

**Doc. No. HCS/7**  
**Case Ref. APP/J1915/V/09/2101286**

***CALLED IN PLANNING APPLICATION BY  
SAINSBURY SUPERMARKETS LTD***

**Final Submission on behalf of  
Hertford Civic Society**

Andrew Sangster

30<sup>th</sup> September 2009

1. Sir, I and those who appear with me on behalf of the Civic Society have listened with interest and with care to the expert evidence put before the inquiry over the past few days. We remain of the view that permission should not be granted for the foodstore proposed by the applicant.
2. The development plan must be the starting point in the consideration of any planning application, and in this closing submission I will first say something about how the proposal relates to the operative Local Plan for East Herts. I will then deal with the question of need for the proposed store. Then I will review and comment on the benefits which it is said that the development would bring, before setting out our reasons for concluding that the adverse effects of the scheme, including its design and impact on the Conservation Area, outweigh any such benefits.

### **The Local Plan**

3. You will have studied the Local Plan for yourself and I do not intend to go through it; I wish to highlight only two policies: HE8 and STC1. The District Council consulted fully with the local community in drawing up the Plan, as they were bound to do, and of course the Society took an active part in the process. A local plan is not intended to be a technical manual intelligible only to professionals; it should set out the agreed objectives and policies for the future planning of an area in a way which everyone can understand. Of course the policies must be drafted clearly and to understand them properly they must be read with care. But the Plan should not be subjected to textual analysis as if it were a statute — in our submission the policies should be read in a common sense way in the context of the document as a whole.
4. We were therefore dismayed at the interpretation placed on Policy HE8 by Mr McGrath, and indeed by Cllr Ashley. The policy refers to sites primarily reserved for industry, defined in terms of Use Classes B1 and B2. Cllr Ashley used the terms 'industrial use' and 'employment use' as though they mean the same thing; Mr McGrath explained that, in his view, the policy means that other uses, such as retail, are acceptable so long as the primary use of the whole area designated under the policy remains for industry. He added that if over half the designated area remained industrial, he would regard the area as primarily in industrial use.
5. In our submission this tortured interpretation is wrong, and does not fairly represent what any reasonable person reading Policy HE8 would take it to mean. The Policy is — and here I agree with Mr McGrath — a development control policy, to be used in assessing planning applications. If his interpretation were right, the case officer considering an application for a use outside Classes B1 and B2 would have to tot up the areas of any such applications which had previously been approved in the designated area, together with the new application, to see whether they amounted to more or less

than half the total area; if less, the latest application would be found to be in accordance with the Plan, and if more it would not be in accordance. I find it impossible to believe that that is the meaning which the authors of the policy intended.

6. I accept that it might have been possible to word the policy more clearly, but on a fair reading I believe it means that most development in the area designated should be for Classes B1 and B2, and that other forms of development should be minor or exceptional. Although of course Cllr Ashley is right to point out that it generates employment, development for retail purposes inevitably has extensive and important consequences for the functioning of the town generally and for traffic flows, and it seems to me that, if the authors of the plan had intended to include retail development within the range of employment-generating uses encompassed by Policy HE8, they would have said so in clear terms. It is inconceivable that they would have left such an important matter to be inferred only from a painstaking analysis of the text.
7. We conclude that Policy HE8 does not lend support to the development of the application site for retail purposes, and therefore submit that, in respect of that policy at least, the Sainsbury's proposal is not in accordance with the Development Plan.
8. Turning to Policy STC1, this is supportive of retail development on edge-of-centre sites where parking provision, access, and traffic generation are satisfactory, in accordance with the Council's adopted standards. Because the Plan sets out no adopted standards for traffic generation, Mr McGrath argued that Policy STC1 has no application to this case with regard to traffic generation, or at least that there is no conflict with it. This interpretation ignores the fact that the very wording of the policy itself requires traffic generation to be both 'satisfactory' and 'in accordance with adopted standards'. More important, it ignores the text which supports policy TR1 of the Plan (i.e. paragraphs 5.7.1, 5.7.2 and 5.7.3). These paragraphs make it clear that the Council's objective is to reduce the traffic generated by development so far as possible.
9. In short, we submit that on a fair reading of STC1, the Policy lends support only to developments where the traffic generation is satisfactory. We support the County Council's conclusion — and I shall say more about this in a moment — that in this case the level of traffic generation would not be satisfactory bearing in mind the local context. We therefore conclude that with regard to Policy STC1, as well as Policy HE8, the present proposal is not in accordance with the Local Plan.

## Need

10. Despite the publication of PPS4 in draft, current government policy advice on retail development is still to be found in PPS6. That guidance requires retail developments outside a centre to be justified on the basis of an identified need, and the onus of demonstrating that need is placed on the applicant.
11. The assessment of need put forward in this case rightly takes into account a number of contributory factors, and in respect of each of those factors an estimate or forecast is made about future conditions. There are uncertainties about each of the contributory factors. Firstly population growth. We appreciate that demographic changes are the main driver here. But the East of England Plan envisages residential development in the catchment area on a scale which provides for population movement into the area in addition to meeting local needs; implementation of the Plan would give rise to an increase in population larger than that which would result from demographic changes alone. However the collapse in the rate of house-building in the past year, and the fact that parts of the Plan have been successfully challenged in Court, both suggest that the Plan will not be implemented as intended, or not so quickly. The assessment of need does not address these uncertainties as to the likely rate of population growth.
12. Secondly, expenditure per head. It is accepted on all sides that the rate of growth of expenditure per head on food during and immediately after a recession is exceptionally difficult to predict. Yet, until yesterday, the applicant's forecasts incorporated only one 'most probable' figure — a point which I return to shortly.
13. Thirdly, the effect on grocery retailing of rising world food prices. Mr McGrath agreed with me that world food prices are rising in real terms and are likely to go on doing so. He preferred, however, to think about the future growth in food retailing in money terms rather than goods terms. I submit that the effect of rising food prices is nevertheless something which should be built into the equation. Simply put, my point is that if bananas double in price, twice as much money will be needed to buy the same number of bananas. Those bananas will occupy the same area of sales floorspace as they did before, and the amount of money turned over by each square foot of sales floorspace will therefore double. If repeated for all commodities (obviously not a realistic scenario but one I use to illustrate my point), this would mean that no additional sales floorspace would be needed until total expenditure had doubled. The forecast of future floorspace need appears to take no account of this issue.
14. Finally, if I can take the remaining components together, the forecasts of clawback, inflow and overtrading, all of which are accepted as being based on professional judgements, are each given as single, 'best estimate' figures.

15. I am aware from my own professional experience in the oil industry it is common practice when making a case in support of projects in either the private or public sectors, and in many types of business, to submit estimates and forecasts to sensitivity testing. This enables decision-makers to understand the range of outcomes which are realistically probable, and to gauge how likely it is that any particular forecast outcome will be realised in practice. In response to my questions the Applicant agreed that no sensitivity testing was carried out in this case. My complaint is not that his estimate of need is wrong — the Society does not have the expertise to say that — but that in the absence of any sensitivity analysis it is not possible for you, Sir, or the Secretary of State to form a considered view on whether it is right or not. As each of the components of the final need forecast is surrounded by so many uncertainties, we submit that this means that the retail need for the development can only be regarded as unproven.

### **Benefits**

16. We accept that, in deciding whether permission should be granted, it is appropriate to weigh up the benefits which would or might flow from the scheme against the adverse effects which it could have. We acknowledge that there would be some benefits but we are not convinced that they would all be as real as the Applicant suggests. I would like to comment on a few of the benefits which have been mentioned.
17. We welcome the proposed works to the Listed Building which would arrest its decline and render it capable of re-use, and we have no criticism of the detail of the works proposed. But we do have serious concerns about the viability of the proposed arrangements for leasing or letting out space in the building, bearing in mind the sums which voluntary groups or small commercial users are likely to be able to pay. Mr Westerdale was unable to say why the information he put in from letting agents had based the estimated annual rental income on a floorspace of 18,650 sq ft, whereas the lettable space shown on his own drawings amounts to only half that. In fact closer inspection of the agents' report reveals that they have assumed a rental of over £13 per square foot for the whole of the net internal area, including the 6500 or so sq ft in the basement which Mr Westerdale conceded would be very difficult to use for anything other than storage.
18. It is said that that the proposed store would promote competition and extend consumer choice in the town. We accept that there would, for the first time, be a real competitor for Tesco in terms of bulk food shopping. However the competition would be between two supermarkets of about the same size which can be expected to carry much the same range of goods; hardly a real choice. At the same time, as we shall submit under the head of impact on the town centre, there is a real possibility that smaller shops

selling goods which really are different could disappear, with the result that real choice becomes more limited.

19. Another alleged benefit is the 300 or so new jobs which it is said that the new store would provide. We accept that, to those who are successful in obtaining one of those jobs, they would be a real and tangible benefit. But we cannot believe that, in a highly competitive retail industry, the creation of an additional outlet will in the long term (disregarding any increase in consumer spending) result in a larger number of full-time equivalent jobs in the industry as a whole. Whilst we can see that a new store might not lead to immediate job losses elsewhere, there is bound to be a constant pressure on store managements to maximise the productivity of staff in order to remain competitive. We therefore do not ignore the predicted employment benefits entirely, but we believe that any increase in total employment should be seen as essentially temporary and heavily discounted for that reason.
20. The proposed store car park would increase the number of public parking spaces available fairly close to the town centre, and is to be welcomed for that reason. However the problem for shoppers in Hertford, as I explained when giving my own evidence, is not so much that parking space is in short supply, but that the system of charging is not user-friendly: an unintended and perhaps unavoidable overstay of a few minutes leads to a swingeing fine whereas in nearby towns, such as St Albans and Welwyn Garden City, it simply means having to pay pro rata for the extra time used. Since the Sainsbury's car park is apparently to employ the same system for users not shopping at Sainsbury's, the real benefit to town centre shoppers of the existence of additional spaces would be slight.
21. The principal benefit claimed for the proposal — and one stressed by the District Council — is that it would result in the improvement and regeneration of a part of the town which is within the conservation area but is in a run-down, neglected and unattractive state. We agree that the area is sorely in need of regeneration. The Society is not opposed to change and does not take an anti-development stance: on the contrary we want the best for Hertford and are anxious to see the town flourish and prosper. We would therefore welcome the redevelopment of the application site. It is for that reason that we have mentioned in several different contexts at this inquiry the sort of development which we would prefer to see. We have not of course worked up a scheme, still less analysed what the traffic consequences of any alternative might be. That is a job not for us but for the Local Planning Authority.
22. The stance of the District Council seems to be that here is a part of the town which is an eyesore and has been in a state of festering dereliction for years. Sainsbury's have come along and offered to rescue the area for us and we should welcome them with open arms. Perhaps I caricature their position a little. In an

attempt to clarify the Council's position I asked Cllr Ashley what steps the Council had taken to identify the best use for the site. He replied that he was sure the Council had been looking for alternative uses, but offered no detail on what has been done. Asked if the Council had thought about future use prior to receiving an application from Sainsbury's, he replied only that he was sure they had.

23. We firmly believe that it was (and is) the responsibility of the Planning Authority to be more pro-active in attempting to secure the redevelopment of an area such as this. Rather than sit on their hands and wait for a developer to come along, they should have engaged with the landowner at an early stage, when it became known that the land would soon become redundant. They should then have drawn up a brief setting out the form of development which would be appropriate, and sought development partners. If any of these actions were taken, the Cllr had ample opportunity to tell us so. From his answers we can only conclude that they were not.

24. We accept that the Sainsbury's scheme would secure the benefit of rescuing and regenerating the area, but as the Council have apparently taken no steps to examine other possibilities, to explore the viability of various uses or to promote or market the site to potential developers, there is no evidence that the Sainsbury's scheme is the only, or the best, way of achieving regeneration. It would be wrong to foreclose options which have not yet even been explored by granting permission on the present application.

### **Adverse Effects**

25. As I said in opening, and in my own evidence, the Society's main concerns relate to the impact of the proposed store on the town centre, to the traffic likely to be generated and the effects of that traffic on the character and quality of life in those parts of the town affected by it, and to the design of the store itself.

### *Impact on the Town Centre*

26. The Applicant estimates that 57% (about £11m) of the turnover of the new store will be transferred from the Ware Road Tesco. The basis for this estimate appears to be that this is the amount by which the Tesco store trades at a rate above the company average. Leaving aside the rather arcane discussions we have had about the definition of overtrading, we make the simple point that there is no reason to believe that the quantum of overtrading will automatically transfer, pound for pound, to the new store. The amount spent in the new and existing stores will ultimately depend on the individual decisions of thousands of shoppers, and the resulting transfer could easily be lower than £11m, or indeed higher. Like the estimates of need, it is essentially a matter of making an informed judgement. Against this background of uncertainty, we reiterate our concerns

that, should the volume of trade drawn from Tesco be lower than forecast, the result would be to increase the pressure on Waitrose and/or to lead to Sainsbury's seeking to concentrate more on comparison goods. As an aside on the latter point, I realise that there would be a condition limiting the area of comparison sales space, but applications can be made to have conditions varied and a future Council might find it difficult not to agree to a variation, if one were sought by what would by then be an important and established retailer in the town.

27. Waitrose is the 'anchor store' for town-centre shopping. The amount of trade forecast to be drawn from it is relatively modest (£1.4m annually), but still 12% of Waitrose turnover if I have understood the tables correctly. I myself drew attention to the way in which Waitrose have recently extended their range and to their competitive success in recent months at the national level. For those reasons I am inclined to agree with the experts' analysis that the proposed store would be unlikely to lead to the closure of Waitrose. Nevertheless the risk is there: Waitrose are not a charity and they do not 'owe Hertford a living'. I am sure they would pull out if they concluded that, commercially, that was the right thing to do. We have pointed out how seriously that would affect some older and less mobile people who access the town centre by bus. Mr McGrath agreed with me that for some of these people the walk from the bus station to the application site would be too far, but was comforted by the fact that they would still have the choice of continuing to shop at Waitrose. The implication is that he accepted that, for a certain minority of people, the loss of Waitrose, were it to happen, would be a serious matter.
28. The potential impact on the turnover of other traders in the town centre, whether they deal in convenience or comparison goods, depends on what might happen with regard to linked trips — in other words how likely it is that those attracted to the proposed Sainsbury's in order to shop there will also walk into the town centre and use other shops or services before returning home. We accept that the proposed linking route is not long and would be relatively attractive. It seems probable that the percentage of customers making linked trips might be similar to the percentage who make linked trips from Tesco now. But again the matter is one of judgement, and the outcome is very uncertain.
29. Sainsbury's, supported by Mr Barber, paint a picture of people flocking across the new bridge to take advantage of everything the town centre has to offer, and by their presence setting in motion a virtuous circle of investment leading to a step-change in the centre's fortunes. Obviously, if permission were to be granted, I very much hope that Mr Barber's expectations are realised. But the alternative scenario is that the vast majority of Sainsbury's customers, like most of Tesco's existing customers, would simply do their grocery shopping and then drive off, without setting foot across the river. Any decline in town centre footfall, or in the turnover of some of the more marginal traders, could lead to

closures, triggering what I described in my evidence as 'a spiral of decline' rather than the virtuous circle which I am sure we would all like to see.

30. My point is that the impact on the town centre is highly uncertain: there could be increased footfall or, as many of our members fear, the town centre could go into permanent decline as trade is siphoned off by major supermarkets on both the eastern and western edges. In the face of such uncertainty, we suggest that it would be right to take a precautionary approach.

#### *Traffic and the Effects of Traffic*

31. Although we presented no quantitative evidence on motor traffic, our concern about the effect of the increased traffic generated by the proposed store is, as I said in opening, at the core of our objection to the proposal. Unlike the position on retail matters, where we accept that there are valid arguments on both sides and a great deal of uncertainty, we find the likely impact of the additional traffic on congestion totally unacceptable, and fully support the case put by the County Council as Highway Authority. I just want to mention two points on that before moving on to summarise our own case about the impact of additional traffic on the town's character and the quality of life.
32. The first is Mr Foot's apparent conclusion that, if an existing level of congestion is tolerated, it must therefore be regarded as acceptable. I put on record the Society's support for the Bengoe residents who suffer from having their streets used by through traffic. That inappropriate use of residential streets (whether or not it technically qualifies as 'rat-running') is largely caused by the existing congestion at Old Cross, and shows that the present situation is far from being acceptable.
33. The second point is that, to me as a layman in these matters, the evidence from the experts about the capabilities of the MOVA system is entirely unsatisfactory. One side says 'yes it would work'; the other says 'no it wouldn't'. As I understand it, the MOVA system is not experimental or uncommon. The onus is on the Applicant to demonstrate the acceptability of his scheme. It would therefore be reasonable to expect from him some evidence of how MOVA has worked elsewhere to resolve or improve a congestion problem such as that which is likely to arise if this scheme goes ahead. In the absence of any such evidence I ask you, Sir, to be slow to reject the considered advice of the Highway Authority who will, after all, be left holding the baby long after the sound and fury of this public inquiry have subsided.
34. Turning to alternatives to the use of the car, the Applicant's case for effective access and transport rests heavily on two factors. Firstly they claim that, despite the serious impact of increased traffic in a sensitive and focal point of the town, there is considerable potential for use of alternative modes: walking, cycling, bus travel. Secondly

they suggest that the location of the proposed new store is such that people in parts of the town can more easily reach it and thus it improves accessibility for those on foot and cycle.

35. However, this enthusiasm over the potential for using modes other than the car is not backed up by any hard information. Walking, cycling and public transport are all discussed enthusiastically, and some routes are identified. But hardly any mention is made of the very real quality issues that affect them, such as the perception of danger for walkers and cyclists from traffic, and the delays to services, poor quality of stops and lack of integration for bus travel. No attempt is made to assess the numbers and proportions of potential shoppers at the proposed store who might use these modes, nor is consideration given to the numbers on foot, bicycle and bus heading for the town centre along Cowbridge and St Andrew Street who might be disturbed or deterred by the increased traffic.
36. Even the descriptions are limited. Coverage of cycling, for example, hangs almost entirely on the Sustrans defined route along the Navigation towpath. The evidence to illustrate bus services consists mainly of a table of bus routes serving the bus station and a copy of a map out of the public timetable. No discussions about information or issues have been held with the main bus company.
37. It is thus very difficult to see how far the pedestrian and cycle links in the development and the proposed measures under a Section 106 agreement would actually lessen the impact on the Cowbridge / Old Cross area or beyond. Would people walk between the proposed store and the town centre more easily, provided they were happy to share the footway with cyclists? Would cyclists reach the Navigation towpath, or Port Vale better, provided they didn't mind pedestrians in their way. Indeed, would most cyclists in Hertford wish to travel that route anyway?
38. Bus users may be provided with improved information at the bus station and better shelter, but would they happily carry their loads of shopping in all weathers for a distance of nearly half a kilometre to the bus station? Their wait for the bus back could be longer if the increased traffic makes their bus less reliable through Old Cross. The Applicant's enthusiasm for the potential of these measures is founded purely on judgement and not on any measured attempt to forecast their actual impact, on users or non-users of the proposed store.
39. The Applicant claims that the proposed new store would provide improved accessibility to retail facilities for local shoppers in Hertford, especially those on foot. The location of the proposed store is nearer some parts of the town, especially Bengoe and Port Vale, but it is also further from other parts, including most of the south and east. The Applicant admits that its attraction for Hertford people might be stronger for the west side while people from the east and south sides might well continue to use Tesco or Waitrose.

People from the east and south sides of the town would of course remain closer to the town centre. To what extent would people in Hertford gain overall from this? We do not know, because the Applicant has not tried to assess the overall balance: even though techniques and data exist to do this quite easily.

40. Understanding and assessing non-car modes of travel and the wider accessibility implications is thus, we consider, essential in this case. We note that the compilation of information and appraisal of impacts in these fields is also strongly recommended by Government guidance for preparing transport assessments (in which the term 'should' is used a number of times). This makes doubly worrying the lack of any such evidence being provided for this inquiry.

#### *Design of the Store*

41. The starting point is government policy in PPS1: "Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted"
42. The Applicant has failed to consider the quality of the Conservation Area adequately or to respond sympathetically to the qualities of spatial relationships with Hartham, the Folly Area or the site itself, once cleared for the new development, contrary to the principals set out in PPG15 and the Council's policies. As a result, the new store is out of character with the scale and texture of nearby buildings, whether in relation to the Folly Island and new bridge to the town centre or up Hartham Lane, past the McMullen offices and into town via Old Cross.
43. Furthermore the car parking area with its routinely spaced tree planting and minimal screening has a detrimental effect upon Hartham and does not improve the view from the Folly, with its familiar, albeit tatty, redundant buildings and dense, self sown saplings. We doubt quoted assurances from McMullens that there will be less noise from their site and feel sure car parking, lights and noise from 7.30 am to 10 pm will be detrimental to the Folly Island residential quality.
44. The Civic Society has consistently questioned the detail of the scheme, focussing on the east elevation facing the car park. This has not been to question the technical competence of Chetwoods but to illustrate the failure of the architects to relate the design of the new building to the proportions, scale or texture of nearby buildings. One example is the arrangement of widely spaced pediments with heavy stone surrounds which are stated to produce a continuing rhythm from the Brewery building but which, by their wide spacing and individual stone framing, fail to do so. The failure is emphasized by the glass canopy which disrupts the desired rhythm and, by glitter and reflection that would intrude upon the effect of the pediments. The windows into the store area

appear to have a strong horizontal emphasis but, as they are drawn as single lines, there is inadequate information to justify detailed planning approval.

45. A further illustration is the so called atrium. Notwithstanding lengthy explanations of the glass roof or the glass wall between the store and the brewery the fact is the store itself abuts the brewery and no explanation is given as to how Sainsbury's will relate their hygienic food cabinets to the old brickwork of the brewery. An atrium is essentially a spatial effect and no such effect is achieved. Verbal assurances on behalf of future store management does not substitute for detail design.
46. The design makes great emphasis on preserving Hartham Lane for pedestrian benefit. In fact the first section will be dominated by the same McMullen traffic that uses it today and, after a token barrier, Hartham Lane then becomes part of the car park traffic area. There will be a pavement, dominated in front of the store by shopping trolleys, but whatever the practicalities, there is no benefit to the Conservation Area.
47. The designers for the development have failed to present a single overall view of the development from either Hartham or the Folly side. In particular they have failed to make clear the visual effect of exposing the 11m high retained McMullen Brewery buildings along the southern boundary of the car park, in relation to the proposed new store, the listed Brewery or as seen from Hartham. In cross examination it was argued that the information was available to study these elements but the Civic Society's case is that the designers have failed to realise the overall effect upon the Conservation Area, created by these disparate elements or failed to present this effect adequately to the Local Planning Authority.
48. The proposed adaptation of the Listed Brewery is chiefly focussed on the restoration of the building to a structurally sound condition. In this respect, while the drawings are detailed in some respects, the architects, Acanthus, have only carried out a superficial study of the wrought iron beam and concrete vaults which form the fundamental structure at ground floor level. Acanthus were only able to say they would investigate later such questions as web corrosion of the beams, corrosion of concrete reinforcement and so called cancer in the concrete - break down of the cementitious matrix due to water, aggressive cleaning fluids and even horse urine. They have also relied on reasonable building inspectors waiving modern structural requirements in dealing with historic buildings.
49. When examined on the actual use of the building, Acanthus admitted that the perspective sketches illustrating the brewery courtyard were prepared before they had been involved. It had not been felt necessary to show any detail which would show the actual adaptation of the building to its future uses. It was represented to Acanthus that, allowing the sketches to stand would tend to mislead Development Control Committee members into

overlooking their officers' advice that the design was not good enough to warrant approval.

50. Finally we have had great difficulty in pulling together in our own minds what is the final intended scheme. We have drawn attention to the disparity between the perspective sketches and the drawings. We learnt that a kiosk was introduced only weeks before consideration of the application, but this kiosk neither appears on the landscape plans nor on any sketches and we do not think it was included in the deposited plans. We have drawn attention to the complete failure of the designs for the listed brewery buildings to relate to the sketches of canopied market stall trading units. Furthermore we cannot reconcile the different cases argued by the two architects as to whether the listed building is to be subsidised by Sainsbury's, or will be put to viable use by them or is, after all, a profitable development opportunity as submitted to this inquiry, but not previously argued in the planning application. Thus the claimed viability for the listed building is unproven.

51. Our argument is not that the applicants are seeking to mislead the Council, but that the application itself is so confused, amended and inconsistent that the officers of the District Council were right to recommend refusal on design grounds and that the Development Control Committee failed to consider properly the character of the scheme they rushed to approve.

### **Conclusion**

52. For all these reasons we ask you, Sir to recommend the Secretary of State to refuse to grant planning permission.