

National Planning Casework Unit  
Dept. of Communities & Local Government  
5 St Philips Place  
Colmore Row  
Birmingham  
B3 2PW

**Your reference: PP-01094179**

May 4<sup>TH</sup> 2011

Dear Sir or Madam

**Winchester City Council Application Case No. 10/01650/FUL - Proposed Sainsbury's Superstore, Bishops Waltham - Referral under 'Retail Direction' of Circular 02/2009**

We understand that the above application was referred to you by Winchester City Council (WCC) on the 15th April 2011 following the resolution of its Planning Development Control Committee on 7th April to approve the application subject to the completion of a S106 Agreement.

I am writing to you on behalf of all the supporters of Bishops Waltham Action Group (BWAG) who oppose Sainsbury's application. The purpose of this submission is to provide reasons why this particular application should be called in by the Secretary of State for Communities and Local Government. It is supported by a petition, addressed to the Secretary of State, asking for this to be done and signed by 3,025 people over the last 12 days.

We believe that you have received copies of the application and its supporting documents as well as the officer's report to committee with the update. We also understand that your access to the letters of representation is through WCC's website<sup>1</sup>.

This being the case, we wish to draw your particular attention to two representation documents. The first is a representation, made on our behalf by solicitors Blake Laphorn (ref 13696399.1) which is attached as Appendix I of this submission. The second is a presentation, again made on our behalf by Blake Laphorn at the WCC Development Control Committee meeting on April 7<sup>th</sup> (ref 14764910.1); this is attached as Appendix II. We believe that these two documents not only provide very important background to this case but also set out the core planning arguments that are raised by this application. Since this is a referral, we believe it important to provide contrasting arguments to some of those put forward in the officer's report.

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<http://planningapplications.winchester.gov.uk/PlanningWeb/Results.aspx?id1=10&id2=01650&id3=FUL&tab=4&PAGE=306>

Clearly in a large and complex case like this there is much information that we would wish to provide, but we have tried to restrict ourselves to that which may be most germane to the referral. We trust that the following is helpful, where possible we have provided specific points and then backed them up with detail in the appendices.

The submission comes in three parts:

1. The core reasons taken from circular 02/2009 why we believe the application should be called in
2. Explanations of why we believe that for a variety of, mainly procedural, reasons the planning and committee processes were faulty and therefore make the decision unsafe.
3. A short section that looks at a critical assumption that we believe is unsafe.

## **SECTION 1**

The core reasons taken from circular 02/2009 why we believe the application should be called in.

### **1. The development conflicts with national policies on important matters**

Section 38, subsection 6, of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise. The statutory Development Plan in this case includes the Winchester District Local Plan Review 2006, as saved and extended by a Direction from the Secretary of State for Communities and Local Government on 18 June 2009.

In Chapter 13 of the above Development Plan, entitled 'Settlements', paragraph 13.8 is quite specific about the Abbey Mill site:

"The area offers an opportunity for significant redevelopment for mixed residential and employment uses, which will be encouraged so as to improve the environment and economic prosperity of the area."

This leads directly to Policy S.3 which states:

"Mixed employment and residential development will be permitted on 1.9 hectares of land at Abbey Mill, Bishops Waltham provided that:

i) employment uses [Use Classes B1 (Business), B2 (General Industry), or B8 (Storage and Distribution)] constitute the majority of floorspace on the site and are integrated well with adjoining housing. A reduced level of employment provision may be accepted if it is necessitated by constraints and the need to achieve viable development which meets other requirements of the plan."

So the proposed development is to erect a retail store (Class A1) and doctors' surgery (Class D1) on land that has been allocated for mixed employment (Classes B1, B2 or B8) and residential use. Planning permission must therefore be refused, unless material considerations indicate otherwise.

Sainsbury's agents, White Young Green (WYG), argue that since PPG4 and PPS6 were merged into PPS4, economic development now includes retail development and "*In the light of the position of PPS4 in this respect the development is shown to accord with the aims of Policy S3*".

Counsel's opinion, obtained by Sainsbury's and referred to in point 2. B below disagrees. Nathalie Lieven QC of Landmark Chambers says:

"Firstly, the site is allocated in the Winchester District Local Plan Review 2006, Policy S3, for mixed employment and residential uses. In the Planning Statement WYG argue that since PPG4 and PPS6 were merged into PPS4, thus economic development now includes retail development and "*In the light of the position of PPS4 in this respect the development is shown to accord with the aims of Policy S3*". For myself I would not go this far, and I would be worried that if the Council adopted this approach wholeheartedly it might be misdirecting itself. PPS4 undoubtedly places more weight on the economic benefits of retailing, and the job creation which follows. However, it does not simply equate employment uses (i.e. B class uses) with retail."

This opinion directly contradicts the opinion of the Head of Strategic Planning provided in the WCC officer's report which stated:

"However, as the Head of Strategic Planning has advised (see above), permission has previously been granted for a scheme which included a level of business use lower than envisaged by the Local Plan, and a higher level of housing, based on evidence regarding employment needs, viability, etc. A reduced level of 'B' Use Class provision has therefore been accepted and the proposed development would involve employment-generating development (albeit retail) over a high proportion of the site, with only limited housing. In view of this, and the increased flexibility advocated by PPS4 (Planning for Sustainable Economic Growth) regarding what constitutes economic development, it is not considered that refusal on the basis of Policy S.3 (i) would be justified."

In a number of sections within the officer's report, including 'Informative 1', the claim that, based on PPS4, retail employment effectively equates to retail employment and this is accepted so wholeheartedly. It would seem then that in Counsel's words, WCC 'might have misdirected itself'.

This is relevant too because the officer's report uses the fact that, in their view, the existing planning permission for 70 houses and business premises has already allowed "business use lower than envisaged by the Local Plan, and a higher level of housing, based on evidence regarding employment needs, viability, etc."

But the wording of S.3 specifically states that "A reduced level of employment provision may be accepted if it is necessitated by constraints and the need to achieve viable development which meets other requirements of the plan." So it is difficult to discern how WCC has already breached policy S.3 with the extant planning permission for housing.

That is why the extant planning application for 70 houses and associated business units wasn't treated, on appeal, as a formal departure from the development plan. This is in clear contrast to Sainsbury's plans which originally included some 12 houses but now is reduced to three small apartments within the Abbey Mill itself.

The conclusion is that under Section 38, subsection 6, of the Planning and Compulsory Purchase Act 2004, WCC's approval of this application deviates from the statutory Development Plan and therefore clearly "conflicts with national policies on important matters."

## **2. The development could have significant effects beyond its immediate locality**

We believe the decision to approve the development could have significant effects beyond its immediate locality on three counts.

### **A. It raises important issues about guidance in PPS4 regarding 'scale'.**

In PPS4, policy EC 16 states:

#### **THE IMPACT ASSESSMENT FOR PLANNING APPLICATIONS FOR MAIN TOWN CENTRE USES THAT ARE NOT IN A CENTRE AND NOT IN ACCORDANCE WITH AN UP TO DATE DEVELOPMENT PLAN**

EC16.1 Planning applications for main town centres uses that are not in a centre (unless EC16.1.e applies) and not in accordance with an up to date development plan should be assessed against the following impacts on centres:

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and the range and quality of the comparison and convenience retail offer
- c) the impact of the proposal on allocated sites outside town centres being developed in accordance with the development plan
- d) in the context of a retail or leisure proposal, the impact of the proposal on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to five years from the time the application is made, and, where applicable, on the rural economy

- e) if located in or on the edge of a town centre, whether the proposal is of an appropriate scale (in terms of gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres
- f) any locally important impacts on centres under policy EC3.1.e

A core part of the argument in both the officer's report and in the questions by Committee members at the meeting itself was around the question of scale. This is unsurprising because a superstore with gross external floor space of 7,158 sq. metres (and a net sales floor area of 3,255 sq. metres) is being placed in an out-of-centre position in a small market town of 6,500 people which has an existing gross retail floorspace of only 2,000 sq. metres. So the superstore will be 350% bigger than the whole of Bishops Waltham's existing town centre gross retail floorspace. The following extracts from the officer's report reflect a very considerable concern about the scale issue whilst simultaneously using Policy EC16.1 (e) to avoid confronting it.

"The scale of the proposed store is a potential issue, although PPS4 advises that it is not necessary to assess whether this is appropriate for out of centre proposals such as this."

"A judgement will need to be made on whether the assessed level of harmful impact is significant or not and, if the impact is not significant, whether the positive impacts are out-weighted by negative impacts and other material considerations, including whether an out of centre store of this scale is the right way forward for the town. It would certainly be a substantial change to Bishop's Waltham's retail role, more than doubling the scale of the town's retail offer and drawing in shoppers from a wider rural area."

"Scale of Store Proposed: Policy EC16.1 (e) indicates proposals should be of an appropriate scale in relation to the size of the centre and its role in the hierarchy, but this test only relates to developments within or on the edge of a town centre. The application site is out-of-centre and in our view Policy Ec16.1 (e) does not apply."

"With regard to the scale of the store, Nathaniel Lichfield & Partners (NLP) refer to PPS4 policy EC16 (i) e which requires the appropriateness of the scale of the store to be assessed if it is "in or on the edge of a town centre". In NLP's view the site is not an 'edge of centre' site, but is 'out of centre' meaning that the 'scale' test does not apply."

"It is accepted that the scale of the proposal (7000+ sq.m. gross, 3000+ sq.m. net) is very large in relation to the size of the existing retail centre of Bishops Waltham. According to NLP's 2010 Retail Study the total retail floorspace of Bishops Waltham is estimated to be less than 2000 sq.m. net, more than half of which is convenience provision. It is acknowledged that PPS4 only advises assessing whether scale is appropriate for schemes in or on the edge of town centres. Nevertheless, it is difficult to ignore the very large scale of this proposal, simply because it is out of centre, although one of the main reasons for considering scale relates to impact,

which has been tested, as has the availability of 'sequentially preferable' sites."

"The scale of the proposed store is a potential issue, although PPS4 advises that it is not necessary to assess whether this is appropriate for out of centre proposals such as this."

"A judgement is required on whether the assessed level of harmful impact is significant or not and whether the positive impacts are out-weighted by negative impacts and other material considerations including whether an out of centre store of this scale is the right way forward for the town."

"This will be a substantial change to Bishop's Waltham's retail role, more than doubling the scale of the town's retail offer, and drawing in shoppers from a wider rural area."

Because Policy EC16.1 e) states "if located in or on the edge of a town centre", the scale issue has not been assessed. It seems an anomaly that, as the supermarket chains increasingly push out into rural areas in search of the remaining areas of development, market towns that cannot possibly hope to house a superstore within the centre or even at an edge-of-centre site are not given the chance of a scale test as a reasonable assessment, having to rely instead entirely on impact assessment.

In contrast, Policy EC3.1.d states that LPAs should:

d) at the local level, consider setting floorspace thresholds for the scale of edge-of-centre and out-of-centre development which should be subject to an impact assessment under (EC16.1) and specify the geographic areas these thresholds will apply to.

As far as we can ascertain, WCC has not set floorspace thresholds as recommended in EC3.1.d, but the 2010 update to Nathaniel Lichfield & Partners "Retail and Town Centre Uses Study Update 2010" prepared for WCC states that:

"The priority should be to seek to accommodate the short to medium term need for new development (up to 2016). The next priority should be to accommodate the need for new development in the longer term (2016 to 2021). The projection for retail floorspace in Winchester rural area (excluding Winchester urban area and Whiteley) as a whole is about 4,130 sq m net up to 2021 (split 1,571 sq m net for convenience retail and 2,561 sq m net for comparison retail, as identified in Appendix B, Table 10B and Appendix C, Table 8C)."<sup>2</sup>

The breakdown for each town indicates that Bishops Waltham would need an extra 552 sq metres net convenience and 938 sq metres net comparison retail floorspace. Even without thresholds, the scale issue is apparent when a 3,255 sq. metres superstore is proposed. This represents a scale of development that

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[http://www.winchester.gov.uk/Documents/LDF/Economic%20Prosperity/Winchester%20Retail%20Study%20Update%202010%20\(2\).pdf](http://www.winchester.gov.uk/Documents/LDF/Economic%20Prosperity/Winchester%20Retail%20Study%20Update%202010%20(2).pdf)

would compete directly with the town centre, replacing it as the “local centre” and the main food/non food shopping destination for residents of Bishops Waltham and its smaller surrounding settlements. But Policy EC16.1 e) provides an anomalous escape route in these circumstances. We would argue that a public review of this would be a suitable way to assess if changes could be usefully made to PPS4 in this regard.

### **B. It raises important issues about future supermarket encroachment into rural areas.**

While we acknowledge that every planning application should be taken on its own merits, this development could have significant effects beyond its immediate locality because it appears to set a new precedent that may be used at other hearings.

We cannot find, anywhere in the country, any other superstore (or indeed large scale supermarket) that is positioned 3.5 miles from the nearest A road. With the exception of town centre sites, most superstores are positioned within a few hundred metres of an A road. If this application is approved, it will open the way for deeper intrusion into the countryside and more remote rural areas. Given the scale of this proposal, more and more small market towns may well find themselves in danger of being overwhelmed and the viability and vitality of their rural economies damaged beyond repair.

### **C. It raises important issues about the future use of Counsel’s opinion, on the likely outcome of an appeal, as a threat to cash-strapped LPAs.**

We have asked many experienced planners and planning consultants whether they can recall the use of Counsel’s opinion before an application goes to committee. All we have spoken to say it is unprecedented in their experience.

The letter, written to Sainsbury’s by Nathalie Lieven QC was dated March 15<sup>th</sup> – enabling its submission to WCC a fortnight before the planning officer’s report was due. It is extremely difficult to think of any reason why this should have been acquired and submitted at such a sensitive stage other than to create a threat. Given the budget reductions most LPAs are facing, this is a most unsettling precedent and we would argue that the best way of halting the practice in its tracks is to call the application in for public inquiry and use that to indicate that this practice is inappropriate.

## **3. The development has caused substantial regional controversy**

We would argue that the number of representations over this development is probably unprecedented. This has been reflected in many articles in the local press, articles in the Daily Telegraph and Daily Mail as well as featuring in a Panorama programme and being covered on three different occasions by BBC South Today. This is reinforced by the petition addressed to the Secretary of State which attracted 3,025 signatures over a 12 day period (that also covered two four-day Bank Holiday weekends)

We would accept that were this controversy the sole cause to call in the application it would probably be insufficient of itself, but given the many other matters that this application has raised, we believe it is one more, good reason for that to happen.

## **SECTION 2**

Explanations of why we believe that for a variety of, mainly procedural, reasons the planning and committee processes were faulty and therefore make the decision potentially unsafe.

### **1. Importance to the Local Community**

It is clear from the many representations that have been made on this application that it has been a cause of intense interest and concern to the local community.

- a) *Local Residents.* Bishops Waltham is a small town with a population of some 6,500 people<sup>3</sup>. Attached, in Appendix III, is a spread sheet which we have built up over the months tracking letters of both objection and support for the application. It also analyses the material considerations that residents put forward in their objections. Contrary to the numbers provided in the officer's report, this shows that there have been nearly 2,500 letters of objection sent to WCC. This is, we believe, an unprecedented number, especially when set alongside an objection petition containing 4,500 names and signatures.
- b) *Meon Valley MP.* Has opposed the Sainsbury's proposals from the start and continues to oppose this decision by WCC.
- c) *Ward Members.* Two of the three Councillors for Bishops Waltham opposed the application at the committee meeting whilst a third commented.
- d) *Local Parishes.* The following five Parish Councils voted to object to this application. Bishops Waltham Parish Council, Twyford Parish Council, Owslebury Parish Council, Curdridge Parish Council, Corhampton and Meonstoke Parish Council.
- e) *Local societies.* The Bishops Waltham Chamber of Trade and the Bishops Waltham Society both oppose the application.
- f) *New Petition.* Concern remains so high that a new petition, to the Secretary of State for Communities and Local Government, has been signed by some 3,025 people over the past 12 days. The wording says:

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<http://neighbourhood.statistics.gov.uk/dissemination/LeadTableView.do;jessionid=ac1f930b30d5e21c9e31da114e658103b72ad13373e1?a=7&b=795192&c=SO32+1AJ&d=16&e=15&g=453001&i=1001x1003x1004&m=0&r=0&s=1304097479890&enc=1&a=7&b=795192&c=SO32+1AJ&d=16&e=15&g=453001&i=1001x1003x1004&m=0&enc=1&dsFamilyId=779&nsjs=true&nsck=true&nssvg=false&nswid=1280>

"In support of BWAG's submission, **WE**, the undersigned, petition the Secretary of State for Communities and Local Government to **CALL IN** planning application no. 10/01650/FUL for a Sainsbury's superstore to be built in Bishops Waltham. We believe that, because of its out-of-centre location, its scale (7,158 sq. metres) and its poor linkage to the Primary Shopping Area, its negative impact on the viability and vitality of the High Street will be very significant and that this, in turn, will be highly damaging to the health and wellbeing of the local community." A sample sheet from the petition is attached in Appendix IV. The pdf scans of the full 181 pages occupies some 31 MB and will need to be sent separately.

We are aware that in planning terms numbers alone do not count. But in reviewing this application we believe it is important to bear in mind the importance being attached to this process by so many people working in a legitimate and democratic fashion. This is particularly the case because the definitive vote at the Development Control Committee meeting was nuanced with a split 4:4, with one abstention and the chairman casting his casting vote against the status quo (something, we acknowledge, he is allowed to do under WCC's constitution). Given the huge amount of importance attached to the application such a finely balanced result of itself seems to beg a public review.

## **2. Procedural Flaws in the pre-committee planning process**

A number of procedural flaws in the whole process have been evident and may be seen to invalidate the decision.

- a) *Invalid Registration.* Sainsbury's planning application directly affects the heritage assets known as the Bishops Palace, the South Pond and Abbey Field which are together designated as a Scheduled Ancient Monument (SAM 26721).

Sainsbury's application was received by Winchester City Council (WCC) on 29<sup>th</sup> June 2010 and was registered on 12<sup>th</sup> July 2010. However, in direct contravention of PPS5 (Planning for the Historic Environment) policy HE6, no Heritage Statement was filed with the application. The Design and Access statement for the application, prepared by CHQ Partnership, did explain the design concept and gave a description of the site, but nowhere in the statement's 43 pages is there an assessment of the impact of the proposal on the heritage assets involved, nor is there any mention of sources that have been considered or expertise that has been consulted in this regard.

Policy HE6.3 states categorically that "local planning authorities should not validate applications where the extent of the impact of the proposal on the significance of any heritage assets affected cannot adequately be understood from the application and supporting documents." On this basis it is clear that, without appropriate detail in the Design and Access Statement, and no Heritage Statement, the extent of the impact of the proposal on the significance of the heritage assets could not adequately be understood. WCC should therefore not have registered the application when it did.

Almost two months after the application was submitted **and three weeks after the formal consultation process had closed (5<sup>th</sup> August)** a short Heritage statement was posted on WCC's website, on 26<sup>th</sup> August 2010.

- b) *Important, relevant report not disclosed.* A report by Eloise Appleby, an Assistant Director (Economic Prosperity) with specific responsibility for economic policy and programmes at WCC, appeared in public for the first time within the officer's report made available on 31<sup>st</sup> March. We understand that procedurally City Council officer's individual reports should be made public before being included in an officer's report so that public challenge can be made. In this instance, it took until Tuesday April 5<sup>th</sup> (two days before the committee meeting) to obtain the full report. It then took further emails to elicit the names of the three "broadly comparable" towns which had been researched.
- c) *Unacceptably limited research cited as evidence.* In her report, Ms Appleby says that a key argument in the letters of representation against the development has been the threat to the High Street shops in Bishops Waltham. This is correct (see Appendix III). To answer this "the economic development team has contacted three other market towns in the UK where Sainsbury's has opened edge-of-town sites in recent years, broadly comparable to the proposed development in Bishop's Waltham. These were selected from personal knowledge and research, and not suggested by the applicant." Informal feedback was then sought from one person in each town – a resident, a town councillor and a shopkeeper.

Not only is such research so woefully inadequate that it should not be cited, but the stores and towns were not even broadly comparable. In Dursley, the store is only 1858 sq. metres and is edge-of-centre. In Bradford on Avon, population 9,300 (compared to Bishops Waltham's 6,500), the store is 1950 sq. metres and on a shopping centre. In North Walsham the population is 18,000 (three times Bishops Waltham) and the store is town-centre.

During the planning meeting, as the minutes disclose, these comparisons were taken seriously by committee members:

"Members also questioned how new stores in other parts of the country had affected existing retailers. One Member quoted a Department of Environment study from 1998 which had discovered that new stores had led to the closure of town centre food stores and a general deterioration of town centres. In response, the Head of Planning Management advised against attaching too much weight to such comparisons, given that every case would be different and depended upon the nature of the place in question. Mr Wilks added that Government policy encouraged large superstores anchoring trade in small market towns. The Assistant Director (Economic Prosperity) added that in each of the three cases she had investigated in other areas, local traders had reacted positively to the challenge of new superstores by differentiating their products and services. There had

been no closure of shops in the towns arising from the opening of the new supermarkets.”

Particularly after the Head of Planning Management’s advice about comparisons, these arbitrarily collected single-person statements should not have been used to reassure the committee members.

- d) *Inaccurate information provided in the officer’s report.* In her report Ms Appleby stated that “In the areas around Bishop’s Waltham where broadband access is very poor, internet shopping is not an attractive option and a store of this kind would provide better access to services, which is one of the priorities of the current Sustainable Community Strategy.” The following describes the different types of internet access and the services available within the area.

ADSL - typically up to 1Mbps (downstream), this was the typical speed when it was first deployed (see dates below). This has since increased.

ADSL MAX - up to 7.15Mbps (downstream)

21CN WBC - up to 24Mbps (downstream)

FTTC - Fibre to the Cabinet - up to 40mbps (downstream)

#### *Durley Exchange*

ADSL Enabled - 14/04/2004

ADSL Max Enabled - 31/03/2006

The Durley exchange serves approximately 542 residential premises and 59 non-residential premises

#### *Bishops Waltham Exchange*

ADSL Enabled - 12/12/2002

ADSL Max Enabled - 31/03/2006

21CN WBC - 31/03/2011

FTTC - 01/12/2011

In addition Bishops Waltham has Local Loop Unbundling (LLU) offering residents up to 20Mbps for a number of years now (no exact date available). The Bishops Waltham exchange serves approximately 4,831 residential premises and 266 non-residential premises

#### *Droxford Exchange*

ADSL Enabled - 21/10/2003

ADSL Max Enabled - 31/03/2006

The Droxford Exchange serves approximately 896 residential premises and 90 non-residential

Other local villages will be served from their nearest exchange. Waltham Chase for example is served by Bishops Waltham and has had access from the same dates given above.

So broadband access has been prevalent in the area since 2003 for the majority of all residents. Access speeds will vary dependent upon how far they live from their nearest exchange but any resident in the area will have been able to have sufficiently fast access for normal Internet

surfing and e-commerce activities since 2002 to 2004 dependent on area. Access speeds have increased significantly since 2006 and continue to do so with new services being deployed.

Entirely contrary to Ms Appleby's statement, Bishops Waltham is actually very well served in terms of access speeds given its size and residents have access to multiple operators via the LLU (Local Loop Unbundling) which offers residents a choice of providers and hence more competitive rates.

- e) We have reason to believe that Winchester planning department have not fulfilled their duties under the Environment Act 1995. The Act imposes a duty on all local authorities to take account of the implications of their decisions on any national Park. In none of its committees or other recorded formal proceedings, since the decision was taken to confirm the South Downs National Park (SDNP, has there been any evidence of the consideration of the proposed Sainsbury's superstore's effects on the SDNP.

In spite of being located at the edge of the SDNP, the proposed superstore will undoubtedly have a material and deleterious effect upon it in the following ways:

- The main route for delivery vehicles is across the SDNP to and from the main Sainsbury's warehouse in Basingstoke. This route is either to/from the M3 via the B3335 through Twyford or via Corhampton and the A32. Both routes go through villages in SDNP which are also conservation areas where houses line the main road. Supermarket deliveries are often timed to take place very early in the day so the impact of the additional heavy lorry traffic on these communities is likely to be intensified
- Significant additional traffic will be drawn to Sainsbury's from the village communities across the SDNP.
- Effect on village shops: Corhampton, Twyford and West Meon will be most to be affected; the effect on these local shops needs to be added to those of Bishops Waltham itself. It should be noted that one of the duties of Councils such as WCC is to protect the economic well being of communities within the National Park.

### **3. The nuanced recommendations in the planning officer's report**

It is important, we feel, in the context of the tied vote at the decision taking stage of the committee meeting to understand just how understated was the recommendation within the officer's report. The following quotes underline this:

"The question that Members will wish to consider is the impact that this is likely to have on the nature of the place and whether the likelihood is that this will be a desirable change or whether there is a risk so great that it merits refusal on the basis that that the change is likely to have an

unacceptably detrimental impact notwithstanding any potential benefits. [Members are reminded that if the proposal is refused the Council will have to deploy evidence, not simply rely upon opinion, at any appeal.]” (Officer’s report page 51)

“Therefore the critical planning issue relates to the impact on the town centre of Bishops Waltham. Whilst it has been concluded that a development of the scale proposed would have some negative impacts on the town centre function (as documented above) the impact has been judged not to be significantly harmful (in PPS4 terms). Overall the negative impact on the town centre is counterbalanced by the positive benefits that the proposed development offers the area and on this fine basis the proposed development is recommended for approval. On that basis your officers recommend approval but do so recognising that there are views against the proposal that have a basis in legitimate and concerned arguments which Members will wish to consider very carefully.”

#### **4. Procedural Flaws in the Development Control Committee Process**

- a) The sudden and unexplained introduction of Condition 44 in the officer’s update for the DCC meeting. As a leading objector to Sainsbury’s application, BWAG received a letter from Sainsbury’s public relations and marketing agents, Gerald Knight Associates (GKA), dated 15<sup>th</sup> September 2010. In this letter GKA sought to explain that while the plans to include a Doctors’ surgery in a Sainsbury’s development application in Portswood, Southampton had been changed and that a surgery was no longer part of the plans, the situation in Bishops Waltham was different:

“In contrast, the replacement surgery proposed on Bishop’s Waltham would be built by Sainsbury’s, rather than a third party developer. It would accommodate an existing local GP practice which has clearly stated their need to provide better facilities for the patients and staff alike. The viability of this has already been assessed and the building specification has already been agreed with the GP practice.”

So the question has to remain as to why two things happened immediately before the DCC meeting that were only disclosed in the Update.

First, the information on page 24 of the officer’s report refers to the 2,383 “*identical letters of support*” supporting the surgery proposals only. The update says that “After further analysis of the detail of the pro-forma letters it is concluded that the letters can be considered as supporting the planning application.” These letters had already been counted as ‘supporting letters’ in the Agenda, so this seems a late anomaly change.

But secondly, and much more disconcertingly, Condition 44 states:

“Condition 44 (Contingency if surgery building not erected): Before development commences the applicant shall notify the local planning authority in writing of the building programme (including completion dates) for the retail store and the doctors' surgery. In the event that it is

decided not to build the doctors' surgery at the same time as the retail store, the notification shall be accompanied by a revised hard and soft landscaping scheme for the area occupied by the surgery and its car parking and revised drawings for the north east boundary to the retail store service yard. The development shall not commence until revised drawings have been approved in writing by the local planning authority. The revised boundary treatment and the additional landscaping shall be implemented in accordance with the approved timing provisions unless otherwise agreed in writing by the local planning authority. The amended landscaping scheme shall be maintained in accordance with condition 9.

Reason: To ensure that the character of the conservation area the character of the townscape is protected in the event that the doctors' surgery is not implemented or significantly delayed."

It is of great concern because we understand that as of early March 2011 the existing GP Practice had still not agreed terms with Sainsbury's. To include this condition at such a late stage in proceedings would appear to suggest a real possibility that the surgery plans may, after all, not be implemented. If there is real doubt and that was the reason for the condition being added should not this possibility have been publicly aired at the planning meeting and even more importantly, shouldn't the chairman have withheld his casting vote and deferred any decision until after this critical aspect of the application was clarified? The surgery has been widely regarded as the main benefit of the scheme for the people of Bishops Waltham.

- b) Throughout the presentations and debate no direct reference was made to the fact that by granting this planning application, WCC would be removing 70 housing units contained in the extant planning permission for the site without considering the fact that there is no other available, suitable space within the town's boundary. The Council therefore failed to consider how it will address the loss of a significant housing allocation.
- c) Although the value of the 300-350 jobs likely to be offered by a Sainsbury's superstore was used as a material consideration in the Planning Officers' presentations, no reference at all was made to the estimated 170-180 jobs expected to be created by the extant planning permission for business units mixed with the planned housing. So all the benefits of Sainsbury's employment opportunities was considered without the material loss of about half as many full-time jobs being put in the balance.
- d) Councillor Alan Mitchell was seen by many attending the committee meeting to fall asleep on a number of occasions throughout the first two hours. At an appropriate break a representative of Bishops Waltham Parish Council approached committee Chairman Robert Johnston to protest and ask that he be disqualified from voting because he had missed much of the proceedings. This approach was vigorously rebutted. In the event, although Councillor Mitchell stated in the debate that he supported Sainsbury's application, he abstained.

- e) During the representations, at which BWAG's planning consultant from Blake Laphorn spoke on our behalf, the committee Chairman was witnessed spending much of the 15 minute presentation engaged in extended conversation with his right hand neighbour, Steve Tilbury Corporate Director (Operations) for WCC. Not only was this discourteous but also – we suggest – indicates an unacceptable level of pre-determination. This scene is caught in the photograph below in which Ray Cole of Blake Laphorn sits alone at the table reading his prepared representations (see Appendix II) whilst Councillor Johnston ignores what is being said.



- f) The committee Chairman disclosed before the voting round was complete that he would be voting for Sainsbury's application to be approved. Subsequent to this statement, Councillor Barry Lipscomb, who had previously said, during the debate, that whilst his judgement was finely balanced he was "likely to vote against", nevertheless voted to approve the application without any explanation.
- g) As directed by the planning officer's report, the committee questioned the officers about, and then discussed, the significance of the adverse impacts on the town centre that the development might have. Contrary to what is contained in the Minutes of the meeting, that:

"the majority of the Committee concluded that, for the reasons set out in the Report, the benefits outweighed the possible risk to the existing town centre and therefore agreed to grant planning permission, subject to the Conditions and the Section 106 Legal Agreement..."

in fact the resolution, after a tie at 4:4 was passed only on the Chairman's casting vote which, whilst constitutionally possible, was a high risk and potentially unbalanced decision. With such a finely balanced recommendation and an even vote in committee a vote for the *status quo* would have been much more appropriate, even if not prescribed.

- h) The sequential test required in PPS4 was part of the planning officer's presentation and, to no great surprise, there was no other space within the centre of a small market town, such as Bishops Waltham, to build even a 3,000 sq. metre supermarket that would require 0.5 hectares of land. This notional 3,000 sq. metre supermarket (actually by definition a

superstore) was created by NLP as the size of store needed to serve main and bulk food shopping in Bishops Waltham. This is the same retail consultancy that, in 2010, provided WCC with a retail report which said that 5,000 sq. metres of new retail floor space was the total required by Winchester district up to 2021. As referred to elsewhere, Bishops Waltham was expected to need 552 sq. metres of convenience floorspace and 938 sq. metres for comparison shopping.

But neither in the officers' presentation nor the subsequent debate was any mention whatsoever made of the current application by Budgens – an existing edge-of-centre supermarket, close to the primary shopping area – to increase its retail floor space by 168 sq. metres (18.5%). An expansion figure much more in keeping with NLP's ideal growth projections made only last year. This application was registered on November 2<sup>nd</sup> 2010. The target decision date was December 28<sup>th</sup> 2010, but no decision has yet been taken. Although the 'needs' test is no longer required in PPS4, a review of the sequential opportunities should have noted Budgens application for a larger store as a material consideration in any planning decision on Sainsbury's own application.

### SECTION 3

A short section that looks at a critical assumption that we believe is unsafe.

As the Head of Strategic Planning said in his report, "The key planning policy issue is whether the proposal accords with retail planning policies, including its impact on Bishops Waltham's town centre." To help them, WCC appointed NPL to advise them on the issue.

As a core part of their impact assessment NLP cited TESCO-sponsored research from Southampton University that appeared to show that the building of a new Tesco at Shepton Mallet had increased linked shopping trips to the town. As correspondence within the representations shows this has subsequently been accepted as non-comparable and indeed by physical evidence incorrect.

However NLP did use linked shopping as a reason for reducing the impact assessment on Bishops Waltham town centre. The following is taken from their report:

"...This research in Shepton Mallet examines the propensity of customers to link shopping at an out-of-centre and edge-of-centre Tesco food stores with the town centre. The out-of-centre Tesco store in Shepton Mallet store was 1.6 miles from the centre and was less well linked to the centre than the proposed Sainsbury store in Bishops Waltham. The new edge-of-centre Tesco store in Shepton Mallet was well linked to the town centre at the southern end of the high street, with a similar relationship to the high street as the Budgens store in Bishops Waltham. **Although not identical the research in Shepton Mallet provides an insight** into the likely affect of trade diversion from Bishops Waltham town centre to the proposed Sainsbury store on the change in the number of linked shopping trips.

- 4.33 Before and after surveys were undertaken to assess the proportional change in linked trips following the relocation of the Tesco store from an out-of-centre to an edge-of-centre location.
- 4.34 The pre-relocation survey indicated that 51.9% of customers never linked their out-of-centre Tesco trip with the town centre. Only 19.2% always or frequently combined their trip, with 28.8% doing so occasionally. Assuming occasional combined trips were made 1 in 4 trips and frequent combined trips were made 3 in 4 trips, this survey suggests only 21.6% of trips made to the out-of-centre Tesco store were combined with trips to the town centre.
- 4.35 The post relocation survey (12 months after opening) indicated that the proportion of customers who never combine trips with the town centre had reduced from 51.9% to 39.1%. The proportion always or frequently combining their trip had increased from 19.2% to 32.3%, with 28.6% doing so occasionally.
- 4.36 Again assuming occasional combined trips were made 1 in 4 trips and frequent combined trips were made 3 in 4 trips, the post relocation survey suggest about 31.4% of trips made to the edge-of-centre Tesco store were combined with trips to the town centre. These results suggest a 45% increase in the propensity to link shopping trips following the relocation of an out-of-centre food store to an edge of centre location. **If the current propensity to link food and grocery shopping trips in Bishops Waltham is around 50% (i.e. to Budgens, Co op etc.) then the Shepton Mallet results suggest an out-of-centre store may generate about 34% linked trips (50% divided by 1.45).**
- 4.37 **It may be reasonable to assume 30% of the trips attracted to the proposed Sainsbury's store are likely to be linked with non-food shopping in Bishops Waltham town centre, i.e. about 166,500 trips (30% of 555,000 trips in total).**

Based on these figures the net change in linked non-food shopping trips to Bishops Waltham town centre could be about +100,000 trips per annum, or £1 million of additional comparison trade in the town centre, assuming an average spend of £10 per trip. Indirect impact on town centre comparison shops as a result of the net gain in linked trips to the town centre should be sufficient to offset the direct impact of the Sainsbury store (- £0.79 million in 2013) on comparison shops. **In terms of impact on town centre comparison shops, the implications of the proposed Sainsbury store may, at worst, be neutral."**

NLP have come up with what they regard as a reasonable assumption about linked trips that takes no account whatsoever of the real on-the-ground circumstances.

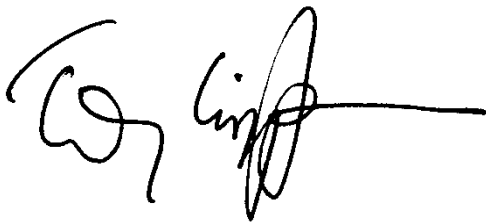
We would ask you to consider, for a moment, the simple concept that underlies this proposition. NLP claims that Sainsbury's customers, having completed their shopping, would go through the check-out, take their shopping trolley down a travelator to the under-store car park, put their purchases – including any chilled or frozen food – into their car boot and put their trolley back into the trolley park. And then, before they drive home, they would relock their car, come back up the travelator, go out through the Abbey Mill door, take a 5-minute walk to cross the Winchester Road to get to the High Street... to buy what? The superstore is designed as a one-stop shop for food and, as indicated above, 30% of Sainsbury's projected sales are for non-food items, like greetings cards, newspapers, clothes, kitchenware and stamps. They'll even be providing cash machines. So what's left to buy?

Then having done all this, their new customers would have to re-cross the B2177, walk back the 400 yards, go down to the under-store car park again and eventually drive up the ramp and leave. Realistic? Basic common sense and any understanding of human nature suggests surely not! What incentive is there to visit the town centre either before or after doing a superstore shopping trip? Sainsbury's would certainly bring customers to Bishops Waltham – with all the traffic consequences – but to their separate, detached, out-of-centre shopping destination, not to anywhere near the High Street.

We believe this assumption – at the core of the impact assessment - is unsafe. In Appendix V we attach two letters of representation, from BWAG, on this whole subject that cover it more fully.

We trust that the information included within this submission persuades you that, for a number of different reasons, this application needs to be called in for review.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tony Kippenberger', with a long horizontal line extending to the right.

Tony Kippenberger  
Chair, Bishops Waltham Action Group (BWAG)