

REPORT

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Councillor D Brown: Cabinet Member for Environment & Transport

SHOPPING TROLLEYS

1. Report Summary

To report to Cabinet on:

- 1.1 The terms of an agreement ["the agreement2} between the council and Sainsbury's Supermarkets Ltd ["Sainsbury's"] and Tesco Stores Limited ["Tesco's"] to establish shopping trolley corrals in Salisbury.
- 1.2 Progress with the provision of corrals and coin deposit trolley locks by Tesco's and Sainsbury's.

2. Background

- 2.1 On 24.04.2002 Cabinet agreed amongst other things:
 - To adopt a scheme for the provision of trolley bays at various locations in Salisbury
 - Revenue costs to be reviewed annually
 - That a progress report be submitted to Cabinet 6 months after the scheme was implemented
 - Consideration be given to referring any supermarket that declined to introduce a coin deposit locking system to the Environment Agency
- 2.2 On 16th October 2002 Cabinet agreed to delete the requirement for an annual review of revenue cost arising from the loss of car parking spaces associated with the implementation of the scheme.
- 2.3 The council entered into the agreement on 21st October 2003. A copy is attached to this report.
- 2.4 Following an initial improvement after the agreement the number of abandoned or dumped trolleys appears to have returned to its former level.
- 2.5 Tesco's has not achieved conversion to trolleys with coin deposit mechanisms largely due to trolleys from their Southampton Road store finding their way into the City centre.
- 2.6 Between August 24th and September 10th 2004 Wiltshire Wildlife Rescue reported that they had removed 9 trolleys from the rivers.
- 2.7 In September 2004 a representative of St Edmunds & Milford Community Association convened a meeting with officers of Salisbury District Council, the Environment Agency and the Wiltshire Wildlife Rescue, as there were still numerous trolleys in use but without coin deposit mechanisms.
- 2.8 Despite numerous deputations to Tesco's by the Chair of the City Area Committee, between October and Christmas 2004 trolleys without coin deposit mechanisms were still in use and available for use in the Tesco's Castle Street store.
- 2.9 Trolleys are still being abandoned including those with coin deposit mechanisms.
- 2.10 Wiltshire Wildlife Rescue reported that over 100 abandoned trolleys were identified on one weekend in early January.
- 2.11 Construction of the trolley bays was not substantially complete until early summer 2004. As at January 2005 some bays still are incomplete, some damaged and there is no adequate signage.
- 2.12 Prior to the meeting of Cabinet on 19th January 2005 a member of the public gave notice of a question asking amongst other things whether

- The agreement was adequate
 - It had been broken by Tesco
- 2.13 At the meeting of Cabinet the member of the public asked an extended version of the question alleging amongst most things that the agreement failed to include any obligations on Sainsburys and Tesco to operate an effective system to stop trolleys being abandoned in Salisbury.
- 2.14 It was agreed that a report would be brought to Cabinet at its March meeting for Cabinet to consider the terms of the agreement and progress with the overall scheme.

3 The agreement

- 3.1 It is clear from the Cabinet minute of 24.04.2002 that the scheme would not necessarily secure any obligations on the part of the participating supermarkets to introduce a coin deposit locking system where they had not already done so.
- 3.2 Members are referred to clause 1.1 of the agreement. This follows comments made by Tesco to the council by letter dated 05.08.2003. The spirit of the agreement is that the council will not charge for the use of its land given over to the provision of trolley bays and in turn Sainsburys and Tesco will amongst other things aim to use coin deposit shopping trolleys. There are no further references to coin deposit shopping trolleys in the agreement.
- 3.3 On 09.12.2003 the council was advised by Tesco that the lockable trolleys "re now signed off by our RDG group, which is something that didn't happen previously" and that it was hoped that approval would be given "and then the order can go in" but that "it may be that the bays are in place and the lockable trolleys follow a bit more gradually."
- 3.4 It would be inappropriate for the Head of Legal & Property to offer a view on the adequacy of the agreement in the context of the above.
- 3.5 Although the agreement records Sainsburys and Tesco aspirations to introduce coin deposit shopping trolleys the agreement does not contain any actual obligations on them to do so. To that extent they have not broken the agreement.
- 3.6 The Head of Legal & Property is not able to offer a view on whether the agreement has been broken in any other material particular in the absence of any specific allegations that Sainsburys and/or Tesco have done so.
- 3.7 It is open to any of the parties to the agreement to end it at any time on giving at least one calendar months prior written notice although where the council wishes to end it the council will use its best efforts to give as much notice as possible. In the event that the agreement is ended Sainsburys and Tesco are required to remove the trolley bays and make good the council land involved.

4 Recent Developments

- Following discussions with Tesco Head Office, a representative from City Centre Management convened a meeting on 27th January 2005 with local representatives from both Tesco stores in Salisbury, Tesco National Trolley Manager and the Waste Management Officer from Salisbury District Council. Also attending was the Managing Director of Trolley Collections PLC, a contractor for Tesco. At this meeting it was agreed that:
- 4.1 Salisbury District Council, Wiltshire Wildlife Rescue & City centre Management would run an awareness campaign about the dangers of trolleys in rivers affecting wildlife.
- 4.2 Trolley Collections PLC would organise a three-month trial of their collection service to start on the 28th February 2005. They will collect trolleys from any retailer that are abandoned and arrange for their return. Stores will need to agree to a scheme of payment.
- 4.3 There will be one sweep of the city centre at 2.00pm and a citywide sweep at 9.00pm. This is in addition to the existing collections by the stores.
- 4.4 Tesco (Castle Street) will have all trolleys fitted with new locks by 3rd February 2005.

- 4.5 Tesco's (Southampton Road) will have diagonal automatic wheel locking systems fitted to prevent trolleys being taken out of their car park by the end of February 2005.
- 4.6 An improved trolley hotline will be set up and hosted by Tesco's (Castle Street) for any store's abandoned trolleys.
- 4.7 Trolley Collections PLC will provide a written proposal to Salisbury District Council.
- 4.8 Review of the trial in 3 months.

5 Legal powers:

- 5.1 The council has previously adopted powers available to it under the Environmental Protection Act 1990 to seize abandoned trolleys and charge for their return. Such powers are only effective if trolley owners wish to reclaim their trolleys.
- 5.2 There are a variety of other powers potentially available to the council in certain defined circumstances under various bits of legislation as well as to other statutory bodies such as the Environment Agency.

6 Consultation Undertaken : None.

7 Recommendation : That Cabinet note the report.

8 Background Papers :None.

9 Implications:

- Key decisions : N/A
- Financial : None
- Legal : Set out in report
- Human Rights : None
- Personnel : None
- Community Safety : None
- Environmental : contained in report
- Council's Core Values : excellent service, environmentally conscious, willing to be an open learning council and a willing partner
- Wards Affected : City

AGREEMENT DATED [21st] day of [October] 2003 **BETWEEN**

- (1) SALISBURY DISTRICT COUNCIL of The Council House, Bourne Hill,
Salisbury, Wiltshire, SP1 3UZ (the Council)
- (2) SAINSBURY'S SUPERMARKETS LIMITED [Ltd] whose Registered Office is at 33
Holborn, London EC1N 2HT (Sainsbury)
- (3) TESCO STORES LIMITED whose Registered Office is at Tesco House,
Delamare Road, Cheshunt, Waltham Cross, Hertfordshire, EN8 9SL (Tesco)

I. RECITALS

- I.1 The parties have reached agreement with the aim that shopping trolleys from Sainsbury and Tesco will use coin deposit shopping trolleys and that these will be kept within shopping trolley bays in the Council's Car Parks making them easier for Sainsbury and Tesco to collect and causing less inconvenience for the Council's customers using the Car Parks
- I.2 The Council will not seek to make a charge for the use of its land for the shopping trolley bays

2. INTERPRETATION

- | | | |
|-----|-----------------------|--|
| 2.1 | Car Parks | The Council's car parks listed in the Schedule to the Agreement |
| 2.2 | Shopping Trolley Bays | Bays for the parking of coin deposit shopping trolleys in the Car Parks by shoppers at Sainsbury and Tesco and shown on the plans annexed hereto |

3. LICENCE TO SAINSBURY AND TESCO

The Council grants a licence to Sainsbury and Tesco to construct shopping trolley bays in the Car Parks. The number to be constructed in each car park is set out in the Schedule

4. COVENANT BY COUNCIL

The Council will not make a charge to Sainsbury or Tesco for the use of its land for shopping trolley bays

5. SAINSBURY'S AND TESCO'S OBLIGATIONS

- 5.1 To construct the shopping trolley bays and thereafter maintain them during the period of the Licence
- 5.2 Tesco shall construct the shopping trolley bays and Sainsbury shall pay to Tesco a contribution towards the cost of construction equal to the proportion of the whole cost as the proportion of their shopping trolley bays bears to the whole number of such bays.
- 5.3 Agree the specific location of the shopping trolley bays with the Council following site visits
- 5.4 To obtain the Council's written approval of the design and specification of the shopping trolley bays before commencing work
- 5.5 Complete construction of the shopping trolley bays within 3 calendar months of completion of this agreement
- 5.6 To each maintain and keep in good repair their respective shopping trolley bays throughout the term of this Agreement
- 5.7 Maintain public liability insurance cover of at least £5m and produce a copy of the insurance policy when required to do so by the Council

- 5.8 Not to use the shopping trolley bays nor allow them to be used in such a manner as may create a nuisance
- 5.9 During construction to minimise the disruption to the Car Parks and to make good any damage caused to the Council's satisfaction
- 5.10 To indemnify and keep indemnified the Council from and against any loss, damage or liability (whether criminal or civil) suffered and any legal fees and costs incurred by the Council resulting from a breach of this agreement as follows:
- 5.10.1 in the case of Sainsbury's, any breach of this agreement by Sainsbury's including any act, neglect or default by Sainsbury's or its servant's, agents or employees
- 5.10.2 in the case of Tesco, any breach of this agreement by Tesco including any act, neglect or default by Tesco or its servant's, agents or employees
- 5.11 Not to assign this agreement without the prior written consent of the Head of Environmental Health Services
- 5.12 Except as may be authorised by the Head of Environmental Health Services not to contact any officer, servant, agent or employee of the Council otherwise than through the Waste Minimisation and Recycling Officer

6. TERMINATION

This agreement shall continue until it is terminated by any one of the parties giving at least one calendar month's written notice to the others. The Council shall however use its best endeavours to give as much notice as possible should it wish to terminate the agreement

7. TERMINATION FOR BREACH

The following obligations are conditions of this agreement and any breach of them by Sainsbury or Tesco shall be deemed a fundamental breach by Sainsbury or Tesco as appropriate which shall determine this agreement immediately in respect of Sainsbury or Tesco as appropriate and the rights and liabilities of the parties shall thereafter be determined as further provided for in this agreement

- 7.1 Failure on the part of Sainsbury or Tesco to observe any obligation under this agreement provided that the Council shall have given Sainsbury or Tesco, as appropriate, written notice of such failure and an opportunity to remedy such failure within 14 days of the date of such written notice if remedying such failure is appropriate in the circumstances of the breach
- 7.2 The levying of any distress or execution against Sainsbury or Tesco or the liquidation of Sainsbury or Tesco (other than a members' voluntary liquidation with the written consent of the Council)

8 CONSEQUENCES ON TERMINATION

- 8.1 On termination of the contract by the Council both Sainsbury and Tesco shall remove the shopping trolley bays and make good the surface of the car park at their own expense and to the satisfaction of the Council provided that if the Council have terminated the agreement in order to redevelop the car park the extent of the making good required, if any, shall be agreed between the parties
- 8.2 In the event that termination is for breach Sainsbury or Tesco, whichever one is in breach, shall remove their shopping trolley bays and make good the

surface of the car park at their own expense and to the satisfaction of the Council

9. WARRANTY

Each of the parties warrants its power to enter into this agreement and has obtained all necessary approval to do so

10. SEVERANCE

If any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieved the intention of the parties without illegality or at the discretion of the Council it may be severed from this agreement

11. CHANGE OF ADDRESS

Each of the parties shall give notice to the other of the above or acquisition of any address or telephone, fax or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition

12. NOTICES

Any notice to be served on any of the parties by any of the others shall be sent by pre-paid Recorded Delivery post, or by facsimile transmission and shall be deemed to have been received by the addressee within 72 hours of posting if by pre-paid Recorded Delivery or 24 hours if sent by facsimile transmission if sent to the correct facsimile number provided that any notice to be served upon the Council shall be directed to the Head of Environmental Health Services at The Council House
Bourne Hill Salisbury SP1 3UZ

13. THE COUNCIL'S RIGHT TO ASSIGN

This agreement and all rights under it may be assigned or transferred by the Council

14. PROPER LAW & JURISDICTION

- 14.1 This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to be made in England
- 14.2 Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in England and Wales
- 14.3 The submission by the parties to such jurisdiction shall not limit the right of the Council to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate
- 14.4 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 11.

15. WAIVER

The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement

16. COSTS

Each of the parties shall pay any costs and expenses incurred by it in connection with this agreement

17. THIRD PARTY RIGHTS

A person who is not a party to this agreement has no right under the contract (Rights of Third Parties) Act 1999 to enforce any terms of this agreement

18. HEADINGS

Headings contained in this agreement are for reference purposes only and shall not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate

19. ARBITRATION

All disputes or differences which at any time arise between the parties or any of them whether during the term or afterwards touching or concerning this agreement or its construction or effect of rights, duties or liabilities of the parties or any of them under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this agreement shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institution of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force

THE SCHEDULE

Car Parks	Number of Shopping Trolley Bays	
Central	Sainsbury	7
	Tesco	8
Maltings (lower deck)	Sainsbury	5
	Tesco	5
Brown Street	Sainsbury	1
	Tesco	1
Salt Lane	Sainsbury	1
	Tesco	1

IN WITNESS whereof the parties hereto have hereunto affixed their Common Seals
the day and year first before written

THE COMMON SEAL of)

SALISBURY DISTRICT COUNCIL)

was hereunto affixed in the presence of: -)

Authorised Signatory

THE COMMON SEAL of)

SAINSBURY'S SUPERMARKETS)

LIMITED [Ltd] was hereunto affixed in the)

presence of: -)

Director [Authorised Signatory]

Director/Secretary [Authorised Signatory]

THE COMMON SEAL of) [EXECUTED AS A DEED BY]

TESCO STORES LIMITED was)

hereunto affixed in the presence of: -) [ACTING BY]

Director

Director/Secretary