

10.EX.35 MAXIMISING ASSET VALUES – FACILITATING DEVELOPMENT OF THE FORMER LAWRENCE'S FACTORY SITE, DESBOROUGH

A report was submitted which advised members of the statutory powers available to the Council to facilitate development of the former Lawrence's Factory site in Desborough, in line with the Executive Committee resolution of 16th September 2009.

The legal position regarding the restrictive covenant was outlined. Members noted the relevant considerations to be taken into account in exercising its powers to appropriate land as set out in paragraph 3.9 of the report. It was noted that the mixed use development of the site did not meet the requirements of the development brief and was not financially viable. It was also noted that the feasibility study supported the development of a supermarket. This supported the considerations in para 3.9 (a), (b), and (d) of the report. Copies of the Committee report of 16th September 2009 were available at the meeting. It was noted that an 'in-principle' decision only was required at this stage, as a further report would be brought to the Committee when the outcome of the planning application was known and other outstanding issues had been resolved.

Members reaffirmed that the proposal helped to expedite regeneration of Desborough Town Centre.

RESOLVED that:-

- (i) as the appropriation of the land for planning purposes would facilitate the redevelopment of land and would improve the social, economic and/or environmental well-being of the area, it be agreed in principle to appropriate the land known as the former Lawrence's site, Desborough, for planning purposes pursuant to Section 122 of the Local Government Act 1972, subject to:-
 - (a) the granting of planning permission for the development of a supermarket on the former Lawrences's site; and
 - (b) the satisfactory conclusion of contractual issues relating to the sale of the land; and
- (ii) the Head of Democratic and Legal Services be authorised to take all reasonable steps to secure removal of the covenant by agreement.

22 July 2010

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Planning Committee Members
c/o Ms A Nimmo
Committee Administrator
Kettering Borough Council
Municipal Offices
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Dear Members

Sainsbury's Supermarkets Ltd, Land at Magnetic Park, Desborough
Application Reference: KET/2009/0734

Please find enclosed our letter of objection, submitted on behalf of Tesco Stores Ltd ('Tesco'), to the Sainsbury's application for a new foodstore at the above site.

DPP will be acting on behalf of Tesco Stores Ltd in preparing a planning application for a foodstore development on the Lawrence's factory site in Desborough town centre. A retail development on this site, which is in accordance with the Council's aspirations, would better meet the needs of the town, be of a sufficient scale to serve as a main shopping facility, and 'claw back' trade leakage and expenditure to surrounding towns. The development would further act as a catalyst for regeneration and investment in Desborough town centre.

Our letter of objection demonstrates that the Lawrence's site is clearly suitable, available and viable for a main foodstore development, contrary to the conclusions reached by the Sainsbury's application. The Sainsbury's proposal fails to satisfy the requirements of Policies EC14 and EC15 as set out in PPS4 and should therefore be refused.

We therefore endorse the planning officer's recommendation, and encourage members to refuse the planning application in line with Policy EC17.1 (a) and (b) of PPS4.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Antony Cook'.

Antony Cook
(antony.cook@dpplp.com)

DPP

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LRQ 400 3060

22 July 2010

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Ms L Holland
Development Officer
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By e-mail only

Dear Ms Holland

Proposed New Foodstore, Petrol Filling Station, and Associated Works at Land at Magnetic Park, Desborough (Application Reference KET/2009/0734)

DPP wish to submit a letter of objection on behalf of our clients, Tesco Stores Ltd, to the planning application by Sainsbury's Supermarkets Ltd for a new foodstore at the above site.

The application proposes an out of centre foodstore of 1,993 square metres net sales area (3,409 square metres gross), 244 car parking spaces, ancillary servicing and landscaping, and a petrol filling station.

The objection is based upon the failure of the applicant to satisfy either the sequential assessment or the impact assessment as required by Planning Policy Statement 4 (PPS4). The application therefore fails to satisfy even the basic policy requirements in our view.

We demonstrate below that the Lawrence's Factory site, located within Desborough town centre, is a sequentially preferable site which is suitable, available and viable and is subject of a proposed foodstore development with Tesco as the intended operator.

Approval of the Sainsbury's application would detrimentally impact upon the Council's regeneration aspirations for the Lawrence's Factory site and of the wider Desborough town centre. We therefore urge members to **refuse** this application.

Lawrence's Factory Site

DPP act on behalf of Tesco Stores Ltd in respect of their interest at the Lawrence's Factory site in Desborough town centre. In respect of developing a foodstore on this site, Sainsbury's state that it is neither suitable, available nor viable. The Planning Officer's Committee Report concludes to the contrary, and identifies in no uncertain terms that the Lawrence's Factory site is suitable, available and viable. We endorse this view for the

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reasons detailed below.

Suitability: The Lawrence's site is located within Desborough Town Centre as defined by the Kettering Borough Local Plan 1995. In September 2009, the Executive Committee at Kettering Borough Council resolved to approve a foodstore development on the Lawrence's site as the preferred solution in line with Development Strategy 1.

In addition, the conclusions of the 'Atkins Feasibility Study' state that the scale of development that could be accommodated on the site is sufficient to meet the recognised need for improved main food shopping provision in Desborough. The Lawrence's site is therefore suitable both in terms of location and scale to support a foodstore development.

Further to this, your Report to Committee in respect of the Sainsbury's application states:

"... there are no known physical problems or limitations and no environmental conditions which would prevent the site from being developed for the proposed use... The Council is therefore committed to bringing forward the Lawrence's site for a supermarket development ..."

If the Sainsbury's application was to be approved, the Council's aspiration to regenerate the vacant and deteriorating Lawrence's site within Desborough town centre would be far less likely to be realised. Contrary to the conclusions reached by the Sainsbury's application, the Lawrence's Factory site is clearly suitable to accommodate a foodstore development.

Availability: The Officer's Report details at length the availability of the Lawrence's Factory site. We are aware that negotiations are at an advanced stage between the Council, Greatline Developments and the landowner of the former omnibus site to bring forward the site for a foodstore development. Further to this, and as documented by the Officer's Report, work is well underway to remove the restrictive covenant which prevents a retail use at the site.

The Sainsbury's application simply dismisses the availability of the Lawrence's site and demonstrates a reluctance to explore the realistic prospect of removal or amendment of the covenant. Sainsbury's therefore fail to demonstrate that the Lawrence's site is unavailable.

As documented by PPS4, Local Planning Authorities should take account of sites that are likely to become available for development within a reasonable period of time when determining planning applications.¹ Given the on-going work by both the Council and Greatline Developments, Tesco are confident that the Lawrence's site will be available in a 'reasonable period of time'. On this basis the Sainsbury's application should therefore be refused.

Viable: The Atkins Feasibility report concludes that the site represents a viable opportunity for a foodstore development. Further, and as documented by the Officer's Report:

"... one major supermarket (Tesco) in conjunction with a developer (Greatline) is keen to acquire the site. At the present time the Borough Council and the interested party are close to signing

¹ PPS4 Practice Guidance, page 43.

contracts for disposal of the site."

Clearly, the site represents a viable opportunity to our client given the advanced status of negotiations between the interested parties. Consequently, Sainsbury's have failed to demonstrate that the site does not represent a viable opportunity.

Summary: The Lawrence's site is clearly suitable, available and viable for a main foodstore development, contrary to the conclusions reached by the Sainsbury's application. The Sainsbury's proposal fails to satisfy the requirements of Policies EC14 and EC15 as set out in PPS4 and should therefore be refused. We therefore concur with the conclusions reached by the Officer's Report that:

"There is a sequentially preferable site that is available, suitable and viable for retail development of a scale that will meet the needs of the town."

Impact

The sequential assessment is a 'gateway test' in that failure to satisfy it should lead to refusal of planning permission. In such a scenario (as is the case here) there are no prospects of successfully seeking to justify the proposal in terms of impact, scale and sustainability.

In any event, of the 10 recommended reasons for refusal, we note that the Officer's Report cites 5 reasons on impact grounds alone. Of particular note, the proposed Sainsbury's development would have a significant adverse impact on:

- economic and physical regeneration of Desborough town centre;
- existing, committed and planned public and private investment in Desborough town centre;
- in-centre trade/turnover and on trade in the wider area;

The application has failed to satisfy criteria contained within Policy EC16.1 and should therefore be refused in accordance with Policy EC17.1 of PPS4. The proposed development will result in significant adverse impacts, particularly on the vitality and viability of Desborough Town Centre, which as detailed in the Roger Tym Health Check (July 2010), is currently underperforming.

The proposed development should be directed to the town centre to help facilitate regeneration and investment in Desborough town centre. A foodstore at the Lawrence's Factory site would encourage linked trips to Desborough town centre, attract further investment and reduce the need to travel to neighbouring settlements to carry out a main food shopping trip.

Summary and Conclusions

Compliance with the sequential assessment is required by Policy EC14 of PPS4. It is clear that the Lawrence's Factory site is a sequentially preferable site that is available, suitable, and viable for retail development of a scale that will meet the needs of the town. The applicant has therefore failed to satisfy Policy EC15 of PPS4.

We are also firmly of the view that the introduction of a new foodstore on the application site, which clearly lies out-of-centre, would divert trade away from Desborough town centre with the prospect of any compensatory mitigation from 'linked trips' extremely limited. This will have a significant adverse impact on Desborough town centre, which is currently underperforming. The application should therefore be refused in accordance with Policy EC17.1 of PPS4.

Furthermore, DPP will be acting on behalf of Tesco Stores Ltd in preparing a planning application for a foodstore development on the Lawrence's factory site. A retail development on this site, which is in accordance with the Council's aspirations, would better meet the needs of the town, be of a sufficient scale to serve as a main shopping facility, and 'claw back' trade leakage and expenditure to surrounding towns. The development would further act as a catalyst for the regeneration and investment in Desborough town centre.

We therefore endorse the planning officer's recommendation, and encourage members to refuse the planning application in line with Policy EC17.1 (a) and (b) of PPS4.

Should you have any related questions or queries, please do not hesitate to contact me or my colleague Mark Buxton.

Yours sincerely



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DPP

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By Email

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22 July 2010

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Dear Sir

Proposed Foodstore, Magnetic Park, Desborough (ref: 2009/0734)

We act for Sainsbury's Supermarkets Ltd in relation to the above planning application. Having seen the committee report, we have serious concerns about the approach it recommends to members in determining this application. Indigo Planning have contacted the case officer with regard to a number of discrepancies and flaws in the report. The assessment fails to properly reflect the facts, or correctly apply relevant policy, in relation to alternative sites, investment aspirations for the Town Centre or the locational advantages of the application site. We explain our concerns in more detail below.

Given the financial implications for the Council of relying on unreasonable grounds to justify a refusal of permission, we request that members be given sight of this letter in advance of their determination, to enable them to form a robust view.

Consequences of flaws

- 1 A decision to refuse permission based on the approach recommended to members in the report would be unreasonable and would expose the Council to an adverse costs award in the event of a successful appeal, which we consider likely in light of the presumption in favour of this type of proposal in PPS4.
- 2 The committee report misapplies Government guidance on the consideration of alternative retail sites (PPS4) and the accompanying Practice Guide by treating the Lawrence's Factory site as:
 - (a) an 'available' alternative location for the proposal, despite the fact that:
 - (i) it is currently impossible to use it for significant retail purposes; and
 - (ii) there no realistic prospect of releasing the restrictions (which would, in any event, involve compensation liabilities that would undermine scheme viability for PPS4

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purposes)

- (b) a 'suitable' alternative location for the proposal, when:
 - (i) the scale of the Sainsbury's proposal reflects the need to recapture current expenditure leakage and re-establish a pattern of visits to Desborough by local people that will assist in renewal of the town centre retail offer;
 - (ii) the Lawrence's Factory site could only house a significantly smaller store, which would be unable to meet the equivalent need/ deliver the same benefits (as required by PPS4).

Alternative sites

- 3 Given that the Council now owns the Lawrence's Factory site, and the scale of the challenges it faces in developing it, its commitment as a landowner to finding a development solution is not surprising. However, PPS4 and the Practice Guidance are clear about how the availability, suitability and viability of alternative sites should be assessed to establish whether they are demonstrably practical alternatives. The Council must, as local planning authority, deal with our client's application in accordance with relevant policies on alternative retail sites. The committee report does not enable members to do so properly.

'Availability'

- 4 The Lawrence's Factory site cannot currently lawfully be used for significant retail development. The timescale for releasing the Lawrence's Factory site from the restrictive covenants, securing a development partner, identifying a deliverable and viable scheme, and undertaking any public procurement process are all highly uncertain. The Co-op has recently confirmed to the Council that it has no intention of surrendering the current restriction. The Competition Commission has confirmed that it is not anticompetitive. There is an urgent need to realise the benefits offered by the Sainsbury's proposal – namely recovering leaking expenditure and associated linked trips to the town centre. The significance of that timing is an important PPS4 consideration in understanding the relevant timescale for assessing how soon alternative sites may come forward. That issue is ignored by the report.
- 5 As such, the site cannot properly be said to be 'available'. The use of planning powers to remove the restriction is complex and would give rise to significant compensation liabilities. There are a number of issues which do not appear to have been properly considered in recommending that members treat the Lawrence's Factory site as being reasonably likely to be released from the current legal restrictions, including:
- (a) the extent of the undervalue relative to a mixed use redevelopment of the site and its ability to dispose of it in that light;
 - (b) the extent of compensation liability where s.237 powers are used, given the unusual drafting of the restriction (which potentially relates to more than one compensatable property) and the fact that the Council bears the ultimate risk under Section 237, regardless of indemnities;
 - (c) the effect of using s.237 powers on best value considerations (in particular, the operation of the General Disposal Consent (England) 2003);
 - (d) the appropriateness of using of s.237 or compulsory purchase powers to release the restriction in circumstances where it would not fail the competition tests in the most recent Controlled Land Order (and may facilitate the introduction of a new operator that could cause those tests to be breached in future);
 - (e) the effect a small format foodstore would have on existing town centre traders and regeneration objectives;

- (f) the evidence base that supports the conclusion that the site is no longer needed for the original purpose for which it was acquired;
- (g) whether the CLG clearance to use the site for a purpose outside the Fit For Market Funding grant conditions is still current, in light of the radically different funding environment now in place;
- (h) what public procurement/ state aid constraints and timing issues arise from the Council's aspirations.

'Suitability'

- 6 The report does not explain that even if the Lawrence's Factory restriction was removed, the site is unsuitable to accommodate the scale of foodstore required to encourage people to stay in Desborough to carry out their main food shopping. The PPS4 Practice Guidance is clear (paragraph 6.42) that "*when judging the suitability of a site it is necessary to have a proper understanding of [the] scale and form of development needed*" and to consider whether more central sites are able to contribute to meeting the same requirements.
- 7 The Addendum Retail and Planning Report provided by Indigo Planning in March clearly sets out the development need, the appropriate scale of development to meet that need and the comprehensive inadequacy of the Lawrence's Factory site to do so. As such, a foodstore development on the site would be unable to satisfactorily meet the need/ demand that the Sainsbury's proposal is intended to serve. The Practice Guide is clear that more central sites should be rejected in these circumstances (paragraph 6.45).
- 8 The committee report misapplies PPS4 by repeatedly identifying the Lawrence's Factory site as a suitable alternative, notwithstanding that it could only house a significantly smaller store, which would be unable to meet the equivalent need, or deliver the same benefits, as the Sainsbury's proposal (as required by PPS4). The conclusions reached on PPS4 compliance are therefore unreasonable.

'Viability'

- 9 The Council has taken the view that it is financially unviable to redevelop the Lawrence's Factory site for mixed use. It has declined to share details of the financial calculations it has applied in reaching this view, but we understand that the retail use of the site it is driven by a desire to cross-subsidise 'Key Site 1'. The Council will no doubt take legal advice on whether this is a proper best value consideration under Section 123 of the Local Government Act 1972, but the need to release the current restrictive covenants and, potentially, fund community facilities, is a significant cost which would be likely to undermine scheme viability. That is not dealt with in the report.

Planned investment

- 10 The original purpose for which the Lawrence's Factory site was acquired has now been abandoned due to the complexities of developing the site. There is no clear scheme which the Sainsbury's proposal could properly be said to prejudice (nor, indeed, any evidence to support the suggestion that it would do so). It is wrong to suggest (on page 32) that the Sainsbury's proposals would have an adverse impact on planned investment in PPS4 terms where:
 - (a) the site is not allocated and there is an undefined scheme;
 - (b) there is no committed developer, occupier or funding;
 - (c) the beneficial effects of any Lawrence's Factory scheme on the vitality and viability of the town centre, were it to be delivered, is unknown (and unlikely, in our view, to be as substantial as the employment, transportation, accessibility, environmental and economic benefits of our client's scheme);

- (d) given the differences in the nature of what is now desired for the Lawrence's Factory site and our client's scheme, granting permission would not prejudice the Council's aims by undercutting operator demand or rental levels.

Reasons for refusal

- 11 For the reasons given above, the requirements of paragraph 17.1 of PPS4 in relation to sequential assessment and impacts are met and the committee report misdirects members on several critical issues (which renders recommended reasons for refusal 1 to 9 unreasonable).
- 12 Furthermore, the suggestion (recommended reason for refusal number 5) that the proposal would not "*take the opportunities available for improving the character and quality of the area and the way it functions*" cannot properly be reconciled with the fact that the application site is an undeveloped plot within an industrial park, previously approved by the Council for several PPS4 'main town centre' uses. That reason for refusal would also lead to the following direct benefits of the Sainsbury's scheme being lost:
- regeneration of a vacant gateway site into Desborough;
 - location close to more than 400 new homes (and further planned extensions of over 1,000 dwellings);
 - £75,000 Section 106 contribution for pedestrian/cycleway works to improve town centre connectivity;
 - £650,000 Section 106 contribution for bus service enhancements to route the no. 18 bus to the site and towards the Rushton community bus;
 - £75,000 Section 106 contribution for works to provide an improved bus interchange in the town centre;
 - £50,000 Section 106 contribution towards town centre management support.
 - assistance in setting up a Local Employment Partnership (LEP).
- 13 In relation to recommended reason for refusal number 10, the assessment of the application site in accessibility and design terms is confused and partisan (and does not adequately reflect the locational and design benefits of the proposals).

In these circumstances, the Council should treat our client's application favourably, having proper regard to EC10.1 of PPS4. Please would you confirm that this letter will be provided to Planning Committee members before they begin to determine the application.

Yours faithfully



Denton Wilde Sapte LLP

Cc Louise Holland, Development Officer

Head of Legal Services



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22 July 2010

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Dear Mrs Holland

**PLANNING APPLICATION REFERENCE: 2009/0734 – PROPOSED
FOODSTORE, MAGNETIC PARK, DESBOROUGH – PLANNING
COMMITTEE REPORT**

I write in relation to the above to bring to your attention a number of errors and inconsistencies in Committee report.

These errors relate to the application of the main retail tests (sequential test and impact) given the Councils contention at page 23 that these are “*the key issues to be assessed*”. The number and type of issues identified demonstrates the lack of robustness, inconsistency and level of confidence that Members can have in the Officer recommendation.

A further separate letter has been forwarded by Denton Wilde Sapte (“DWS”) focusing on sequential test and restrictive covenant issues, which will also be of interest to Members.

The comments are provided below:

Part A: “Planning Policy Context and Principle of Development”:

- Officers consider the proposal not to be “sustainable economic development”. This conclusion is incorrect. This is sustainable economic development, as assessed against PPS1. The out of centre location does not make it unsustainable, just less sustainable, than a town centre site. The supposed availability of a site in the town centre does not make the application proposal unsustainable in its own right. (Page 14 and Page 16);
- As above, just because the proposal does not deliver the same benefits as may be delivered via an alternative scheme does not make the development unsustainable or not compliant with policy (Page 15 and Page 16);
- The sequential test under PPS4 has no greenfield / brownfield element. Officers have confused the application of these concepts and the conclusions are misleading and inappropriate (Page 16, Page 22 and Page

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25);

- Section B of the report does not show that the Magnetic Park site is not a suitable site for the development. It only seeks to show that the Lawrence's Factory site ("LFS") is an appropriate site for the development (in the Councils view). Policy CSS9 is irrelevant given the application of the sequential test which effectively takes precedent (Page 16);
- The report states that the proposal can be accommodated within the town centre – it cannot. The Council have not applied the sequential test appropriately in accordance with PPS4 and the nature of the application proposal (refer to DWS letter) (Page 17);
- The report states that the proposal does not deliver environmental improvements in the town centre. It is not required to do so unless necessary to mitigate any impact and are in accordance with Circular 05/05. This is irrelevant given the out of centre location of the application site (Page18 and Page 63);
- Policy 64 of the Local Plan is not relevant. The LFS is not the subject of this application (Page18);
- The Council accept that Urban Design Framework for Desborough carries some weight but there is no reflection of this in consideration of the policy context for the LFS (Page 19 and Page 24). Significant work was undertaken to inform this document contrary to commentary in the report (Page 26);
- In the summary to section A, there is no acknowledgement of the s106 package, linked trips, and sustainability benefits and no evidence as to how this proposal will alter character of the town of Desborough as claimed by Officers (Page 63).

Part B: "Retail Impact"

Sequential Test

- The report confirms that PPS4 requires the application of the sequential assessment on the basis of "*whether a site is suitable for a **proposed development***" i.e. that which has been applied for. This is not the approach taken by the Local Planning Authority (Pages 20, 23 and 24). This is the subject of the correspondence from DWS;
- The Atkins report has not been the subject of public scrutiny. Its findings hold no planning policy weight (Page 24 and Page 26);

Suitability

- The proposed store on the LFS is not of a sufficient scale to meet full needs as detailed in retail assessment. It would not deliver the degree of self containment and self sufficiency envisaged by the Core Spatial Strategy

(Page 25);

- The examples of Sainsbury's stores elsewhere are irrelevant as their context is materially different to Desborough, given the scale and type of incumbent foodstore operators in Corby, Kettering and Market Harborough. The conclusion is contrary to the response provided by Roger Tym and Partners as the Councils retail planning advisors in correspondence with the Council (Page 25);
- The LFS is not suitable, available or viable and therefore is not sequentially preferable (Page 25);
- There is no guarantee that the LFS will be delivered. There is no evidence that a due diligence exercise has been undertaken (assessing conservation area / existing heritage assets / access and delivery / highways capacity issues) (Page 25 and 26);
- The proposed store on LFS is not of a similar scale. There is no proposal or planning application. It is 25% smaller than the Magnetic Park proposal and will not have the required "gravitas" (Page 27 and 28);
- No analysis of the deliverability of other components on LFS (car parking / petrol filling station / access / landscaping / back of house) has been provided (page 27);

Availability

- The LFS is not available – the identified retail need is required to be met now (Page 27);
- There is no evidence of progress on delivery of Lawrence's site in terms of contract; planning application; programme for delivery; public consultation; design; covenant removal; funding, which is further compounded by the challenging economic climate (Page 27);
- The position of the Co-op in relation to covenant was recently confirmed to Sainsburys. There is no prospect of release (Page 27);

Viability

- There is no evidence that the Council have considered the viability of the Lawrence's site for this foodstore proposal – rather than a foodstore proposal (Page 28);

Impact

- Officers have incorrectly applied Policy EC10.2 (a) of PPS4. The proposal should be judged on its own merits, not against the site specific characteristics of the LFS. This is not a comparative exercise and compromises the consideration of the proposal (Page 29);

- The design objections are subjective and unsubstantiated. The application was supported by significant environmental, visual and graphic justification for relation to siting, design and layout in accordance with PPS1, relevant DPD's and EIA regulations. The D&A statement and further supporting information justified position and made further amendments contrary to comments made by Officers (Page 44) Officers comments were not disregarded but were considered and discussed with Officers in meetings resulting in further amendments to car parking and landscaping (Page 30, pages 46 - 48).
- Landscaping is as permitted under the previous scheme and applicant was advised to retain by Officers – (Page 31)
- The report provides no evidence that this proposal will result in a lack of delivery of the LF site (Policy EC10.2(d)).(Page 31 and Page 34)

A number of these issues go to the heart of the recommendation and it is imperative that they are brought to the attention of the Committee members in advance of their consideration of the application. Therefore I request that this letter is circulated as a matter of urgency to Members.

Yours sincerely



Robert Crolla

cc: Ms Smales – Sainsbury's Supermarkets Limited
Mr R Oxley – Sainsbury's Supermarkets Limited
Mr R Pinnock – Denton Wilde Sapte

21 July 2010



Ms L Holland
Development Officer
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Bowling Green Road
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Dear Ms Holland

Sainsbury's Supermarkets Ltd, Land at Magnetic Park, Desborough
Application Reference: KET/2009/0734

Greatline Developments ('Greatline') wishes to object to the application by Sainsbury's Supermarkets Ltd for a new foodstore at the above site. We would appreciate it if you could notify your Members of our objection.

As you are doubtless aware, Greatline are involved in on-going negotiations with the Borough Council over the purchase of the Lawrence's Factory site, and the adjacent former Omnibus site, with the aspiration to bring forward a foodstore development to meet the recognised need in Desborough.

This aspiration fully accords with the aims and objectives of established and emerging policy within Kettering Borough Council. The Council agreed a preferred approach in September 2009 to develop a foodstore on the Lawrence's Factory site. A foodstore on this site, which is situated within Desborough town centre, would fully accord with planning policy at all levels.

Turning to consider the Sainsbury's application, Greatline fully endorses the Officer's recommendations to the Planning Committee.

PPS4 and the Sequential Assessment

Policy EC14 of Planning Policy Statement 4 (PPS4) sets out the supporting evidence required for planning applications for main town centre uses. A sequential assessment is required for main town centre uses that are not in an existing centre and are not in accordance with an up to date Development Plan. The requirement applies to retail or leisure uses where the proposed gross floorspace exceeds 200 square metres.

The proposed development exceeds this threshold and therefore a sequential assessment is required to support this planning application. The requirements for such an assessment are set out in Policy EC15 of PPS4.

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Policy EC17 of PPS4 states 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:

(a) The applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15) ..."

Lawrence's Factory Site

We are currently preparing a planning application for a new foodstore development on the Lawrence's Factory site.

The Lawrence's Factory site (including the Omnibus site) is identified by the local planning authority as a sequentially preferable site for the proposed development and is available, suitable, and viable for retail development. Agents on behalf of Sainsbury seek to argue that the Lawrence's Factory site is not suitable, viable or available. The planning officer's report to committee states that the local planning authority disagrees with these conclusions, and we endorse this view for the reasons detailed below.

The Lawrence's site represents a suitable location for a foodstore and is capable of meeting the main food shopping needs of Desborough, by accommodating a scale of foodstore sufficient to 'claw back' expenditure. The development of a supermarket at the Lawrence's Factory site was found by the 'Atkins Feasibility Study' to be the most viable development location, and there is no planning policy justification for the Lawrence's site not coming forward as a foodstore.

The Council is committed to bringing forward the Lawrence's site for a supermarket development and is actively promoting the site for retail use to meet the needs of Desborough and deliver regeneration to the wider town. Furthermore, the Lawrence's site can be brought forward in a reasonable timeframe.

The applicant has therefore failed to demonstrate that there are no sequentially preferable sites to accommodate the proposed development. In accordance with Policy EC17 of PPS 4 this application should therefore be refused in line with the unequivocal Officer recommendation.

Other considerations

The proposal will not deliver the much needed regeneration and enhancement of Desborough town centre, which are the key objectives and priorities of Development Plan Policy. Furthermore, it will result in an unsustainable form of economic development.

The proposed development is likely to result in significant adverse impacts, particularly on the vitality and viability of Desborough Town Centre, which is currently struggling as detailed in the

Roger Tym Health Check (July 2010). The development should be directed to the town centre to help facilitate regeneration and investment, to encourage people to visit the town centre and reduce the need to travel particularly by car.

Summary and Conclusions

The Sainsbury application has therefore failed to demonstrate compliance with the sequential assessment as advocated by Policies EC14 and EC15 of PPS4. There is a sequentially preferable site that is available, suitable, and viable for retail development of a scale that will meet the needs of the town.

Furthermore, we are currently preparing a planning application for a foodstore development on this sequentially preferable site. We consider a retail development on this site would better meet the needs of the town, be of a sufficient scale to serve as a main shopping facility, and 'claw back' trade leakage and expenditure to surrounding towns.

A foodstore in this location would act as an important catalyst for further investment to come forward in Desborough, and would regenerate a significant vacant site within the town centre. However, the proposal would be deterred should the Sainsbury's application be approved.

Therefore, we endorse the planning officer's recommendation that the planning application should be refused in line with Policy EC17.1 (a) of PPS4.

In conclusion we maintain that for the reasons set out above, the proposed development is contrary to policies of the Development Plan and National Planning Policy. Therefore, we endorse the planning officer's multiple reasons for refusal as detailed in the report to committee, and request that the application be refused.

Yours sincerely



Mark Wilkinson