



N A B A R R O

Via e-mail and post
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Planning Department
Development and Design
Telford & Wrekin Council
Derby House
PO Box 212
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For Attention of: Gareth Thomas

14 December 2009

Our ref: PH/MDE/T1784/00003

Dear Sirs

Town and Country Planning Act 1990: Proposed Asda Store at Land at West Southwater, Telford – Application made on behalf of Asda Stores Limited (LPA Ref. No. W2009/0915)

Introduction

As you are aware we act on behalf of Telford Trustee No. 1 Limited and Telford Trustee No. 2 Limited ("**the Trustees**"). We write, further to our letter of 11 December 2009, in connection with the above-mentioned planning application submitted to Telford and Wrekin Council ("**TWC**") by Asda Stores Limited.

1. OFFICERS' REPORT TO THE PLANS BOARD MEETING ON 16 DECEMBER 2009

- 1.1 The notice of Asda's planning application under Article 8 of the Town and Country Planning (General Development Procedure) Order 1995, which was published on 20 November 2009, confirmed that anyone who wished to make representations about the application should write to TWC by 11 December 2009. On 9 December 2009, **before the expiry of the required 21 day consultation period**, TWC published an officers' report to its Plans Board meeting on 16 December 2009 which recommends that Asda's planning application be granted planning permission.
- 1.2 The officers' report refers to the objections to the Asda planning application submitted by Drivers Jonas, on behalf of the Trustees, on 16 November 2009. This letter clearly reserved the Trustees' right to make further representations. Yet the report was written and published before these additional representations had been received. It is evident that other key responses, such as those from the Highway Agency, are also still outstanding.
- 1.3 When the Asda application was registered with TWC, TWC's planning officers indicated to Drivers Jonas that it would be reported to the Plans Board on 6 January 2010. Despite Drivers Jonas being in regular contact with planning officers, at no time since that indication

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was given did TWC inform the Trustees or their consultants that the committee date had been moved forward. The first the Trustees' knew of the revised committee date was publication of the officers' report and a press release issued by the TWC Chief Executive to that effect.

- 1.4 TWC was informed by Drivers Jonas on 13 November 2009 that a planning application was due to be submitted by the Trustees for the development of the Red Oak Car Park. Pre-application discussions took place between the Trustees and planning officers at TWC on 1 December 2009. The application was submitted on 11 December 2009 by the Trustees for the redevelopment of Red Oak Car Park as a supermarket-led mixed use scheme in the primary shopping area of Telford. Despite the knowledge held by TWC about this application no consideration is given to the Trustees' application in the officers' report

2. ADDITIONAL INFORMATION NOT MADE PUBLICLY AVAILABLE UNTIL AFTER THE PUBLICATION OF THE OFFICERS' REPORT

- 2.1 In addition to the report being prepared in advance of receipt of all consultation responses, the officers' report has made it clear that supplementary information had been submitted in support of the Asda application which had not been made publicly available. Significantly, this additional information included a letter dated 3 December 2009 from RPS, Asda's planning consultants responding specifically to the Trustees' letter of objection dated 16 November 2009.
- 2.2 The RPS letter was only made available to the Trustees on 10 December 2009 (i.e. after the report was written and published) and at no point has TWC sought a response from the Trustees. TWC's planning officers appear to accept the assertions of RPS in their report without question.
- 2.3 Critically the RPS letter relies on two illustrations to support Asda's argument that the Red Oak Car Park is not "available". These illustrations have not been provided to the Trustees and were not available on TWC's website. It is not clear whether these have been seen by members. What is certain is that members have been denied the Trustees' comments on these highly material assertions. The Trustees' comments – which cannot in the circumstances be made because of the absence of the illustrations – will themselves be highly material considerations which members will now not be able to take into account in their determination.
- 2.4 These issues also raise further doubt as to the procedural fairness of TWC's treatment of the Asda application and is further evidence of TWC having fast tracked the consideration of this application at the cost of consultation with key stakeholders.

3. REPRESENTATIONS ON THE OFFICERS' REPORT TO THE PLANS BOARD MEETING ON 16 DECEMBER 2009, THE RPS LETTER DATED 3 DECEMBER 2009 AND THE LETTER FROM TWC'S HEAD OF PROPERTY & DESIGN DATED 30 NOVEMBER 2009

- 3.1 We enclose a note which has been prepared by Drivers Jonas and Nabarro LLP which sets out a number of detailed representations on behalf of the Trustees in connection with the



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officers' report and the letter referred to above, which was provided to the Trustees on 10 December 2009.

3.2 It is clear from these representations that the officers' report proceeds on an entirely irrational and unjustified basis and fails to adequately address all of the material considerations which arise in this case and were referred to in Drivers Jonas' initial letter of 16 November 2009 and the further objections set out in our letter of 11 December 2009 and this letter.

3.3 Significantly, the officers' report fails adequately to address to the following concerns:

3.3.1 **Conflict with local and national planning policy** – Given the "town centres first" policy of PPS6, Asda has failed to provide **clear evidence** to demonstrate why sequentially preferable sites are not "*available, suitable and viable*". There are a variety of flaws in the arguments put forward by Asda, but the case boils down to a self-serving assertion that Asda would "block" its own opportunity to move to Red Oak Car Park. Other than PP6 the report fails to consider any other national planning policy considerations in relation to the proposals.

3.3.2 **Retail Impact** - That no proper assessment has been carried out of the implications for and impact on the town centre in the event that, as is likely to be the case, the effect of the grant of permission on the Civic Offices site is to stymie future investment from supermarket operators in respect of the options which clearly exist within the primary shopping area.

3.3.3 **Prematurity** – Although not overtly relying on Central Telford Area Action Plan ("CTAAP"), the Asda scheme effectively implements a major part of the strongly disputed CTAAP proposals. The application pre-determines the full and proper consideration by an Inspector of the retail policies in the CTAAP.

3.3.4 **Reliance on a retail study which should be afforded no weight** - The officers' report states that the applicant has utilised TWC's White Young Green borough-wide Retail Study to determine whether the additional floorspace would prejudice TWC's objective of securing the future health of the town centre. This study should be given no weight as it has been prepared as part of the evidence base of the CTAAP, which the Inspector has identified as being "*unsound*" at an exploratory meeting in November 2009. RPS should have supplied its own retail study.

3.3.5 **Design and Highways issues** – The Trustees' representations on design grounds have not been reported in the Committee Report and TWC's own highways officers have identified inadequacies in the Transport Assessments, concerns which are shared by the Highways Agency who may issue a direction to defer.

4. THE TRUSTEES' PLANNING APPLICATION FOR THE REDEVELOPMENT OF THE RED OAK CAR PARK

4.1 The Trustees submitted an outline application for the redevelopment of Red Oak Car Park as a supermarket-led, mixed use development on 11 December 2009. Drivers Jonas have requested in the letter accompanying the Trustees' planning application, that TWC determine both applications at the same committee in order that the implications of the Trustees'



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application in sequential test (and other policy) terms are fully and correctly addressed in the report to committee on Asda's planning application. The current report fails to do this.

- 4.2 In effect to grant planning permission for Asda's proposals at the Civic Offices site would be to reach a decision which would prevent the development of the Red Oak Car Park option and any such decision would, in effect, predetermine whether development could proceed on the Red Oak Car Park. Further, unless Asda can show that the Red Oak Car Park is not "available" for a supermarket, its own application must be refused. The consideration of the two are, therefore, inextricably linked and cannot rationally be considered in isolation without leaving out of account highly material considerations.
- 4.3 In the event that TWC decline to adopt this approach then the Trustees reserve the right to make this point in representations to the Secretary of State on the question of call-in and also in any subsequent judicial review proceedings.

5. CALL-IN

- 5.1 In the event that the Plans Board resolves to grant planning permission the Trustees will make a formal request to the Secretary of State that the Asda application be called-in for the Secretary of State's determination following a public inquiry before an independent Inspector.
- 5.2 This is a multi-million pound scheme on TWC's own land being recommended for planning permission and being "fast tracked" ahead of a sequentially preferable site in flat contradiction to the development plan and PPS6.

6. JUDICIAL REVIEW

- 6.1 In the event that there is a resolution to grant planning permission, the Secretary of State declines to call-in the Asda planning application and TWC subsequently issues planning permission to Asda then the Trustees will challenge the grant of planning permission by way of judicial review given their fundamental and serious concerns about the manner in which TWC has dealt with the application.

We would request that the contents of this letter and the accompanying document are reported in full to the members of the Plans Board meeting on 16 December 2009 in the event that TWC decides to continue with the consideration of the Asda application at that meeting.

Yours faithfully

NABARRO LLP

Enc.

- Note by Drivers Jonas/Nabarro LLP