

SAINSBURY'S SUPERMARKETS LIMITED ("SAINSBURY'S")

McMULLEN'S BREWERY, HARTHAM LANE, HERTFORD

PINS REF: APP/J1915/V/092101286

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CLOSING SUBMISSIONS FOR SAINSBURY'S

Introduction

The scope of these submissions

1. These closing submissions should be read together with the remarks I made at the beginning of the inquiry [SS 2]. They amplify and expand what I said then, in the light of the evidence and submissions the inquiry has now heard.
2. I shall address the main issues identified on the first day. Before doing that, however, I make some general submissions about the proposals, and the process they have now been through.

The proposals

3. The proposals now before the Secretary of State are a comprehensively detailed and deliverable scheme for the regeneration of a large and mostly derelict site in the middle of Hertford.
4. It is significant that the proposals are already mature in their design, not merely a concept in outline. The level of detail here is itself a tangible expression of Sainsbury's commitment to bringing the application site back into beneficial use, and thus to securing the wider enhancement of the environment and economy of central Hertford which the development will produce and stimulate.

5. The scheme now before the Secretary of State is the culmination of a process of option selection, consultation and design refinement, which began early in 2007. Since the application [CD1] was submitted to the local planning authority in August 2008 the proposals have continued to evolve following discussions with the local planning authority, the local community and English Heritage, and others.
6. The scheme is explained and illustrated in the Design and Access Statement [CD C4], which sets out how it will achieve the key objectives set for it. Those objectives have not been said by anybody to be inappropriate. They were assessed in an environmental statement [CD C3], which no one has criticized for its coverage of the relevant effects or for its reliability in their assessment. Statements were submitted explaining the planning implications of the development [CD C2], its effects on the local and wider transport infrastructure [CD C5], its compliance with national and local policy for retail development [CD C6], its likely influence on employment and the local economy [CD C8], its sustainability [CD C9 and CD C18], its relationship to, and its role in, the conservation of the historic environment – in particular, the Hertford Conservation Area [CD C16] and the listed brewery buildings [CD C13]; its compatibility with the principles of national policy directed to the reduction and control of the risk of flooding [SOCG C17]. None of this material has been said to be inaccurate or incomplete.
7. Conservation area consent [CD C25] and listed building consent [CD C24] for the elements of the scheme requiring those approvals were granted on 14 January 2009. The application for planning permission was approved by the local planning authority at the meeting of its Development Control Committee on 11 February 2009 [CD C23]. It has been consistently supported by the authority since then. This support has not been merely passive. The local planning authority has come to this inquiry, with an advocate and witnesses, and has shown its desire to see the regeneration promised by Sainsbury's proposals go ahead. This is the authentic expression of the democratically accountable view at local level.

And it should be remembered that, whilst the decision in this case is now to be taken at the national level, it is the local community and the local environment, in Hertford, which will experience the benefits this development will realize.

The formally agreed common ground

8. A substantial consensus on all the salient planning issues has been reached between Sainsbury's and the local planning authority.
9. Three statements of common ground have been produced, one on general planning matters [**SO CG 1**] and two on retail planning issues [**SO CG 2 and SO CG 5**]. Both on questions of principle and on detailed aspects of the proposals and their merits the level of agreement is comprehensive. In fact, there is no disagreement at all between the two principal parties on any of three main issues or on any of the matters on which the Secretary of State has asked to be informed.
10. The common ground on general and retail-related matters is not fully matched by agreement on transport matters between Sainsbury's and Hertfordshire County Council as highway authority. Nevertheless, there is accord on many of the factual and technical considerations, which is set out in the two statements of common ground on transport [**SO CG 3 and SO CG 4**].

The benefits of the proposed development

11. In opening I said that Sainsbury's proposals hold in prospect benefits of huge importance for the town of Hertford and its people. That submission has not been seriously challenged in the course of the inquiry.

12. I referred to three principal benefits.
13. First, the development will answer the need for modern major food store provision in Hertford, and it will do so in an effective, proportionate and competitive manner.
14. Secondly, the proposals are consistent with national policy, in PPS1, for sustainable development and for the creation of sustainable communities. The development will regenerate, in a mix of uses, a large, previously-developed and now substantially redundant and underused industrial site, close to the centre of the town, bringing new economic activity and development to land where economic activity has died and where buildings once devoted to economic use have long been idle and empty.
15. And thirdly, as national policy in PPS1, PPS6 and PPG13 urges, and consistently with the principles of sustainable transport, the development will reduce the need to travel.
16. I shall say more about those benefits in the submissions I make on the three main issues.

Section 38(6) of the Planning and Compulsory Purchase Act 2004: matter (i) in the call-in letter – “The extent to which the proposed development is in accordance with the development plan for the area having particular regard to the policies in the Regional Spatial Strategy for the East of England, the East Herts Local Plan Second Review April 2007 and the Local Transport Plan”

17. The proposals are in accordance with the development plan.
18. This, of course, would be a fundamental point in the case of any application for planning permission. But in the case of a scheme for so

substantial a development as this, on so large a site, and in the middle of an historic town, it is remarkable.

19. The local planning authority – responsible as it is both for producing the statutory policies applicable in its district and for managing the plan-led system in development control decision-making – has accepted that the proposals are consistent with the statutory plan. The statement of common ground on planning matters [**SOCG 1**] records (in paragraph 6.10) the agreed position that “the application broadly accords with the provisions of the development plan and key policies within the local plan”.
20. As to the policies of the development plan of most direct relevance to the proposals, two submissions may be made as a context for the argument on the main issues.
21. First, the proposals reflect the preference – expressed in policy STC1 (“Development in Town Centres and Edge-of-Centre”) of the local plan [**CD B6**], which mirrors national policy in PPS6 – for new retail development to be sited in and next to established town centres.
22. In the light of the agreed evidence on the retail planning issues, and for the reasons given by Mr McGrath in paragraphs 6.23 and 6.61 to 6.74 of his main proof [**SS/3/A**], it ought to be concluded that the proposals are clearly consistent with policy STC1. The policy makes it plain that in East Hertfordshire district, the favoured location for new retail development “will be town centres followed by edge-of-centre sites in line with the sequential approach”, provided that four criteria are met. Sainsbury’s proposals satisfy all four. The proposed food store is “consistent with the character and role of the town centre” (criterion (a) in part I of the policy). It will be “accessible by a choice of transport means other than the private car” (criterion (b) in part I). The development “will provide for the effective use of” the upper levels of the listed brewery building (criterion (c) in part I). “Parking provision, access and traffic generation are satisfactory ...” (criterion (d) in part I). A need has been demonstrated for

the development (part II of the policy). And an assessment of “the impact of the development on other town centres” has been undertaken, and this has demonstrated that there will be no harmful impact on any other centre (part III of the policy).

23. Secondly, the proposals are also consistent with the designation, under policies EDE 1 and HE8 of the local plan, of a swathe of land in Hartham as an Employment Area.

24. As Mr McGrath has explained (in paragraphs 6.25 to 6.33 of his main proof [SS/3/A], the policy matrix allows scope for development other than that in the defined categories of employment uses. Policy HE8 reserves the seven defined Employment Areas, including the one at “Hartham Lane/Station Approach”, “primarily” for Class B1 and Class B2 use. The policy does not preclude other uses, still less other employment-generating uses, as long as they do not distort the balance of the Employment Area in question by disturbing the primacy of the uses referred to, and provided that the objective of the policy (stated in paragraph 12.5.4 of the local plan) to maintain a “supply of employment land in Hertford” is not compromised. Neither of those things would happen here. No one has argued to the contrary. As Mr McGrath has shown in Appendix 2 to his main proof [SS/3/C], even after the application site has been developed for the new food store at least 61% of the Employment Area will remain in Class B1 and Class B2 uses. Nor has there been any suggestion that land and buildings available for such uses is, or is likely to be, in short supply. Here, plainly, there is ample justification for the form of economic development proposed, itself a generator of new jobs. And there is no need for the site to be retained for any other use: industrial or offices. Applying policy HE8 pragmatically in this way is consistent with the Government’s broad conception of “economic development”, set out in paragraphs 3 to 5 of the consultation draft of PPS4 [CD A4], which specifically includes “town centre uses”.

25. Nor is any other provision of the statutory policy regime offended. Mr McGrath has demonstrated (in sections 6 and 9 of his main proof of evidence [SS/3/A]) the proposals' compliance with the relevant provisions of the East of England Plan [CD B1] – policies SS1, SS2, T4, T8, ENV6, ENV7; with the policies of the local plan of specific relevance to them, namely policies STC1 and HE8; with the more generally relevant policies ENV1, SD1, ENV1, SD1, EDE1, BH6, TR1, TR2 and TR4; and with the ancillary non-statutory documents –the local planning authority's SPD on car parking provision in new developments [CD B7] and its SPD on planning obligations [CD B8]. None of this evidence has been in dispute.

The public inquiry

26. When the Secretary of State calls an application in, he not merely takes on the responsibility for making the decision himself; he also gives the parties concerned the right to appear at a public inquiry to test the case for the development, or to articulate their reasons for supporting it, and, whatever their views or beliefs, to have their own position on the proposals scrutinized in a forensic way. Evidence given in these circumstances by witnesses who are prepared to be cross-examined – or whose clients are not afraid to let them – carries full weight, as it deserves.

27. In the present case the two main parties have dealt conscientiously with the matters the Secretary of State has specified in his call-in letter; and the third parties who have come to the inquiry have done the same. They have contributed fully to a fair and worthwhile process. And the inquiry has been just that.

28. Tesco, however, have chosen not to take part in the inquiry. Why in the end they decided to pull out does not matter. The facts speak for themselves. In July 2008 Tesco submitted proposals for a major new store on their site at Ware Road. In March 2009 Berwin Leighton Paisner wrote to the Secretary of State on their behalf, urging that Sainsbury's

application be called in. Only two and a half months ago, in July 2009, Tesco attended the pre-inquiry meeting, giving every impression of a resolve to press on. But they then promptly withdrew their appeal, thus abandoning their scheme for a new store, and within a few weeks of that told the Inspectorate they had decided not to appear at the inquiry after all. On 14 August 2009, about one week before proofs of evidence for the inquiry were due, they submitted to the local planning authority a scheme for a relatively modest extension of their existing store. What the outcome of that application will be, if it is pursued, is a matter of conjecture. In any event the decision on it will probably not be made until after Sainsbury's proposals have been determined by the Secretary of State. When the time came for the written evidence in this case to be produced Tesco sent to the Inspectorate "proofs of evidence" of two consultants, Mr Crowdy and Mr Bedwell, who clearly had no intention of coming to the inquiry to be questioned about what they had written. What is one to make of all this? Certainly, Tesco's actions are consistent with a retailer's instinct to protect its profit and market share and with an ambition to delay a competitor's proposals for as long as it can. Above all, it is behaviour inimical to competition. The crucial point, then, which sounds in the sphere of land use planning, is that everything Tesco have done serves only to underscore the competitive merit of Sainsbury's proposals.

The first main issue: the effects of the proposed development on the character and appearance of the area and on heritage assets, including listed buildings, the conservation area and archaeology

The issue

29. This issue embraces the relevant parts of the development plan policy matrix under matter (i) in the Secretary of State's call-in letter; matter (ii) ("Whether the scheme would secure a high quality of design, and its effect on the character of the area, having regard to the advice in paragraphs 33 to 39 of [PPS]1: *Delivering Sustainable Development*"); matter (iv) ("The

extent to which the proposed development/works are consistent with advice in [PPG15]: *Planning and the Historic Environment* with particular regard to: a) the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; b) the need for the scale and type of development/works proposed at this location to secure the future of the listed building”); and matter (v) (“The extent to which the proposed development/works are consistent with advice in [PPG]16: *Archaeology and Planning* for the protection, enhancement and preservation of sites of archaeological interest and of their settings”)

The regeneration of the Hartham Lane area of central Hertford

30. Nothing but good will result – both in the townscape of this part of Hertford and for its heritage assets – if this development is allowed to proceed.
31. The site’s regeneration as proposed will secure considerable improvements for both the character and the appearance of the Hartham Lane quarter of the Hertford Conservation Area. Wider benefits for the environment of central Hertford will also accrue.
32. Although regeneration is not a concept limited to the physical renewal of land and buildings, this is a vital part of it here. But this initiative within the proposals has a wider context of public benefit too.
33. The townscape of this part of central Hertford, including prominent historic fabric within its conservation area, will be re-invigorated. The special interest of the Hertford Conservation Area as a whole, and of the Hartham sub-area within it, will thus be enhanced.

34. Consistently with the Government's advice in PPG 15, and as its draft replacement in draft PPS15 now requires, the historic assets on the site will be actively conserved and better integrated into their wider context.
35. Hartham Lane and its immediate surroundings will be transformed, for the better, as Mr Westerdale has explained (in paragraphs 6.1.4 to 6.1.12 of his proof of evidence [SS/6/A]) and as Mr White has shown (in Appendix 6B to his proof of evidence [SS/5/A]).
36. The accessibility both of the town centre and of Hartham Common will be greatly improved.
37. This part of the conservation area will be made more permeable for people who want to come here, or to be here, or simply to pass through. Attractive new routes will be threaded into and across the area for pedestrians and cyclists; Mr Foot has illustrated them (in his Figure JF 5 [SS/4/C]). Hartham Lane, once stopped up, will be retained as a route for people on foot and bicycle and vehicles serving the continued operations of the brewery. This has been described both by Mr Foot (in paragraph 4.17 of his proof of evidence [SS/4/A]) and by Mr Westerdale (in paragraph 6.1.8 of his proof of evidence [SS/6/A]).
38. The river Lea will be made less of a barrier to movement in the heart of the town, and more easily enjoyed by the public. A new bridge will cross the river at Folly Island. This will be, for all who walk in and around this part of the town, a considerable gain. It will facilitate journeys on foot from the Sainsbury's site into the town centre, and in the opposite direction. Its value cannot be doubted, as the evidence of Mr Westerdale (in paragraph 6.1.8 of his proof of evidence [SS/6/A]), Mr Foot (in paragraph 4.15 of his proof of evidence [SS/4/A]) and Mr White (by his drawing 06055/04A in Appendix 5A to his proof of evidence [SS/5/C]) has shown. It can and will be delivered. A commitment to this is contained in the section 106 obligation.

39. Access to the riverside will become possible where at present it is not. This has been illustrated by Mr White (by his drawing 06055/30K in Appendix 5A to his proof of evidence [SS/5/C]). The banks on this stretch of the river Lea will be re-naturalized. Biodiversity will thus be enhanced.
40. Planting and landscaping and lighting will assist the integration of the component parts of the regenerated land with each other, and the integration of that land and the buildings and spaces on it into the town centre itself. This has been illustrated by Mr White (in appendix 7C to his proof of evidence [SS/5/C]).
41. Economic regeneration and the greater confidence the commercial community of the town centre will feel in maintaining and increasing investment in their businesses will find tangible expression in the active conservation of their buildings, many of them historic. This is a sensible inference to draw from the evidence of Mr Westerdale, who (in paragraphs 6.1.13 and 6.1.14 of his proof of evidence [SS/6/A]) describes the example Sainsbury's will set in repairing the listed building and adapting it for new and beneficial uses which will endure.

The design of the proposed development

42. Mr White has described (in sections 3 and 4 of his proof [SS/5/A] and in his oral evidence) the meticulous and inclusive approach which Sainsbury's design team adopted in preparing and refining the design of the scheme. Attention has been paid to the context throughout the design process. It would be impossible to fault the way in which this has been done.
43. As Mr White has made clear, the intention, from the very beginning, has been to generate a bespoke design for the food store rather than to adopt some ubiquitous standard format. The result, on the ground, will be a confident building, suitably respectful of its listed neighbour, to which it

will be appropriately joined by a light, glazed structure, which has sometimes been referred to as an “atrium” (and shown in drawings 2500 SK 1005A [SS 14], which is one of the application drawings, and 2500 PL (2) 614B [SS 12 A], which is not one of the application drawings but depicts this feature of the scheme). Put simply: a well designed new building will replace unprepossessing buildings of no heritage worth.

44. Good design here has not been confined to the architecture of the new store, or to its relationship to the listed building which it will adjoin, but to the wider context of heritage assets. A holistic approach has been taken. The building itself will be an honest contemporary piece of architecture; the antithesis of puny pastiche; fit for its function; a large building with a suitably firm rhythm in its elevations; made of traditional materials which will resonate well with the listed fabric beside it; sustainable in its construction; congruent in its scale – neither dominating nor unduly subservient to the massive but crisply detailed Victorian brew-house whose neighbour it will be; and properly connected, both physically and visually with its surroundings.
45. The Secretary of State can also be satisfied that the project now before him has been through the rigour of option selection, consultation and refinement, without the essential integrity of the design being lost. This exercise is described in the Design and Access Statement (in section 6.00, entitled “Consultation/Stakeholder Involvement” [CD C4]).
46. English Heritage, having discussed the scheme with Sainsbury’s design team on several occasions, offered constructive comment and advice (as can be seen in the three letters English Heritage have written about the proposals, which are appended to Mr White’s proof in Appendix 3B [SS/5/C]. This advice has been responded to in the adjustments made to the proposals, principally in the reduction of the bulk of the northern part of the roof of the proposed store, the remodelling of the east and north elevations to enable more articulation and additional glazing to be introduced into the north façade, and the refined form, profile and

materials of the canopy on the Hartham Lane elevation. This is noted in the third of English Heritage's letters, dated 17 December 2008 (which is in Appendix 3B to Mr White's proof of evidence [SS/5/C]).

47. No less responsible an approach has been taken with the local planning authority's conservation officers, the local Architects Advisory Panel and the Hertford Civic Society. Praise for the design was expressed at the panel's meeting in March 2008 (the minutes of which are in Appendix 3A to Mr White's proof of evidence [SS/5/C]). No cogent critique of the design came from the civic society, either in February or July 2008 (when meetings took place, the minutes of which are in Appendix 3C to Mr White's proof of evidence [SS/5/C]), or in the society's letter to the local planning authority dated 3 October 2008 (Appendix 3D to Mr White's proof of evidence [SS/5/C]).
48. At the inquiry it has been suggested on behalf of the civic society (by Mr Kirby in paragraphs 4.5, 4.14 and 4.28 of his proof of evidence [HCS/5/A]) that more detail ought to have been provided in the planning application drawings. This is not a fair point. Ample detail has been supplied – enough, at least, for conservation area and listed building consents to have been granted. If had been required for planning permission to be granted, the local planning authority or English Heritage could and would have called for it.
49. Mr Kirby offered some thoughts of his own on the rhythm and articulation of the east elevation of the proposed new building (in paragraphs 4.25 to 4.27 of his proof of evidence [HCS/5/A]). Whilst these ideas represent Mr Kirby's own subjective and, no doubt, sincere reaction to the design, they do not amount to a basis for refusing planning permission.
50. In its scale and massing, in its use of traditional materials – as is commended by the local planning authority in its character statement for the Hertford Conservation Area [CD B9] (on page 29) – and in the landscaping and planting which has been designed to surround it, the new

building will relate sympathetically to the historic fabric beside which it will take its place.

51. As Mr White has said (in paragraph 4.17 of his proof of evidence [SS/5/A]), the new store has been designed to be sustainable in its construction and operation: taking at least 10% of its energy from local renewable sources, using natural light and ventilation as much as is possible, sourcing its washing and drinking water from a borehole on the site, making use of a rain water harvesting and using a biomass boiler for its heating (as is explained in Appendix 4B to Mr White's proof [SS/5/C]).

The effect of the development on the character and appearance of the conservation area and on the setting of the listed brewery building

52. The defined context for the redevelopment of the application site is the large conservation area in which the site is embedded.
53. As the local planning authority's conservation area character statement [CD B9] illustrates and describes, the Hertford Conservation Area is heterogeneous in both character and appearance. The Hartham sub-area, within which the application site lies, is itself very mixed in architectural period and genre, in land use, and in the height, scale and mass of its buildings. Such variety is apparent even in the industrial enclave itself, as the photographs produced by Mr Kirby (in the appendix to his proof of evidence [HCS/5/A]) show quite well.
54. This is not a conservation area whose special interest demands that there be no change. It is well able to take new development that replaces outworn or incongruous fabric with worthy new buildings, which, when the situation allows or requires it, can and should be large. That is so here.
55. In its observations on the Hartham Lane area (on page 32) The conservation area character statement [CD B9], says that the character of this part of the conservation area is

“ ... dictated mainly by the McMullen Brewery complex which has two dominant buildings – the original building which is red brick and flamboyant, but compatible in scale and proportion with the town, and the modern “Lager building” red brick with grey metal roofing and of large bulky proportion totally out of scale with everything else around”.

Commenting on Hartham Common the statement says this (on page 33):

“... On the industrial southern boundary, the buildings seen from the park, with the exception of the Lager building, still retain the scale of the town although the original 19th century building is higher than its neighbours. ...”.

All of this clearly is right. And if it is accepted as a sound outline of the essential constituents of the local townscape, there ought to be no difficulty in concluding that the removal of the ugly Lager building and its replacement with a building of appropriate size, scale and materials is, in principle, to be welcomed. The application scheme will achieve this, opening up views of the listed building over the Sainsbury’s store. A more harmonious composition of new and old will be the result.

56. As Mr Westerdale said (in his oral evidence), the character of the conservation area will be reinforced, which translates to saying that it will be not merely preserved, but enhanced. The appearance of the conservation area and the setting of the listed brewery building will both be enhanced.

Compliance with policy and guidance

57. Sainsbury’s proposals represent not merely good, but exemplary design.

58. Judged by the precepts of good design in PPS1 [CD A1], “By Design: Urban Design in the Planning System – Towards Better Practice” [CD A16], “Building in Context” [CD A15] and “Going to Town – Improving Town Centre Access”, the proposals are sound in every relevant respect.

Mr White has provided the inquiry with a systematic and thorough exposition of all the relevant considerations (in section 5 of his proof [SS/5/A]), and this evidence has not been challenged or questioned. A synopsis will therefore suffice.

59. The proposed development will realize all seven “Objectives of Urban Design” set down in “By Design” [CD A16] (“Character”, “Continuity and enclosure”, “Quality of the public realm”, “Ease of movement”, “Legibility”, “Adaptability” and “Diversity”), as well as the eight specified “Aspects of Development Form”; and the principles of “Going to Town” (see Appendix 2A to Mr White’s proof of evidence [SS/5/C]).
60. The development will more than meet the objectives of PPS1 for sustainable design. The advice in paragraph 35 of PPS1 is reflected in all five of its principles.
61. As I have already said, accessibility will be improved (see paragraphs 4.14 to 4.32 of Mr Foot’s proof of evidence [SS/4/A]). Connections between residential areas skirting the town centre to its north, the town centre, the Hartham industrial area, Hartham Common, and the riverside will be strengthened.
62. The development will be successfully integrated into both the existing grain and urban form of central Hertford, improving the texture of the town’s built and natural environment. The imperatives of repairing the listed brewery building, of inserting new and viable uses into it, and of designing new fabric to sit next to the old have demanded such integration. The removal of the Lager building and its replacement with a much better new building will be a boon.
63. As Mr White has mentioned (in paragraph 5.9 of his proof), meetings have been held with the local crime prevention officer, the police architectural liaison officer and others to ensure that the development will “be an

integral part of the processes for ensuring [a] successful, safe and inclusive [town]”.

64. The listed building will, for the first time, be made accessible to the public. Community and business uses will be put into it. Everyone, including people with disabilities, will be able to get into it.
65. Impacts on the natural environment, both direct and indirect, will be good. They are described in the Environmental Statement (on pages 102 to 119 of volume 2 [CD C3].)

The repair and conservation of the listed building

66. Sainsbury’s are committed to the repair of the listed brewery building and its adaptation for new uses.
67. This commitment carries a big responsibility, as Mr Westerdale’s evidence (supported by the correspondence in Appendix L to his proof) – which he was able to amplify in cross-examination by Mr Kirby – has made plain. The doubts expressed by Mr Kirby about the integrity of the viability of this part of the project are not well founded. The areas and rental figures given in the simple outline provided are dependable, as will be apparent when one reads the documents in Mr Westerdale’s Appendix L fairly as a whole.
68. The capital commitment involved here is one which neither McMullen’s nor any other developer or prospective investor in the site has been able or prepared to take on. And on the thesis Mr Kirby seemed to be contending for in the questions he put to Mr Westerdale in cross-examination, which was that the challenge might turn out to be a greater one still when the parlous condition of the listed building is further investigated, the likelihood of some other philanthropic intervention to save this building should Sainsbury’s proposals not be approved seems extremely remote.

69. This investment in a heritage asset – to adopt the language of the consultation draft PPS15 issued in July 2009 [CD A18] (in paragraph 5) – which is one of the most familiar buildings in central Hertford, a striking symbol of Victorian industrial vigour, is a gain for the historic environment which should earn considerable weight in the Secretary of State’s decision in this case.

70. No other prospect of the building being brought back to life and given a viable future in active and beneficial uses has come forward. None is likely to in the foreseeable future. No evidence has been given to the inquiry to indicate the likelihood of there being any other use or mix of uses for this site which might be able to sustain, financially, the capital cost of repair and adaptation, or the continuing cost of upkeep and management. Not even a hypothetical viability analysis has been presented by any opposing party. In the absence of such a possibility the only probable future for the listed building, if the present scheme should fail to get the last of the three approvals it requires, is one of continued dereliction and decline. Mr Williams’ sobering view, which he shared with the inquiry in his cross-examination by Mr Sangster, was that if the Secretary of State were to refuse planning permission for Sainsbury’s proposed development, it would be likely that the site would remain vacant for the next five years and probably for much longer. If that were to happen, and even if one could envisage another scheme eventually coming forward which could shoulder the task of rescuing the listed building, the future facing this piece of Hertford’s heritage would look bleak indeed.

71. The approach Mr Westerdale has taken to his task is a model of good practice. He has described it clearly in his evidence to the inquiry. His experience in the handling of the repair and adaptation of historic buildings is immense. He knows the McMullen’s buildings in Hartham Lane intimately. He has been engaged in the present project since early 2008. He has called on expert consulting engineers to assist him when it

has been appropriate to do so. His judgment in these matters is to be trusted.

72. Mr Westerdale's starting point lay, as one would expect, in the research and analysis which was done to identify the special architectural and historic interest of the listed building, so that it could be properly conserved (see section 3.0 of Mr Westerdale's proof of evidence, in particular paragraph 3.2; and section 5.0, especially paragraph 5.1.6.3 [SS/6/A]). This in turn informed the design proposals, including the resolution of the interface between the listed building and the new store (see paragraphs 6.2.2 and 6.2.4 of Mr Westerdale's proof of evidence [SS/6/A]. Mr Westerdale's emphasis on the importance of carrying out the repair and adaptation of an historic building within the framework of a sound conservation philosophy was apt. As can be seen from the text in section 4.00 of the Design and Access Statement [CD C4] (in particular the passage under the heading "Conservation Policies"), this philosophy has informed the whole approach to the design of the scheme. Minimal and reversible intervention has been a guiding principle. Mr Westerdale rightly described the approach to the adaptation of the building as having been "pragmatic" and "balanced".

73. As Mr Westerdale has said (in section 4.0 of his proof of evidence [SS/6/A]; see in particular paragraphs 4.2, 4.4 and 4.8), the listed building lends itself well to the new uses proposed. Nobody has suggested otherwise. Nor has anybody has put forward any other use or uses which are said to be likely to be more suitable than the community and small business users envisaged.

74. The several parts of the building – the northern brew-house section, the southern element and the basement – will all be brought back into long-term beneficial use, the basement being devoted, probably, to storage, and the ground and upper levels to more active occupation. An economically secure future for the whole of the building can thus be achieved. But this does depend on the cost of the structural repairs and adaptation being

borne by Sainsbury's, so that those who occupy the building will not be faced with that (apart from the fitting-out of the business accommodation) and will be able to sustain the regular costs of maintenance and management (see paragraph 5.2.3 of Mr Westerdale's proof [SS/6/A]).

75. The Secretary of State's conclusion should be that the proposals Mr Westerdale has described will have a very positive effect on the listed building and its setting; and that they are entirely congruent with the policy guidance contained in PPG15 [CD A8], in particular paragraph 2.14; and that they may also be seen as a model of good conservation practice in the light of the advice given in "Building in Context", in particular the advice given on page 5 of that document [CD A5] (see paragraphs 6.1.4 to 6.1.12 of Mr Westerdale's proof of evidence [SS/6/A]).
76. The result will be, as Mr Westerdale said, a landmark building brought back to life, a new source of activity in the conservation area, with the added gains of public access and the greater visibility of the listed building in views from the east (Folly Island) and north (Hartham Common) (see Acanthus' drawings 3912 123 and 121 [SS 14]). That is not a bad return from a development which meets other planning needs and has other planning benefits outside the ambit of conserving the historic environment.

Archaeology

77. The statement of common ground on planning matters [SOCG 1] records (in paragraphs 8.1 to 8.9) the agreement which has been reached on the proposals' compliance with development plan and national policy relating to archaeology. The relevant policies at the local level are policies BH1, BH2 and BH3. These policies effectively replicate the corresponding policy and advice in PPG16 and PPG15. The relevant statutory authority is Hertfordshire County Council. When consulted on the application for planning permission the county council advised that a condition should be

imposed on any grant of planning permission to ensure that no work should be undertaken on the site until an agreed scheme of archaeological investigation has taken place and that work is carried out consistently with the outcome of that investigation. This approach is agreed.

The second main issue: the effect of the development on the vitality and viability of the town centre and other centres nearby

The issue

78. This issue brings together matter (iii) in the call-in letter and the relevant part of matter (i) (the overarching policy issue). Matter (iii) is “The extent to which the proposal is consistent with advice in [PPS 6] to promote the vitality and viability of the town centre by supporting efficient, competitive and innovative retail leisure, tourism and other sectors, with improving productivity; and improving accessibility, ensuring that existing or new development is, or will be, accessible and well-served by a choice of means of transport”.

The retail assessment work

General observations

79. There is substantial accord between the experts who have been involved in assessing the need for the proposed new store and the likely effects of the store’s trading performance on the economic health of Hertford and other town centres. This covers all the essential constituents of retail capacity and impact assessment. No cogent challenge has emerged to the clear conclusions which are the outcome of that work. At the inquiry the only party to question any of those conclusions has been the Hertford Civic Society. For the civic society Mr Sangster has sought both through his own evidence and through his cross-examination of Mr McGrath a deeper

explanation of some aspects of the capacity and impact analysis. But nobody else has done so, which is significant in itself. Moreover, the evidence the inquiry has heard on these matters has effectively been corroborated by the assessment undertaken by GL Hearn [TS 4] for the now withdrawn application and appeal for the erection of a superstore to replace Tesco's shop on Ware Road, and in the "proof of evidence" tendered to the inquiry by Mr Crowdy [CD D4]. Mr McGrath has also referred the work done for Asda by Planning Potential to promote the development of a food store in Ware as part of a mixed-use scheme of development.

The catchment area

80. The first statement of common ground on retail matters [SOCG 2] records (in paragraph 2.8) the agreement between Sainsbury's and the local planning authority that the primary catchment area of the proposed store on the application site is composed of Zones 4 and 5 within the catchment area described by Indigo in the Retail Statement they produced in August 2008 (see Appendix 1 to the statement of common ground [SOCG 2]). The reasons why the catchment area is defined in this way have been fully described in Indigo's Supplementary Retail Statement [CD C21] and in Mr McGrath's rebuttal proof [SS/3/D] (in paragraphs 2.1 to 2.5). The second statement of common ground on retail matters [SOCG 5] confirms (in paragraphs 2.8 and 2.9) that the study area incorporating the primary shopping area provides the basis for a reliable assessment of capacity. No positive case for any other definition of the relevant catchment area, or primary catchment area, has come from any objector. The civic society has not ventured to do so, despite questions having been asked of Mr McGrath in his cross-examination, which ventilated the possibility that the pull of the large Sainsbury's stores in Stevenage and Harlow on the spending of some Hertford residents might be greater than the household survey had indicated: a notion which Mr McGrath rejected. In the briefing note produced by Indigo on "Clawback Expenditure and Inflow" [SS 15] (in the second paragraph under the heading "Clawback") it is noted that the primary catchment area, comprising zones 4 and 5 of

the study area in the August 2008 Retail Assessment (in Appendix 1) [CD C6] is agreed to be “Hertford’s natural catchment area”. The Secretary of State can be confident in concluding that the catchment area and the primary catchment area have been robustly defined.

The design year

81. No material dispute has arisen over the selection of 2013 as the realistic design year, which reflects the delay the project has been caused, though estimates of expenditure growth have been made at 2011 (see paragraph 2.9 of the first statement of common ground on retail matters [SOCG 2]).

Expenditure estimates and expenditure growth

82. It is agreed between the two main parties that at 2011 the convenience goods expenditure in Zones 4 and 5 will be £105.4 million; and that there will be growth in convenience expenditure in Zones 4 and 5 between 2007 and 2011 of £5 million (see paragraphs 2.10 and 2.12 of the first statement of common ground on retail matters [SOCG 2]). The second statement of common ground on retail matters [SOCG 5] considers the implications of the latest growth rate projections published by Experian in its Retail Planner Briefing Note 7.1 (in paragraphs 2.3 to 2.7), concluding that, even in the light of “recent economic fluctuations”, the level of convenience expenditure growth estimated by Indigo in their August 2008 assessment was “robust”. Mr McGrath maintained this conclusion with conviction in his cross-examination by Mr Sangster. Further justification for the figures agreed between Mr McGrath and Mr Williams on alternative scenarios, with sensitivity tests is to be found in the briefing note Indigo have produced on “Expenditure Growth” [SS 16]. This shows that even on the most cautious view there would still be at least £2.73 million of residual convenience capacity after allowance is made for the proposed Sainsbury’s store’s turnover. This should give the Secretary of State the comfort he may wish in concluding that there is going to be plenty of money in the system to support the new store and a considerable amount of other new convenience goods floor space as well.

Outflow and clawback

83. The new Sainsbury's store will be effective in retrieving to Hertford convenience goods spending generated in the Primary Catchment Area and currently leaking elsewhere. This is clearly a virtue of the scheme to which the Secretary of State ought to give material weight. In simple terms, it will help to reduce the need to travel. It is recognized that in other towns beyond the Primary Catchment Area there are several stores which are larger, some of them considerably larger and selling a wider range of goods, than the proposed Sainsbury's store. This has been taken into account by Mr McGrath in the analysis he has presented. As is explained in the briefing note on "Clawback Expenditure and Inflow", the evaluation of clawback by Indigo –with which Mr Williams, for the local planning authority, indicated he agreed – has been robust. In the first place, as the briefing note [SS 15] explains, the potential clawback was assessed on the basis of expenditure leakage from Zone 5 alone, which is only the core of the Primary Catchment Area. Secondly, the estimate of approximately £3.84 million currently being spent at stores outside Zone 5 being clawed back by the Sainsbury's store is based on the assumption that the store will claim only 50% of the expenditure leaking from Zone 5 to Sainsbury's stores elsewhere and only 20% of the expenditure leaking from Zone 5 to all other stores elsewhere (as is indicated in Table A in Appendix 1 to Indigo's Supplementary Retail Assessment [CD C21]). Thirdly, as is pointed out in the briefing note, at present £13.7 million is leaking to stores outside Zone 5. The clawed back expenditure represents less than 28 % of this leakage. Fourthly, there is a further £10 million leaking from Zone 4. Therefore the total amount of leakage from the Primary Catchment Area is £23.8 million, of which the estimated clawback amounts to a only 16%. Fifthly, there is no less than £10 million of expenditure leaking from the Primary Catchment Area to stores operated by Sainsbury's. This equates to 40% of the total leakage. The Sainsbury's stores, outside the Primary Catchment Area, at Hoddesdon, Welwyn Garden City and Stevenage are estimated to be overtrading at an aggregate level of £17 million. The total amount of overtrading at all the other stores outside the Primary Catchment Area is estimated to be £27 million. Given

this degree of overperformance by remote facilities the clawback estimate made by Indigo is clearly not disproportionate. Sixthly, as the briefing note emphasizes, there are several commercial and geographical factors militating in favour of Mr McGrath's estimate, including the fact that the new Sainsbury's store will contain a "full main food shopping offer" and will be operating in a market where there are no other Sainsbury's stores within 10 minutes' drive, the Hoddesdon store, located on that isochrone, being the nearest. It would be wrong, therefore, to suggest that the level of clawback estimated for the new store on the application site is anything other than reasonable and conservative.

Inflow

84. The estimate of inflowing expenditure (expenditure generated outside the catchment area which is spent within the catchment area) is also low. As is explained in the same briefing note [SS 15], it was estimated by Indigo that only 10% of the store's turnover would be derived from outside the catchment area comprising Zones 1 to 5. It is noted that the inflow estimate is "conservative", having been formed in the light of the results of an on-street survey which showed that more than a quarter of people within Hertford town centre lived outside that wider catchment.

Overtrading

85. Some controversy has arisen over the agreement between the two main parties (in paragraph 2.18 of the first statement of common ground on retail matters [SOCC 2]) that the relevant existing stores are overtrading to the tune of £14 million. However, there should be no doubt in the Secretary of State's mind on this point, for all three of the relevant retail assessments (Indigo's, Chase & Partners' and GL Hearn's) show a vast amount of trading above company average levels; GL Hearn found no less than £19 million surplus to the aggregate benchmark level. As Mr Williams acknowledged, both in his original critique of Indigo's work [CD C20] and in his briefing note of 29 September 2009 [EHDC/5/D] (in paragraphs 8 to 10), it is entirely legitimate, in the light of the Government's advice in paragraph 2.36 of PPS 6 [CD A5], to take into

account, in the capacity assessment, overtrading at stores within the primary catchment area.

86. This point gathers force from the dramatic description presented by GL Hearn, Tesco's own consultants, of the chronic congestion apparent in the trading conditions of the Tesco store on Ware Road (see paragraphs 5.40, 5.42. 5.68 to 5.70 of the GL Hearn Retail Assessment of July 2008 [**CD D4**]).

The turnover of the new store

87. The agreed range for the turnover of the proposed store, at 2011, is from £21.48 to £22.11 million, which includes a convenience goods turnover of between £19.19 and £19.82 (see paragraphs 2.13 to 2.15 of the first statement of common ground on retail matters [**SOCG 2**]).

Retail need

88. Against the background of the complete agreement of expert judgment, having regard to at least three capacity assessments which throw up a broadly similar picture of the shortfall of floor space to meet expenditure being generated in the primary catchment area, it can be seen that there is a complete and pressing case of quantitative need for Sainsbury's proposed new store. The several strands of the analysis are helpfully drawn together by Mr McGrath (in paragraphs 7.14 to 7.21 of his main proof of evidence [**SS/3/A**]). The position is summarized in Mr McGrath's Table 7.1, which shows a total residual convenience capacity at 2011 of £24.96 million, of which the convenience turnover of the new store will absorb up to £19.82 million, which leaves a residue of at least £5.14 million of surplus capacity for others to claim. On any view, that is a totally cogent case of quantitative need.
89. When a need as great as that exists it usually follows, and it does here, that there is a pressing qualitative need as well. In the present case the deficiency in the existing provision of major food stores to serve the communities in the primary catchment area, the manifest strain there is on the Tesco store in Hertford, a 20 year-old store which nevertheless holds a

near-monopoly of major food retailing in this settlement and is trading at 150% of Tesco's company average, the lack therefore of any effective competition to, or relief of, Tesco's long-established dominance in the town, the inability of Tesco to act effectively as an anchor for the town centre's retail function, the substantial leakage of money for convenience goods spending to other places, and the absence of any other serious contender with planning permission for a modern major food store or the likelihood of getting it in the foreseeable future, there is a compelling qualitative justification for Sainsbury's proposals as well (see paragraphs 7.22 to 7.33 of Mr McGrath's main proof of evidence [SS/3/A]).

90. It can be appreciated, therefore, that the need for the proposed food store in this case has several dimensions. Viewed broadly, as I said in opening, the need here has both a quantitative and a qualitative aspect. Both are significant. The new store will largely overcome the acknowledged shortfall in capacity to meet convenience goods spending generated in the relevant catchment area. And it will do so, close to the town centre, in a format of retailing not adequately represented in Hertford today: a superstore selling a sufficient range of convenience goods to attract the custom of local people whose requirements impel many of them to go elsewhere for their main food shopping.

91. The comparison goods need is also a strong one. In the first statement of common ground on retail matters [SOCG 2] (in paragraphs 2.22 to 2.24) it is agreed that the comparison goods element of the new store's turnover which will be drawn from the primary catchment area (£2.29 million) will equate to less than 6% of the growth of comparison goods expenditure in that area between 2007 and 2011. There is therefore more than abundant capacity for the comparison goods floor space proposed.

92. The Secretary of State will rarely find himself confronted with so powerful a case of need as he is in the present case. Ironically, however, it gives him the opportunity to impress on the retail community in this

country that, in promoting economic recovery, the Government will do what it can to resist protectionism and to promote a modern, inclusive and sustainable provision of basic retail services.

Competition and choice

93. A very considerable benefit of Sainsbury's new store, which can be seen as a facet of the need for it, is that it will increase competition and choice for food shoppers in Hertford. It will expand the provision of convenience retail services in the town. It will remove the present dominance of Tesco. It will introduce the virtues of a commercial balance, which is plainly in the interest of consumers. Even those who stay loyal to Tesco by continuing to shop at the Ware Road store will gain, for the advent of Sainsbury's will serve to improve their shopping environment by relieving overtrading and may lead to keener pricing of certain goods. It will boost the fortunes of the town as a destination for shopping. It will add materially to the number of people who come regularly into central Hertford to make use of the various facilities – not merely retail, but many others too – which it has to offer. It will widen the options, in Hertford, for those with the good sense to make a single journey serve more than a single purpose. Thus it will stimulate Hertford's greater prosperity, and it will bolster the town centre's standing in the hierarchy of town centres to which it belongs.
94. Sainsbury's does not hesitate to invite the Secretary of State to give significant weight to the need for something to be done now – and the something that needs to be done is to approve the present proposals – to correct the serious problem which is the absence, in Hertford, of an “efficient, competitive and innovative” convenience goods retail sector. This is a manifest aim of current government policy in PPS6 [CD A5] (paragraph 1.4) and it is given renewed emphasis as a principle the Government evidently remains determined to promote through the new PPS4 “Planning for Prosperous Economies” when that policy moves from the consultation stage to the long-awaited final and published version. For

the moment, the Secretary of State can be sure that Sainsbury's can be relied on to play its part, as it always has, in seeking "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, and particularly socially excluded groups" (paragraph 6 of the consultation draft PPS4 [CD A4]). In this instance this aim cannot be achieved on a site within the presently defined town centre. But it can be achieved by Sainsbury's proposed development which will function symbiotically with the town centre.

The sequential approach

95. It is agreed between all parties to the inquiry who have provided the inquiry with evidence on retail matters that the application site is an edge-of-centre site as defined in PPS6. The agreement between Sainsbury's and the local planning authority on this point is recorded the first statement of common ground on retail matters [SOCG 2] (in paragraph 2.42). After a moment of hesitation when he was cross-examined, Mr Harman for the Hertford Civic Society accepted this too.

96. There is no site, or scheme, sequentially preferable to the applications and proposals for the meeting of the identified need. This too has been agreed between Sainsbury's and the local planning authority. The Secretary of Stat will note the way in which the agreement is expressed (in paragraph 2.43 of the first statement of common ground on retail matters [SOCG 2]:

"It is agreed that there are no other sequentially more suitable sites or any units currently available within Hertford own centre either for the development as proposed or if disaggregated."

This point should be seen in the light of the further proposition, also agreed (in paragraph 2.45 of the first statement of common ground on retail matters [SOCG 2]) and also important:

“It is agreed that the proposed foodstore is of an appropriate scale to Hertford.”

97. The only suggested alternative in the town centre is the vacant shop in Maidenhead Street, formerly occupied by Woolworths. This was put forward by Mr Sangster (in paragraph 5 of his proof of evidence [HCS/3/A]). It is plainly not a relevant alternative in the sequential sense. At 467 square metres those premises are far too small to accommodate the format of retail service which is needed.
98. As Mr Shearman observed, Tesco’s site at Ware Road, which Tesco once proposed to redevelop to provide a new superstore and which is now the subject of an application seeking permission for an extension to the existing store, is at the outer limit of what could be regarded, on a generous view, as an edge-of-centre location. Mr McGrath accepted (in answer to a question put to him by Mr Sangster) that the Tesco store functions as an edge-of-centre store. If this is so, and if the level of linked trips taking place between the Tesco store and the town centre is as high as has been claimed by Mr Crowdy (in his “proof of evidence” [TS/3/A]), the Secretary of State should be encouraged to conclude that the new Sainsbury’s store on the application site would do at least equally well. In fact, for the reasons given by Mr Shearman (in his oral evidence) the Sainsbury’s store will do a good deal better than that. The unrealism of Mr Crowdy’s analysis is highlighted in the second statement of common ground on retail matters [SOCG 5] (in paragraphs 2.21 to 2.32).

Linked trips

99. Whilst there has been more evidence than one might have expected at this inquiry on the propensity of those currently shopping at the Tesco store in Ware Road to link their trips to the Tesco store with excursions into the town centre, that is not what the present case is about. The inquiry has heard this evidence mainly because it helps demonstrate the potential of

Sainsbury's, as manifestly a better located store, to improve on Tesco's rate of linkage and to increase the overall number of linked trips taking place in Hertford town centre.

100. The application site is closer than Tesco's to many of the places in the town centre where those who shop at a superstore will want to go. Mr Shearman has referred to some of these potential destinations (in section 8 of his proof of evidence [SS/7/A]). The routes for those on foot from the Sainsbury's store will be convenient, safe and attractive. They compare well with the routes from the Tesco store. And they do so even if one takes into account the route through the Bluecoats site (as has been done for the purposes of showing simply the walking distances [SS 18]). That route is not a public right of way; it is purely permissive and could be closed at any time.

101. Mr Shearman indicated that, in his view, the degree of linkage will be significantly greater from the Sainsbury's store than it has been from the Tesco store. This is obvious if one compares the two routes on the ground.

102. Several points can be made about this (see paragraphs 8.23 to 8.27 of Mr Shearman's proof of evidence [SS/7/A]).

103. First, the Sainsbury's store will be more conveniently accessible from the primary shopping area of the town centre in its true commercial status – at Maidenhead Street, Salisbury Square and the northern end of Bircherley Green (see Mr Shearman's Plan A and Table 1 [SS/7/C]) – and will no less well related to defined "Primary Shopping Frontages" shown on the local plan proposals map (see paragraph 8.23 of Mr Shearman's proof of evidence [SS/7/A]).

104. Secondly, there is no reason why a lot of linkage should not simply be diverted from Tesco's store to Sainsbury's will not continue to be undertaken.

105. Thirdly, some people, whether or not they happen to be loyal Tesco shoppers who would continue to shop at the Tesco store anyway, will continue to make linked trips from that store to the shops and other facilities they are already visiting in the town centre.
106. Fourthly, if Sainsbury's new store does what the consensus of expert judgment – and common sense – tells one it will, and substantially adds to the number of people who are coming to Hertford to shop for food, there will be more potential linkage for that reason in any event.
107. Fifthly, therefore, to imagine that the advent of the new Sainsbury's store will reduce linkage as opposed to increasing it – probably by a large amount – would be absurd.

Economic effects in central Hertford

Existing conditions

108. Mr Shearman has given very clear, closely detailed and patently well considered evidence about the current health of Hertford town centre. He has considered the way in which the town centre functions (in section 3 of his proof [SS/7/A]; the composition and comparative strengths and weaknesses of its retail offer and how this offer has metamorphosed over time (in section 4); the provision of retail services outside the town centre (in section 5); the competition it faces from other town centres and the Brookfield complex at Cheshunt (section 6); and a scrutiny of its performance before and during the current economic recession and a prognosis for its future health once economic recovery begins (section 7). It is to be noted that his conclusions are well aligned with the experience and perception shared with the inquiry by Mr Barber, the former town centre manager, who gave impressive evidence in support of Sainsbury's proposals.

109. Without compressing too much the summary of what this investigation of the town centre reveals, one can draw certain basic conclusions from it.
110. As Mr Shearman has said, the town centre is not by any means perilously fragile. It is, as an historic market town, an attractive place. And it has some strengths. But they are not, in the main, retail strengths. It has many services and facilities. But it lacks retail multiples. It lacks sufficient retail gravity, or as Mr Shearman described it “critical mass”. What it needs to have to assist it in adding to that gravity is a markedly improved convenience goods offer. It wants an anchor, which the Waitrose store is not; and never will be; which the Tesco store plainly is not and never will be. What the town centre needs, above all, is the impetus of a major retail facility of high quality, in the convenience goods sector, which will bring to central Hertford a new retailer and a new retail service. It needs more people shopping in it; their footfall and their spending. Only then will the “virtuous circle” – a telling image in Mr Shearman’s evidence – begin to move.
111. Sainsbury’s scheme answers the town centre’s needs as well as any proposals could. This will be the largest single retail investment in central Hertford since Bircherley Green Shopping Centre was built. It will be a signal of a front-rank retailer’s confidence in Hertford, and its confidence in itself in the commercial judgment it makes in delivering this investment now. It is to be noted that since the present application was made Waitrose have indicated their intention to extend their supermarket in the town centre.
112. Quite apart from the injection of new retail confidence into the town, new employment will be created on the site: in the new store about 300 jobs, and in the listed building, potentially, about 80. Sainsbury’s resolve, even in the present recession, to go ahead with so substantial an investment in Hertford will be a signal of confidence which is likely to stimulate others to do likewise.

Impact on Hertford and Ware town centres

113. The new store will take more than half of its trade (57% of it) from the Tesco store at Ware Road. This is agreed, and recorded in the first statement of common ground on retail matters [SOCG 2] (in paragraph 2.32).
114. Mr Shearman has considered the likely effect of Sainsbury's new store on the Waitrose store in the Bircherley Green Shopping Centre (in paragraph 4.2 of his main proof of evidence [SS/7/A] and in paragraphs 1.3(v) and 1.4 of his proof rebutting the written evidence of Mr Sangster [SS/7/D]). There has been – and can be – no suggestion that the arrival of Sainsbury's in central Hertford will cause the Waitrose store to close. Indeed, it has been indicated by the owner of the Bircherley Green Shopping Centre, the Diageo Pension Trust, that there is in prospect an extension to that store (in Cordea Savills LLP's letter received by the Inspectorate on 4 June 2009 [CD F1]). Waitrose themselves have not objected to Sainsbury's application. Whilst in purely monetary terms the Waitrose store would experience the highest proportionate reduction in its turnover, this effect on its trading performance will come nowhere near jeopardizing its viability. They have not said that they will cut their staff or their retail offer, or otherwise reduce the service they offer their customers; and there is no reason to suppose that they will. Their store, largely serving "top-up" and "basket" shoppers, functions in a different market from that on which the Sainsbury's will concentrate,. And in any event Waitrose have for many years competed perfectly well, so far as they have had to, with Tesco's store at Ware Road.
115. The town centre health check shows Hertford town centre to be, by the conventional objective measures of a town centre's economic well-being, to be a vital and viable town centre, and to have remained so in spite of the recession. This is common ground between Sainsbury's and

the local planning authority (see paragraphs 2.28 to 2.30 of the first statement of common ground on retail matters [**SOCG 2**]).

116. It is agreed that the impact of the development on the vitality and viability of both Hertford and Ware town centres will be acceptable (see paragraph 2.36 of the first statement of common ground on retailing [**SOCG 2**]). None of the impacts to which government policy is directed in paragraph 3.22 of PPS6, which now of course needs to be viewed in the broader perspective of the consultation draft of PPS4, will be harmful, in either of these two town centres. Between Sainsbury's professional consultants and the local planning authority's this proposition is agreed, as is the robustness of the assessment which demonstrates it.

117. In the light of the evidence of Mr Shearman, given from the broader economic perspective one can discern in the Government's thinking in draft PPS 4 [**CD A4**], and the more conventional PPS 6 type of assessment undertaken by Mr McGrath and Mr Shearman, the conclusion ought to be that the new store will not do anything but good to the health of Hertford town centre as a whole; and that it will not occasion any of the harms contemplated in paragraph 3.22 of PPS 6 [**CD A5**]. Indeed, by virtue of the proximity of Sainsbury's site to the existing town centre, the connections that will be created between the site and the town centre and the additional trade that will be generated for the town centre by linked trips, two significant matters are agreed between Sainsbury's and the local planning authority: first, the Sainsbury's store "has the potential to form part of an extended town centre in the future; and secondly, the convenience goods turnover of Hertford will increase by approximately £7 million in 2011 (see paragraphs 2.39 and 2.0 of the first statement of common ground on retail matters [**SOCG 2**]).

118. So the Secretary of State may – and should – conclude that the effects of the proposed development will be not merely sustainable in economic terms, but beneficial.

The third main issue: the effect of the development on highway safety in terms of vehicle movement

The issue

119. This issue embraces the relevant aspects of planning policy captured in the Secretary of State's matter (i), and the carte blanche matter, matter (ix): "Any other matters that the Inspector considers relevant".

Approach: the planning balance and the comparative context

120. Hertfordshire County Council, as highway authority, has sought to persuade the Secretary of State to resist the regeneration of the site which Sainsbury's propose on the grounds that the development would increase congestion at two of the road junctions near the site: at the confluence of Old Cross, St Andrew's Street and Mill Bridge and where Hartham Lane meets Cowbridge.

121. It is important to note at the outset that this objection, in the way in which it was actually presented in the evidence given to the inquiry for the county council by Mr Jepson, in the cross-examination of Mr Foot, and now in the closing submissions made on the county council's behalf by Mr Keen, has not been framed as a concern relating to the safety of road users. But it is the question of safety which is posed in the main issue identified for the inquiry. This is not a pedantic point. It is fundamentally important. This is because, if the issue is essentially about safety, the case that Sainsbury's had to meet at the beginning of the inquiry has now evaporated.

122. Moreover, as the evidence on highway matters has shown, the county council's objection is, even on the narrow basis on which it has been placed at the inquiry, entirely misconceived.
123. In the first place, the objection lacks a proper balance. As was emphasized in the opening remarks made for the county council (in paragraph 4 of Mr Keen's opening statement), there has been no attempt by the council to consider whether its concern about congestion was, or might be, outweighed by other factors material to the development control decision in this case (see Mr Foot's proof of evidence paragraphs 5.4 to 5.12 and 5.141 to 5.160 [SS/A/4]).
124. What, then, are the balancing considerations which the county council has decided to eschew, or has had to because it has not had the expertise available to it to make the judgments which must be made if complete and proper balance is to be struck? These factors will include the regenerative benefits of the proposals, and, in particular, the clear and uncontradicted evidence which has been given about the need to develop the application site with a use which can bear the capital cost of repairing and adapting the listed building; the pressing retail needs, both quantitative which Sainsbury's proposals will answer; the general economic and social benefits associated with the holistic regeneration which the development will bring about.
125. None of those matters have been set against the alleged harm, in terms of congestion, for which the county council has, through its evidence and submissions to the inquiry, contended.
126. Secondly, even within its own compass, the objection fails to engage in any convincing way at all with the practical realities of the situation. The application site requires to be regenerated. That cannot sensibly be in dispute. And the county council has not disputed it. Whatever form the regeneration of the site might take, there will inevitably be more vehicular and pedestrian traffic in this part of Hertford.

A conventional solution, such as the reconfiguration of a traffic light-controlled junction to a roundabout, or vice versa, is simply not available (see paragraph 5.79 of Mr Foot's proof of evidence [SS/4/A]). This is an historic town, and it has an historic centre. Manipulating the local road network to accommodate development in the places where planning policy seeks to concentrate it is not as straightforward here as it might be elsewhere.

127. Whilst, as Mr Foot has demonstrated (in paragraphs 5.104 to 5.118 of his proof of evidence [SS/4/A]), any of the alternative uses suggested for the application site would be bound to add traffic to the local road network – by which I mean new in the sense that much if not the entirety of it is not there at all at the moment – and to do so at times when it is most under pressure, the proposed food store will not generate motor traffic that is not already on the highway. What it will do is cause that traffic to be distributed differently. Necessarily, though traffic on other parts of the local and wider road system will be reduced, the streets closest to the new store will be carrying more than they do today. But this kind of scenario has not led to any embargo on retail development in central Hertford, or any general resistance in policy to development which increases congestion. Government policy does not disapply in historic towns its fundamental priorities for the fostering of economic well-being and the meeting of essential planning needs. Indeed, these imperatives are often more pressing in such settlements than they are in other towns, not least because they are more of a challenge.

128. The county council's evidence on hypothetical alternative uses (given by Mr Jepson in section 9 of his proof of evidence, and in particular paragraphs 9.10 (b) and 9.11(b) [HCC/3/A]) is inconclusive and unconvincing. No confidence can be placed in the idea of car-free residential or commercial development on the site, notwithstanding its credentials as a sustainable location for any form of development. Paradoxically, however, the county council's emphasis on the possibility of a materially limited level of parking for housing or offices on the site,

or a mixture of the two, only sharpens the focus on the high level of public transport accessibility which the site enjoys.

129. Even if some other putative use might be regarded as suitable and likely to generate less traffic than would the proposed development, that would not, in planning principle, be any proper basis for refusing planning permission for the present proposals.

130. It should be remembered that there is no policy at national, regional or local level which stipulates as unacceptable any specific level of saturation at a road junction, or any unacceptable increment of congestion. The very concept of “congestion” is a protean one, requiring a sensible understanding of the particular context and circumstances in which the matter is being considered. Whilst, as one might expect, there are generalized references in several policies to the desirability, or the need, to “tackle” congestion. What this means in a development control, as opposed to plan or strategy-making, context is no more than an acknowledgment that increased congestion resulting from a development may be a material consideration. The weight to be given to that congestion will be matter for the decision-maker. It is to be noted that neither the county council nor any other objector who has expressed concerns about traffic congestion in central Hertford or in the residential areas of the town has pointed to any decision of an Inspector or the Secretary of State, or indeed by the local planning authority responsible for administering the policies referred to, citing any of those policies as a basis for rejecting an otherwise acceptable scheme.

The effect of the development on the need to travel

131. One ought to begin one’s consideration of the issue raised by the county council by acknowledging that a corollary of the national policy imperative to locate “town centre uses”, including retail uses, in or – failing that – on the edge of town centres is that such uses will usually – if not invariably – both encounter and engender town centre traffic. Equally if the opportunity to act on that imperative and on another one as well,

namely to make full and effective urban land, arises on a vacant site next to a town centre, the chances are that new traffic will be added to the town centre road network.

132. In the present case application site is derelict and unused land on the edge of the town centre, close to pedestrian and cycle route and to bus stops and the bus station. The pedestrian routes are shown on Mr Foot's Figure JF 5 [SS/4/C]. The positions of the bus stops are shown on Figure JF 8 [SS/4/C]. The proximity of the application site to the bus station is shown on Mr Foot's Figure JF 2 [SS/4/C]. And the bus services that terminate or pass through the bus station are listed on a note provided to the inquiry on 29 September 2009 [SS 17]. There are many of them; and the areas of the town they serve are wide. That the county council should have sought, for the reasons carefully described by Mr Jepson during the session of the inquiry at which the section 106 obligation was discussed, financial contributions which are to be devoted in part to works at the bus station signals the relevance and importance of considering the bus services which come to the bus station as services which bear on the sustainability of the application site for the development proposed.

133. Sainsbury's proposals will, indisputably, make efficient use of the existing infrastructure in central Hertford, adjusting it to accommodate the new uses proposed. I have already touched on this point in a different context, but it is significant in this one too. Making the more efficient use of existing infrastructure is an apparent and obviously worthy objective of national and regional planning policy. One sees it, for example, in policy T1 of the East of England Plan [CD B1] (in the second bullet point: "to encourage efficient use of existing transport infrastructure").

134. The county council has sought from Sainsbury's, and secured, money for enhancements of the existing transport infrastructure, to enhance its sustainability. These have been described by Mr Foot (in paragraphs 5.121 to 5.131 of his proof [SS/4/A]). A Green Travel Plan

will be worked up and put into effect; its production is assured by the section 106 obligation.

135. For those travelling travel on foot of by bicycle the accessibility of the town centre, of the riverside, and of the Hartham Common will be enhanced. A new footpath will be introduced, running along the river Lea on the eastern side of the site. Via the new bridge that will be placed over the river at Folly Island the site will be linked to the town centre. Hartham Lane will be stopped up, and restricted to use by pedestrians and cyclists and vehicles serving the reduced operations of the brewery. In simple terms, therefore, the need to travel will be reduced by the proactive steps Sainsbury's are taking to improve the sustainability of local infrastructure for pedestrians and cyclists, in what is, for the uses proposed, both by definition and in fact a sustainable location (see paragraphs 5.26 to 5.28; and 5.30 to 5.36 of Mr Foot's proof of evidence [SS/4/A]). This cannot sensibly be denied.

136. A new road will connect Station Approach to the car parks beside the common. The car parking laid out on the site itself will serve not only shoppers using the store but also those who have cause to visit the town centre to shop or to do other things there (see paragraphs 4.7 to 4.11 of Mr Foot's proof of evidence [SS/4/A]). For the county council Mr Jepson has acknowledged that the level of parking proposed is appropriate and acceptable, given the site's location in "proximity ... to the urban centre" (see paragraph 5.4.1 of Mr Jepson's proof of evidence [HCC/3/A] and the likelihood there being of a material number of linked trips between the Sainsbury's store and the town centre (see paragraph 8.3 of Mr Jepson's rebuttal proof of evidence [HCC/3/D])).

Existing conditions on the local road network

137. It is evident that in central Hertford less than perfect conditions for motorists (see paragraphs 5.1 and 5.76 to 5.78 of Mr Foot's proof of

evidence [SS/4/A] , and for pedestrians and cyclists, have been accepted, not only by Hertfordshire County Council as highway authority but also by these motorists, pedestrians and cyclists themselves. At times, no doubt, there is more congestion and more delay than many road users would prefer to experience in making the journeys they do along the streets which lead into and out of the town centre. As I have already said, had there been some magical solution to all this, the combined ingenuity of the authorities concerned would surely have discovered it by now. But that has not yet happened. Whether it will in the future when the local urban transport plan is in place, as Mr Jepson seemed to suggest, during the discussion of the planning obligation is moot.

138. The first question to be considered, however, is whether the development will make matters materially worse.
139. And the second question, if the answer to the first were “yes”, would still be whether that negative factor in the planning balance (if it is really does amount to a negative factor at all) can properly be judged to outweigh the locational and other benefits of the proposals to which I have referred.
140. To the first question the evidence the inquiry has now heard suggests the given the fact that the type of trips attracted to a food store such as is proposed here are by their nature discretionary
141. Analysis of the specific effects on the junctions has been presented to the inquiry. Evidence has been given about the inherent flexibility there is in controlling the performance of the junctions in question, and thus to re-balance the flow of vehicles passing through them.

The effect of traffic associated with the development on the Old Cross junction

142. For all the apparent complexity of the numerical evidence that has been presented to the inquiry, and the sophistication of Mr Keen’s closing

submissions on this point, the implications of the development for the Old Cross junction are really quite simple. The approach adopted by Mr Jepson in his evidence and, in closing by Mr Keen, is not merely pessimistic but unreasonably unrealistic.

143. The relevant figures are in Tables 3, 5 and 6 of the second statement of common ground on transport [SOCG 4].
144. As Table 3 shows that in the morning peak hour there is already a degree of saturation (“DOS”) on the Old Cross arm of the junction of 141 %, with a queue length of 170 vehicles.
145. The county council does not say that that situation is insupportable, either in practical or in policy. This fact in itself condemns the submissions which have been made by Mr Keen in closing; and it demonstrates the county council’s objection to Sainsbury’s application is untenable.
146. It should be noted that the proposed development is not said by the county council to be unacceptable in its impact in the morning peak hour, when it will add only 1% to the DOS, and five vehicles to the queue, on the Old Cross arm of the junction.
147. Table 5 shows that the DOSs for the St Andrew’s Street, Old Cross and Mill Bridge Right arms of respectively, 107%, 99% and 106%, which would actually be reduced to 103%, 103% and 107%, materially lower than in the morning peak, with queues at no more than 40 vehicles, which is between a third and a quarter of the queue lengths in the morning peak. Even assuming no optimization by MOVA at all, the DOSs, at 117%, 128% and 110%, and with queues not exceeding 84 vehicles, the levels of congestion are much less than the upper end of the range in the morning peak.
148. Table 6 shows the position in the Saturday evening peak, when the DOSs are for the same three arms respectively 107%, 104% and 107%, with queues of 24, 30 and 23 vehicles. The position modelled with the development in place will be better: DOSs of 92%, 96% and 95% and queues of 19, 29 and 16. Again, even in the scenario for which the county council has tried to contend, in which its MOVA system does nothing about the situation at all, the position would be much less congested than

in the weekday morning peak, with DOSs of 123%, 116% and 104% and queues of 50, 62 and 19.

149. It will be clear therefore that even in the counter-intuitive, imaginary world which is where the county council places its objection, there is no fair objection to the proposals on the grounds of congestion.
150. It is simply not good enough for the county council to advance nebulous concerns about the junction being, at certain times, and remaining at certain times, “over capacity”. It points to no practical harm as a consequence of this, other than that, in effect, some people who choose to take their motor vehicles through this part of the town centre at times when they may be liable to experience some delay will experience either slightly less or slightly more delay if and when they do so in the future. And, as Mr Bedford has submitted, it is to be noted that the county council does not say that no increased in congestion, even in the morning peak, is per se unacceptable.
151. Notably too there is no objection on safety grounds. The only safety concerns originally pursued have not been persisted once revised arrangements were put forward for the servicing of the new store, which are now the subject of proposed planning conditions. The word “safety” was not used once by Mr Keen in his cross-examination of Mr Foot. And Mr Jepson deliberately excised section 7 from his main proof of evidence, and section 7 from his rebuttal proof as well.
152. Even if there were not a perfectly good answer to the saturation levels suggested by the county council, its objection could not be regarded as a sound basis for turning Sainsbury’s proposals away.
153. But there is an answer. It lies in the effective operation of the MOVA system, in the manner which the Department of Transport says in the web-site publication which Mr Foot has provided in Appendix A to his rebuttal proof [SS/4/D].
154. The very purpose of MOVA is to react to heavily congested conditions at a junction. It is in just such circumstances that MOVA offers its “best return”, as is stated in Department’s document (on page 5). There are two ways in which MOVA deals with these situations: either by

extending the cycle time of the signals, or adjusting the proportions of “green time” on the several arms of the junction, or both.

155. And at this very junction MOVA is already doing this by extending the cycle time to 132 seconds in the morning peak hour, which is half as much as long again as the cycle time of 88 seconds in the evening peak hour.

156. Of course, MOVA has not yet had the chance to respond, on the ground, to the new store because the new store is not there. However, there is absolutely no reason to think that it will not do what it is meant to do, and what it is already doing in the morning peak hour.

The effect of the traffic associated with the development on the Hartham Lane junction with Old Cross

157. The only issue at the Hartham Lane junction is whether a modelled queue of 14 vehicles waiting to turn right into Hartham Lane from Cowbridge will actually happen in real life. There is merely an advisory “Keep Clear” box on the street here. Mr Foot’s evidence, not contradicted in evidence or cross-examination, by the county council, is that motorists here show reasonable courtesy to each other. So they can be expected to in the future. There is no reason to believe otherwise. There will not be queuing back to the Old Cross junction.

158. Again the county council’s objection lacks good sense and realism.

“Rat running” in Bengoe

159. I adopt Mr Bedford’s submissions on the issue of rat-running in Bengoe.

160. As Mr Nudds acknowledged, this is a problem that has persisted for a long time. Various solutions have been suggested.

161. The obvious answer seems to be close Byde Street, to stop the rats from running. Perhaps there are other potential options. In any event this is not a problem that is the responsibility of Sainsbury’s to deal with.

162. A tailpiece here is that many of the “rats” may not be rats at all, as the county council’s survey data [HCC 4] suggest: as much as 64% of the

through traffic in the morning peak hour and 89% of it in the evening peak originates in the defined “Bengeo” area.

Servicing arrangements

163. It has been shown, as I have said, and as one would expect, no insurmountable problem exists in the servicing arrangements for the store. The limitation of the length of service vehicles to 13.5 metres and the reconfiguration of the service yard answers the concerns originally expressed.

The effect of the development on flood risk

164. I adopt the submissions of Mr Bedford on flood risk. The Environment Agency is satisfied that the development will be acceptable provided that it is controlled by the conditions it put forward (see paragraphs 8.10 to 8.16 of, and Appendix 3 to, the statement of common ground on planning matters [SOCG 1].

Planning controls: the section 106 agreement and planning conditions

165. I adopt the Mr Bedford’s submissions on the planning obligation.

Conclusion

166. In opening I rhetorically asked the question: how often in an historic market town – or, indeed, in any town – will such an opportunity as this arise? The answer now, as it was at the beginning of the inquiry, is plain. Only rarely will this occur. For the Secretary of State, having called in the application to determine it himself, the basic question may be put in this way: is there any compelling reason in the public interest to reject the opportunity that presents itself here? The answer, as Sainsbury’s and the local planning authority’s evidence to this inquiry has shown, is that there is not.

167. The decision at the local level in this case, taken by those democratically accountable for it, is that the proposed development is to be welcomed and should be allowed to proceed. By the resolution of its Development Control Committee in February 2009 the local planning

authority, having thoroughly considered all the representations submitted to it and having weighed the merits of what was then ostensibly a rival scheme, a venture which was later abandoned, concluded that none of the objections could justify a decision to turn this project away. Knowing this town as well as they do, the members recognized that the proposals Sainsbury's have put forward are for the right development, at the right time, in the right place. They were not wrong.

Keith Lindblom QC
Francis Taylor Building
30 September 2009