

PLANNING APPLICATION NUMBER: P08/1441

Type of approval sought	FULL PLANNING PERMISSION
Ward	CASTLE & PRIORY
Applicant	MR ROGER WELCHMAN
Location: TESCO SUPERSTORE, TOWN GATE RETAIL PARK, BIRMINGHAM ROAD, DUDLEY, DUDLEY, DY1 4RP	
Proposal: REDEVELOPMENT OF TOWN GATE RETAIL PARK AND REPLACEMENT WITH NEW TESCO FOODSTORE (A1) RELOCATED PETROL FILLING STATION. NEW ACCESS ARRANGEMENTS AND ACCESS FROM BIRMINGHAM NEW ROAD WITH ASSOCIATED PARKING AND LANDSCAPING	
Recommendation summary: APPROVE SUBJECT TO A 106 AGREEMENT	

SITE AND SURROUNDINGS

- 1 The application site is known as Town Gate Retail Park and is located to the Birmingham Road and Birmingham New Road (A4123) immediately to the west of Burnt Tree island, approx 1km from Dudley town centre. Vehicular access is from two free flow junctions located on Birmingham Road and Birmingham New Road.
- 2 The application site consists of a 6282m² (gross) TESCO supermarket, which is constructed in brick with a tiled roof, often referred to as an 'Essex Barn' design. Adjoining the store is a large car park and a petrol filling station. To the rear of the supermarket is an extensive servicing and home delivery base for TESCO.com. Within the store which is principally open-plan, is a café, toilets for shoppers, a bakery, a pharmacy, stock storage and staff accommodation. Also within the site are a number of steel uprights which are part of an unfinished mezzanine.
- 3 Adjoining the TESCO site is a retail park consisting of two retail units, one presently used as a DIY store and garden centre, the other being vacant. The combined floor space of these buildings is 4645m² (gross). These buildings were built in the 1990's and are finished in colour treated profiled sheeting. Adjoining these buildings is a further car park.
- 4 In addition to these units is a smaller unit located near to Birmingham Road. This was formerly used as a Blockbuster video rental shop and has an adjacent car park. The building, which is now vacant has a floor area of 680m² (gross).

- 5 The application site has an extensive network of private roads which link the various parts of the Town Gate Retail Park.
- 6 The application site which includes all the aforementioned buildings is roughly triangular and is bounded on two sides by busy dual carriageways. On the south side of Birmingham Road is a mixture of residential and commercial uses including a hotel and a laminate flooring store. On the eastern side of Birmingham New Road is a varied mix of commercial uses including a family orientated public house, a 1970s office building and factories. On the north side of the site is a further hotel, an area of vacant land and a factory.
- 7 The site has no significant landscape features with a limited amount of planting around the periphery, some of which has been poorly maintained.
- 8 The site is well served by public transport with three frequent services passing the store on route to Birmingham, together with a couple of less frequent services. The site presently has circuitous pedestrian links with the adjoining footways.

PROPOSAL

- 9 The application seeks to demolish all of the buildings on the site and construct one large TESCO store which runs to approximately 13004m². The store would be two-storey with car parking on the lower level with access to the upper level by travellers, a lift and stairs.
- 10 The proposed building would be finished in glass and timber to the front elevation with glass and other panelling to the sides. The roof would be curved and would be topped with 'wind catchers' which as well as being a design feature would also provide a level of natural ventilation for the store.
- 11 A service yard would be located at the rear of the shop. The service yard would be elevated and would be accessed by a ramp on the Birmingham Road side of the proposed store. Car parking would be located below the service area. The applicants are indicating that the plant would be sited in this location as well.
- 12 On the site of the former video rental store would be a replacement petrol station which would include a small retail shop, a car wash and a jet wash. The petrol filling station would operate on a one-way basis.
- 13 The vehicular access to the site from Birmingham New Road would be relocated to the northern part of the site and would be signal controlled. The junction would be designed to allow right movements into and out of the store which is not presently possible. The existing access onto Birmingham Road would be modified and a new access road provided to allow access to the car park. These measures would form part of the proposed replacement of Burnt Tree Island.

- 14 The application was submitted with a transport assessment, a design and access statement, an air quality assessment, a noise assessment, a flood risk assessment, a design and access statement, a landscape assessment and planning statement which incorporates the retail impact assessment.
- 15 Amendments have been made to the application which includes changes to the disabled parking, pedestrian routes to the site and some indicative public realm details. In addition details have been provided of the combined heat and power plant.
- 16 The purpose of this report is not for determination of whether planning permission should be granted but is to allow the Director of the Urban Environment to be authorised to amend the Planning Obligations Heads of Terms as agreed at the Development Control Committee on 2 February 2009

PUBLIC CONSULTATION

- 17 None

OTHER CONSULTATION

- 18 None

RELEVANT PLANNING POLICY

Unitary Development Plan

DD1 Urban Design

DD3 Design of Retail Development

DD4 Development in Residential Areas

DD5 Development in Industrial Areas

DD6 Access and Transport Infrastructure

DD7 Planning Obligations

DD9 Public Art

UR9 Contaminated Land

CR1 Hierarchy of Centres

CR3 Local Shopping Areas

CR8 New Retail Development - Large Foodstores

CR9 Edge-of-Centre and Out-of-Centre Development

CR10 Conditions on Major Retail Development

AM1 An Integrated, Safe, Sustainable and Accessible

Transport Strategy
AM11 Cycling
AM12 Pedestrians
AM15 Personal Mobility
AM16 Travel Plans
NC1 Biodiversity
EP5 Air Quality
EP6 Light Pollution
EP7 Noise Pollution
EP10 Renewable Energy

Supplementary Planning Guidance/Documents

Parking Standards and Travel Plans Supplementary Planning Document
Planning Obligations Supplementary Planning Document

National Planning Guidance

PPS1 - Delivering Sustainable Development
PPS6 – Town Centres
PPG13 – Transport
PPS22 - Renewable Energy
PPS23 - Planning and Pollution Control
PPG24 - Planning and Noise
PPS25 – Development and Flood Risk

ASSESSMENT

- 19 The above planning application was presented to the Development Control committee on 12 January 2009. Paragraph 71 of the report stated that the applicant had agreed to power a proportion of its store delivery and home delivery vehicles with alternative fuels and that this would be controlled by legal agreement. This follows a commitment given in a letter from the applicant in December 2008.
- 20 Whilst the applicant is still willing to commit to this the report implies that the matters would be fully controlled by legal agreement. However, the applicant is now only prepared following the detailed negotiation to agree to “best endeavours” rather than a specified proportion. This repositioning is based on advice from the applicants distribution section.

- 21 The applicant also wishes to impose a clause where best endeavours shall include any measures which would require the payment of excessive additional costs or which in the view of the applicant would not be viable to undertake, as determined solely by the applicant. The applicant is also unwilling to agree a clause which would allow any of these conclusions to be tested by the Council. Therefore the use of this clause is considered to be a deviation from the spirit of commentary that was given within the report and therefore in accordance with the Councils adopted Constitution there is a need to refer this matter back to the Development Control Committee for agreement.
- 22 Whilst there is significant disappointment in the approach taken by the applicant, in the final negotiations, the prevailing view is to accept the applicants revised offer on the basis the air quality improvements which may have arisen would not have gone to the heart of any planning permission, in other words it would not be reasonable to refuse the application for this aspect alone.
- 23 The redevelopment of the site which is a key gateway to the town centre would bring significant regeneration benefit, it would improve the appearance of the site, would provide improved retail facilities and employment opportunities that would outweigh the air quality benefits that would have occurred.
- 24 The other planning obligation relating to the site such as the contributions towards new bus shelters, an air quality monitoring station and the employment compact remain unchanged.

CONCLUSION

- 25 The proposed development is considered to be acceptable in principle as the existing unrestricted floor space is in situ or is authorised, that the proposal would not have a severe impact on competing centres, would not have an adverse impact on the local highway network, would not have an adverse impact on neighbour amenity. Similarly the design of the proposal is considered to be acceptable. Consideration has been given to policies DD1 DD3 DD4 DD5 DD6 DD7 DD9 UR9 CR1 CR3 CR8 CR9 CR10 AM1 AM11 AM12 AM15 AM16 NC1 EP5 EP6 EP7 EP10 of the Dudley Unitary Development Plan.

RECOMMENDATION

The existing recommendation should stand, although the Director of the Urban Environment be authorised to agree a modified Head of Terms which allows for the applicant to agree best endeavours rather than a specific proportion of delivery and home delivery vehicles to be powered by alternative fuel and that best endeavours shall not include any measures which would require the payment of excessive additional costs or which in the view of the applicant would not be viable to undertake, as determined solely by the applicant.

Conditions and/or reasons:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. No part of the development hereby permitted shall be commenced until detailed plans and sections showing existing site levels and finished floor levels of the store have been submitted to and approved in writing by the District Planning Authority and the development thereafter shall only be carried out as approved.
3. No part of the development hereby permitted shall be commenced until a schedule of all materials to be used on the external surfaces of the buildings has been submitted to and approved in writing by the Local Planning Authority and thereafter the development shall only be constructed in accordance with these details.
4. No part of the development hereby permitted shall be commenced until full details of soft landscaping works have been submitted to and approved in writing by the Local Planning Authority. These details must include, where appropriate, planting plans, written specifications including cultivation and other operations associated with plant and grass establishment, a schedule of plants including species, plant sizes and proposed numbers/densities and a programme of implementation. Plans must also include accurate plotting of all existing landscape features such as trees, hedges and ponds and any scheme should also include proposals for managing these features. The works approved as part of this condition shall be completed in accordance with a timetable which has been agreed by the Local Planning Authority

Any trees or shrubs planted in pursuance of this permission including any planting in replacement for it which is removed, uprooted, severely damaged, destroyed or dies within a period of five years from the date of planting shall be replaced by trees or shrubs of the same size and species and in the same place unless otherwise agreed in writing by the Local Planning Authority.

5. No part of the development hereby permitted shall be commenced until full details of hard landscape works have been submitted to and approved in writing by the District Planning Authority. The details must include existing and proposed finished levels or contours; the position, design and materials of all site enclosures, car parking layout and other vehicular and pedestrian areas; hard surfacing materials, minor artefacts and structures (e.g. street furniture, play equipment, refuse areas, lighting etc;) and any retained historic features and proposals for restoration. The works approved as part of this condition shall be completed in accordance with a timetable which has been agreed by the Local Planning Authority.
6. No part of the development hereby permitted shall be commenced until a schedule of landscape maintenance, including details of its implementation for a minimum period of five years from first planting has been submitted to and approved in writing by the Local Planning Authority.
7. No part of the development hereby permitted shall be commenced until details of the positions, design, materials and type of boundary treatment or means of enclosure have been submitted to and approved in writing by the Local Planning Authority. No

part of the development shall be occupied until these works have been carried out in accordance with the approved details.

8. No part of the development hereby permitted shall be commenced until details of the 'proposed landscaped feature area' as shown on plan F/ECXT/714/P100A has been submitted to and approved in writing by the Local Planning Authority. The proposed landscaped feature area shall thereafter be provided in accordance with the approved details which shall thereafter be retained for the life of the development.
9. No part of the development hereby permitted shall be commenced until details of public art features within the site has been submitted to and approved in writing by the Local Planning Authority. The public art shall thereafter be provided in accordance with the approved details and shall be retained for the life of the development.
10. Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
 - (i) A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - (ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - (iii) The site investigation results and the detailed risk assessment (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - (iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
11. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.
12. A) No development approved by this permission shall be commenced until a scheme to deal with contamination of land has been submitted to and approved by the LPA and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the LPA dispenses with any such requirement specifically in writing:
 - i) A desk-top study to formulate a conceptual model of the site. The requirements

of the LPA shall be fully established before the desk-study is commenced;

ii) Once the desk study has been approved by the LPA, a site investigation shall be carried out to identify and evaluate all potential sources and impacts of identified contamination in accordance with the conceptual model. The findings of site investigation shall be presented in report format for approval by the LPA and shall include a risk-based interpretation of any identified contaminants inline with UK guidance;

iii) Following the approval of desk study and site investigation reports, a written remediation scheme and method statement shall be agreed in writing with the LPA prior to commencement. No deviation shall be made from this scheme without the express written permission of the LPA. Such a scheme shall include provisions for validation monitoring and sampling and be retained throughout the lifetime of the development.

iv) No development approved by this permission shall be commenced until a validation scheme and validation criteria for the use of imported material and reuse of site-won materials is submitted to and approved by the LPA. No deviation shall be made from this scheme without the express written permission of the LPA. Such a scheme shall include provisions for validation monitoring and sampling and be retained throughout the lifetime of the development.

B)

i) If during development works any contamination should be encountered which was not previously identified or is derived from a different source and/or of a different type to those considered under contamination proposals (if applicable) then the LPA should be notified and remediation proposals formulated/amended for consideration.

ii) If during development work, contaminants are found in areas previously expected to be clean, then the LPA should be notified and remediation proposals formulated/amended for consideration.

13. Development shall not begin until a comprehensive written site investigation strategy (in a form to be agreed with the local planning authority), has been submitted to and approved by the local planning authority. Such a strategy shall facilitate the identification of methane and/or carbon dioxide gases. Where the investigations identify the presence of carbon dioxide and/or methane the development shall not begin until a scheme to protect the development from the effects of such gases has been submitted to and approved by the local planning authority. Such a scheme shall: include provisions for validation monitoring & sampling; be implemented in accordance with the approved details before the development is first occupied; and be retained throughout the lifetime of the development.

14. Development shall not begin until drainage details, incorporating sustainable principles and an assessment of the hydrological and hydro geological context of the development have been submitted to and approved in writing by the Local Planning Authority, and the scheme shall subsequently be implemented in accordance with the approved details before development is first occupied.

15. No part of the development hereby permitted shall be commenced until details of any shopping trolley storage structures within the car park area have been submitted to

and approved in writing by the local planning authority. The structures shall thereafter be provided in accordance with the approved details.

16. Prior to commencement of development a shopping trolley management plan will be submitted to and approved in writing by the lpa. Prior to first use the shopping trolley management plan will be implemented and maintained for the life of the development.
17. None of the development hereby approved shall be first commenced until details of shower facilities for staff cycling to work has been submitted to and approved in writing by the local planning authority. The showers for staff shall thereafter be provided in accordance with the approved details and shall be retained for the life of the development.
18. The development hereby approved shall not be occupied until a travel plan has been submitted to and approved in writing by the local planning authority, including details of a travel plan co-ordinator, staff travel survey, car parking management, walking and cycling initiatives, publicity and marketing, set targets and monitoring and to join company travel wise in dudley together with a timetable for the implementation of each such element. The travel plan shall be implemented in accordance with the details approved by the local planning authority.
19. Prior to the commencement of development plans shall be submitted showing the precise location of the proposed ATM (automatic teller machines). The ATMs shall thereafter be provided in accordance with the approved location.
20. Prior to the commencement of development details of any external CCTV equipment shall be submitted to and approved in writing by the Local Planning Authority. The CCTV equipment shall thereafter be provided in accordance with the approved details.
21. Prior to the commencement of development detail plans and specification of the proposed wind turbines to the roof of the store shall be submitted to and approved in writing by the Local Planning Authority. The wind turbines shall thereafter be provided in accordance with the approved details.
22. Notwithstanding the provisions of the Town and Country Planning Act 1990 (as amended by Section 49 of the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (General Procedural) Order 1995 (as amended) no mezzanine floor(s) shall be provided within the store without the express grant of planning permission.
23. None of the development hereby permitted shall be first commenced until the applicant has entered into a Section 61 agreement under the Control of Pollution Act 1974 controlling noise levels and the hours of operation at the site which shall be submitted to and approved in writing by the Local Planning Authority. The demolition and building works shall thereafter be carried out in accordance with the approved scheme.
24. Work shall not begin until a method statement for the control of dust and emissions from the demolition and construction phase of the development has been submitted to and approved by the local planning authority. All works which form part of the scheme shall be implemented throughout the construction and demolition phase of the development
25. The Combined Heat and Power Plant (CHP) shall be of the type outlined received in the electronic mail communication of 27 November 2008 from Waterman Group and

the separately received CHP air quality assessment document. There shall be no change to the type of fuel or rating of the CHP plant specified in supporting document EN8016/R/2.1/DP unless otherwise agreed in writing by the Local Planning Authority.

26. The jet wash hereby permitted shall not be operated before 0800 hours or after 2000 hours on Mondays to Saturdays inclusive. The jet wash shall not be operated before 1000 hours or after 1700 hours on Sundays.
27. The car wash hereby permitted shall not be operated before 0800 hours or after 2000 hours on Mondays to Saturdays inclusive. The car wash shall not be operated before 1000 hours or after 1700 hours on Sundays.
28. Development shall not commence until details of the fixed plant serving the development hereby permitted, and any mitigation measures to achieve this condition are submitted to and approved in writing by DMBC. Fixed mechanical and refrigeration plant and necessary the mitigation measures shall be installed in accordance with the approved scheme and requirements of this condition shall apply for the life of the development.

For the period 0700 to 2300 hours the Rating Level of noise emitted from the fixed mechanical and refrigeration units associated with the site shall not exceed the minimum background noise level of 54dB(A) by greater than 5dB(A) at any time when assessed as a 60 minute LAeq.

For the period 2300 to 0700 hours the Rating Level of noise emitted from the fixed mechanical and refrigeration units associated with the site shall not exceed the minimum background noise level of 40dB(A) by greater than 5dB(A) at any time when assessed as a 5 minute LAeq .

The noise level shall be determined by measurement or calculation at the closest point of the boundary with the nearest noise sensitive premises. The measurements and assessments shall be made in accordance with BS4142:1997 'Method of rating industrial noise affecting mixed residential and industrial areas'. The requirements of this condition shall be maintained for the life of the development.

29. A continuous acoustic barrier of minimum height 3.5 metres (as measured from the floor level of the TESCO service yard) and a minimum density of 10kg/sq. m shall be constructed along the boundary with the Village Hotel. The barrier shall extend along the entire length of the service yard along this boundary. The barrier shall be retained and appropriately maintained for the life of the development.
30. No demolition of any of the buildings on site shall be commenced until wheel wash facilities have been installed on the site in accordance with details which have been submitted to and approved in writing by the Local Planning Authority and the facilities installed as part of this condition shall be maintained and available on site until the development has been completed.
31. Notwithstanding the provisions of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification) no buildings, compounds, structures enclosures or the contractors parking area which are required temporarily in

connection with the development hereby permitted shall be placed or erected on the site or adjacent land until details have been submitted to and approved in writing by the Local Planning Authority. Any matters covered by this condition shall thereafter only be sited in accordance with these approved details.

32. The store shall not be fully occupied until the car park has been laid out in accordance with the details shown on the approved plans. The car parking area shall thereafter be made available at all times when the store is open and shall thereafter be retained for the life of the development.
33. The store shall not be fully occupied until the access roads has been laid out in accordance with the details shown on the approved plans. The access roads shall thereafter be made available at all times when the store is open and shall thereafter be retained for the life of the development.
34. Notwithstanding the details shown on the approved plans the disabled drop off point as shown on the approved shall be made available as disabled parking for van sized vehicles. The allocated space shall be made available for use at all times and shall be retained for the life of the development.
35. The disabled drop off point as shown on the approved plan shall be made available as disabled parking for van sized vehicles. The allocated space shall be made available for use at all times for disabled customers and shall be retained for the life of the development.