

Re: Planning application UTT/1451/09/FUL
Application by Sainsburys for a new store, Thaxted Road, Saffron Walden
(the “Sainsbury’s Application”)

and

Re: Planning application UTT/1323/09/FUL
Application by Tesco Stores for a proposed food store extension, Radwinter Road, Saffron Walden
(the “Tesco Application”)

Supplementary statement of objections from the Saffron Walden and District Friends of the Earth
Group following the revision of PPS 4 and publication of associated guidance

A. INTRODUCTION

1. We refer to our submissions dated 10 December in relation to the Sainsbury’s Application and the Tesco Application (together, the “Applications”). As you will be aware, on 29 December 2009, immediately following the conclusion of the period for commenting on the Applications, the Department for Culture and Local Government (“DCLG”) published a new Planning Policy Statement 4: Planning for Sustainable Economic Growth (“PPS4”) and related Practice Guidance on need, impact and the sequential approach (the “Guidance”).
2. This supplementary submission is made by Saffron Walden & District Friends of the Earth Group in light of the adoption of PPS4 and the Guidance. PPS4 and the Guidance reiterate the planning commitment to promoting the vitality and viability of town centres and the Government’s desire to promote sustainable development and to focus new main town centre uses in existing centres which were previously contained in the old PPS4, PPS6 and parts of PPG13.
3. We confirm the objections made in our previous submissions, and the reasons for them, as all still being relevant. In addition we make the comments set out below, particularly in light of the additional guidance given in the Guidance. We have attempted not to raise any issues save for those necessary as a result of the contents of PPS4 and the Guidance, and have tried not to duplicate any of the objections we have previously made.

B. SUMMARY OF OUR SUPPLEMENTARY CONCLUSIONS

4. In summary:
 - a. We confirm the objections contained in our previous submissions;
 - b. We note that in accordance with Policy EC14, and particularly paragraph 14.5, an impact assessment is required for the Tesco Application. Such an impact assessment has not been carried out;
 - c. We note that the impact assessment which forms part of the Sainsbury’s Application is wholly deficient in light of the requirements for impact assessments contained in Part 7 and Appendix D of the Guidance; and
 - d. The implementation of the new PPS4 leads us to exactly the same conclusions that we reached in our original submissions, that both Applications are in clear breach of the applicable planning legislation and policies and should be refused.

C. SUPPLEMENTARY DOCUMENTS REVIEWED

5. In arriving at these conclusions, we have reviewed the Applications against the amended planning legislation, in particular:
 - a. PPS4 as revised;
 - b. The Guidance;
 - c. The research report, *The Impact of Large Food Stores on Market Towns and District Centres* published in September 1998 and referred to in the Guidance;
 - d. The press release dated 29 December 2009 issued by the DCLG in conjunction with the publication of PPS4, *Healey: Protecting small shops and boosting town centres*.

D. REVIEW OF PPS4 AND THE GUIDANCE

6. The key objective of PPS4 (PPS 4 para 9) is the delivery of sustainable economic growth. This is amplified in PPS4 para 10, that planning should:
 - a. Build prosperous communities;
 - b. Deliver more sustainable patterns of development and reduce the need to travel especially by car;
 - c. Promote the vitality and viability of towns and focus new economic growth and development of main town centre uses in existing centres;
 - d. Promote competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups).

Both of the Applications directly contravene this key objective of PPS4 in the same way that they contravened the equivalent key objective of PPS6. They would reduce the viability and vitality of the Saffron Walden town centre, they would increase car use and increase unsustainable shopping patterns and they would reduce competition and decrease consumer choice by driving out smaller, town centre shops. Indeed, it would be hard to imagine a retail planning application which could more directly contravene PPS4.

7. In terms of detailed planning policies, PPS4 essentially continues the focus of PPS6 on protecting town centres as far as retail development is concerned. Given that we have commented in detail on PPS6 in our original submissions, we will not do so again on PPS4, but would highlight the following policies of PPS4 which are directly relevant to the Applications:
 - a. EC1.1 and 1.3 require UDC to prepare a robust evidence basis of the need for main town centre use development and the capacity to accommodate new development. UDC did this through the FDRS, which of course identified no need for either of the Applications;
 - b. EC4.1 sets out the requirement for local authorities to promote competitive town centre environments, provide consumer choice by planning for a strong retail mix "*recognising that smaller shops can significantly enhance the character and vibrancy of a centre*", and take measures to conserve the established character and diversity of their town centres. The Applications of course run directly counter to this policy;
 - c. EC5 requires authorities to identify appropriate sites to accommodate identified need – neither of the Applicant sites are identified in the Local Plan as no need for them has been identified;
 - d. EC10 sets out policy on determining planning applications – those that secure sustainable economic growth should be treated favourably. By their nature and location, both of the Applications are directly opposed to sustainable economic growth, and therefore should not be treated favourably;

- e. EC14 sets out policy on the need for supporting evidence for planning applications for main town centre uses. EC14.4 requires an impact assessment for developments over 2,500 sq.m; EC14.5 requires an impact assessment for smaller developments which are not in an existing centre and not in accordance with an up to date development plan that would be likely to have a significant impact on other centres. The Tesco Application is of course likely to have a significant impact on the Saffron Walden town centre and therefore an impact assessment should have been provided with its Application. We note the requirements of EC14.7 for impact assessments, and particularly that “*Any assumptions should be transparent and clearly justified, realistic and internally consistent*” – the impact assessment provided by Sainsbury’s completely fails this test in making all sorts of assumptions about where demand will come from, how much trade will be diverted from the town centre and who will be most affected by the development with absolutely no form of justification whatsoever to support their assumptions;
 - f. EC17 stipulates the considerations which should be given to applications for main town centre uses not in a centre and not in accordance with an up to date development plan. EC17.1 requires that such applications should be refused where there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of the impacts set out in EC10.2 and 16.1. In our view, both Applications would clearly lead to significant adverse impacts and should therefore be refused. Even if no significant adverse impact had been identified, EC17.2 requires that applications be determined by taking account of the positive and negative impacts in terms of policies EC10.2 and 16.1. Both Applications run directly counter to the policies set out in EC10.2 and 16.1 and should therefore be refused under EC17.2 as well as EC 17.1.
8. As the DCLG 29 December 2009 press release says, the new PPS4:
- a. “*Reinforces the ‘town centres first’ policy and ensures the planning system promotes the vitality, viability and the unique character of town centres*”; and
 - b. “*Creates a new tougher ‘impact test’ that assesses economic, social and environmental criteria so councils can better assess the impacts on the town centre. It tests whether impact is positive or negative on climate change, town centre consumer choice and retail diversity; investment and town centre trade and gives councils powers to cap the size of big retail developments where this is justified*”.
9. The Guidance reinforces the objectives of PPS4. It also notes at para 1.12 that, although the PPS6 “need” test has been removed because of the perverse effect it occasionally had of protecting out-of-town facilities from new town centre developments, “*a key component of any positive strategy is to identify quantitative and qualitative needs for retail and other key town centre uses*”. As para 2.9 says, assessing the need for retail uses is central to the requirements of Policy EC1.
10. Part 2 of the Guidance reinforces the requirements on planning authorities to plan positively for town centre uses, and to use an up to date and sound evidence base to do so. UDC has of course already done so in formulating the Local Plan, which identifies no need for the Applications.
11. Part 3 of the Guidance sets out the procedure to be followed in identifying needs. We would particularly highlight:
- a. The first key step in identifying quantitative retail need is to define the catchment / study area – para 3.4. UDC of course did this as part of the Local Plan. Neither of the Applicants has made any attempt in their Applications and their needs assessments to define the appropriate – and realistic - catchment areas for the developments. The

- b. The availability of central sites will determine the extent to which different centres are capable of accommodating future retail use – para 3.7. As the Local Plan and FDRS acknowledge, Saffron Walden has a lack of suitable central sites for large scale developments – it should not therefore be trying to move further up the retail hierarchy;
- c. The steps for identifying qualitative need are set out in para 3.10. For the reasons set out in our original submissions, we do not believe there is any qualitative need for either Application given the existing town centre retail offering; indeed, by driving town centre stores out of business either development would actually decrease rather than increase consumer choice. Looking at the following paragraphs of the Guidance:
 - i. There is no “deficiency” in the existing retail provision for the purposes of paras 3.11 – 3.12;
 - ii. The Developments would reduce consumer choice for the purposes of paras 3.13 – 3.15. Para 3.14 in particular emphasises the need to maintain a healthy town centre, to maintain critical mass and a diversity of retail development with a good mix of different types of retailer – the Applications would have completely the opposite effect by drawing trade away from the town centre, impairing the viability of town centre retailers and therefore reducing consumer choice. Para 3.15 highlights the negative impact of out of centre development;
 - iii. Paras 3.16-3.17 give guidance on “overtrading”. In particular the Guidance notes (in the Kidlington case study below para 3.17) that *“the term overtrading is still frequently misunderstood, and where existing services are claimed to be overtrading this should be backed up by corroborating evidence such as overcrowding and congestion rather than simply by comparison with a retailer’s company average turnover.”* This completely supports our original submissions – Sainsbury’s relied purely on a simple comparison of average company turnover to try to show quantitative need, and neither of the Applicants have made any attempt to produce evidence to show congestion and overcrowding; indeed our visits to the existing stores show this is clearly not the case;
 - iv. Saffron Walden is clearly not a deprived area for the purposes of para 3.18;
 - v. There are no obvious issues with the quality of the existing retail provision in Saffron Walden for the purposes of paras 3.19-3.20.

12. Part 7 of the Guidance focuses on impact assessments. In particular:

- a. Para 7.1 says that an impact assessment will be required in all cases where the proposals are not in accordance with an up to date development plan strategy. An impact assessment should therefore have been produced for the Tesco Application;
- b. Para 7.6 requires that the scope should be agreed in advance – we are not aware that the scope of the Sainsbury’s impact assessment was agreed in advance with UDC;
- c. Para 7.9 notes the impacts which out of centre supermarkets have on market towns and district centres. As Para 7.9 says *“even modest sized foodstores and extensions have been judged to have unacceptable impacts on small or vulnerable centres”*. Both the Sainsbury’s Application and the Tesco extension are anything but modest, and Saffron Walden is both small and vulnerable. We find it impossible to believe that either Application would not have a significant adverse effect on Saffron Walden. Para 7.9 also endorses the DETR research report *The Impact of Large Food Stores on Market Towns and District Centres* published in September 1998, and in particular the conclusion quoted in the Guidance, that *“The report concluded that it is vital that those responsible for the future of market towns and district centres take positive steps to*

- d. Para 7.22 notes that as well as considering the overall effects of the Applications on the vitality and viability of the town centre, *“It will also be appropriate to consider the implications of a proposal on retail diversity, particularly the range, type and quality of goods available”*. As the Guidance goes on to say *“This will be especially relevant in historic market towns”*. Again, we find it impossible to believe that either of the Applications will not have a significant adverse effect on the town; they will inevitably result in the closure of local retailers and precisely this loss of retail diversity;
- e. Para 7.23 notes that in most cases impacts of out of centre developments are gradual and it is the cumulative effect of developments over time which can result in a decline in vitality and viability. This has happened already with the opening of the out of centre Tesco, which had both an immediate and an ongoing adverse effect on Saffron Walden, and we believe that either Application would have both an immediate and an ongoing significant adverse effect;
- f. The table following para 7.25 of the Guidance, which provides guidance on how to judge the effects of a proposal on the viability and vitality of a centre, is particularly relevant, in particular its conclusions that:
 - i. *“Significant levels of trade diversion from the centre, or key sectors, can seriously undermine its vitality and viability resulting in reduced footfall, increased vacancies, a more “down market” offer etc”*. This is precisely what has happened to so many towns, and is precisely what we believe would happen if either Application were permitted. As we have said in our main submissions, we believe that both Applicants have hugely understated the likely trade diversion from the town centre that either Application would cause;
 - ii. in important historic centres and those with a special character, as Saffron Walden is, it may be appropriate to take a cautious approach to potential adverse impacts. We strongly endorse this view;
 - iii. impacts may not be widespread or necessarily significant in quantitative terms. In the case of the Applications, we believe that they would be, but as the Guidance says, they do not need to be to be significantly adverse;
- g. paras 7.28-7.36 provide guidance on how to assess impact. In particular:
 - i. the starting point is to make an assessment of the likely catchment area, market position and turnover potential of the proposal. Neither of the Applications even attempts to define a likely catchment area, let alone a comparative market position. As we say above, the reasons are obvious, because their catchment areas will be exactly the same as the existing town centre stores, and they will not overlap significantly with the catchment areas of any other stores from whom trade may be attracted. We have gone into much more detail in our main submissions about the misleading statements in the Applications, but it is worth noting that the Guidance shows that the Sainsbury’s impact assessment is deficient right from the very start;
 - ii. the box following para 7.28 then notes that the key factors affecting judgements about where a proposal will draw its trade from will be determined by (a) *“the intended market sector/role on the basis that ‘like affects like’ so the centres currently serving the intended catchment population will experience the greatest impact”*; and (b) *“distance, on the basis that consumers will generally use the nearest centre / facility which meets their needs in terms of quality/convenience etc”*. This completely endorses the arguments we have made in our main submissions, and is completely contrary to the unfounded allegations made by

- h. Appendix B provides further guidance on quantifying retail need:
- i. Again, the first step is to establish the catchment area of the proposal (Figure B1 and following) – neither Application even achieves this first step;
 - ii. Paras B.10 and B.11 comment on the drivetime isochrones of the sort which we have used. As these paragraphs say, whilst drivetime isochrones are inexact, they may be used to provide an indication of likely catchment area, which is what we have done in our main submissions. As para B.11 says, the use of detailed survey data is likely to provide a better indication of catchment area – neither Application however provides any catchment area information whatsoever;
 - iii. Paras B.16 – B.25 provide guidance on estimating future customer demand. We would highlight para B.22 in light of the approach taken by Sainsbury’s and Tesco. As we have said in our main submissions, we believe their approaches greatly overstate future customer demand, but in any case their quantitative arguments are essentially entirely based on projected future growth – as para B.22 says, this should be treated with extreme care;
 - iv. Step 3 is then to assess the level of existing retail provision. No useful survey to identify shopping habits of the kind envisaged by paras B.29-B.35 has been performed – and indeed as the Applicants have not even identified catchment areas for the proposed developments, this is hardly surprising. It is also worth noting the findings of the Competition Commission in the CC Report on the concentration of supermarkets and the population figures they believe are necessary to support supermarkets (see Annex 1 to Appendix 7.1 of the CC Report). According to these findings, 99% of areas which have two nearby supermarkets have a population of at least 34,000 within a 20 minute drivetime. As Saffron Walden has two supermarkets and barely this level of population within a 20 minute drivetime if at all, the CC Report shows no theoretical lack of retail provision either. Indeed, the CC Report says that 95% of areas which have two nearby supermarkets have a population of at least 48,000 within 20 minutes drivetime, which is vastly more than the Saffron Walden catchment area;
 - v. Step 4 is then to compare supply with demand. As we have said in the main submissions, there is no empirical evidence of demand exceeding supply or of significant trade outflows from Saffron Walden, and para B.42 specifically cautions against the use of company average store turnovers as any form of benchmark – this is of course virtually the only assertion of over-trading made by Sainsbury’s. Para B.44 specifically confirms the point made in our main submissions that where average turnovers are used, they should be weighted to reflect local circumstances such as the affluence of the area.
- i. Appendix D then provides guidance on quantifying impact. Again, by failing to do any form of trade-draw modelling, neither Application comes anywhere near to being compliant with the Guidance. We note in particular the following provisions of Appendix D:
- i. On estimating impact of a development and its likely turnover, Para D.14 provides that *“Any assumptions that new development will only achieve a potential retailer’s respective company average should be treated with caution.”* Indeed Para D.14 notes that new stores/extensions are likely to have higher than

- ii. To analyse trade draw and diversion, it is necessary to fix a catchment area, which the Applications of course fail to do, and therefore we cannot see how there is any credibility to their impact statements.
 - iii. Para D.30 reiterates the fact that trade impact will always be greatest on the stores which are closest and most comparable. As we have said before, we believe therefore that both Applicants have vastly underestimated the effects they will have on Waitrose and the town centre stores directly and by extension the amount of trade they will draw away from the town centre.
13. The research report, *The Impact of Large Food Stores on Market Towns and District Centres* published in September 1998 and referred to in the Guidance endorses all of our concerns, and completely contradicts the Applicants' assertions that the developments will bring any benefits to Saffron Walden. In particular:
- a. The finding (para 14) that many local authorities consider that large foodstores have had an adverse impact on the vitality and viability of market towns;
 - b. The research (para 21) identifies impacts on the market shares of existing stores of between a 13 and 50% reduction following the opening of a new out of centre supermarket - these are much greater than those suggested by the Applicants;
 - c. Even where there is a well-developed provision of existing large supermarkets, a new one can give cause for concern, particularly with the cumulative effect (para 25);
 - d. Market towns generally have small catchments which only support a limited number of large foodstores. Out of centre development therefore has a disproportionate effect (para 30);
 - e. Out of centre stores attract a significantly higher proportion of car borne trade than those in town centres (para 36) – they therefore completely fail the test of sustainability;
 - f. The report refutes the suggestions of the Applicants that expenditure may be clawed back by a new supermarket to the benefit of the neighbouring town (paras 43-45). In the report's case studies, the principal effect of the new stores examined was to divert trade away from the town centre, not to clawback trade (which in any case we don't believe is being lost in the first place). Moreover, the report says (para 45) that even where trade has been clawed back this has led to no tangible benefit to the neighbouring town centre;
 - g. Out of centre developments of the types proposed discourage linked shopping trips (para 46-48), and new out of centre developments do not encourage people to visit the neighbouring town centre in the same trip (para 48). This completely refutes the Applicants' suggestions that there would be any gain to Saffron Walden through clawback or linked trips.

Saffron Walden & District Friends of the Earth
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