recommended that an accompanying application for Conservation Area consent to demolish the existing store (3/08/1304/LC) be approved. Members supported that recommendation.
 - 1.4 Subsequently, an appeal has been lodged with the Planning Inspectorate with regard to the planning application refusal. This is to be dealt with by way of an Inquiry, and dates have now been established, with the Inquiry commencing on 26 May 2009. There are five initial timetabled days (26 May – 1 June) and a further three reserve days, if required, (10 -12 June).

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- 1.5 The Council has submitted its outline statement of case based on the reasons for refusal set out above. It is now necessary to submit full evidence and the deadline for this is 27 April 2009. In accordance with normal practice the Council is also invited to submit a statement of common ground. The Inspector dealing with the matter has requested that this be submitted by 9 April 2009.
- 1.6 The resubmitted Hartham Lane, Hertford scheme (the Sainsbury's proposals) were considered by Members at the meeting of 14 January 2009. Members will recall that Officers recommended that this scheme be refused. However, the Committee was supportive of the proposals and the matter was deferred from the January meeting to enable full details of conditions and s106 obligation requirements to be set out for them at the next meeting of 11 February 2009. Associated Conservation Area consent and Listed Building consent applications were granted.
- 1.7 At the 11 February 2009 meeting it was resolved that permission be granted. The matter was subsequently referred to the Government Office under the requirements of the Shopping Direction.
- 1.8 The Government Office has now confirmed, by letter dated 25 March 2009, that the Sainsbury's proposals, as referred, are to be called in and determined by way of an Inquiry. This means that the Council may not proceed to issuing a decision on the matter.
- 1.9 Given the areas of commonality between the proposals, Officers have submitted a request to the Planning Inspectorate that both of them are dealt with at a co-joined Inquiry and by the same Inspector. At the time of writing this report, a response on this request has not been received. Officers will update Members at the meeting.
- 1.10 Officers are currently proceeding then on the basis of preparing the case in relation to the Tesco's proposals, with a date for the Inquiry for the Sainsbury's proposals to be established.

2.0 The Tesco's Case

- 2.1 Members will note that eight refusal reasons were set out in relation to the proposals. The first of these relates to the issue of linkage between the proposals and the town centre. The Councils retail consultants are considering this issue further and will advise on the potential strength of it in relation to other appeal decisions and their retail knowledge. The outcome of this consideration is not yet confirmed but, as part of the general authority

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sought below, the committee is requested to give authority to the Head of Planning and Building Control to adapt the Council's case, as advised by consultants, to best support this issue at the Inquiry.

- 2.2 A related issue is the retail impact of the proposals. Considered on their individual basis, as they rightly were and the evidence available when the matter was considered by the Committee, the view was taken that unacceptable impact could not be demonstrated and the proposals were not, therefore, refused on that basis.
- 2.3 Subsequent to the decision on the Tesco's proposals, Members resolved that the Sainsbury's scheme could be supported. As a result of that decision, the issue of the potential combined retail impact of both retail schemes has become more important. Whilst this matter was not contained in the Councils initial statement of case, the Planning Inspectorate have been alerted to the issue in a letter of 18 February 2009.
- 2.4 Retail consultants are engaged on behalf of the Council to put forward the case on this issue at the Inquiry. Initial work suggests that a case can be advanced to support the development of one of the two proposals, having regard to need and retail impact. The combination of both proposals, it is considered, would be likely to result in identified harm to the existing town centre. Given that this issue is now an important element to be considered, the Committee's endorsement is sought to enable Officers (and consultants) to develop and advance the case on this basis at the Inquiry.
- 2.5 Refusal reasons two and three relate to the visual impact of the proposals with regard to their Conservation Area location, the proximity of Listed Buildings and their design and landscaping impact. The Council will continue to advance the case on this basis at the Inquiry through its Planning Officer and Conservation consultant.
- 2.6 Refusal reasons four and five are transport related. Reason four relates to the convenience of use of the highways in the area, highway safety and the environment and amenity impact of transport matters. Subsequent to the submission of the appeal, the transport consultants for Tesco's have been providing additional information to the Highway Authority to seek endorsement of its (Tesco's) view that the proposals are acceptable in highways terms. Agreement between the Highway Authority and Tesco's has been reached with regard to traffic modelling background assumptions.
- 2.7 This work is still underway. However, it does seem that transport modelling now shows that, with highway adaptations, the scenario is that greater highway capacity can be achieved in the vicinity of the site with the development. This is because of the widening of Mill Road to three lanes at

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the junction with Ware Road combined with an adjustment to signalling. This scenario also takes into account the potential of more development taking place in the Mead Lane area accessed via Mill Road.

- 2.8 This does not address all of the issues raised in this refusal reason and the current indication is that the Highway Authority is still minded to submit evidence that relates to the use and convenience of the highway and wider environmental and amenity issues. As above, the delegated authority of the Committee is sought to enable the Councils case to be adapted to retain the most appropriate elements on the basis of the advice from the Highway Authority.
- 2.9 The position is similar in relation to condition five. Further assessment is being undertaken by the Highway Authority in relation to the adequacy of the provisions relating to walking, cycling and passenger transport and whether there is scope to take steps, in association with the development, for encouraging these modes. Again, on the basis of the advice of the Highway Authority, delegated authority is sought to enable the Councils case to be amended as considered most appropriate.
- 2.10 Conditions six, seven and eight relate to affordable housing, infrastructure provision (through planning obligation agreement) and renewable energy provision respectively. The Council will continue to advance these issues at the Inquiry.
- 2.11 As Members can anticipate from the above, as further work is undertaken by all parties in relation to these proposals and evidence is provided, the strength of the cases that can be put on individual matters varies. Any party can be seen as acting unreasonably if it seeks to maintain a position which, with the benefit of additional information and evidence cannot be supported.
- 2.12 Your Officers have considered the matter in the round, given the issues set out above. The view is that the initial decision made by the Committee remains sound and is appropriately supported by planning policy. That is, the changes which have been outlined above are not so fundamental that the balance of decision making is seen to be altered. A position of rejection of the proposals will be maintained then at the Inquiry.
- 2.13 However, Members will also appreciate that further information will continue to be provided in the lead up to and at the Inquiry. To anticipate this the endorsement of the Committee is sought to enable the Head of Planning and Building Control (and representatives at the Inquiry) to adapt the Council's case as necessary at the Inquiry to ensure that the most appropriate case is put and to ensure that the Council is not seen to have acted unreasonably in any respect.

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3.0 Sainsbury's proposals and future Inquiry

- 3.1 As indicated above, the Sainsbury's proposals have now been recovered by the Secretary of State for a decision to be made following an Inquiry. Officers have requested that a single co-joined Inquiry to deal with both sets of proposals be organised. This would enable issues common to the two proposals to be fully considered. Members are requested to endorse this request.

- 3.2 Members will be updated with further information on the outcome of the request at the meeting. If the Secretary of State agrees, it is possible that the Tesco Inquiry dates will either continue (but with no decision pending a further Inquiry to consider the Sainsbury's proposals) or they will be abandoned in favour of a jointly convened future Inquiry. The result may also be a requirement for further consideration of the Council's position. If this is the case a further report on the matter will be brought before Members.