

**Planning Committee:** 21 February 2006

**Item Number:** 02

**Application No:** W 05 / 1870

**Registration Date:** 14/11/05

**Town/Parish Council:** Warwick

**Expiry Date:** 09/01/06

**Case Officer:** Martin Haslett

01926 456526 [planning\\_west@warwickdc.gov.uk](mailto:planning_west@warwickdc.gov.uk)

**Tesco Store, Emscote Road, Warwick, CV34 5QL**

Variation of Condition 2 of Planning Permission W981588 under section 73 of the Town and Country Planning Act 1990 (as amended) FOR Tesco Store Ltd

---

**SUMMARY OF REPRESENTATIONS**

Town Council: objection: 'The Town Council do not consider that the circumstances have altered and that to relax the conditions attached to the application W98/1588 will be detrimental to the retail base of towns.'

neighbours: 3 letters of objection on grounds of increased traffic and difficulty of exiting drive, competition with town centres.

Warwick Chamber of Trade: there have not been significant changes since the original grant of permission to warrant the condition being lifted.

Warwick Society: objection. Contrary to local plan policies which aim to maintain the shopping function of town centres. Concern for survival of smaller and medium sized shops in Warwick and Leamington which are necessary for the economic health and survival of town centres and their users.

**RELEVANT POLICIES**

- (DW) ENV3 - Development Principles (Warwick District Local Plan 1995)
- (DW) S1 - Protection and Development of Town Centres (Warwick District Local Plan 1995)
- TCP1 - Protecting and Enhancing the Town Centres (Warwick District 1996 - 2011 Revised Deposit Version)
- TCP2 - Directing Retail Development (Warwick District 1996 - 2011 Revised Deposit Version)
- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011 Revised Deposit Version)

**PLANNING HISTORY**

Planning permission for the Tesco store was granted on appeal to the Secretary of State in January 1995 (application W94/711). One of the conditions attached to the permission restricted the type of goods which could be sold. Condition 4 stated:

*Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order the store the subject of these permissions shall not be used other than for the sale of food or other convenience goods with ancillary use in class A3.*

In September 1999 application was made for a variation of this condition (W99/993) so as to allow certain non-food items to be sold. The conditions were as follows:

1. *No more than 10% of the net sales area of the store shall be devoted to non-food goods*

*2. Notwithstanding the requirements of condition 1, the following goods shall not be sold; compact discs, toys, clothes (other than children's and baby's clothes and hosiery), photographic equipment (other than the sale of films, disposable cameras and batteries).*

These conditions were imposed to protect the vitality and viability of adjoining town centres.

In March the applicants submitted a further application (W05/398) which sought to vary condition 1 to allow 20% of the net sales area to be devoted to comparison goods and to completely remove condition 2. This application was supported by a Planning and Retail Statement and remains undetermined, because of continuing discussions and negotiations.

Nevertheless, officers have indicated to the applicants that they would not wish to raise objection to the removal of condition 2, but that there continued to be difficulties with the proposed alteration to condition 1. In order to make progress with the second condition without having to wait for resolution of the 2 issues, the applicants have made the current application.

There is an additional history to this site, not directly relevant to the current application. Planning application W04/138, submitted in January 2004, was for a proposed extension of 1630 sq.m, which was refused on grounds of shopping policy (at national, county and local level) and failure to provide a sustainable travel plan. In response to this, the applicants have submitted a further application for an extension (W05/962) which remains undetermined. Furthermore, Tesco's have commenced construction of a mezzanine floor, thus ensuring their future right to complete it, irrespective of changing legislative requirements.

## **KEY ISSUES**

### **The Site and its Location**

The application site is a large out-of-centre supermarket, with car parking, accessed from Emscote Road.

### **Details of the Development**

The proposal would allow up to 10% of the net floorspace of the supermarket to be used for the sale of non-food goods, without any description of the type of goods to be sold. Currently the store does not sell the full range of goods associated with other large Tesco stores. No building works are proposed, only the removal of the condition relating to type of goods sold.

### **Assessment**

In determining the original appeal application in 1995; the Inspector imposed a condition which allowed no non-food sales. However, the applicants asked for this condition to be relaxed (in 1999) and on the evidence available at that time, it was considered reasonable to allow 10% non-food floorspace, but a list of goods not to be sold was imposed, so as to restrict competition with adjoining town centres. This list reflected the concerns of the time and the list of 'banned' goods was seen as those which might have a major impact on town centres. However, it could be argued that

times have changed, and the list is not necessarily so relevant today. The exclusion of CD's but not DVD's is a case in point.

The applicants argue that they compete principally with other out of town superstores, and that the others in this area (Sainsbury at Shires Retail park and Asda at Sydenham) are free to compete without any such restrictions. This situation, they argue, is unfair. The application is supported by a retail report which examines the health of adjoining town centres and concludes that they are not suffering from undue competition. In particular, they note that vacancy rates (a commonly used indicator of the health of shopping centres) are below the national average. The applicants contend that this comparatively minor change would have a 'very minimal impact on the types of customer that will frequent the store'.

I consider that the argument put forward by the applicants, that other stores have not had this requirement placed on them, is a strong one. In the event of an appeal, an inspector might conclude that the Tesco store operates under an out-dated planning condition, putting it at an unfair disadvantage compared to its competitors. Furthermore, the assertion that adjoining town centres are healthy is supported by independent research commissioned by the Council.

Local Planning Authorities are reminded (in *Planning Policy Statement 6: Planning for Town Centres*) that 'it is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation.' It follows that if no clear cut reasons can be put forward to continue with the restriction on Tesco, then the condition should be removed, as it clearly restricts competition.

### **RECOMMENDATION**

GRANT.

### **INFORMATIVES**

For the purposes of Article 22 of the Town and Country Planning (General Development Procedure) (England) (Amendment) Order 2003, the following reason(s) for the Council's decision are summarised below:

It is considered that the proposal would not have a material impact on the vitality and viability of the adjoining town centres and to continue with the restriction on goods sold would therefore be contrary to Government advice that local planning authorities should not seek to restrict competition between retail outlets.

-----