



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  
Telford  
TF3 4LB

For Attention of: Gareth Thomas

4 January 2010

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) and outline application for residential development (LPA Ref. No. W2009/0945)**

We write further to our letter of 22 December 2009 and in advance of the Plans Board meeting on 6 January 2010 which we understand is to consider the above-mentioned applications submitted by Asda Stores Limited ("**Asda**"). We also respond below to your letter of 31 December 2009.

**1. PPS4: Planning for Sustainable Economic Growth**

- 1.1 PPS4 was published on 29 December 2009 and was issued with Practice Guidance on need, impact and the sequential approach. We enclose a note on PPS4 and its implications for the Asda supermarket application which has been prepared by Drivers Jonas. The note raises fundamental issues which must be addressed by TWA in its capacity as the local planning authority.
- 1.2 As important Government policy on the development of town centres the new guidance is clearly a fundamental material consideration which needs to be taken into account in the determination of the Asda planning applications.
- 1.3 In particular TWC will need to take into account the new guidance at Policy EC17. This is of pivotal importance and requires that planning applications which fail either the sequential approach or the impact test be refused. This is a significant hardening of the Government's approach to the assessment of proposals which are outside existing town centres on edge-of-centre sites. Asda's supermarket planning application must be refused given that it is in clear and direct conflict with Policy EC17 and other policies and provisions in PPS4.
- 1.4 The enclosed note prepared by Drivers Jonas demonstrates that the Asda proposal fundamentally conflicts with the guidance in PPS4 and its associated Practice Guidance.

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- 1.5 We would also specifically refer TWC to the following provisions of the Practice Guide accompanying PPS4 which support the Trustees' representations to date that the Red Oak Car Park proposal represents a viable alternative to the Asda proposal on a sequentially preferable site:
- (a) *"the fact that a specific retailer or occupier is said to be unwilling to locate on a particular site is not necessarily evidence that it is unviable"* (paragraph 6.4.8 of the Practice Guide);
  - (b) *"Where alternative sites are being actively promoted for new development by a developer/retailer this is a reasonable indicator that the location is viable"* (paragraph 6.4.9 of the Practice Guide);
  - (c) *"Given the timescale for bringing forward some town centre schemes, and their vital importance to the continuing vitality and viability of town centres, it would be inappropriate to reject a more central opportunity as being currently unviable, without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward"* (paragraph 6.50 of the Practice Guide).
- 1.6 Any failure by TWC to properly and objectively consider the new PPS4 would render any grant of permission to Asda unlawful such that it would be judicially reviewed by the Trustees.
- 2. Letter of 18 December 2009**
- 2.1 In your letter to us of 18 December 2009 (which was incorrectly dated 16 December 2009) at paragraph 7 you confirmed that you were seeking to prepare your report to the Plans Board meeting on 6 January 2010 *"for 28<sup>th</sup> December 2009"*.
- 2.2 The report to the Plans Board meeting on 6 January 2010 has now been published on Telford & Wrekin Council's ("**TWC**") website. We were, however, surprised and disappointed to note that its contents in respect of the Asda applications is, in all material respects, exactly the same as the report prepared for the Plans Board meeting on 16 December 2009 which deferred consideration of the applications.
- 2.3 As a result the published report to the Plans Board meeting on 6 January 2010 is wholly deficient. It fails to address any of the points made in the representations submitted by both ourselves and Drivers Jonas on and after 11 December 2009 in connection with the applications or even acknowledge their existence.
- 2.4 From your e-mail to Drivers Jonas of 30 December 2009 we understand that an Addendum Report is being prepared to the Plans Board meeting on 6 January 2010 and is to be made publically available this afternoon, at the earliest. We reserve the right to comment on the Addendum Report when it is published but would again express concern that a report is being prepared in advance of receipt of these further representations which we were given until 4 January 2010 to submit.



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**3. Osborne Clarke's letter of 22 December 2009**

- 3.1 On 22 December 2009, TWC provided Drivers Jonas with a copy of Osborne Clarke's letter of 22 December 2009 and the attached rebuttal note seeking to respond to the note prepared for the Trustees by Waterman and enclosed with our letter to you of 11 December 2009.
- 3.2 Osborne Clarke's letter responded to TWC's letter to RPS of 15 December 2009. TWC's letter to RPS of 15 December 2009 referred to our letters to TWC of 11 and 14 December 2009 (with enclosures) and asked for "*point by point*" responses from RPS on behalf of Asda.
- 3.3 We enclose a note that we have prepared with input from Waterman and the Trustees' team on the rebuttal note enclosed with Osborne Clarke's letter to TWC of 22 December 2009.
- 3.4 Osborne Clarke have responded to our letter of 14 December 2009 and the detailed note attached to it by merely stating that they have reviewed those documents and that they provide "*no additional issues*" to those commented upon by RPS in their letter to TWC of 3 December 2009. On that basis Osborne Clarke have referred TWC back to the contents of RPS's letter to TWC of 3 December 2009. As a result TWC must now reach its own independent view on the points raised and we would reiterate that our letter of 14 December 2009 to TWC and the detailed note which accompanied it identify a number of fundamental defects with the Asda supermarket application which, contrary to Osborne Clarke's assertion, do raise significant additional issues which TWC must address.

**4. The Trustees' Planning Application for the Red Oak Car Park**

- 4.1 On 22 December 2009, TWC registered the Trustees' outline planning application for a supermarket and mixed use development on the Red Oak Car Park site (LPA Ref: No. W2009/1074).
- 4.2 For the reasons set out in our letters of 14 and 22 December 2009 the Trustees' planning application and the Asda supermarket application should be reported to the same Plans Board meeting.

**5. Illustrations A and B**

- 5.1 You provided Drivers Jonas with Illustrations A and B as referred to in RPS's letter of 3 December 2009 on 17 December 2009 and your letter to us of 16 December 2009 asked for any further representations from the Trustees on these illustrations on or before 4 January 2010.
- 5.2 In respect of Illustrations A and B, RPS's letter asserts that the level of car parking loss and disruption would mean that the impact would be "*simply untenable*" if the Red Oak Car Park site were redeveloped to provide a supermarket.
- 5.3 The illustrations themselves are diagrammatic with little detail and do not purport to represent a detailed analysis of the potential for development.



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- 5.4 The Trustees' planning application, however, demonstrates that a suitable, available and viable option exists for the redevelopment of the Red Oak Car Park and Asda has acknowledged that in physical terms an option that complies with its design criteria exists at the Red Oak Car Park site (see paragraph 2.5(iii) of Drivers Jonas' letter to TWC of 16 November 2009).
- 5.5 The main assertion made by RPS is that the disruption caused to car parking would render the scheme unviable but this is clearly not the case. Our comments are as follows:
- (a) if the impacts were as great as Asda now suggest then they would have been apparent to Asda, as an experienced operator, from the outset and Asda would not have had lengthy discussions with the Trustees and signed off a scheme on the Red Oak Car Park as meeting Asda's design criteria. If such a scheme was fundamentally unacceptable it would have been academic for Asda to pursue those discussions;
  - (b) the RPS letter addresses car parking during the construction phase but does not provide an accurate or full assessment. The Trustees have, however, produced such an assessment and a car parking strategy to satisfactorily address impacts during the construction phases and this has been submitted with the Trustees' planning application and will need to be considered by TWC in its determination of the Asda supermarket application;
  - (c) the assessment submitted by the Trustees has been prepared by Peter Brett Associates and identifies the car parking currently used by Asda's customers and how sufficient spaces would be available in the construction and post-construction phases;
  - (d) RPS's letter does not provide this level of analysis and merely addresses the number of spaces lost on the Red Oak Car Park. It does not recognize the availability of other spaces within the Shopping Centre or the improved links to the Ash Grey Car Park proposed by the Trustees' application.
- 5.6 RPS's letter also attached a letter from Marsh and Baxter Properties Limited to RPS of 1 December 2009. Peter Brett Associates have reviewed the comments in that letter in light of Illustrations A and B and have the following further comments:
- (a) the letter suggests all movements for the parking will be catered for from one junction on Grange Central. As well as this junction, which we assume they have considered to be the current exit from Grange Central, two additional entrances are proposed, one from Lawn Central and one from Hollinsgate Roundabout. Two exit points are proposed by the Trustees, namely the current exit point and an additional exit point is also proposed located 70m to the south on Grange Central;
  - (b) the letter suggests that the servicing traffic is now mixing with customer access and egress. The use of the word "now" suggests that the service traffic at the moment does not mix with customer access and egress, which is incorrect. The existing service route accesses the service area for the current Asda via Ash Grey car park access and egress. This includes service vehicles having to reverse into the



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service area against the flow of a one way route. A true comparison of the servicing arrangements for servicing is as follows:

- (i) current servicing vehicles share 250m of roadscape with town centre users when accessing via Ash Grey, including having to reverse along this shared route. By comparison the proposed servicing arrangement will lead to 42m of roadscape shared with users at the proposed site;
- (ii) the proposed site has a full movement turning circle in a dedicated service area, unlike the current arrangement;
- (c) the new junction is commented on, stating that either a left-in left-out junction or an all movements junction will be provided. A left-in left-out junction would go against the one way routeing, and is therefore not possible and shows a lack of understanding of the junction.
- (d) it is stated that significant disruption would be caused to the store and public. As a junction already exists in this location, and there are alternative access and egress points proposed, it is expected that the works themselves would cause little disruption. The alternative access and egress points would allow continued operation of the car park.

5.7 In conclusion, it is clear that that knowledge of how the existing Asda operates, and the Trustees' proposed design, has not been considered either in RPS's or Marsh and Baxter Properties Limited's assessment.

5.8 It should be noted that the proposed Asda store also has servicing that shares the customer entrance, and, worse, service vehicles are shown in the application to require movements that overlap onto opposing lanes to access the service area. Therefore it can be concluded that the proposed Red Oak redevelopment has the most efficient and safe service vehicle arrangement.

## 6. Letter of 31 December 2009

6.1 We note the comments set out in your letter to us of 31 December 2009.

6.2 In respect of your numbered paragraph 1 for the reasons referred to in our letter of 17 December 2009 the Waterman report was not submitted "*late*". It was submitted on 11 December 2009 within the deadline for public consultation.

6.3 In respect of your numbered paragraph 2 our comments on Illustrations A and B are set out elsewhere in this letter.

6.4 In respect of your numbered paragraph 9:

- (a) the Asda proposal is a "*replacement*" (see description of development on the application form and paragraphs 2.4 to 2.10 of the detailed note accompanying our letter to TWC of 14 December 2009) and it is highly unlikely that Asda's existing



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store would be reoccupied by an operator such as Tesco/Morrison's for the reasons set out in the Trustees' representations to date;

- (b) the Trustees' application is clearly an important material consideration as it demonstrates an available, suitable and viable alternative within the town centre and must therefore be taken into account in applying the sequential approach set out in PPS4;
- (c) we would also refer you to the Trustees' earlier representations on why to determine the Asda application in advance of the Trustees' application would prejudice the proper consideration of the Trustees' application;
- (d) if your letter in any way suggests that the Trustees' application has been submitted in bad faith then that is rejected;
- (e) you appear to suggest that the Asda application is "*otherwise acceptable*" but that is a fundamental error as it is clear that the Asda proposal breaches numerous policy requirements (not least those now set out in PPS4) and should be refused permission.

6.5 On the highways modelling work our understanding is that it is not available and will not be so for public consultation until later this year. We would therefore reiterate our comments set out at paragraph 4.6 of the detailed note accompanying our letter to you of 14 December 2009.

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 6 January 2010, together with the other representations submitted on and after 11 December 2009 by ourselves and Drivers Jonas in connection with the Asda planning applications.

Yours faithfully

*Nabarro LLP*

**NABARRO LLP**

Enc:

- Note prepared by Drivers Jonas
- Note prepared by Nabarro LLP and Waterman