

## AGENDA ITEM 4 – URGENT BUSINESS

<b>Parish:</b>	North Runcton	
<b>Proposal:</b>	Hybrid application seeking full permission for new supermarket (use A1), including cafe, petrol filling station and kiosk, recycling facilities, surface level car parking, new access roundabout, landscaping, servicing and associated works plus outline permission for new Pinguin cold store facility and associated equipment (use B2/B8) with all matters reserved except access	
<b>Location:</b>	Land On The South East Side Of Scania Way King's Lynn Norfolk	
<b>Applicant:</b>	Sainsbury's Supermarkets Ltd And Morston Muckworks Ltd	
<b>Case No:</b>	09/00216/OM (Outline Application - Major Development)	
<b>Case Officer:</b>	Mr D Parkin Tel: 01553 616468	<b>Date for Determination:</b> 13th May 2009

**Purpose of Report** – To allow the Board to consider the resolution to grant consent for the above application in light of issues raised by solicitors acting for Tesco.

### 1. INTRODUCTION

At the special meeting of the Development Control Board on 16<sup>th</sup> June the Board considered applications 09/00216/OM (submitted by Sainsbury's and Morston) and 09/00713/OM (submitted by Tesco). The Board resolved to grant consent for 09/00216/OM and refused consent for 09/00713/OM. The Board considered a second report at its meeting of 12<sup>th</sup> July 2010. At this meeting the Board considered and reaffirmed the detailed reasons for approving the application 09/00216/OM as well as the conditions to be attached to any consent and the details of the Section 106 agreement. Copies of both reports (including late correspondence and minutes) are appended for completeness.

The application was subsequently referred to the Government Office under the provisions of the Town and Country Planning (Shopping Development) (England and Wales) (No.2) Direction 1993. The Government Office has advised that the Secretary of State does not wish to recover the decision and that the Council is free to determine the application.

However, lawyer's acting for Tesco have raised issues that need to be brought to the attention of the Board before the Sainsbury's application is finally determined.

### 2. ISSUES RAISED

#### A) Material Change in Circumstances

Tesco's lawyers claim that the submission by Tesco of another application for redevelopment of the Campbells/Tesco site on Hardwick Road represents a material change in circumstances since the Board resolved to grant consent for application 09/00216/OM on the Pinguin site, and that the Council needs to consider this change before finally coming to a decision on the Sainsbury's application.

At the meeting on 16<sup>th</sup> June when the Board resolved to grant consent for application 09/00216/OM, members also considered the merits of application 09/00713/OM for 09/00216/OM

redevelopment of the Campbells/Tesco site. The report that covered that application and 09/00216/OM is appended for information.

Application 09/00713/OM is described on pages 32 to 34 of the report to the 16<sup>th</sup> June meeting. The description of the development was:-

Outline planning application for the redevelopment of the former Campbell's factory and existing Tesco store (following demolition of existing buildings) for phased, mixed use development comprising employment uses (use Classes B1, B2 & B8), a replacement supermarket (Use Class A1), hotel (C1), restaurant (A3), public house (A4) and car showroom. Reserved matters in respect of access (including alterations and improvements to the Hardwick Road and existing sites access) are to be determined. These arrangements will serve all phases of development. All matters in respect of the first phase of development are to be determined. The first phase comprises the erection of a replacement supermarket (A1) including a cafe, petrol filling station and kiosk, recycling facilities, car parking, home delivery centre, new access and road infrastructure, servicing and associated works.

As members are aware, that application was subsequently refused at the meeting on the 16 June 2010. The latest application for the Campbells/Tesco site (application 10/01219/OM) was validated on 12<sup>th</sup> July and is for the following development:

Outline planning application for the redevelopment of the former Campbell's Factory and existing Tesco store (following the demolition of existing buildings) for a phased, mixed use development comprising uses (Use classes B1,B2 and B8), a replacement supermarket (use A1), hotel (C1), restaurant (A3), public house (A4) and car showroom (sui generis). Reserved Matters in respect of access (including alterations and improvements to the Hardwick Road and existing sites access) are to be determined. These arrangements will serve all phases of the development. All matters in respect of the first phase of the development are to be determined. The first phase comprises the erection of a replacement supermarket (A1) including cafe, petrol filling station and kiosk, recycling facilities, car parking, home delivery centre, new access and road infrastructure, servicing and associated works and 5575m<sup>2</sup> of employment floorspace consisting of 929m<sup>2</sup> of use class B1 and, 4646m<sup>2</sup> of use class B8, arrangements will serve all phases of the development.

From a comparison of the descriptions, the Board will note that the difference between application 09/00713/OM and application 10/01219/OM is that 5,575m<sup>2</sup> of employment floorspace is included in the first phase of development for which full consent is sought by application 10/01219/OM. The first phase of application 09/00713/OM only sought full consent for a foodstore. In all other respects the total amount of floorspace in each application is the same, as shown in the table below. The layouts are also the same for both schemes as at the time of writing.

Land use	09/00713/OM		10/01219/OM	
	Full consent	Outline consent	Full consent	Outline consent
Replacement store	10,393m <sup>2</sup>		10,393m <sup>2</sup>	
Employment uses		Max 21,830m <sup>2</sup>	5,575m <sup>2</sup>	Max 16,255m <sup>2</sup>
Hotel		1,710m <sup>2</sup>		1,710m <sup>2</sup>
Public House		952m <sup>2</sup>		952m <sup>2</sup>
Restaurant		405m <sup>2</sup>		405m <sup>2</sup>
Car showroom		5,750m <sup>2</sup>		5,750m <sup>2</sup>

The split of employment uses in the outline elements of both applications will ultimately depend upon the resolution of traffic issues, as indicated in pages 34 and 65 of the report to the Board on 16<sup>th</sup> June. However, the split between employment uses for which full consent is sought under 10/01219/OM is 929m<sup>2</sup> B1 (offices, light industrial and research and development) and 4,646m<sup>2</sup> of B8 (warehousing and storage) and the traffic assessment will reflect this split.

Application 10/01219/OM is also accompanied by a draft legal agreement, the contents of which are similar to those proposed by the applicant with 09/00713/OM as outlined in Table 12 of the report to the Board on 16<sup>th</sup> June with the addition of a contribution of £100,000 towards a footbridge over the railway line to link the site with the NORA development, which was outlined in late correspondence to the Board on the 16 June 2010 meeting.

However, there is an additional clause in the draft agreement in which the developer commits to the following:-

- a. To deliver the Phase 1 Employment Land for employment uses prior to the Occupation of the Retail Store;
- b. Prior to Commencement of the Retail Store to submit the Marketing Strategy to the Council for approval (such approval to be given if the Council does not provide a substantive response to the Parties within 14 Working Days of submission);
- c. Subject to the Marketing Strategy being approved by the Council under paragraph 10(b) (or deemed approved) to use reasonable endeavours to market the Phase 2 Employment Site for a minimum of 12 months in accordance with the Marketing Strategy.

The following definitions apply:-

“Employment Land” means the Phase 1 Employment Land and the Phase 2 Employment Land known as the former Campbell’s factory forming part of the Site and shown edged red on Plan 1

“Marketing Strategy” means a scheme to be submitted to and approved by the Council for the ongoing marketing of the Phase 2 Employment Land for employment uses at market value

“Phase 1 Employment Land” means 5575 sqm of the Employment Land shown edged red on Plan 4 annexed hereto

“Phase 2 Employment Land” means that part of the Employment Land which is not within the Phase 1 Employment Land shown edged red on Plan 5 annexed hereto.

This clause could, subject to agreement, provide a mechanism to secure delivery of 5,525m<sup>2</sup> of employment floor space prior to occupation of the retail store through application 10/01219/OM.

The Board is reminded that application 09/00715/OM was refused for three reasons as follows:-

1. *The comparison goods floorspace proposed as part of this development, when taken cumulatively with the comparison floorspace approved under application 09/00216/OM, would have a significant adverse impact upon the vitality and viability of King’s Lynn Town Centre. Consequently, the proposal is contrary to central government policy as expressed in PPS4 ‘Planning for Sustainable Economic Growth’ as well as to policies SS6 and E5 of the East of England Plan and to saved policy SS9 of the King’s Lynn and West Norfolk Local Plan 1998*

2. *The applicant has failed to demonstrate either:*
  - i. *That traffic generated by the development will not cause undue interference with the safe and free flow of traffic on the Hardwick Road, which is a busy principle route, or that the traffic would not be incompatible with the use of the A47 trunk road as part of the national system of routes for through traffic; or*
  - ii. *That the proposal represents a sustainable form of development as the Travel Plan submitted is inadequate.*

*Consequently, the proposals are contrary to national government policy as expressed in PPG13 and PPS4 as well as to saved policy T2 of the Norfolk Structure Plan 1999.*

3. *In the absence of evidence to the contrary, the traffic generated by the proposed development, when considered cumulatively with that generated by the development approved under application reference 09/00216/OM, is likely to have an adverse impact upon the safe and free flow of traffic both on the local and strategic road network. The proposals are therefore contrary to national government policy as expressed in PPG13 and PPS4 as well as to saved policy T2 of the Norfolk Structure Plan 1999.*

Application 10/01219/OM has not addressed those reasons for refusal; indeed it was not accompanied by any information to address them when submitted although that has subsequently been provided and is being reviewed. There is a holding direction from the Highways Agency preventing the Local Planning Authority from granting planning permission that is valid until 30<sup>th</sup> September. Consultants GVA Grimley are reviewing information on cumulative impact upon the town centre of the comparison goods floor space proposed by the Tesco and Sainsbury's scheme. As the Board consider this report, the Highways Agency maintains their direction and initial advice from GVA Grimley indicates that the information submitted may not address the issue of cumulative retail impact. There has been no confirmation that the outstanding issues will be resolved in the near future.

The purpose of this report is to bring to the attention of the Board the new material considerations which accompany the second Tesco application and for the Board to decide whether the new or enhanced benefits claimed by Tesco outweigh the advantages of the Sainsbury's proposal. If that is the Board's position, it is recommended that the Board defer a decision on the Sainsbury's application until such time as it is able to consider both the Tesco and Sainsbury's proposal together.

If the Board considers that, having given consideration to the changes outlined above, the Sainsbury's application remains the preferred application, then they may reaffirm the resolution to approve the Sainsbury's proposal subject to consideration of the remainder of this report.

## **B) The Weight to be Attached to Delivery of the Cold Store**

The report to the Board on 12<sup>th</sup> July asked the Board to reaffirm its reasons for approving Sainsbury's and Morstons proposals for the Penguin site. The minutes record the 3<sup>rd</sup> reason for refusal as starting with the following sentence:

*"The proposal would result in the creation of jobs directly in the new retail unit and would assist in supporting an existing employer (Penguin Lutosa) through the provision of a new and improved cold store facility".*

Tesco's lawyers have criticised the approach taken by members because it is suggested that they had no evidence before them that a mechanism existed or exists to guarantee that the cold store will actually be delivered if consent was to be granted, there being no provision for

this in the draft section 106 agreement. Tesco thus assert that if the Council proceeds to issue a planning permission on this basis it will act unreasonably and unlawfully.

Since this issue has been raised, your officers have discussed the matter with the applicants. They have confirmed by letter dated 3<sup>rd</sup> September that they are willing to include a clause in the Section 106 agreement to secure submission of a reserved matters application within three years of the grant of outline permission and to implement the consent within a further two years of approval of the reserved matters application.

### **3. CONCLUSION**

Lawyers acting for Tesco have raised two issues that the Board needs to consider before a decision on application 09/00216/OM for redevelopment of the Penguin site to provide a retail unit (full permission) and cold store (outline permission) is finally made. These are outlined in the above report and the options open to the Board are outlined in section 2 above.

#### **RECOMMENDATION:**

The Board is asked to consider and respond to the following points:-

- a. Whether or not the new or enhanced benefits claimed by Tesco, outlined in section 2A, outweigh the advantages of the Sainsbury's proposal; and
- b. If the answer to (a) is that the benefits of the new Tesco proposal do outweigh the advantages of the Sainsbury's proposal then the Board should defer a decision on the Sainsbury's application until such time as it is able to consider both the Tesco and Sainsbury's proposal together; or
- c. If the answer to (a) is that the benefits of the new Tesco proposal do not outweigh the advantages of the Sainsbury's proposal, then the Board should reaffirm its decision to grant consent for the reasons outlined in the minutes of the meeting of 12<sup>th</sup> July, subject to the conditions and details of the Section 106 described in the report considered on 12<sup>th</sup> July but with the inclusion of clauses in the Section 106 agreement to secure the provision of the cold store.

## **BACKGROUND PAPERS**

Application file reference: 09/00216/OM

Item 7/1(b) on the agenda of the special meeting of the Development Control Board on 16th June 2010

Summary of Correspondence Received after Publication of the Agenda for the special meeting of the Development Control Board on 16th June 2010

Minutes of the special meeting of the Development Control Board on 16th June 2010

Item 9 on the agenda of the meeting of the Development Control Board on 12<sup>th</sup> July 2010

Summary of Correspondence Received after Publication of the Agenda for the meeting of the Development Control Board on 12th July 2010

Minutes of the meeting of the Development Control Board on 12th July 2010