

**RE LAND AT McMULLENS BREWERY SITE,
HARTHAM LANE, HERTFORD, SG13 5QA,
INQUIRY**

PINS REF: APP/J1915/V/09/2101286

CLOSING SUBMISSIONS

on behalf of

East Hertfordshire District Council

INTRODUCTION

1. These Closing Submissions address the 3 main issues and 2 other matters identified in the Inspector's opening remarks. They are:
 - (i) the effect of the proposal on the character and appearance of the area and its heritage assets (the Listed Building, the Conservation Area, and archaeology);
 - (ii) the effect of the proposal on the vitality and viability of the town centre and other nearby centres;
 - (iii) the effect of the proposal on highway safety as a result of vehicular movements;
 - (iv) the effect of the proposal on flood risk; and
 - (v) the appropriateness of the terms of the s.106 planning obligation and the proposed conditions.

2. Whilst each of the main issues (points (i), (ii) and (iii) above) initially requires separate consideration for the purposes of evaluation and assessment, it is then necessary to bring the conclusions of that exercise together to allow a balance to be struck. Only when that

balancing exercise has been undertaken can an overall planning judgment be made as to the acceptability of the proposal.

3. The 2 matters (points (iv) and (v) above) are not determining issues but they need to be addressed to ensure compliance with Government policy in the event that the planning balance on the main issues favours the grant of planning permission.

ISSUE (i): THE EFFECT ON CHARACTER AND APPEARANCE

4. Any assessment of the effect of a proposal on the character and appearance of the area has to start with a clear sighted appraisal of what currently exists. The site lies within the Hartham sub-area of the Hertford Conservation Area and contains the principal Listed Building within the sub-area. This is the historic McMullens Brewery building. The other Listed Building (the former Great Northern building now occupied by Ekins & Co.) is visually subservient in both scale and detailing to the Brewery and no one has suggested that the proposal has any effect on this building or its setting.¹
5. In addition to the built form, a key feature of this part of the Conservation Area is the River Lea, one of the watercourses that help to define the fundamental character of Hertford.² In this part of the Conservation Area the River Lea is generally hidden from view, except at the bridge crossings and within Hartham Crossing, and there is minimal access to its river banks within the built up parts of the town.
6. Hartham Common is also a principal feature of this part of the Conservation Area. It is the largest green space within the Conservation Area³ and is a focus for recreational activities.⁴

¹ Expressly confirmed by Mr Kirby in XX

² Local Plan, para 12.1.1: CD B6

³ 14 January 2009 Committee Report, para 7.46: CD C23

⁴ CD B9, p29

7. The principal characteristics of the Hartham sub-area are described in the Conservation Area Character Assessment.⁵ Whilst Mr Kirby sought to paint this as only a cursory description (as a building block in HCS's complaint that the proposal was produced without adequate regard to its context) a straight forward reading of the relevant text shows that all of the features which are relevant to this application are identified. The omission of direct mention of the Ekins building is of no consequence given the concession noted above (and in any event the effect on that building is assessed in the ES).⁶ As well as recognition of the importance of the main Brewery building⁷ there is also an honest assessment of the detrimental impact of the Lager Building⁸ and the other modern brewery buildings, and the identification of a marked distinction between the industrial character of the developed area and the open character of Hartham Common.⁹

8. Moving beyond the Character Assessment, a clear sighted appraisal of the current condition of this part of the Conservation Area has to recognise the detriment that is caused by the lack of use of the Brewery building and the other redundant brewery buildings. The Listed Building itself is in need of physical repair and its condition is deteriorating.¹⁰ This is not in dispute. The other redundant operational buildings are now simply unsightly and the former public house and empty dwellings also contribute to the area's run down and derelict appearance. The underlying cause of these problems is the lack of any active use for the land and its buildings.

9. It is also necessary to keep in mind that this is not a recent occurrence. Brewery operations ceased in 1997 when the new McMullens brewery was established on the eastern side of Hartham Lane. Since then nothing has happened to provide a new use for the buildings, despite

⁵ CD B9, pp32-33

⁶ CD C3, paras

⁷ CD B9, p32

⁸ CD B9, p32

⁹ CD B9, p33

¹⁰ SS/6/A, paras 3.4 and 3.6

the decade that followed being one of substantial economic growth and prosperity. Even in that benign climate (which of course no longer exists) the site remained unused.

10. Whilst Mr Nudds complains that McMullens have “*run the site down*”,¹¹ there is no suggestion (or evidence) of deliberate dereliction or neglect. The simple truth is that substantial historic buildings do not repair themselves and, without a beneficial use, deterioration is unfortunately an inevitable long term consequence for redundant buildings.

11. The result is a site where there is now a compelling need for regeneration. The site sits at the transition between the built up area of Hertford and one of its defining open spaces. It is flanked by one of the characteristic watercourses. The site itself contains an important heritage asset and the site as a whole has a pronounced effect on the character of the area. It should be making a positive contribution to the character and appearance of the Conservation Area. At present, however, its assets are wasted and its impact on its surroundings is negative.

12. The Sainsburys proposal provides an opportunity to change that. It entails the repair and adaptation of the Listed Building at significant expense.¹² The proposal brings new uses to the Listed Building, including community uses. The proposal removes the unsightly later brewery buildings. The proposal replaces them with an architect designed new building which is respectful in scale and form to the Listed Building. The proposal introduces a major new use which will ensure that the site is a focus for considerable activity. The proposal opens up the riverside and provides at least one new link to the town centre and potentially enables the provision of a second new link. This part of the town with the development in place will become vibrant instead of moribund.

¹¹ F4, para 6.05

¹² SS/6/C, Appendix K

13. The adaptation of the Listed Building has already secured Listed Building Consent.¹³ The demolitions of the redundant industrial buildings, the former dwellings and the public house have secured Conservation Area Consent.¹⁴ English Heritage has been consulted on the planning application and, having requested and obtained various changes to the scheme during the course of its determination, is content that there are no outstanding issues of objection.
14. The evidence from Mr White and from Mr Westerdale has responded to the relatively limited design objections raised by Hertford Civic Society and has shown that the scheme has been carefully considered in relation to its context. There is adequate information available in the application plans and accompanying reports to assess the merits of the design in the light of emphasis in policy at all levels on securing good design that respects and responds to its context. No doubt other design solutions could have been adopted for the new store (indeed a number of different treatments were considered in the evolution of the scheme) but this does not undermine the integrity or validity of the chosen approach. The Council remains satisfied that the proposal will enhance the character and appearance of the Conservation Area and will respect the setting of the Listed Building.
15. Given the dilapidated state of the site and the prospects of further deterioration, and the absence of any credible evidence to suggest that alternative proposals are likely to come forward with the financial wherewithal to secure the future of the Listed Building, the benefits of regenerating the site and securing a stable future for its heritage assets are a substantial conservation gain.
16. Archaeology is addressed by proposed Condition 6, allowing for a scheme of investigation and programme of archaeological work prior to

¹³ C24

¹⁴ C25

any development. An initial archaeological appraisal has already been undertaken (as reported in the ES)¹⁵ and HCC as the responsible authority is content that archaeological interests can be secured by this condition.¹⁶

ISSUE (ii): THE EFFECT ON VITALITY AND VIABILITY

17. In relation to retail matters the evidence shows that not only does the proposal satisfy all of the retail policy tests but in addition it delivers positive benefits for Hertford residents and other shoppers in Hertford. There is a demonstrated quantitative and qualitative need for both the convenience and the comparison elements of the retail floorspace. This is agreed by both of the retail experts who have given evidence to the Inquiry. That evidence also provides a full response to the written material presented on behalf of Tesco. If Tesco had wished to test that evidence it has had ample opportunity to do so. For its own reasons, however, it has chosen not to attend the Inquiry.
18. The quantitative need is made up of the conventional elements of expenditure growth, reducing overtrading, and the clawback of leakage.
19. There is no real scope for dispute about the level of expenditure growth (£5m by 2011 within the PCA).¹⁷ HCS has queried this on the basis that the short term consequences of the recession will limit the prospects for expenditure growth. This overlooks the derivation of the growth projections from long term past trends (including past recessions). Sensitivity testing shows the robustness of the projections and further comfort is provided when it is recognised that the actual design year is now likely to be 2013 rather than 2011.¹⁸

¹⁵ CD C3

¹⁶ SOCG1, para 8.5

¹⁷ SOCG2, para 2.12

¹⁸ SS/16

20. The proposal reduces overtrading at the current main food store serving Hertford (i.e. Tesco) which even that operator acknowledges is presently creating serious practical problems for shoppers at that store.¹⁹ Whilst Tesco would no doubt prefer to solve those problems itself through its own proposals to redevelop or extend that site, there is no such preference in retail policy. The current Tesco application for an extension is not a matter for this Inquiry and it can claim no priority relative to the Sainsburys proposal, whatever its merits. Planning applications are not commitments, and planning applications to extend non-town centre stores are treated in retail policy terms in the same way as any other non-town centre retail development.²⁰
21. The HCS concerns that overtrading derived simply from the benchmark of company averages should not be taken as an indicator of need might have some force if the amount of overtrading so calculated was modest and there was no direct evidence of it causing any detriment in terms of the existing retail provision meeting consumers' needs. However, here the overall level of overtrading (looking just at the stores within the PCA as suggested by Chase & Partners) is substantial at over £14m in 2011.²¹ In addition there is empirical evidence of the real problems this creates for shoppers in the store where most of that overtrading occurs. The overtrading referable to Tesco is some £11.6m of that £14m.²² Even if the overtrading which is considered is limited only to that deriving from the expenditure of residents of the PCA which is spent in the overtrading PCA stores, it remains substantial (at £12.4m), and the Tesco element still accounts for the lion's share (£10m of that £12.4m).²³ The identified overtrading is therefore a proper component of the need assessment in this case.

¹⁹ CD D4, paras 5.40, 5.42, and 5.68

²⁰ PPS6, para 3.1

²¹ SOCG2, para 2.18;

²² SS/3/D, Table 1

²³ SS/3/D, Table 1

22. The proposal will reduce the leakage presently flowing out of Hertford's core catchment. The assessment of the level of clawback has been very conservative, being limited only to Zone 5 of the PCA and recognising that the presence of stores in the wider area will limit the attraction of a new Sainsburys store at Hertford even for residents of that core catchment. It is assumed that only 50% of current Sainsburys shoppers who are resident in Zone 5 will switch to a closer Hertford store and only 20% of the Zone 5 residents who presently shop beyond the PCA with another operator will make that switch.²⁴ Thus, even if it is assumed that a proportion of those Zone 5 residents who currently travel greater distances to shop elsewhere are attracted in part by the larger offer available in some of those locations, the assumptions made still allow for 1 in every 2 of those shopping at a Sainsburys elsewhere to continue to do so, and for 4 in every 5 of those of those shopping at other operators' stores elsewhere to continue to do so.

23. HCS criticised the absence of explicit sensitivity testing of this modest level of clawback. However, given the available residual capacity there is no need for such testing because even if the clawback figure is halved, there remains a comfortable margin of available expenditure.²⁵ In addition, no account at all has been taken of any clawback attributable to Zone 4 residents who may be attracted to shop at a closer Sainsburys at Hertford than their existing store.

24. Thus the conclusion that there is a quantitative need for the convenience element of the proposal is robust. HCS has questioned why this need has been accepted by the Council in the context of this application when it was not identified in the District-wide Retail Study²⁶ in 2008. Mr Williams has explained the reasons for this in terms of the different assumptions that were made in that Study on market share,

²⁴ SS/15

²⁵ SS/16 and Williams in RX

²⁶ CD B9

overtrading, and clawback.²⁷ In simplistic terms it is the difference between a strategic assessment of retail needs sufficient to inform the LDF process and the more detailed assessment of a particular planning application for a specific proposal by a specific operator.

25. No one has disputed the quantitative need for the modest comparison element of the proposal.
26. On qualitative need, the problems experienced as a result of overtrading have already been noted. In addition, in terms of choice and competition the fact that main food shoppers in the PCA are limited to a choice of only one full sized food store and the limited range (albeit quality) offers of Waitrose and M&S Simply Food does deny those shoppers the breadth of choice available further afield. One consequence of that is the levels of leakage being experienced as shoppers from the PCA seek out that wider choice.
27. No real issues arise on scale or the sequential test. Given the need, a materially smaller store would be inadequate to provide a full sized foodstore. Given that need, it is clear there are no sequentially preferable sites within the town centre. The option of meeting the need for improved convenience provision by encouraging a food operator to take up the floorspace in the former town centre Woolworths (as promoted by HCS) fails to recognise the nature of the convenience need in this case and its causes. A small format convenience store is not going to meet the needs of Hertford's main food shoppers and it is those shoppers who are either shopping at the overtrading Tescos or have chosen to go elsewhere.
28. The proposal will enable linked trips between the new store and the town centre by virtue of its edge of centre location, the provision and management of its car parking, and the provision of a new and

²⁷ EHDC/5/D

attractive pedestrian and cycle link from that car park to the town centre. The issue of the deliverability of this link is considered separately below. The proposal also offers the opportunity to create a further new link to the town centre from Old Cross, increasing the permeability of this part of the town and better facilitating movement between the St Andrews Street specialised shopping and the town centre.

29. The proposal will take some trade from the town centre, primarily from the existing Waitrose food store.²⁸ Potentially there may also be less linked trips from the Tesco to the town centre as a consequence of the reduction in overtrading by the transfer of trade to the Sainsburys. On this latter point there is no reason to expect that there will not be (at the least) an equivalent number of linked trips when that trade now takes place at the Sainsburys. The routes for linked trips are at least as good from the Sainsburys. Tesco shoppers who already make linked trips to the town centre will not suffer amnesia in terms of their knowledge of what is available in the town centre if they switch to become Sainsburys shoppers. If they are disposed to combine their food shopping with a linked trip then it is reasonable to expect them to continue to do so. In addition, those shoppers who are clawed back to Hertford from elsewhere will provide a further pool of potential linked trips.

30. In any event, retail policy is not concerned to prevent all change in existing trading patterns. Its focus is on change that will undermine the vitality and viability of existing town centres. By no stretch of the imagination can the modest degree of impact on Hertford town centre as a whole be said to constitute harm of that magnitude. Rather, the addition of a new major food store in an accessible edge of centre location, with a car park which can be used by town centre shoppers, will serve to improve the overall attractiveness of Hertford as a place to

²⁸ SOCG2, para 2.33

shop. Given the lack of new retail development in the town centre in the recent past, the relative weakening of its overall offer compared to other nearby centres,²⁹ and the constraints presented by its historic built form to allow significant retail redevelopment within the town centre itself, the proposal to re-use this edge of centre site provides the best practical opportunity for Hertford to keep pace with the world around it.

31. The option of using the site to meet the need for comparison shopping in preference to the primarily convenience function of the present proposal might constitute an objection if the site was expressly allocated for that purpose in the Local Plan. However, it is not so allocated and the Council's retail advisors did not suggest that the site should be reserved for this purpose in the face of an active proposal to develop it for a food store. The realism of such an aspiration must also be questioned, given the absence of any market testing to show that there is development interest in such an option.³⁰
32. The impact on other centres needs only limited mention. There is no material impact³¹ and Asda's tentative aspirations at Ware³² cannot carry any real weight at this stage.
33. Whilst not directly a retail issue, it is convenient to address the employment implications of the proposal at this stage. First, the policy position. The Local Plan does define the site as an Employment Area under Policy HE8 and reserves it "*primarily*" for Class B1 and B2 purposes. The policy does not preclude other uses within a mixed development and the mix in this case will include B1 employment.
34. There will also be a very substantial increase in Class A1 employment. There is no evidence that this A1 employment will be

²⁹ CD B11, para 6.9; SS/7/A; and F6

³⁰ Williams in XX to HCS

³¹ SOCG2, para 2.34

³² F10

achieved at the expense of existing retail jobs in the town. The Tesco store will not get any smaller and Tesco has not suggested that a reduction in the volume of its trade to bring that store closer to company average levels will produce job losses. In itself the new retail jobs provided at the new Sainsburys store will be an economic benefit and one that is particularly to be welcomed in today's climate.

35. In addition, given the retail need and the absence of allocated sites to meet that need, it is almost inevitable that a suitable site which follows the sequential approach and so which seeks to be close to the town centre will be allocated for some other purpose. It is also necessary to recognise that despite a lengthy period of vacancy no predominantly B1 employment use has come forward on this site. Thus, whether or not there is strict compliance with Policy HE8, there are substantial material considerations to show that there is no detriment to the objective of the policy to secure the provision of employment.

ISSUE (iii): THE EFFECT ON HIGHWAY SAFETY

36. As indicated in the Council's Opening Submissions, the Council does not seek to resolve the technical disagreements between Sainsburys and HCC on likely trip rates and the modelling and performance of junctions. In the Council's view the following points are the key matters to bear in mind when examining this issue.
37. First, in the light of the minor changes to the servicing arrangements there is now no suggestion by HCC that the proposal will result in unsafe highway conditions for highway users.
38. Second, whilst on any assessment there will be some increases in congestion compared to the base at some peak periods, HCC does not object to the resulting effects in the AM peak period or suggest that there should be an embargo on all traffic generating

development in that period.³³ The proposed resulting conditions in the PM peak and the Saturday peak are materially less congested (even on HCC's preferred figures) than is the case in the AM peak.³⁴ Whilst HCC is correct to observe that the incremental effect of the development is much less in the AM peak, the point is that HCC is not suggesting that there cannot be any worsening of existing conditions, and even if conditions are as congested as is the case in the AM peak HCC recognises this does not preclude development.

39. Third, comparison with the base (i.e. the site as a generator of no vehicular traffic) is not a sound basis for assessment when all parties agree that for wider planning reasons the site needs to be regenerated. It is unreal to suggest that it is likely this would happen without some traffic generation (or attraction).
40. However, once it is recognised that it is necessary to move away from the base, then a difficulty presents itself for the various objectors (including HCC). This is the absence of any meaningful assessment of the traffic implications of the alternative development that would instead be needed to regenerate the site. Simply postulating that there are some forms of development which could generate/attract less traffic than the proposal, depending on their scale, is not an adequate response.
41. Such notional alternatives are too inchoate to allow any judgment to be made as to what their actual effects might be (so as to measure them against the identified impacts of the proposal) and, furthermore, they fail to demonstrate that they have sufficient value either to be viable in today's market conditions or to be capable of funding the repair and re-use of the Listed Building. Mr Micawber's belief that "*something will turn up*" may be an acceptable stance for a fictional character but it is

³³ Jepson in XX to EHDC

³⁴ Compare SOCG4, Table 3: 2010 Base including growth + Full Development with average trip rates to HCC/3/A, Tables 6.3 and 6.5.

not a sound principle to be applied in land use planning. In the real world it is incumbent on those who oppose this specific and tangible regeneration project to identify the alternative which they believe would deliver the same ends but with lesser impacts. That has not been done.

42. Fourth, whilst the Bengo rat run is clearly a source of real concern to local residents, and the solution is at present unclear, any nexus between the application proposal and that rat running relates essentially to the length of queues in the AM peak³⁵ and this is not the period of concern to HCC.
43. Fifth, in the particular case of HCC, for understandable reasons no attempt has been made to bring the identified detriment in terms of congestion into an overall planning balance. Thus whilst HCC can advise the Inquiry on the highway issues, it cannot provide assistance on the ultimate question of how its highway objection should rank against other planning considerations.

THE BALANCE

44. The planning balance was undertaken by the Council's Development Control Committee. Since balancing competing considerations in terms of relative weight so as to reach an overall planning judgment is not a matter for technical appraisal or detailed policy analysis this is a task which can be properly and competently undertaken by a democratically accountable Committee of the local planning authority, even if they reach a different balance to that advised by their officers. Despite some suggestions by HCS (and Mr Nudds) that the Council made its decision without being aware of material considerations or by being wrongly influenced by immaterial ones, the objective evidence does not support such claims.

³⁵ HCC/3/A, para 4.14

45. The Council's Minutes for the 14 January 2009 Committee³⁶ show that there was a full debate on the application proposal and that Members were clearly advised that the traffic issues were likely to be intractable. This is confirmed by the evidence from Mr Jepson who explained³⁷ that he addressed the Committee and made the position quite clear to them. Further confirmation is provided in the evidence from Councillor Ashley, as Committee Chairman, to demonstrate that the Members were fully alive to the relevant issues but simply chose to balance them differently to their officers.³⁸
46. It is also clear from the history that this is not a case of a Committee being "*bounced*" in some way by an unexpected turn of events. The site has been vacant and unused since 1997. No one familiar with Hertford, and not least a Member of the Development Control Committee could be unaware of the circumstances of this site. The nature of Sainsburys aspirations was clear from at least 2007 with the pre-application consultation on the earlier application. Those proposals themselves had gone so far as to be the subject of a report to Committee. Thus it is not credible to suggest that the Committee was "*caught out*" by the application and had not been able to reflect fully on the planning implications of their decision.
47. Mr Nudds' complaint³⁹ that the Council was wrongly influenced by the fact that Sainsburys had sufficient resources to take on the challenge of regenerating a difficult site is misconceived. The realism of the delivery of any regeneration package is a material consideration and in a case where the need for regeneration is pressing because of the deteriorating state of the heritage asset, it is a particularly weighty consideration.

³⁶ CD C23

³⁷ Jepson in XX to EHDC

³⁸ Ashley in XX to HCS

³⁹ F4, para 6.04

48. Now that all of the evidence has been heard, the Council would suggest that it is clear that the balance drawn by the Members was the correct one. There is a real need to resolve the future of this site and to bring it back into use for the good of the town. The benefits delivered by the proposal are considerable in both heritage and retail terms. There are also wider environmental improvements. There is a substantial package of mitigation measures to ameliorate the highway effects of additional traffic generation. The balance strongly favours the grant of permission.

FLOOD RISK

49. The application was supported by a Flood Risk Assessment.⁴⁰ This has been appraised by the Environment Agency and it is agreed that the matter can be addressed by conditions.⁴¹

CONDITIONS AND PLANNING OBLIGATIONS

50. Agreement has been reached between the applicant, the Council and HCC on the terms of appropriate conditions. It is the Council's assessment that those conditions meet the tests in Circular 11/95.

51. The planning obligation has been agreed between the applicant and the Council and (on a without prejudice basis) by HCC. It is agreed that its requirements meet the tests in Circular 05/05. HCC would wish for greater provision to be made (in relation to its highways case) but this does not detract from the efficacy of the document which has been produced. The Council has accepted that package as sufficient.

52. Two points only call for additional comment.

⁴⁰ CD C17

⁴¹ SOCG1, paras 8.14 and 8.15

53. First, the delivery of the Folly Island footpath/cycle link. Tesco has questioned the deliverability of the main footpath/cycleway link between the store and the town centre on the ground that there may be an intervening land ownership between the Council's land at Little Hartham and the maintainable highway at Bull Plain. This point has no substance. It is based on a misunderstanding of the full extent of highway land.
54. Where land is highway it can be used by the public for highways purposes (subject to any restrictions on the class of highway user by reason of the status of the highway, e.g. footpath, bridleway, restricted byway, all purpose highway, etc). An all purpose highway can be used by pedestrians and cyclists.
55. Land Registry title plans do not record whether an individual ownership includes any highway land which impinges on the ownership (unless that highway land has its own separate registered title). Where a highway does impinge on private land the surface of the highway is vested in the highway authority (here HCC) and only the sub-soil remains vested in the private owner. The surface vested in the highway authority includes as much of the soil below the surface as the highway authority reasonably requires in order to discharge its functions as highway authority.
56. It should also be noted that Land Registry title plans record only general boundaries (unless detailed boundaries have been determined) and the boundaries shown on a title plan are not therefore a precise delineation of the extent of adjoining ownerships. The boundary between the Council's land at Little Hartham (Title HD346570) and the adjoining land at Cooper's Court (Title HD153449) is a general boundary only.
57. HCC's highway records show that the maintainable highway extends from the footway at the north west corner of Bull Plain, across the land

which may be in an intervening ownership and then onto the Council's land at Little Hartham. The extent of the maintainable highway is set out more fully on Plan 1 annexed to the Statement from HCC.⁴²

58. The footpath/cycleway link as shown on Plan 1 can be provided on Folly Island entirely within land which is either already highway or which is in the ownership of the Council. North of the River Lea the link can be provided entirely within land which is owned by Sainsburys or by McMullens. The arrangements for the delivery of this link are set out in the s.106 agreement.

59. When the Council's land is added to the highway land, there is sufficient land available to provide the proposed footpath/cycleway link. There may be a need to adjust the precise alignment at the Bull Plain end compared to what is shown on the application drawings but this adjustment is catered for by the terms of the proposed conditions and the s.106 agreement. The provisions in Schedule 6 of the s.106 agreement ensure that the development (including the store) cannot be occupied until the footpath/cycleway link has been constructed and dedicated in its entirety. Thus Sainsburys will need to deliver this link in order to benefit from the planning permission. There can therefore be no doubt about the deliverability of this link.

60. The second issue is the link from Old Cross to Dolphin Yard via a further bridge crossing. There are 2 aspects: does it meet the policy test of necessity and is it desirable in overall planning terms? On the question of the necessity for this link, the Council considers that it is necessary for the proposal to maximise the opportunities which are available to encourage linkage between the site, the town centre, and other important retailing destinations in the town. With a choice of

⁴² HCC/5

routes which come out in different parts of the town centre the potential for linkage is maximised. A Sainsburys shopper attracted to the niche shopping at St Andrews Street may not then make a linked trip into the town centre if he or she has to first return back to the car park before accessing the new riverside link. In contrast a link available at Old Library Lane or Nicholas Lane would intercept that return trip and may encourage a circular route through the town centre. The potential for this will increase if the Council is able to secure a further link into Maidenhead Street as the balance of the Riverside Yards site comes forward for development.

61. However, the Council is only seeking a contribution towards this second link in recognition that it will also be of wider benefit.
62. On the question of the desirability of this link, clearly there remains a need for planning permission for the crossing itself and the Council cannot seek to pre-empt that process. The specific issues raised by the residents of Old Library Lane will need to be examined in that context. However, whilst that is the proper forum for scrutiny of specific proposals, it is possible to conclude that the principle of having such a link (as opposed to its particular route) is a desirable planning objective. The s.106 agreement does not seek to go beyond this point and it is therefore unnecessary for this Inquiry to do so.

CONCLUSION

63. For all the reasons set out above the Council invites the Inspector to recommend to the Secretary of State that planning permission should be granted.

30 September 2009

MICHAEL BEDFORD