

Committee: Development Control Committee
Date: 27 July 2011
Agenda Item No: 5
Title: Tesco Stores Ltd, Radwinter Road, Saffron Walden
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Summary

- 1 Since the resolution to grant planning permission for the Tesco extension at the Special Development Control Meeting on 9 December 2010 new survey data has become available. This has resulted in Sainsbury's requesting that the original resolution to grant be reconsidered in light of the new information.
- 2 After careful consideration of the new data this report recommends that the Section 106 Agreement be sealed and the decision notice issued in accordance with Members' resolution to approve the application subject to conditions and an agreement at the meeting on 9 December 2010.

Background

1. Members resolved to grant planning permission under reference UTT/1323/09/FUL for the "Extension to existing Class A1 retail store" at the meeting held on 9 December 2010. The resolution to grant consent was subject to a Section 106 Agreement seeking the following;
 - £75,000 to be paid for MOVA works to Elizabeth Way/Radwinter Road traffic lights
 - £180,000 to be paid towards the investigation and implementation of improvement measures at the Air Quality Management Area location of Thaxted Road/Radwinter Road/East Street/Chaters Hill.
 - £3,000 to be paid for monitoring the Travel Plan

To date the Section 106 Agreement has been drawn up, and has been sealed by the applicant and the mortgagee.

2. Since the resolution to grant planning permission for the extended Tesco store there have been some factual changes in circumstances:
 - Sainsbury's has lodged an appeal in respect of their application refused under reference UTT/1451/09/FUL. It is anticipated that the appeal will be held in September 2011.
 - Waitrose has been granted planning permission for an extension to their store.
 - Sainsbury's has submitted a revised application for a store approximately 20% smaller than the previously refused scheme. A parallel application has been submitted for a petrol filling station.

These applications are currently being considered by the Council, references UTT/0787/11/FUL and UTT/0788/11/FUL.

3. As part of the Council's preparation for the Local Development Framework (LDF) a retail assessment is being carried out by the consultant who initially assessed the Tesco/Sainsbury's applications considered by Members on 9 December 2010. Part of the work required to guide this assessment is a household survey of shopping patterns, undertaken by NEMS Market Research (referred to as NEMS data).
4. One of the principal results of the NEMS data is that a markedly different comparison goods sales profile, with sales levels showing slight over-trading in comparison to the original survey data considered as part of the decision making process in relation to the original Tesco application.
5. The Retail Assessment submitted with the Tesco application predicted retail growth in comparison goods shopping to increase by £36mpa from £140.58mpa to £176.87mpa by 2012. Retention rates for comparison retail expenditure were expected to be around 42%.
6. The NEMS data collated in 2010 has revealed that for the year 2011 around £314.28mpa comparison goods expenditure would be available within the district, of which around £37.71mpa expenditure would be available within Saffron Walden, representing around 12% retention rate of the District's expenditure. These expenditure and retention rates are significantly different to those originally reported.
7. On 15 June 2011 SNR Denton, representing Sainsbury's, wrote to advise that in their opinion the results of the NEMS data has "radically altered it's (the consultants) view of the health and prospects of Saffron Walden town centre."

They identify the following areas where they consider the Council has now substantially altered its previous position:

- (a) The recent NEMS survey indicates that there is not the level of overtrading for comparison turnover (as was promoted in the Tesco committee report);
 - (b) There is a concern that Saffron Walden will lose further influence in terms of comparison trading from the town centre given committed growth in competing facilities.
8. Given the above, they further state "...it is clear that the circumstances in which the Council's planning committee determined the Tesco application have altered and the Council cannot safely grant planning permission without members being given an opportunity to reconsider."
 9. SNR Denton refer to case law set by R (on the application of Kides) v South Cambridgeshire District Council [2002] where the Court of Appeal held that the duty of a local planning authority to have regard to all material circumstances required it to consider new material considerations arising after the passing of a resolution to grant planning permission, but before the issue of the decision notice.

10. In response to this letter the Council has received a letter from Berwin Leighton Paisner, representing Tesco. They advise that, on the basis of the information they have been party to (NEMS data and a response from the consultant to the Council dated 8 July 2011) that "...there has been no change in material circumstances relevant to the grant of planning permission for the Tesco scheme. Furthermore, it is not a case in which the principle of *Kides* applies, as there are no "new" material considerations arising which had not already been previously considered by committee."
11. Advice has been sought from Counsel on this matter who advises that "the findings which flow from the NEMS survey about the level of comparison goods expenditure within the town centre and the markedly lower level of comparison expenditure retention for Saffron Walden are matters that could be reasonable seen to fall within Jonathan Parker LJ's category of "material considerations" when assessing an out of centre proposal which is primarily intended to provide comparison floorspace (i.e. the Tesco extension). It is information which "*would tip the balance to some extent*" (rather than necessarily being determinative) in a decision on the application. ... The Development Control Committee, as planning decision maker, should be given the opportunity to assess matters for itself."
12. The Council's consultant has been asked to review the advice given in respect of the original application in light of the NEMS survey. This report is focussing on the comparison goods issue as the consultant is of the opinion that there is no change to the original recommendation to the Tesco proposal in respect of the convenience goods impact.
13. With regards to the comparison goods the assumption has once again been made that the proposed Tesco extension would be trading at 50% of normal sales in 2013. The assessment concludes that there would be a surplus of floorspace available for the zone and as such there would be no significant effect upon the vitality and viability of the comparison shopping in Saffron Walden town centre.
14. The Council's consultant predicts that retail expenditure for comparison goods will continue to grow but retention rates are likely to fall. Given that there are no immediate commitments for additional comparison goods floorspace within the town centre there will continue to be a requirement for additional capacity. As such it is the Council's consultant's view that the NEMS data does not lead them to advise that there is a comparison goods impact objection in relation to either the proposed Tesco extension or the proposed Sainsbury's scheme, either in isolation or when considered together.
15. Therefore it is recommended that the Section 106 Agreement be sealed and the decision notice issued in accordance with Members' resolution to approve the application subject to conditions and an agreement at the meeting on 9 December 2010.

Background Papers: UTT/1323/09/FUL

Letter from SNR Denton on behalf of Sainsbury's dated 15 June 2011

Letter from Berwin Leighton Paisner dated 28 June 2011

Advice letter from Savills dated 8 July 2011