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Planning Department
Central Bedfordshire Council
Priory House, Monks Walk,
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15 July 2011

Our Ref:CVH/HAR

Dear Sirs,

RE: Planning Application Ref. CB/10/04238/FULL – Tesco, Linslade.

We act for South Bedfordshire Friends of the Earth, and are instructed to comment on the Officer's Report (OR) produced for the Development Management Committee (DMC) of Central Bedfordshire Council (CBC) which will meet to determine the above-mentioned planning application on 20 July 2011. This letter should be read in conjunction with the objection previously lodged by S Beds FoE. We set out our comments below.

Planning in favour of sustainable development.

The OR places significant weight on the draft wording of a presumption in favour of sustainable development which, it is proposed by the Government, will be incorporated in a new National Planning Policy Framework (NPPF). It is intended that the NPPF will replace both Planning Policy Statements (PPSs) and Planning Policy Guidance (PPGs). At the present time a draft NPPF is not yet available, and has yet to be released for public consultation.

The OR (p48) cites 3 bullet points from the draft presumption, and states that all of the

“policies should apply to the determination of this application unless the adverse impacts of allowing the development would significantly and demonstrably outweigh benefits when assessed against the policy objectives in the NPPF taken as a whole.”

There is a particular and significant problem with adopting this approach advocated by the OR. Absent the publication and adoption of the NPPF, it is impossible to assess what the specific policy objectives referred to in the OR actually are, and therefore impossible to judge whether any application, on balance, is compliant with those policy objectives.

Whilst it may well be Government's intention to introduce such a system of assessment in the future, and to introduce a presumption in favour of sustainable development, until the

NPPF is adopted as policy, planning applications must continue to be assessed and determined in accordance with the adopted Development Plan.

This situation has parallels with Government's stated intention to abolish Regional Spatial Strategies (RSSs). Recent case law has reiterated that despite the stated intention of Government, until such time as RSSs are actually abolished they remain an integral part of the Development Plan, and as such, are a material consideration in the determination of planning applications. This judicial view was confirmed as recently as 5 July 2011 in a judgement given by Mrs J Davies in *Resource Recovery Solutions v Secretary of State for Communities and Local Government* [2011] EWHC 1726, which considered, and followed, the leading case on this matter, *Cala Homes v Secretary of State for Communities and Local Government* [2011] EWCA Civ 639.

In addition, the Minister Greg Clarke's letter of 30th June 2011 sent to the MP Andrew Selous reaffirmed that;

"The 'town centre first' policy will continue to be strongly expressed through the forthcoming National Planning Policy Framework."

In any event, it is clear when the policies of the draft presumption are applied to this specific application, the criteria set out in the policies referred to in the OR are not of direct relevance to this current planning application.

The first bullet point, to

"Prepare local plans on the basis that objectively assessed development needs should be met, and with sufficient flexibility to respond to rapid shifts in demand or other economic changes."

refers to the preparation of local plans, which has relevance to issues relating to the emerging Core Strategy (CS) for the Council, which is discussed in more detail below, but is of no direct relevance to the current application, whilst the second bullet point refers to the approval of proposals that accord with statutory plans (i.e. the Development Plan). This is simply a restatement of the current policy approach to the determination of planning applications and is nothing new.

The third bullet point referred to in the OR, is to

"Grant permission where the plan is absent, silent, indeterminate or where relevant policies are out of date".

However, despite citing this policy, the OR is silent as to whether it applies to the policies that make up the Development Plan. The RSS, the East of England Plan (EEP) was adopted in 2008, the South Bedfordshire Structure Plan (SBSP) in 2011, and the Core Strategy is well advanced and due for adoption in May 2012. Luton has just withdrawn from the CS, but the policies on the town centre have been largely unchanged for several years.

The most relevant national planning policy statement, PPS4, Planning for Sustainable Economic Growth was published in 2009. Given this, it is difficult to see the immediate relevance of the third bullet point to the determination of this current application.

In summary, the conclusion drawn in the OR that;

“...the draft wording of the presumption in favour of sustainable development lends a degree of support to the proposal.”

is hard to reconcile with the specific policy issues that are of direct relevance to this application. In planning terms, any weight that may be given to these policies is very limited, and should not be interpreted as determinative.

PPS4 – Planning for Sustainable Economic Growth.

The starting point for the assessment of this application should be the policy considerations and objectives set out in PPS4, because, as the Statement advises, the policies in PPS4;

“...are a material consideration which must be taken into account in development management decisions, where relevant.” (PPS4 para. 3)

Paragraph 9 states that the Government's overarching objective is sustainable economic growth, which is defined as;

“Growth that can be sustained and is within environmental limits, but also enhances environmental and social welfare...” (footnote to para. 9)

Paragraph 10 of the Statement sets out the objectives of the guidance, which include, reducing the need to travel, especially by car, and the promotion of the vitality and viability of town centres.

This latter objective will be achieved, inter alia, by focusing new economic growth and the development of main town centre uses in existing centres and the promotion of competition between retailers through the provision of shopping and leisure in town centres, which allows genuine choice to meet the needs of the entire community.

It is against this overall policy framework that the specific policies of PPS4 have to be interpreted and against which the current application should be assessed. As paragraph 3 of the Statement makes clear;

“The development management policies in the PPS can be applied directly by the decision maker when determining planning applications.”

Policy EC14 of PPS4 requires a sequential assessment to be undertaken for applications for main town centre uses that are not in a centre and not in accordance with an up to date development plan, and Policy EC16 additionally requires an impact assessment in such circumstances.

Policy EC17 states that such proposals (for main town centre uses not in a centre and not in accordance with an up to date development plan) should be refused planning permission where either compliance with the requirements of the sequential approach is not met or where there is clear evidence of significant adverse impacts as set out in policies EC10.2 and EC16.1.

The OR makes reference to such an impact assessment prepared by consultants acting

on behalf of the applicants, submitted “in response to this requirement”, which would appear to be the requirement pursuant to Policy EC16.

There thus seems to be an acceptance on the part of the applicant and/or the Council that the development proposal is both for a main town centre use not in a town centre (which appears to be unarguable), and, more significantly, that the development proposal is not in accordance with an up to date development plan.

Given this apparent acknowledgement, there is a clear inconsistency between this and the view expressed in the OR that;

“... the new development would accord with policies in the development plan...” (OR p49)

East of England Plan 2008 (EEP)

The only policy from the EEP referred to in the OR is Policy E1, which sets a target for the creation of 23,000 jobs in the Luton S Beds area over the Plan period 2001-2021. The OR states that the proposed scheme will create a total of 84 additional full and part time jobs, which it accepts is “modest”. (This figure is the Tesco jobs, 140, minus the loss of the Homebase jobs).

No indication is provided as to the breakdown of the 84 posts into full-time equivalents, and in any event, these posts would be created irrespective of location. That is, an outlet of a similar size would produce the same number of jobs whether located out of town or in the town centre. Tesco is announcing 140 new jobs of which 75% are part time and 25% full time.

(A study by the National Retail Planning Forum in 1998 of 93 new superstores found that each one resulted in a net loss of 270 jobs. In Accrington, Tesco promised 450 jobs during the planning process yet once the new store was opened it only advertised for 191 staff. http://www.lancashiretelegraph.co.uk/news/8489610.Fewer_jobs_on_offer_at_Accrington_s_new_Tesco_store/?ref=rss).

Impact on the town

The loss of Homebase will harm the DIY offer to the town which is currently good and so result in more people travelling outside the town. –“Savills consider that the combined implications would have no significant impact on the town centre, but would be likely to slightly prejudice its vitality and viability.” We understand that Homebase opposed to the Tesco application.

In addition, we question the assertion that: "The range of shopping and service facilities is good". There is a real shortage of shortage of clothing shops in the town centre – only 9% of money spent on clothes and footwear is spent in the town(Borough Retail Study 2005). An ILLB survey of 850 people in 2008 found that 94% wanted a larger range of clothing and footwear. Tesco states that it will only sell the lower end of the range

The ILLB group in its submission state: “For one store to have as large a percentage of comparison good sales is unrealistic for the viability of the town centre shops. There is not the evidence that the offer that Tesco wants to have (depending on the size) will come from Milton Keynes. It is more than likely to come at the expense of the town centre shops as seems to be the case in most other towns.

Being located at an out of town centre site does not provide the customer the choice of comparison with other stores as is possible in a town centre with a wider range of goods.

On the subject of linked trips, the OR refers to a figure of 42 % linked trips – this survey has not been made available for public scrutiny as part of the planning application, but is quoted in the Savills Report at para 5.8.

“A compensating factor is that new customers drawn into the centre will almost certainly engage in associated shopping trips into the central area. Survey information collected at the Tesco store in June 2010 showed that some 42% of customers visiting the store undertook linked trips and that it would be reasonable to assume that most if not all such trips were into Leighton Buzzard Town Centre. Further research material supplied to us by Tesco’s consultant in relation to another proposal at Sandy confirms that a store located some 400 metres from the primary shopping area in a nearby centre would give rise to a significant number of linked trips and confirms the above survey results. One has to be careful not to over-state this phenomenon in the current circumstances. The Tesco store is already substantially over trading and insofar as the proposed extension is merely mopping up this expenditure the proposed extension would not give rise to additional linked trips. There is no information in the Assessment to permit a calculation of the retail sales value of such trips.”

The Tesco linked trips survey has not been subject to independent scrutiny or review, and the percentage reported (42%) is almost double that of a figure (22%) accepted by an Inspector at an appeal inquiry in 2003 for a similar application at the same site.

Disaggregation –

There is an element of uncertainty on this point in the OR (p59), which states;

“However, Savills add a note of caution. The exercise conducted by MRPP assumes a continuing sales capacity of £3.16M per annum for the extension when the tendency would be for the turnover ratio to climb towards the company average with the effect of substantially reducing expenditure capacity. Savills argue that the above table (combining the Tesco and town centre schemes) assumes that change has taken place by 2016 and is, therefore, a robust illustration of capacity at that date, namely a difference of 330m² between the convenience floorspace to be provided in the combined schemes (1,807m²) and the convenience floorspace requirement at 2016 (1,477m²). Insofar as the extension turnover would not have reached the company average, the difference between the two figures would be correspondingly less. The implications of these circumstances would be two-fold - firstly, reduced sales in the other main supermarket outlets and secondly, less than sufficient retail need to support the convenience element of the anchor store at 2016. Notwithstanding their note of caution, it is Savills’ view that the scale of the overall difference between the two figures and its spread suggests very limited trading implications for the vitality and viability of the town centre.”

Furthermore, the Savills Report fails to take into consideration a planning application for East Leighton-Linslade for 2,500 houses with a 2,000m² supermarket. The likely impact of this development on capacity for convenience and comparison has not been taken into account in either Retail Assessments.

South Bedfordshire Local Plan Review 2004

The OR makes specific reference to Policy SD1 and states that the proposal clearly accords with the policies of SD1.

As the Review was undertaken in 2004, its policies have now been superceded by those set out in PPS4 released in 2009. As such, very limited weight, if any, can be afforded to Policy SD.1

Emerging Core Strategy (CS)

It is surprising that the OR makes no specific reference to the emerging CS, which is timetabled for adoption by May 2012. The draft CS has already been out for public consultation and been subject to a preliminary assessment by an Inspector responsible for assessing its soundness. As such the emerging CS is clearly a material consideration to be taken into account in the determination of this application, and should be afforded due weight.

Draft Policy CS21 considers the planned development of Leighton-Linslade Town Centre and states that Development Briefs will be prepared to guide, enable and facilitate the delivery of mixed-use development on 2 sites, one within and one adjoining the town centre. Part of the proposed mixed-use development consists of the provision of up to 6,889m² of retail floor space.

The draft policy further states that development proposals must have regard to these objectives and that any development proposals submitted in advance of the production of Development Briefs will need to demonstrate that they would not prejudice the provision of such uses. One of the preferred options, the development of land South of the High Street, subject to recent public consultation, identifies the provision of an anchor store of some 2,400m² and other retail outlets of up to 2,850m².

Whilst the OR places significant weight on 2 Retail Assessments (one undertaken by the Applicant and another by the Council itself), both of which conclude that the development of the current scheme would not prejudice town centre development plans, such conclusions should be approached with a high degree of caution.

It is unclear from the OR as to how up to date the data upon which growth projections are based actually are. At the time of writing, retail sales figures and projections for retail growth are subject to a high degree of uncertainty and flux. Data released by the British Retail Consortium (BRC) on 11 July 2011 record retail sales growth of 1.5% for the period June 2010-June 2011. The Director General of the BRC in commenting on the figures referred to a "spate of shop closures" and "weak company figures" over the period in question. He also pointed out that the higher VAT rate was responsible for making the year on year comparison "better than it really is". Figures for inflation released by the Office for National Statistics (ONS) on 12 July 2011 show a slight fall to 4.2% from 4.5%.

The OR accepts that the current proposed scheme clearly overlaps with the retail development proposals for the Land South of the High Street, and the Council's own consultants, Savills, suggest "very limited trading implications for the vitality and viability of the town centre". However, this conclusion should be tested against the most up to date figures available, not those which may already have been overtaken by recent developments.

The OR advises that;

“Allowing the new extension would not materially impact on the redevelopment proposals at Land South of High Street. There is no substantive evidence to suggest that the scheme would fail to proceed if permission were to be granted.” (OR p61)

In the current retail climate there can be no such certainty, and a more precautionary approach should be adopted, particularly when a proposed scheme risks prejudicing an emerging plan which is based on a high degree of public participation.

Conclusion

In conclusion, the application is not in accordance with the Development Plan. As such the application can only be approved in circumstances where the benefits of the proposal clearly outweigh the disbenefits of the scheme. This remains the correct policy position irrespective of the draft presumption in favour of sustainable growth published by DCLG in June. Whilst the presumption may come into effect in the future, at the present time planning applications must be determined in accordance with adopted policies and guidance.

The benefits of the proposal will largely accrue to the applicant company, in that it will improve its overtrading situation, which is the stated purpose of the planning application.

Set against this is are the likely adverse impacts of the development on the emerging plan for the town centre and likely adverse impacts on the viability and vitality of the town centre at a time of great uncertainty as to growth of the retail sector. At a time of low consumer confidence, falling disposable incomes, restrictions on consumer credit and stagnant retail growth, there is a very real risk that were this application to be approved adverse impacts on the town centre would be of a far greater magnitude than those projected in the retail assessments.

For these reasons and those set out above, this application should be refused.

Yours sincerely,

Charlie Hopkins MA (Oxon) Dip Law Solicitor (Non-Practicing)

Planning & Environmental Consultant

Submitted on behalf of South Bedfordshire Friends of the Earth