

PLANNING & ENVIRONMENTAL PROTECTION
COMMITTEE

TUESDAY 20 MARCH 2012 AT 1.30PM

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**UPDATE REPORT &
ADDITIONAL INFORMATION**

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Procedure for Speaking

List of Persons Wanting to Speak

Agenda Update

Letter from GL Ham

Item 4

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ADDITIONAL INFORMATION
&
UPDATE REPORT

PETERBOROUGH CITY COUNCIL

PUBLIC SPEAKING SCHEME - PLANNING APPLICATIONS

Procedural Notes

1. Planning Officer to introduce application.
2. Chairman to invite Ward Councillors, Parish Council, Town Council or Neighbourhood representatives to present their case.
3. Members' questions to Ward Councillors, Parish Council, Town Council or Neighbourhood representatives.
4. Chairman to invite objector(s) to present their case.
5. Members' questions to objectors.
6. Chairman to invite applicants, agent or any supporters to present their case.
7. Members' questions to applicants, agent or any supporters.
8. Officers to comment, if necessary, on any matters raised during stages 2 to 7 above.
9. Members to debate application and seek advice from Officers where appropriate.
10. Members to reach decision.

The total time for speeches from Ward Councillors, Parish Council, Town Council or Neighbourhood representatives shall not exceed ten minutes or such period as the Chairman may allow with the consent of the Committee.

The total time for speeches in respect of each of the following groups of speakers shall not exceed five minutes or such period as the Chairman may allow with the consent of the Committee.

1. Objectors.
2. Applicant or agent or supporters.

EMULSIFICATION SCHEME - PLANNING APPLICATIONS

Proposed Rules

1. Chairing Officer to introduce application
 2. Chairman to invite Ward Councillor, Parish Council, Town Council or Neighbourhood representatives to present their case
 3. Member's questions to Ward Councillor, Parish Council, Town Council or Neighbourhood representatives
 4. Chairman to invite objector(s) to present their case
 5. Member's questions to objector
 6. Chairman to invite applicant, agent or any supporter to present their case
 7. Member's questions to applicant, agent or any supporter
 8. Officer to comment, if necessary, on any matter raised during stages 2 to 7 above
 9. Member to debate application and seek advice from other members where appropriate
 10. Member to reach decision
- The total time for speeches from Ward Councillor, Parish Council, Town Council or Neighbourhood representatives shall not exceed ten minutes or such period as the Chairman may allow with the consent of the Committee.

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The total time for speeches in respect of each of the following groups of speakers shall not exceed five minutes or such period as the Chairman may allow with the consent of the Committee.

1. Objector
2. Applicant or agent or supporter

PLANNING AND ENVIRONMENTAL PROTECTION COMMITTEE – 20 MARCH 2012 AT 1.30PM
LIST OF PERSONS WISHING TO SPEAK

Agenda Item No.	Page No	Application	Name	Objector/Applicant/Agent/Supporters/Parish Council/Town Council/Neighbourhood Representatives
4.1	7	11/01321/OUT – VACANT LAND AT MASKEW AVENUE, NEW ENGAND, PETERBOROUGH	Mr Ben Wrighton Mr Huw Williams / Mr Rick Mai / Mr Andreas Markides Mr Mohammed Sabeel	Objector Agent (Chase & Partners) Supporter

BRIEFING UPDATE

P & EP Committee 20 March 2012

ITEM NO	APPLICATION NO	SITE/DESCRIPTION
1.	11/01321/OUT	Vacant Land At Maskew Avenue, New England, Peterborough. Construction of new foodstore (A1) with car and cycle parking, recycling facilities, wind turbine, highway improvements and park and cycle scheme including a non-food retail unit.

1. Since the committee report was drafted officers have received a letter from Stewart Jackson MP objecting to the planning application. Stewart Jackson MP raises the following issues:

- The City Council has failed to provide an holistic overview of the efficacy of its policy on large scale retail developments and seems to be proceeding on a piecemeal basis
- The threat or otherwise of legal redress by any applicant should never be a material factor in consideration of the merits of a specific application for planning consent.
- Officers have disregarded, the advice of the Council's own retail consultants
- The proposal will undermine the City Council's sequential hierarchy
- The application contravenes the City Council's own planning policies, specifically core strategy policy CS4 and CS15 in that it disregards the priority given to protecting the viability of the city centre as the principle retail location in the city
- The proposal will destroy the potential for the medium to long-term development of the North Westgate project
- The proposal will destroy any further investment in Rivergate
- Proposals will irreparably damage the Millfield District Shopping Centre on Lincoln Road and will have significant impact on other supermarkets across Peterborough
- Will have significant impact on the long term prospects of the national exemplar development at eye
- Will have a significant impact on the mixed usage of the site at the Station Quarter
- The sequential test is based on outdated data and fails to take due regard to other more suitable sites
- ~~Contravenes policy CS12 and CS14 in that the impact on traffic movements would be very significant particularly affecting the A47 junction with Bourges Boulevard and the Maskew Avenue with Bourges Boulevard junction.~~
- Do not believe that s106 funding will ameliorate the likely damage to the city centre or other shopping locations

Stewart Jackson MP has asked members to reject this application.

2. Since the committee report was drafted officers have received an email from the applicant's ecologist. The applicant's ecologist will meet the Council's ecologist on the 21st March and the reptile presence/absence survey will be undertaken during April.

3. A letter of objection has been received on behalf of Hawksworth Securities Plc who has a major interest in North Westgate. Their objections are:-

- This is another retail scheme which is contrary to Peterborough adopted Planning Policy. Policy CS4 and CS15 give priority to the City Centre and North Westgate for new retail development
- There have been numerous approvals of out of centre retailing over the past few years e.g. Brotherhood, Garden Park, and ING site, and they reduce the ability to deliver a critical mass of new city centre retailing.
- A critical mass of new retailing in the city centre would improve the evening economy and bring new jobs and investments, more so than out of town supermarket, which will largely only redistribute existing expenditure within the city.
- The 360 new jobs of this proposal may involve a high percentage (25-50%) of jobs redistributed from other retailers whose trade has been reduced. Hawksworth estimate the annual wage benefit of the proposal to be around £4.6 million. Whereas they say a large city centre retail development is likely to employ around 2000 mainly new jobs and have an annual wage benefit of £30million.

- We note that the committee report refers to there being spare retail capacity of up to 98,000 sq metres of comparison floorspace. This is a figure up to the year 2026. The Adopted Core Strategy states the capacity is only between 21,000 and 27,000 sq metres up to the year 2016, a much lower figure. All of this space should be going into the City Centre, as agreed in the Core Strategy, where it will benefit Peterborough as a whole.
4. A letter of objection has been received on behalf of CBRE SPUK III who have been in discussion with the Council on a pre-application basis for the last 18 months in respect of the Phase 2 regeneration of the Orton Centre. Phase 2 of the Orton Centre proposes a foodstore and relocation of the medical centre. They have already submitted representations in September 2011 and January 2012. Their objections are:-
- Concerns in respect of the sequential assessment, particularly in respect of the conclusion for Orton Centre that there are no suitable sites available for the size of store proposed.
 - CBRE and Peterborough Primary Care Trust have been working together to agree the relocation of the existing medical site to free up the land for a new supermarket development
 - Viability of a supermarket has been investigated and bids from foodstore operators have been received. A preferred partner will be selected shortly so it is considered the Orton Centre is a viable option.
 - The Orton Centre site is sequentially preferably to the application site, in accordance with Policy EC15 of PPS4 and Policy CS15 of the Core Strategy.
 - The delivery of a new foodstore within Orton is considered to be at risk by this proposed development, which will impact on the overall regeneration of Orton and the delivery of a new medical facility.
5. A letter of support has been received from Peterborough Chamber of Commerce. They comment:-
- the project will regenerate a derelict, brown-field site immediately adjoining the Maskew Avenue retail park.
 - It will be a high quality, green development that will create 360 jobs providing a massive boost to the local economy.
 - There will also be a community benefits package totalling some £3.25M, including nearly £2.5M for City Centre improvements, £250,000 for sustainable transport, and £450,000 for local employment and energy efficiency projects.
 - We consider the proposals to be very welcome in the current economic circumstances and the significant investment is a substantial vote of confidence in the Peterborough economy. Investments of this kind should be welcomed at this time of great necessity to boost essential local growth for the benefit of all.
6. The following comments have been received from Councillor Mohammed Nadeem:-
- As the local member for the ward I welcome the application and urge the committee to accept the officer's recommendation for approval.
 - The site is fast becoming an eyesore and needs to be developed quickly to stop it becoming a haven for other unsocial activities
 - It will greatly help in the regeneration of a deprived area
 - It will create employment and training opportunities for local people
 - I would also ask that I be kept fully updated on the application and the development as it progresses through the various stages because it will have big implications for my ward.

2 .	12/00008/HHFUL	100 Alexandra Road, Peterborough PE1 3DH. Demolition of conservatory and construction of single storey rear extension and two storey side extension.
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1. The neighbour to the application site has indicated to Councillor Peach that he no longer objects to the application. Councillor Peach has therefore removed his request that the application comes to Committee.

This change in circumstances arose on 12th March, after the agenda was published.

Councillor Shearman was due to speak in favour of the application, but in the light of the objection being removed and Councillor Peach no longer concerned about the application, he is no longer going to address the committee. Councillor Shearman supports the officer recommendation to approve the proposal and hopes the Committee agrees with it too.

<p>1. The applicant has been advised that the Council has no objection to the proposed development and that the Council will support the application.</p>	<p>2. The Council has no objection to the proposed development and that the Council will support the application.</p>	<p>3. The Council has no objection to the proposed development and that the Council will support the application.</p>
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The applicant has been advised that the Council has no objection to the proposed development and that the Council will support the application. The Council has no objection to the proposed development and that the Council will support the application. The Council has no objection to the proposed development and that the Council will support the application.

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GL Hearn

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PE1 5DD

19 March 2012

Dear Mr Cundy

Land at Maskew Avenue, Peterborough.

Construction of New Foodstore (A1) with car and cycle parking, recycling facilities, wind turbine, highway improvements and park and cycle scheme including a non-food retail unit (Ref:11/01321/OUT)

I refer to correspondence dated 24 January 2012 made on behalf of ING RED (Peterborough) Ltd (hereafter 'ING') in which strong objection was made to the above proposals. This was made on the basis that the proposals by Ravenside Investments Ltd for a foodstore at Maskew Avenue would be contrary to adopted planning policy.

The following additional comments are made in response to the Planning and Environmental Protection Committee Report for the forthcoming Committee on 20th March 2012. This correspondence does therefore not repeat all of the points made previously which remain relevant to the case.

In addition, since ING made the previous comments, the Council has resolved to approve ING's application of a mixed use development on Bourges Boulevard subject to the completion of an obligation under the provisions of s106 of the Town and Country Planning Act 1990. The decision was made on 21st February 2012, and the section 106 agreement is now in agreed form and has been executed by ING with completion by the Council today.

The Principle of Development

ING would again highlight that the Site has been allocated for business class uses since the adoption of the Local Plan in 2005 (saved in 2008). The Council has since undertaken an Employment Land Study in 2008. This up to date review of the commercial market forms the evidence base for both the very recently adopted Core Strategy (2011) and Site Allocations DPD which is recommended for adoption by the Council next month. Having taken these policies through independent examination and public consultation very recently the Council are now choosing to depart from this policy not even adopted yet. This does not reflect well on the Council.

Retail Implications of the Development

Moreover, ING have fundamental concerns regarding the retail issues associated with the proposal, in particular the sequential approach, retail capacity, and retail impact both in terms of the applicant's assessment and the planning officer's interpretation of that assessment set out in the Committee Report to the Committee.

Sequential Approach

The Maskew Avenue site has been accepted and identified as out of centre therefore the sequential test must be addressed. The applicant has identified seven sites in agreement with the Council and the Officers conclude that there are no sequentially preferable sites that are suitable, viable and available.

However, the Council's advisors, GVA, are not convinced that there are no sequentially preferable sites and specifically refer to the Station Quarter site as being sequentially preferable. However, the Report states that the GVA advice of October 2011 predates the ING decision on the Station Quarter site (see below) with the implication that following the Council's resolution to grant outline planning permission for the redevelopment of the Station Quarter site it is now no longer available, and would be too small for the proposed store in any event. This is contrary to GVA's advice and indeed the reality of the situation.

The resolution to grant outline planning permission on the Station Quarter site makes the site more available for retail development rather than less, and is therefore it remains sequentially preferable to the Maskew Avenue site.

Furthermore, ING is able to demonstrate that a larger foodstore is physically achievable within the Station Quarter site – for example through the inclusion of mezzanine floorspace. Indeed, ING originally proposed a larger store (5,400 sq m gross) which was subsequently reduced in scale (4,500 sq m) on the basis that the Council and their consultants were concerned about retail impact of a larger foodstore.

At no point did the Council suggest that financial contributions towards economic development would be able to outweigh the potential economic effects of the originally proposed foodstore - 5,400 sq m compared with 6,900 sq m gross proposed at Maskew Avenue).

The Station Quarter site can therefore physically accommodate a larger foodstore, if the Council are of the view (as they appear to be) that there is capacity for further retail floorspace and/or need for further investment and employment generation and it would serve a similar catchment area to the Maskew Avenue site being only 1.5km apart.

The Applicant has also not considered or demonstrated flexibility regarding the format, or disaggregation of the proposed floorspace as required by PPS4, and this is not addressed in the Committee Report.

It is considered that the Committee Report's conclusions regarding the sequential approach demonstrate a clear misunderstanding of the PPS4 test. The proposals are clearly not in accordance with PPS4 and Core Strategy Policies CS4 and CS15.

Capacity

At Paragraph 6.3.10, the Committee Report has failed to identify all of the *convenience* floorspace approved since 2009, in particular the schemes at Orton District Centre and Werrington District Centre and the Brotherhood Retail Park and Carbon Challenge sites. These are schemes that the Council asked ING to consider in respect of cumulative impact to ensure that the technical assessment was robust.

When taking these additional schemes in to account, it is clear that there would not be capacity for the convenience goods element of the proposed development. In addition, the capacity figures are reported to 2026 and the commitments at Great Haddon should also therefore be taken into account.

Should the Application be permitted, the Applicant's assessment also demonstrates that there would be no identified capacity for other convenience goods retail schemes promoted in the Core Strategy Policy CS15, for example at Werrington and new centres in proposed urban extensions. Therefore other new proposals will be likely to have a greater effect on existing stores and centres.

In addition, the approved *comparison* floorspace since 2009 identified at Paragraph 6.3.9 of the Committee Report appears to be lower than our understanding (and as agreed with officers and their consultants) of the respective schemes.

The Committee Report is therefore inaccurate and misleading in respect of capacity issues. ING maintain that the proposals are not in accordance with PPS4 and Core Strategy Policy CS15.

Retail Impact

In terms of retail impact, the Committee Report only provides Members with the trade draws of the proposed development from the existing centres and stores, rather than the impact of the proposed development on those centres and stores. Members are therefore not able to make a decision on the impact of the proposed development without the relevant impact information.

Furthermore, ING consider that the applicant has failed to provide any cumulative impact assessment, particularly taking into account the approved ING scheme. Cumulative assessment is not referred to in the Committee Report, and this should be provided before a decision on the application can be made.

The Report's conclusions appear to be contrary to the advice from GVA to the Council in a number of key areas. For example, GVA concluded on 17 October 2011 that:

"...the current application for Maskew Avenue should be refused based on the provisions of the sequential approach, the relatively greater adverse impact on the city centre and district centres and other locational advantages of this area"

There have been no changes to the proposals since this advice other than further refinement of the s106 Planning Agreement.

GVA's last advice to the Council in respect of the Station Quarter stated (author's emphasis):

"The proposals also impact on a number of district centres, and the analysis suggests that the Bretton Centre, Millfield Centre and Serpentine Green are likely to be trading below benchmark sales levels at 2018 as a result of the cumulative impact assessed. This is an issue which the Council needs to keep under review and is a potential cause for concern. However, we are satisfied that the current proposals are unlikely to materially effect the vitality and viability of these or any other district centres, and on balance we consider the effects of the proposals are acceptable."

The need for constant review for cumulative assessment appears to have been ignored in this instance.

There are significant inaccuracies in the Report on sequential, capacity and impact issues that are misleading to Members. It is very concerning that the Council has chosen not to request further technical advice from GVA on such an important planning decision.

Overall, ING have fundamental concerns regarding the details provided and the Report's conclusions regarding the sequential approach, retail capacity, and retail impact contained within the Committee Report.

Economic Benefits

Given the significant retail impacts anticipated in the Committee Report, and that an important business use allocation would be lost, we now consider the economic benefits of the proposals as expressed in the draft s106 planning obligations. This is central to the balance of benefits against significant costs.

The Report concludes at Paragraph 6.3.17 that the proposed development provides additional employment opportunities in a deprived area of the City and contributes towards the regeneration of Millfield and New England, but this has not been demonstrated in the report, and it should not be assumed that this will be the case. Employment will be displaced rather than created due to the impact on a relatively mature foodstore market.

Furthermore, it is concluded that the proposed development will significantly financially contribute towards regeneration of the city centre, though notably not district centres such as Millfield which also are adversely affected. ING consider that due to the location of Maskew Avenue being out of centre and adjacent to an existing retail park, it is unlikely that the proposal will lead to a positive impact on the city centre. The contributions will lead to physical benefits which will be relatively short lived and not compensate for the retail trading impacts, particularly in the long term.

Relationship with Station Quarter Investment

Most significantly for ING, the Council has very recently permitted a mixed use development in one of the Council's key regeneration areas. This is a scheme which is in accordance with the Development Plan and one which commercially relies on the delivery of a foodstore. The granting of permission for the proposal at Maskew Avenue will have significant adverse effect on the ability to deliver this scheme. This is a point which has been made to the Council several times before.

A larger, out of town, single use foodstore development with more car parking is far more commercially attractive to foodstore operators. The potential operator market of approximately five 'major' operators in any typical situation is much more limited in Peterborough given existing foodstore presence, and more recent permissions such as the Morrison's at Stanground. A further permission at Maskew Avenue will limit potential occupiers to an unacceptable level.

Furthermore, the ability to negotiate with a more limited pool of operators will put much greater pressure on the financial viability of a scheme which has already been reduced in size at the request of the Council. This clearly demonstrates an inconsistency in the Council's position as well as that the proposed development will have much greater adverse effect than is demonstrated in the Committee Report.

The Maskew Avenue single use proposal will extend an existing out of centre retail park which would become a major retail destination with poor connectivity. In contrast, the ING proposals offer a mixed use scheme including a foodstore within a major regeneration area, adjacent to the City's prime shopping centre, and between the rail and bus stations (the most publicly accessible location in Peterborough). This scheme was strongly supported by the Council barely a month ago, and it therefore seems incredulous that Council now wants to undo that decision so soon.

Ecology

Paragraph 6.5.1 of the Committee Report states that reptiles have not been adequately addressed in the applicant's extended Phase 1 Habitat Survey and that specifically "the report makes no reference to the presence of the Rail Corridor High Grade Brown-field site which is located along the western boundary of the proposed development and is likely to contain populations of reptiles which may have moved onto this abandoned site". Further "the site itself contains areas of shrubs, hedgerows and ruderal vegetation and basking areas which may be considered suitable for reptile habitat".

The officers' recommendation is therefore for the application to be approved subject to "the conclusion of a reptile presence/absence survey and mitigation proposed".

The Council should not be recommending approval for an application before it has the full environmental information before them. This principle is clearly established in case law. The Council cannot grant planning permission or recommend that planning permission be granted upon reliance that such reptile information will be produced.

In the case of *R v Cornwall County Council ex parte Hardy* [2001] Env LR 25 the decision of a local planning authority to grant planning permission was quashed for failure to take into account the full environmental information. The failure in that case related to inadequate information about the impact of the proposed development upon badgers and lesser horseshoe bats.

The Cornwall case was also followed by the Court of Appeal in *Smith v Secretary of State for the Environment, Transport and the Regions* [2003] EWCA Civ 262 where it was held that it was unlawful to grant planning permission on the basis that questions relating to the significance of the impact on the environment and the effectiveness of any mitigation could be left over to be undertaken subsequently.

Therefore, quite clearly, the Council should not be recommending that Members approve the application when a reptile survey has not yet been carried out, the potential environmental effects are unknown and any required mitigation has not been identified. The application should not go before Committee until this information has been provided and carefully considered. To proceed otherwise would be lawfully incorrect.

Conclusions

In conclusion, the proposals do not satisfy the policy test of PPS4. The proposals will clearly have significant impact, which is not fully presented by the Committee Report given the considerable shortfalls of the impact assessment method. It also cannot be assumed in the determination of this planning application that commercial arrangements with named foodstore operators will be forthcoming.

The proposal should therefore be refused in accordance with Policy EC17 of PPS4. The proposal is also contrary to Core Strategy Policy CS15 for similar reasons as well as the likely impact upon Peterborough's retail strategy. The site is also clearly identified for alternative uses in not yet adopted planning policy documents.

The Officers' recommendation to approve the application subject to the conclusion of a reptile presence/absence survey and mitigation proposed is not lawfully correct. All the environmental information should be before Officers before they can conclude that the application should be recommended for approval by Members.

The Council appears to be putting aside a number of important Council policies and legal requirements for the sake of financial gain. The application should therefore be withdrawn based upon a legally flawed Committee Report, or at the very least **REFUSED** upon the above grounds. A decision to approve the proposals as set out in the Committee Report would potentially leave the Council open to legal challenge on a number of grounds.

Yours sincerely



Ben Wrighton
Planning Director

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