

**RE: SAINSBURY'S SUPERMARKETS
LIMITED: FOREST COURT, DORRIDGE,
SOLIHULL**

ADVICE

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**RE: SAINSBURY'S SUPERMARKETS LIMITED: FOREST COURT,
DORRIDGE, SOLIHULL**

ADVICE

INTRODUCTION AND BACKGROUND

1. I am asked to advise with regard to Sainsbury's' proposed development of a supermarket at Forest Court, Dorridge, Solihull. I have previously advised in connection with the application made on the 4th November 2009 in respect of which planning permission was refused on the 19th March 2010. That refusal was against a background of a carefully considered Officer's recommendation for approval of the application and appeared at the time, in essence, to be a response to local representations rather than being soundly based on relevant planning considerations.
2. Notwithstanding the clear potential for appeal in respect of the earlier application Sainsbury's embarked on a very substantial public consultation exercise designed to engage with the community and community organisations who had made representations with regard to the earlier proposal.

3. I do not propose to rehearse in detail every aspect of the public consultation exercise, it is sufficient to note that it was rigorously carried out, comprehensive in its coverage of local people and enabled a clear understanding to be gained of not only people's shopping habits but also their preferences.

4. It is evident from the response to the questionnaires which were sent out that Dorridge is manifestly failing to meet the needs of local residents. Two elements of the response to the questionnaire make that clear, the first that the vast majority of respondents were travelling to supermarkets outside the catchment area in order to carry out their main food shopping and the second that nearly 70% of respondents would like to carry out their main food shopping in Dorridge.

5. Subsequent to the questionnaire being sent out local workshops were held in order to discuss the redevelopment of Forest Court, the upshot of which was a general level of agreement that the site needed to be redeveloped with a food store. Sainsbury's' subsequently revised plans were then subject to a public exhibition as part of the extensive public consultation exercise. There was a significant level of response to the consultation exercise with a total of 906 responses received out of which some 67%

supported the scheme, 49% supported elements of the scheme and only 16% did not support the scheme or elements of it.

THE REVISED APPLICATION

6. Following the extensive public consultation the revised application was submitted to the Council on the 6th July 2011. The application proposes the comprehensive redevelopment of the Forest Court shopping precinct to provide a food store which is some 26% smaller than the previous proposal. In addition the service yard is now enclosed and the car parking proposed to be provided is above the store. The architectural treatment of the proposal has been substantially revised in order to reduce its scale and to ensure that it is in keeping with the character of the area. The comprehensive nature of the proposals is perhaps best illustrated by the range of elements included in the application, they are as follows:

- A supermarket with a sales area of 1,812m²;
- 7 individual retail units;
- An extension to an refurbishment of the existing doctor's surgery;
- 179 car parking spaces above the store;
- A covered service yard off Station Road;
- Works for the enhancement of the public realm including enhanced landscaping.

7. The proposals have been subject to review not only by Council Officers but also by MADE in order to consider the design proposals. I do not propose to rehearse the content of the MADE response. It is sufficient to note that overall it is supportive of the approach which has been adopted whilst suggesting in the main minor modifications to the scheme. Apart from that consultation response the Council's internal consultees whilst making suggestions for some minor changes to the scheme are clearly supportive of it for the reasons given.

8. The Dorridge & District Residents Association have considered the application and have offered a balanced view in the statement included with my instructions. The position taken is one which does not object to the grant of planning permission and has clearly attempted to reflect the views of local people. Others continue to raise objection to the development, among them the Knowle Society and the Dorridge Residents Opposed to Village Superstore. The latter have instructed planning consultants and transportation consultants and obtained an opinion from Counsel, Mr Jeremy Cahill Q.C.

PLANNING POLICY

9. I do not propose to rehearse the totality of relevant or potentially relevant policy in relation to this proposal; to do so would result in a voluminous Advice of little practical value. Instead I propose to focus on those

elements of the national and local policy which appear to me to be particularly relevant in the circumstances that have arisen.

10. At the national level, any consideration of a development proposal currently needs to have well in mind the written Ministerial Statement Planning for Growth of the 23rd March 2011. That Statement makes it quite clear in the first paragraph that the statement and the policies within it are intended to take immediate effect. The statement has arisen from the serious economic situation which currently prevails and the Government's evident very strong desire that development and all the benefits associated with it should be clearly and positively encouraged, provided that the development can be appropriately characterised as being sustainable. It is important to note that sufficiently important is the Government's priority with regard to promoting sustainable growth that the view is taken that the default answer to any development and growth proposals should be "yes" unless it would compromise the key sustainable development principles set out in national planning policy. The remainder of the statement draws attention in the numbered paragraphs to the particular importance of giving significant weight to fostering economic growth and employment and the likely economic, environmental and social benefits of proposals including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies. It is worthy of note that

among the particular matters which the Statement draws attention to is the need to be sensitive to the fact the local economies are subject to change and so a positive approach should be taken to development where new economic data suggests that prior assessments of needs are no longer up to date.

11. In addition to the written Ministerial Statement of the 23rd March 2011 a separate statement entitled “Planning and the Budget” was issued at the time of the Budget Statement. The Budget Statement contains much that is important but like the written Ministerial Statement draws particular attention to the fact that although some reforms to the planning system will take time to deliver other aspects of Government Policy can be immediately given effect to by Local Authorities prioritising growth in the decisions that they take locally. In essence the statement makes clear the Government’s expectation that Local Authorities should be taking a clear and positive attitude to development proposals that would assist economic growth rather than being obstructive and putting impediments in the way of proposals.

12. Apart from the general advice contained in PPS1 the most relevant national policy guidance is to be found in PPS4. The content of the PPS will be familiar to those who instruct me and accordingly I do not propose to recite its contents at length. It is however important to note that it takes

an entirely positive view of proposals for retail development in centres subject to consideration of the range of matters set out in Policy EC10. EC10 is the first of the development management policies in PPS4 and is intended to headline the approach which should be taken. I am unable to identify any aspect of this proposal which would not be fully supported by Policy EC10.2. In taking that view I have borne in mind the representations which are made by those who oppose the application but with due respect whilst there is much talk of the scale of the proposals being inappropriate for Dorridge, a matter which I comment on below, and of the absence of need, there is little, if anything, to support the view that there would be any adverse impact arising from the proposal in relation to the considerations set out in policy EC10 or the wider sustainability considerations set out in PPS1.

13. This proposal is for a supermarket in an existing centre which is manifestly failing. The DTZ report of 2009 makes clear that the centre is failing and there does not appear to me to be any sensible basis upon which any other view could be taken. The consequences of the failure of the centre are that a regular and significant number of journeys are being made on an unsustainable basis to more distant locations in order to undertake main food shopping in centres elsewhere and the centre as a whole is suffering with consequences for the whole community particularly those who are dis-advantaged. Whilst objection is taken to

the scale, the floor space proposed to be provided is below that which is currently provided within the Forest Court Centre and has been carefully considered so as to ensure that the store to be provided could function effectively as a supermarket to retain expenditure in Dorridge rather than having it leak out to largely out of centre stores elsewhere.

14. PPS4 invites a consideration of impact of the development. Although objectors have written much about the scale of the proposal and its alleged lack of compliance with current and emerging development plan policies with one exception related to parking which I shall deal with below, they do not appear to me to identify any adverse impacts and in particular do not appear to address the very substantial sustainability and other benefits that would arise from the approval of the proposal. In essence a series of points are made about scale and need but none of the points relates to the identification of some clear adverse impact which could be said to be producing a solution which is unsustainable or something which would be contrary to the Governments most up to date policy advice referred to above.

15. With regard to the development plan position it is in my view plain that the UDP is out of date. It predates all current national policy with regard to retail and town centre development and is clearly not based on an up to date consideration of either the need for retail development, current

shopping habits or the current state of Dorridge centre. It appears to me to be entirely inappropriate to be relying on the policies of the UDP.

16. Reliance is also placed on the consultation version of the emerging Core Strategy. That reliance is misplaced. The Core Strategy was manifestly, in its consultation version, not consistent with PPS4 for a variety of reasons set out in the representations made on behalf of Sainsbury's. The consequence of those representations is that the Council proposes to develop policies which are more in accordance with PPS4 and which will accordingly define a retail hierarchy, consider the role of centres and policy measures required to support them and, it is to be hoped, more fully reflect the approach in PPS4 which is to plan positively for economic development and in particular that related to town centres: see PPS4 policy EC1.

17. In my view it would be entirely inappropriate to attach any significant weight to the consultation version of the Core Strategy. An emerging development plan which is not in accordance with up to date Government policy (one of the tests of soundness), is proposed by the planning authority to be subject to change as a result of consultation and which has not in any event progressed any further since the 17th March 2011 Report to Committee cannot be said to be a weighty material consideration.

18. In these circumstances in policy terms it appears to me that the appropriate approach here is to proceed on the basis of the national policies as representing the most appropriate policy framework for a consideration of this application.

19. As I have indicated already, in my view this proposal performs well when considered against the relevant national policies and in particular when measured against the imperatives set out in the statements which are issued at the time of the Budget in 2011.

20. One aspect of the objections which has arisen needs particular comment and that is the one relating to parking provision. The essence of this objection is set out in the Phil Jones Associates' letter of the 11th August 2011 which is that there is a potential for the capacity of the car park to be significantly exceeded and that there may be additional demands placed on available on street places and inappropriate parking with implications for road safety and pedestrian amenity.

21. Sainsbury's have robustly rebutted the suggestion that the parking requirement has been inappropriately considered but in any event it is in my view important to have regard to Government Policy with regard to parking provision set out in PPG13 (2011). The guidance in paragraph 50

of PPG13 is quite clear. It is that in developing and implementing policies on parking Local Authorities should:

- (i) Ensure that as part of a package of planning and transport measures, levels of parking provided in association with development will promote sustainable transport choices;
- (ii) **Not** require developers to provide more spaces than they themselves wish other than in exceptional circumstances which might include for example where there are significant implications for road safety which cannot be resolved with the introduction or enforcement of on street parking controls;
- (iii) Encourage the shared use of parking particularly in town centres and as part of major proposals...

22. In this instance I do not believe from the information available to me that there are any exceptional circumstances indicating that even if more parking was likely to be needed than Sainsbury's wished to provide that there were implications which cannot properly be controlled by the introduction or enforcement of on street parking controls. In short I see no basis here for contradicting the approach in PPG13 that Sainsbury's should not be required to provide more parking spaces than they

themselves wish. In this instance the parking is sensibly located, has been carefully considered as to its extent and the way it would function and appears to me to, by that means, comply with the letter and intent of national policy.

23. As to the particular issues raised in my instructions I respond as follows:

- (i) Scale: The proposals respond to a particular need in Dorridge to avoid unsustainable patterns of movement arising from the absence of a suitable supermarket in the centre. All of the survey information and the DTZ 2009 Report in my view points to a scale of provision which is of the order now being promoted. Any materially lesser scale will simply result in a continuation of the unsustainable patterns which are currently in place and the continued failure of Dorridge centre to meet the needs of residents. Comparisons of the size of the store proposed with the size of individual stores proposed in larger centres appears to me to entirely miss the point that the larger centres, for example, Solihull Town Centre, have not a single major supermarket to meet their needs but a range of major stores to meet their needs as well as out of centre stores. What is proposed in Dorridge is in effect the main foodstore for the centre. It will function as such and by that means promotes

sustainable patterns of travel, increase consumer choice, make Dorridge centre a more viable centre as a whole, avoid social exclusion by making local provision for people who would otherwise have difficulty travelling to a suitable store and also encourage other local economic activity. In short the scale of the proposal is a response to both the quantitative and qualitative need and I observe again that although much is made of the alleged inappropriate scale of the proposal no adverse impacts are identified either for Dorridge or indeed for any other centres.

- (ii) The extent to which the revised application has addressed the previous Reasons for Refusal: In my view the revised proposal has comprehensively addressed the earlier Reason for Refusal for in essence the reasons set out in my instructions. In respect of the car parking provision, I have addressed that matter in my comments on the policy position above and have nothing to add. With regard to the Reason for Refusal related to scale and the function of Dorridge centre, again I have referred to some aspects of this matter already, in summary, the quantitative and qualitative need is such that I do not believe there could be any reasonable objection to the scale of the proposal. There does not appear to me to be any evidence

of any impact arising from the scale of the proposal which would make it inappropriate. As to the Reason for Refusal related to the design of the proposal that has in my view been carefully and sympathetically addressed and I note that all of the consultation replies whilst making suggestions for minor changes do not dispute the appropriateness of the design approach adopted.

- (iii) Compliance with PPS4: For the reasons which I have set out above I believe the proposal complies with both the letter and intent of PPS4. There are a whole series of very positive ways in which the proposal connects with Government policy aimed at fostering and encouraging economic growth, promoting sustainable patterns of living, promoting social inclusion and promoting regeneration, particularly of town centres. In the light of the DTZ Report, when read as a whole, and in the context of up to date information I do not believe it can be suggested that the proposal conflicts in any material way with the PPS4 Guidance.

- (iv) The strength of the fallback position: The fallback position which is identified in my instructions relies upon identifying the total extent of the permitted retail floor space within Forest

Court. Clearly that floor space is significant, amounting to some 2900m². On the evidence before me the planning consent does not prohibit the amalgamation of the existing retail units. On this basis, Sainsbury's could operate a foodstore of a size comparable to the application proposals without the need for planning permission. This should form a significant consideration in determining the application.

Furthermore, the floor space permitted is an indication of the scale of retail development which was regarded as appropriate for Dorridge and whilst that was being provided in a different form, that is more retail units, it is nonetheless giving a broad indication of the scale of what is appropriate for the centre.

- (v) Any other relevant comment: I have set out above my views with regard to the application as a whole and the relevant parts of national and local planning policy. In my view there is a real danger here that the obvious and significant merits of the current application will be lost in a consideration of issues related to scale without stopping to consider whether and to what extent the proposals have any identifiable adverse impacts. Based on the papers which are before me I have been unable to identify any basis for a credible suggestion that there would be any relevant adverse impact arising from the

proposals. On the contrary it appears to me that the impacts are entirely positive and fit very clearly and effectively with the most up to date statements of Government policy including, in particular, the written Ministerial Statement of the 23rd March and the Budget Statement.

24. In the circumstances of this case there are in my view very powerful reasons as to why planning permission should be granted. They arise in essence from the merits of the proposal and the obvious and urgent imperatives contained in Government guidance related to the promotion of economic recovery. Whilst of course there are those who oppose the grant of planning permission, in this instance most obviously the Dorridge Residents Opposed to Village Superstores, those objections appear to be more rooted in a simple dislike of larger supermarkets than anything which is specifically attributable to this proposal in Dorridge. Whilst one must respect the views of those who dislike major food stores and the philosophy which underlies them it is nonetheless the fact that major food stores provide the means by which the vast majority of the population achieve their household needs in a convenient, affordable, accessible and sustainable fashion. Objection in principle is, in the context of national policy, not something which should be troubling the Council here.

25. There is one further aspect which calls for comment and that is the prospect that the Council might notwithstanding the obvious merits of the scheme still consider that planning permission should be refused. Against the background of the evidence which is currently available and the national planning policy framework that I have identified. There do not appear to me to be any sound reasons as to why planning permission should be refused. I have already set out that I do not believe there have been any adverse impacts identified which would merit refusal and so far as I am aware there is no evidence available to members which would support that view. The views of the DROVS planning consultants and counsel whilst replete with references to the alleged inappropriate scale, do not provide, in my view, cogent evidence related to any adverse impacts and in particular in relation to the matters set out in Policy EC10 of PPS4 or the written Ministerial Statement of the 23rd March 2011. Against that background a refusal of planning permission would in my view be unreasonable.

22nd October 2011
No 5 Chambers
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Martin Kingston Q.C.