

S104/1239

APPENDIX 6

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Appeal Decision

355600

S1762

Inquiry held on 21 October 2003
Site visits made on 21 November 2003

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by Alan Novitzky B Arch MA(RCA) PhD RIBA
an Inspector appointed by the First Secretary of State

Date 3 DEC 2003

Appeal Ref: APP/C1950/A/03/1113687
Tesco Store, Oldings Corner, Great North Road, Hatfield, Herts, AL9 5JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tesco Stores Ltd against the decision of Welwyn Hatfield District Council.
- The application (Ref. S6/2000/1244/FP), dated 18 September 2000, was refused by notice dated 27 September 2002.
- The development proposed is *front, side and rear extensions to provide additional sales floorspace, customer facilities and an extension to the bulk store.*

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out in the Formal Decision below.

Procedural Matters

1. The Inquiry sat on 21 and 22 October 2003, was adjourned and resumed on 21 November 2003. Site visits took place on 21 November 2003.
2. I have attached all documents and plans submitted to the Inquiry, including proofs of evidence. The proofs are as originally submitted. Unless expressly stated they do not take account of how the evidence may have been affected by cross examination or other aspects of the Inquiry.

Main Issues

3. The main issues are:
 - (i) Whether need for the proposal exists.
 - (ii) Whether the sequential test has been satisfied.
 - (iii) The effect of the proposal on the vitality and viability of existing centres and on planning strategies to maintain and promote their vitality and viability.
 - (iv) The effect of the proposal on travel patterns in the area.
 - (v) The fallback position.

Planning Policy

4. The development plan includes the Hertfordshire Structure Plan Review, adopted April 1998, covering the period to 2011 (SP), and the Welwyn and Hatfield District Plan Alterations No 1, adopted March 1998, covering the period to 2001 (LP). The inquiry into the District Plan Review Second Deposit June 2002 (ELP) has taken place and the Inspector's report is awaited. There are a number of objections on retailing and town centre matters but the ELP is in conformity with the Structure Plan and most accurately reflects government guidance on these matters. I will therefore give it considerable weight.

5. The Statement of Common Ground (SoCG) lists the policies to which the parties draw attention. The most important policies, for this case, are described below:
6. ELP Policy TCR1 states that new retail development must be located in accordance with the sequential approach set out in government guidance on retailing and town centres. The preferred location for retail development is within the district's town centres on sites identified in the following policies:
 - (i) TCR4 - Welwyn Garden City Town Centre North.
 - (ii) TCR5 - Campus East, Welwyn Garden City.
 - (iii) TCR5A - Southern End of Town Centre, Welwyn Garden City.
 - (iv) TCR14 - Hatfield Town Centre East (Reference to this Policy was omitted in error from the SoCG).

Other locations within the primary retail cores of the two town centres will be considered where this accords with town centre strategies. Retail development on sites on the edge of the town centres will be considered where there is clear need, where no sites within the primary retail cores are suitable, and where it would not conflict with the town centre strategies and specifically not harm the vitality and viability of the primary retail cores.

7. ELP Policy HATAER2 states that the redevelopment of the Hatfield Aerodrome Inset Site should provide for a variety of land uses. Any retail and leisure development shall be located within the local centre for the site and will be limited in scale to that necessary to meet local needs. ELP Policy HATAER4 sets out land use proposals.
8. ELP Policy TCR3 sets out the criteria to be applied to proposals for retail development in out of centre locations, such as the appeal site, including the extension of existing retail stores, which include:
 - (a) Need for the additional retail floorspace, which cannot be met within any of the district's town, village or neighbourhood centres.
 - (b) Application of the sequential approach.
 - (c) Absence of harm to the vitality and viability of the district's town, village or neighbourhood centres, either on its own or with other recent similar developments.
 - (d) Accessibility by choice of means of transport.
 - (e) Acceptable levels of car traffic and absence of prejudice to road safety.
 - (f) Absence of harm to the ELP strategies for the town centres.
9. ELP Policy M6 seeks improvements in facilities for the safe and convenient movement of pedestrians. ELP Policy M7 aims to encourage cycling through the inclusion of safe cycle routes and parking for cycles. Developers may be required to provide or contribute towards off-site facilities and the overall planned cycle network.

Reasoning

FIRST ISSUE - Need

Quantitative Need

10. The proposal involves additional net retail floorspace of some 1000 square metres, increasing the existing floorspace by just over 20%. At present, some 18.4% of the

floorspace is devoted to comparison goods sales. The Appellant aims to devote approximately two thirds of the additional floorspace to comparison goods.

11. The Appellant and the Council adopt very different approaches to the analysis of quantitative need. There is little between the parties regarding growth in convenience goods expenditure. This amounts to quite a small figure, easily capable of being absorbed by the allocated sites in the ELP, and does not, of itself, indicate a quantitative need for the proposal. However, there is disagreement over comparison goods expenditure growth. The Council maintains that the ELP allocated sites easily cover growth, whilst the Appellant points to a much greater growth than could be covered by the ELP allocated sites.
12. Whatever the argument for the inclusion of the comparison element of the proposed extension within comparison goods expenditure growth, the store would remain a convenience business. With regard to convenience goods, the Appellant maintains that the catchment areas are not in equilibrium, that there is significant overtrading based on turnover per unit floor area compared with company averages and that there is significant leakage of expenditure to stores outside the catchment areas.
13. The Appellant's quantitative analysis takes these aspects fully into account in arriving at a figure for need which is far too much for the ELP allocated sites to satisfy on their own. On the other hand, the Council prefers to confine its quantitative need assessment to growth in expenditure. It notes that checks should be made at a later stage to test whether modifications are necessary to take account of overtrading or clawback of expenditure leakage, but the nature of these checks is unclear.
14. I have studied the appeal decisions and the Inspector's report submitted by the parties on the admissibility of overtrading and clawback as factors in quantitative need calculations. In my view, provided a realistic view of quantitative need results, it does not matter which methodology is followed. However, no cogent analysis has been undertaken by either side to indicate the quantum of overtrading or clawback that should be taken into account in arriving at a realistic assessment of need.
15. The Appellant's evidence shows that most of the convenience stores in the Welwyn Hatfield area are overtrading. Taken as a whole, the stores in the area appear to be overtrading by approximately one-third above their respective national company averages. In particular, Tesco at Oldings Corner appears to be trading well above its company average.
16. There can be many reasons for overtrading, including regional variation in turnover and advantageous siting. Also, the introduction of 24 hour trading can alleviate some of the physical symptoms of overtrading but distort turnover figures. I would expect turnover in this affluent part of the country to be substantially above the national average. Also, the Tesco store is remarkably well connected to the road network and, in my view, its convenient location, perhaps on commuter routes, helps it to trade above company average. Moreover, unless overtrading gives rise to difficulties, such as congested shopping conditions or loss of trade from the catchment areas, it may be of no consequence.
17. Whilst overtrading figures of this magnitude probably indicate some repressed demand, and this accords with the relatively high degree of activity I observed on my site visits to the various stores, the figures are unlikely to reflect quantitative need on a one for one basis. From the evidence presented at the Inquiry, and its manner of analysis, only a very approximate judgment can be made of the extent of repressed demand.

18. Turning to leakage, assessment is immediately complicated by the fact that Welwyn GC and Hatfield centres do not exist in isolation but are in close proximity to a number of other centres of equivalent or superior ranking in the retail hierarchy. Catchment areas inevitably overlap. In these circumstances comparison of inflow and outflow figures is fraught with difficulty. In my view, an adequate basis of comparison did not emerge at the Inquiry, albeit the Appellant excluded leakage from the catchment zone nearest to St Albans in its analysis, on the basis that outflow would be expected towards St Albans as a minor sub-regional centre.
19. Nevertheless, overtrading, if representing unsatisfied demand within the catchment areas, naturally leads to leakage. In this case, I think that some clawback of trade lost from the catchment areas is a realistic proposition without harming other centres.
20. Overall, I consider that a body of quantitative need for convenience goods exists over and above that arising from expenditure growth. The proposal's floor area is quite small in relation to the area of the ELP convenience store allocation and, provided demand exists for the allocation, very little margin of need would be required to satisfy the proposal. The position is less clear with regard to comparison goods. However, expenditure growth in comparison goods is nationally much higher than that of convenience goods. In the interests of maintaining what *Planning Policy Guidance: Town Centres and Retail Developments* describes in paragraph 3.2 as the mainstay of retailing in most sizeable town centres, the comparison goods element of the proposal could be contained to much the same proportions as exist at present. I find that quantitative need beyond that represented by the ELP allocation may well exist sufficient to meet the floor area of the proposed extension.
- Qualitative Need*
21. The store is very busy and, although I did not see excessive queuing at checkouts or congestion in lobby areas on my visit, there were clear difficulties in keeping shelves stocked. Aisles were obstructed by goods trolleys and cages arising from the need for continual restocking of shelves. This was confirmed by the frenetic activity at back of store, sorting and delivering goods to shelves.
22. The proposed extension might provide some relief through increased shelf space and the opportunity to reorganise the layout of the store to improve the internal distribution of goods. However, the advantages of this might well be overcome by congestion arising from increased trade and from customers spending more time in the store, as the Appellant suggests is its aim. Reorganisation of both the sales floor and back of store to improve internal distribution would be possible without extending the store.
23. Furthermore, I am not persuaded that the store is qualitatively different by reason of scale and range of shopping opportunity to the offer that might be available with the ELP allocated sites. A similar range of convenience goods could be sold in either an extended Waitrose or Sainsbury and comparison goods at other outlets in the centre. Nor do I see why the Oldings Corner store is best placed to effect a clawback of trade lost to other catchments. Trade clawed back to centres is clearly to be preferred in policy terms.
24. I find that the case for qualitative need is not strong. However, on balance, I am persuaded by the case for quantitative need. I conclude on the first main issue that, as far as can be seen from the analyses before the Inquiry, quantitative need for the proposal exists. Therefore the need aspect of ELP Policy TCR3 is satisfied by the proposal.

SECOND ISSUE – Sequential Approach

25. Scope for locating the proposed floorspace in Welwyn GC and Hatfield town centres clearly exists within the ELP allocations. This could take the form of a single convenience store of the Tesco 'Metro' format in Welwyn GC, Hatfield, or the Aerodrome site. Alternatively, the proposed development could be disaggregated into its convenience and comparison goods elements and these could easily be accommodated within the town centre sites.
26. The Appellant contends that the ELP allocated sites are not sufficient or suitable to meet the identified quantitative need. In other words, the quantitative need for the extension and for much floor area besides would continue to exist after the development of all the potentially sequentially preferred sites had been completed. However, policy does not require that sequentially preferable sites cover all anticipated need, simply that a preferable site or sites exist which could accommodate the class or classes of goods proposed, to the extent proposed.
27. Although quantitative need for the proposal may exist now, I see no reason why the ELP allocated sites should not come forward within a reasonable period of time and I have no reason to doubt that they would be viable. Moreover, any need for the store to be improved in qualitative terms could be met by reorganisation without extension, with the additional floor area proposed being accommodated in centre.
28. I conclude on the second main issue that the sequential test has not been satisfied. The proposal therefore conflicts with the aspects of ELP Policy TCR3 concerned with the sequential approach.

THIRD ISSUE – Vitality and Viability

29. I agree that the proposed extension is of insufficient scale to have any appreciable impact on the vitality and viability of the existing town centres. The Council does not rely on this aspect to support its case. However, it contends that the proposal would undermine the ELP strategy for Welwyn GC and Hatfield town centres and put at risk potential future investment in new retail floorspace needed to safeguard the future vitality and viability of the two centres.
30. The Council's concerns focus on the progress of the schemes represented by ELP Policy TCR14, Hatfield Town Centre East and ELP Policy TCR5A, Southern End of Town Centre, Welwyn GC, which both remain under negotiation. The Council is keen to avoid loss of confidence arising from the perception that out of centre sites can be allowed to expand contrary to national policy advice, threatening the security of returns from investment in town centres.
31. I do not find this argument persuasive. The proposed extension at Oldings Corner has been in the public domain for some time. Developers and investors in the town centre schemes will already have taken a view on the likelihood of Tesco's expansion, either through permission being granted or through the fallback position of mezzanine development taking place within the existing envelope without the need for further permission.
32. The grant of permission would come as no surprise, and commitment to the long and expensive process of negotiation would not have been made without allowing for the consequences of Tesco's expansion. In terms of trade diversion, these consequences would

be very minor and I think it doubtful that the grant of planning permission could be taken as a sign of weakening in the application of national policy.

33. Furthermore, the grant of permission might well increase investor confidence, since it would be accompanied by firm controls on further expansion. It would also give control over the sales content of the floor area providing a measure of protection to the comparison goods sector in town centres. By contrast, the fallback position would bring no guarantee against further expansion and no control over the types of goods sold. The grant of permission would signal that long term control was being sought over the expansion of out of centre developments, at no net cost in terms of likely trade diversion.
34. In these circumstances, I conclude on the third main issue that the effect of the proposal on the vitality and viability of existing centres and on planning strategies to maintain and promote their vitality and viability would be acceptable. The proposal therefore accords with ELP Policy TCR3 with regard to these aspects.

FOURTH ISSUE – Travel Patterns

35. A transport assessment has been carried out as part of the application and an Agreed Statement on Highways and Transportation Matters is appended to the SoCG. The Council raises no objection to the proposal on transport grounds, subject to agreed conditions and the s106 Agreement.
36. The site is very accessible by private car and has a good range and frequency of bus services including a free Tesco shuttle. Access by cycle is available, but with insufficient separation from motor traffic, and pedestrian access is possible but unlikely as the sole mode from all but the closest residential areas.
37. The impact of the increased traffic volume arising from the proposed extension has been shown in the Transport Assessment to be slight and, in my view, is acceptable. The existing parking provision is adequate, would remain so with the proposed development, and I see no reason why it should encourage an excessive increase in private car use.
38. The completed s106 Agreement provides for a contribution towards cycle route improvements. The agreed conditions provide for covered secure cycle parking spaces for staff and customers, completion of reorganised parking before occupation, markings on the A414 at the site egress, and a Green Travel Plan to encourage access to the site by alternative modes of transport to the private car.
39. The proposal would accord with ELP Policy M7 (cycling encouragement) and those aspects of ELP Policy TCR3 concerned with accessibility by choice of means of transport, levels of car traffic, and road safety. Subject to the Agreement and the agreed conditions, which are necessary on the grounds of highway safety and sustainability, I conclude on the fourth main issue that the effect of the proposal on travel patterns in the area would be acceptable.

FIFTH ISSUE – Fallback Position

40. The store's existing planning permission is for Class A1 use without any constraint as to floor area or type of goods sold. Expansion of the sales floor area within the envelope of the building could take place without further permission and no planning control exists over

the extent of floor area devoted to comparison goods. A scheme exists for the installation of a mezzanine sales floor within the existing store, of equivalent area to that of the proposed extension, with the intention of implementing it should the appeal be dismissed.

41. The Tesco store at Fforest Fach, near Swansea, has a mezzanine level selling non-food items, with travelator and lift access from the main floor. I visited the store and found the mezzanine an attractive feature which appears to work well. Although the existing suspended ceiling would need to be removed and mechanical services rearranged, I see no reason why a mezzanine level could not be installed in the Oldings Corner store – sufficient clear height exists between the ground floor level and the underside of the roof trusses. Moreover, I do not doubt that Tesco would follow this course, as they have said they would, should the appeal be dismissed.
42. I think the mezzanine would generate much the same scale of turnover as the proposed extension and its retail impact would therefore be similar. However, it would not bring with it the s106 contribution for cycle route improvements, nor the other access improvements arising from the agreed conditions. Moreover, expansion of the mezzanine could take place without the need for further permission and the existing lack of control over the nature of the goods sold from the store would continue. Therefore, there would be lack of certainty over the extent to which the store might divert trade in the future, particularly from town centre comparison stores.
43. By contrast, the future retail impact of the proposed extension would be clear, both in terms of quantum and type of trade diverted. This degree of certainty might well give comfort to those contemplating investing in the Hatfield and Welwyn GC centres.
44. I conclude on the final main issue that there is a real prospect of the fallback position being adopted, should the appeal be dismissed, and that it would be more harmful than the proposed development.

Overall Conclusions

45. Because of my conclusion on the final issue, and despite my conclusion on the sequential test, I find that the proposal is acceptable overall. I intend to allow the appeal, subject to necessary conditions, based on those which were agreed at the Inquiry, albeit the percentage of floor area devoted to comparison goods was not agreed. I have considered them in the light of advice in Circular 11/95.
46. Control over external materials is necessary to achieve a satisfactory appearance. For the sake of clarity, the net retail floorspace of the extended store is defined. In my view, it is necessary to restrict the retail sales area devoted to the range of comparison goods listed to a maximum of 20% of the extended whole. This is to contain the impact on comparison stores in centres, so as to help maintain and promote the vitality and viability of town centres. Those conditions relating to transport and highways matters are necessary for the reasons already explained.
47. In my view the s106 obligation complies with advice in Circular 1/97 and is likely to fulfil its stated objectives.
48. I have taken into account all other matters raised but they do not outweigh the considerations that led to my overall conclusions.

Formal Decision

Appeal Ref: APP/C1950/A/03/1113687

49. In exercise of the powers transferred to me, I allow the appeal and grant planning permission for *front, side and rear extensions to provide additional sales floorspace, customer facilities and an extension to the bulk store* at the Tesco Store, Oldings Corner, Great North Road, Hatfield, Herts, AL9 5JY in accordance with the terms of the application Ref. S6/2000/1244/FP dated 18 September 2000, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall be begun before the expiration of five years from the date of this decision.
- 2) The materials to be used in the external construction of the development hereby permitted shall be as shown on Drawings nos A551.P.12, A551.P.13, and A551.P.14 unless otherwise agreed in writing by the local planning authority.
- 3) The development hereby permitted shall not be occupied until a Green Travel Plan to encourage access to the site by alternative modes of transport to the private car, together with a programme for its implementation, have been submitted to and approved in writing by the local planning authority.
- 4) The car parking spaces shown on drawing no A551.P.10, or such other revised drawing as may be approved in writing by the local planning authority, shall be laid out in full and made available for use prior to the first occupation of the development hereby permitted.
- 5) A minimum of 20 covered secured cycle parking spaces, details of which including location and specification shall be submitted to and approved in writing by the local planning authority, are to be provided for staff in accordance with the approved details, for use prior to the first occupation of the development and retained for that purpose thereafter.
- 6) A minimum of 30 covered secure cycle parking spaces, details of which including location and specification shall be submitted to and approved in writing by the local planning authority, are to be provided for customers in accordance with the approved details, for use prior to the first occupation of the development and retained for that purpose thereafter.
- 7) No parts of the permitted development shall be occupied until such time as 'keep clear' markings have been provided on the A414 across the site egress.
- 8) The net retail floorspace of the extended store shall not exceed 5883 square metres exclusive of lobbies and toilets.
- 9) No more than 20% of the total retail sales area of the whole store, including the retail sales area of the extension hereby permitted, shall be used for the sale of toys, clothing, sports goods, kitchenware, books, CDs, videos, DVDs, electrical goods, furniture and other household goods.

Information

50. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

- 51. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
- 52. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.
- 53. Attention is drawn to the requirements of section 76 of the Town and Country Planning Act 1990 concerning provisions for the benefit of the disabled.

Alan Horvitzky

INSPECTOR