

13 September 2010

Denton Wilde Sapte LLP
One Fleet Place
London
EC4M 7WS

Our Ref: APP/C3810/V/09/2117516

For the attention of Anita Rivera

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY SAINSBURY'S SUPERMARKETS LTD & SIME DARBY
LONDON LTD: LAND AT LEC SITE, SHRIPNEY ROAD, BOGNOR REGIS, WEST
SUSSEX, PO22 9NQ – Application ref: BE/122/08**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Stephen Amos MA(Cantab) MCD MRTPI, who held a public local inquiry between 11 and 25 May 2010 into your clients' application for demolition of existing buildings and erection of Class A1 superstore with associated car parking, landscaping, petrol filling station, car wash and jet wash and creation of new access from A29 and internal estate roads, together with replacement car dealership facility fronting Shripney Road, in accordance with application ref: BE/122/08.
2. Instead of being dealt with by the relevant planning authority, Arun District Council ("the Council"), the application was called in for decision by the Secretary of State following a direction issued on 17 November 2009 in pursuance of section 77 of the Town and Country Planning Act 1990. The reason given for making the direction was because the application may conflict with national policies on important matters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application should be approved and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Secretary of State has noted (IR3) that, following the close of the Inquiry, the Inspector asked the Planning Inspectorate office to seek comments on a minor change of wording to the proposed condition relating to the appearance of the bio-mass boiler and wood chip store. Although your reply on

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behalf of your clients was the only response received, the Secretary of State is satisfied that all parties have been given an opportunity to respond. He has therefore taken account of the Inspector's proposed change of wording to condition 24 (see paragraph 19 below).

Policy considerations

5. In determining this application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, following the revocation of the South East Plan (to which the Secretary of State has therefore given no weight in coming to his decision on this case), the development plan comprises those parts of the Arun District Local Plan ("the local plan") which were saved by Direction of the Secretary of State on 25 September 2007.
7. Other material considerations which the Secretary of State has taken into account include: Planning Policy Statement (PPS) 1: *Delivering Sustainable Development* and the associated supplementary PPS: *Planning and Climate Change*; PPS4: *Planning for sustainable economic growth* and the associated practice guidance; Planning Policy Guidance Note (PPG) 13: *Transport*; PPS25: *Flooding* and the associated practice guidance; Circular 11/95: *Planning Conditions*; Circular 05/2005: *Planning Obligations*; and the Community Infrastructure Levy Regulations 2010 (CIL) - which apply in the case of all determinations made on or after 6 April 2010.
8. As the Council has made limited progress on those documents which will make up the Local Development Framework (IR34), the Secretary of State affords them no weight in this case.

Main issues

The development plan and national policy (PPS4)

9. As the Inspector points out at IR408, the main policy in the local plan relating to retail development is DEV27 and, as the local plan was adopted in April 2003, that policy fails to reflect the latest Government guidance in PPS4 in two ways. As set out by the Inspector at IR409, the main elements of difference are that PPS4 no longer requires an applicant to demonstrate "need"; and that it sets a less exacting requirement to demonstrate whether the proposal is likely to lead to significant adverse effects on other shopping facilities in the area either individually or in cumulative terms. The Secretary of State considers that, together, these differences constitute a material consideration leading him to give no weight to those requirements of Policy DEV27 which conflict with those set out in PPS4. Otherwise, however, the Secretary of State agrees with the Inspector at IR502 that, for the reasons given at IR496-501, the proposal is in accordance with the relevant policies in the local plan.

The sequential test

10. The Secretary of State agrees with the Inspector that both PPS4 and DEV27 require a sequential assessment in the case of applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan (IR412). The Secretary of State has therefore gone on to consider the Inspector's arguments with regard to potential alternatives at: the Covers site (IR414-415), the Regis Centre (IR416), the Hothamton site (IR417-418) and the site of the Morrisons' store in Bedford Street (IR419-431). The Secretary of State agrees with the Inspector's analysis, and thus with his overall conclusion at IR432, that there are no sequentially preferable sites in Bognor Regis town centre, or on the edge of that centre, which are available, suitable and viable as alternatives to the application site for the development of a foodstore of the requisite size. The Secretary of State is therefore satisfied that the applicants have demonstrated compliance with the requirements of both PPS4 and DEV27 for a sequential approach to site selection.

Impacts on existing, committed or planned investment or on trade

11. For the reasons given at IR434-445, the Secretary of State agrees with the Inspector's conclusion at IR446 that the proposed superstore would comply with PPS4 in that it would not have any significant adverse impacts on existing, committed or planned investment in Bognor Regis town centre. In particular, the Secretary of State agrees with both the Inspector's conclusion at IR436 that there appears to be no imminent prospect of development beginning on either the Hothamton or the Regis Centre sites even if the application under consideration here were to be refused; and his conclusion at IR444 that the balance of evidence supports the contention that the redevelopment of the Morrison's site would be unlikely to take place whether or not this application is refused. Furthermore, for the reasons given at IR447-450, the Secretary of State agrees with the Inspector's conclusion at IR451 that the proposed superstore would be compliant with PPS4 in that it would be unlikely to have any significant adverse impact on the vitality and viability of Bognor Regis town centre, including with regard to consumer choice and the range and quality of the retail offer.
12. For the reasons given at IR452-454, the Secretary of State agrees with the Inspector's conclusion at IR455 that the proposed superstore would accord with the requirements of PPS4 in that it would not have any significant adverse impact on in-centre trade/turnover or on trade in the wider area. Similarly, for the reasons given at IR456-458, the Secretary of State agrees with the Inspector's conclusion at IR459 that the proposed superstore would comply with PPS4 in being of an appropriate scale in relation to the size of Bognor Regis as a centre and its role as a Secondary Regional Centre.

Environmental impacts and design

13. For the reasons given at IR460-465, the Secretary of State agrees with the Inspector's conclusion at IR466 that the proposal complies with PPS4 in being planned to limit carbon emissions over its lifetime and to minimise vulnerability and provide resilience to climate change. He also agrees with the Inspector's conclusions at IR474-476 that, for the reasons set out at IR467-473, the proposed development would be reasonably accessible by a variety of means of

transport, with the potential to reduce journeys out of Bognor Regis; and that it would therefore be in accordance with PPS4, PPG13 and DEV27.

14. The Secretary of State also agrees with the Inspector's conclusions at IR481 that, for the reasons given at IR477-480, the proposal would accord with PPS4 and DEV27 with regard to the provision of a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area; and that it would therefore also comply with the expectations of PPS1.

Impact on economic and physical regeneration and local employment

15. With regard to the impact of the proposal on economic and physical regeneration and local employment, the Secretary of State agrees with the Inspector (IR482) that these are inextricably linked in this case and, for the reasons at IR483-486, he also agrees that the evidence is convincing that regeneration and remediation of the application site would be unlikely to be secured in the foreseeable future unless the development of the proposed superstore is allowed to take place. In particular, the Secretary of State agrees with the Inspector (IR485) that there is no evidence of current demand for the site for housing, other types of commercial uses, or a mixture thereof; and he notes (IR486) the lack of evidence to confirm that residential use would be acceptable having regard to flood risk considerations.
16. The Secretary of State further agrees with the Inspector (IR489 and IR493) that, in the context of relatively high levels of unemployment and deprivation in the area, the creation of jobs would be a substantial regeneration benefit of the application scheme; as would be the commitment (IR490) to provide training opportunities for the staff who would be employed.
17. The Secretary of State therefore agrees with the Inspector (IR 493) that these positive impacts on economic and physical regeneration and on local employment would accord with PPS4. Furthermore, in coming to these conclusions, the Secretary of State, like the Inspector (IR494), has had regard to the arguments put forward suggesting that negative impacts for regeneration would arise from the diversion of trade from the town centre and in terms of deterring investment in development schemes in the town centre. However, the Secretary of State agrees that the potential positive impacts for regeneration and employment identified by the Inspector would significantly outweigh any limited negative effects that would arise in those respects.

Overall balance of factors in assessing proposals not in town centres

18. The Secretary of State has also had regard to the criteria set out in PPS4 to be applied in considering planning applications for development of main town centre uses not in a centre and not in accordance with an up to date development plan. For the reasons given at IR507-509, he agrees with the Inspector that the application falls to be determined by taking account of the balance between its positive and negative impacts and he also agrees that, for the reasons set out by the Inspector and in the preceding paragraphs of this letter, the balance of considerations weighs in favour of approval of the application.

Planning Conditions

19. The Secretary of State has considered the proposed conditions relating to this application and the Inspector's comments and modifications as set out at IR403-405 and IR510-515. He considers that the conditions which he proposes to impose, as amended by the Inspector and set out in the Annex to this letter (including the amendment to what is now condition 24 – see paragraph 4 above), are reasonable and necessary and meet the tests of Circular 11/95.

Planning Obligation

20. The Secretary of State has considered the planning obligation by agreement dated 25 May 2010 in the light of the Inspector's comments at IR382-402, IR445, IR490-492 and IR516-523. He agrees with the Inspector that those obligations relating to the clearance and remediation of the land (IR517); the transport contributions and facilities (IR518); the employment and management of sustainable urban drainage (IR521); and the provision of training and skills development at the proposed superstore (IR521) are fairly and proportionately related to the development proposed and accord with the tests in Circular 05/2005 and the CIL Regulations.
21. However, the Secretary of State also agrees with the Inspector that, for the reasons given at IR445 and IR520, the contributions towards the implementation of town centre management and initiatives would fail to comply with Regulation 122 of the CIL Regulations. Similarly, for the reasons given at IR491 and IR 520, the Secretary of State agrees with the Inspector that the provisions for contributions to be made to the delivery and promotion of business enterprise in the vicinity of the site would fail to comply with Regulation 122. He has therefore given no weight to either of those aspects of the obligation in coming to a decision on this case.
22. The Secretary of State also agrees with the Inspector (IR522) that the obligation concerning the signing of the Bognor Regis Development Charter probably does not meet the tests of either Circular 05/2005 or the CIL Regulations but that that is no longer of any significance as the applicants have already signed the Charter.

Overall Conclusions

23. The Secretary of State concludes that, to the extent that the proposed development does not accord fully with the Arun Local Plan, it nevertheless accords with national policy in the more recently published PPS4 with regard to its potential impact as a main town centre use which would not be in the town centre; and he considers that that is an important material consideration in favour of the scheme. The Secretary of State is satisfied that the Inspector has not identified any significant adverse effects arising from the proposal on existing, committed and planned public and private investment in the town centre, nor has he identified any sequentially preferable sites in, or on the edge of, Bognor Regis town centre which are available, suitable and viable as alternatives. On the other hand, the proposed development would achieve the physical and economic regeneration of the site, thereby improving the character and quality of the area; and the scheme would be built to appropriate standards to limit carbon emissions and achieve resilience to climate change.

Formal Decision

24. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby grants planning permission for the demolition of existing buildings and erection of Class A1 superstore with associated car parking, landscaping, petrol filling station, car wash and jet wash and creation of new access from A29 and internal estate roads, together with replacement car dealership facility fronting Shripney Road, in accordance with application ref: BE/122/08, subject to the conditions set out in the Annex to this letter.
25. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
26. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

27. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
28. A copy of this letter has been sent to Arun District Council and all parties who appeared at the inquiry.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. No development shall take place until a scheme of hard and soft landscaping for the site has been submitted to, and approved in writing by, the Local Planning Authority. The approved details of the soft landscaping shall be carried out in the first planting and seeding season following the occupation of the retail store and any trees or plants which, within a period of five years from occupation of the retail store, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The approved details of the hard landscaping scheme shall be implemented before the retail store is opened to the public.
3. No development of the retail store element of the development shall take place until details of any external lighting/floodlighting for the retail store, including details of levels of luminance, have been submitted to, and approved in writing by the Local Planning Authority. The approved details shall be implemented and operational, before the retail store is opened to the public.
4. No development of the car dealership element of the development shall take place until details of any external lighting/floodlighting, visitor car parking spaces and boundary treatment in relation to that part of the development have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and operational, before the car dealership is opened to the public.
5. The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and Addendum (document ref HA/2008/105829/ 02-L01) and in particular, the following mitigation measures as detailed within the FRA:
 1. Limiting the surface water run-off generated by the critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off site.
 2. Provision of compensatory flood storage on the site.
 3. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
 4. Setting of finished floor levels no lower than 2.20 m above Ordnance Datum (AOD).
6. No development shall take place until the following components of a scheme to deal with the risk associated with contamination of the site, to include an implementation programme, have each been submitted to and approved in writing by the Local Planning Authority:
 1. A site investigation scheme, based on the Desk Top Study and historical site investigations to provide information for a detailed

assessment of the risk to all receptors that may be affected, including those off site.

2. Based on the results and the detailed risk assessment referred to in 6.1 above, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in 6.2 above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
7. A Verification Report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority before the retail store is occupied. The Report shall include results of sampling and monitoring carried out in accordance with the approved Verification Plan to demonstrate that the site remediation criteria have been met.
8. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until an amendment to the remediation strategy detailing how this unsuspected contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority, and the measures included in the amended strategy shall be carried out in accordance with the details approved by the Local Planning Authority prior to the opening of the retail store.
9. No development shall take place until details of piling or other foundation designs using penetrative methods have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
10. No development shall take place until a scheme to install the underground tank(s) for the petrol filling station has been submitted to and approved in writing by the Local Planning Authority. The installation of the tanks shall be carried out in accordance with the approved scheme prior to the opening of the petrol filling station. The scheme shall include the full structural details of the installation, including details of: excavation, the tank(s), tank surround, associated pipe work and monitoring system.
11. No development shall take place until a scheme for the disposal of foul & surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the retail store is occupied.
12. The retail store shall not be opened for trade until the approved A29, Shripney Road/site access road signalised junction has been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
13. The retail store shall not be opened for trade until the approved signalised toucan crossing has been provided across the A29, Shripney Road, in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.

14. The retail store shall not be opened for trade until the bus lay-by and bus shelter with seating, lighting and bus information timetables has been provided on the A29, Shripney Road, site frontage in accordance with a scheme to be submitted to, and approved in writing by the Local Planning Authority.
15. The retail store shall not be opened for trade until the existing site accesses have been physically closed in accordance with a scheme to be submitted to and approved in writing by the local planning authority.
16. The retail store shall not be opened for trade until the site access road and its associated footways have been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
17. The retail store shall not be opened for trade until the car park circulatory aisles, the car parking spaces, the disabled spaces and the parent and child spaces have been provided, surfaced and marked out in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. These vehicle parking spaces shall thereafter be retained at all times for their designated users.
18. The retail store shall not be opened for trade until the motorcycle parking area within the store car park has been provided, surfaced and marked out in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. This motor cycle parking area shall thereafter be retained at all times for its designated use.
19. The retail store shall not be opened for trade until the customer and staff cycle parking spaces have been provided within the site in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. These cycle parking spaces shall thereafter be retained at all times for their designated use.
20. The retail store shall not be opened for trade until the store service road and its associated service yard have been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
21. The Travel Plan (May 2009) hereby approved shall be implemented in accordance with the details therein on first occupation of the retail store.
22. The retail store shall not be commenced until a temporary site construction access has been provided in accordance with a plan and details to be submitted to and approved in writing by the Local Planning Authority.
23. In the retail store no more than 3,570 sq. m of the floor space shall be used for the sale of convenience goods and no more than 1,640 sq. m for the sale of comparison goods.
24. Details of the bio-mass boiler, to include details of all emissions and its physical form, and details of the associated chip store, to include details of the elevations of this building, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The boiler and the chip store shall be provided in accordance with the approved details before the retail store opens for trading.
25. Within 6 months of the commencement of development, details of the art panels to be included on the Shripney Road elevation of the retail store shall

be submitted to and approved in writing by the Local Planning Authority. The approved art panels shall be erected as part of the store construction.

26. This planning permission relates to the following plans and statement:

- Site Location Plan (Red Line) – No. CHQ.08.8157-001
- Proposed Master Plan – No. CHQ.08.8157-002 C
- Proposed ground floor Plan – No. CHQ.08.8157-003 A
- Proposed first floor plan – No. CHQ.08.8157-004 A
- Proposed elevations – No. CHQ.08.8157-005
- Proposed rendered elevations No. CHQ.08.8157-006
- Proposed PFS elevation No. CHQ.08.8157-007 A
- Proposed car dealership plans and elevations – No. CHQ.08.8157-008 A
- Topographical Survey – No. CHQ.08.8157.009
- Design and Access Statement (January 2009)