

DEVELOPMENT COMMITTEE

AGENDA ITEM 5

21ST APRIL 2011

REPORT OF HEAD OF REGULATORY SERVICES

10/00178/FUL: REDEVELOPMENT OF THE SITE FOR A NEW FOODSTORE (CLASS A1 USE) WITH ASSOCIATED CAR PARKING, ACCESS, HIGHWAY WORKS, LANDSCAPING AND SERVICING. NOTTINGHAM ROAD. MELTON MOWBRAY

OUTCOME OF REFERRAL TO SECRETARY OF STATE AND PROPOSED OPENING HOURS

1. PURPOSE OF THE REPORT

- 1.1 To report to the Committee the outcome of the referral process and consider the proposed opening hours for application 10/00178/FUL.

2. RECOMMENDATION

- 2.1 That approval is given to include the proposed opening hours, below, within the conditions of the decision notice;

- 7:00am – 10:00pm Monday to Saturday, and;
- 10:00am – 4:00pm Sunday

- 2.2 That Committee note that the Secretary of State has declined to 'call-in' the application and agree that the conditions and 'Article 31' reasons for granting permission that comprise Appendix A of this report accurately represents the Committee's intentions for determination of the application.

3. BACKGROUND

- 3.1 The above application, 10/00178/FUL, was reported to Committee on the 27th January 2010. Committee resolved at this meeting to permit the application subject to referral to the Secretary of State, the completion of a Section 106 Agreement and conditions.

3.2 Hours of Opening:

As part of the resolution it was requested by Members that the opening hours of the proposed store be restricted and should not be 24 hour opening. A condition was drafted to state the store should not be 24 hour opening and that details of the opening hours be submitted and approved in writing by the Local Planning Authority. Members also requested that the details submitted in order to discharge this condition should be reported back to Committee for Members to agree the proposed opening hours.

- 3.3 Planning approval on this application has not yet been issued following the referral process to the Secretary of State. However, the applicants have agreed that a more prescriptive approach would deliver greater certainty to the condition and have suggested the hours of opening referred to above.

- 3.4 The applicant has advised the Authority that the opening hours sought are 7:00am – 10:00pm Monday to Saturday and 10:00am – 4:00pm Sunday and Members are requested to consider these proposed times and whether they are acceptable. In respect of their request, the applicant has advised:

- 11pm would be preferable but 10 pm is proposed as a compromise

- 10pm is in line with other operators in the area. the Tesco in Melton is open for 24hours a day and is in a more sensitive location, opposite residential properties.
- Extended hours allows use by people whose commitments prevent them shopping at conventional hours e.g. after work, and thus be a better facility for the community
- The noise study submitted with the application identified that even with full use, noise levels would be acceptable in nearby houses (i.e. would meet BS 8233 'reasonable' level indoors and recommended 55Db levels outdoors)
- Other sources of noise do not subside significantly during later hours
- Officers have been satisfied with the noise assessment and proposed mitigation measures
- The noise barrier and good management, including CCTV, will assist further

3.5 The proposed hours have been considered by the Council's officers (including Planning and Environmental Health). Given the distances to adjoining properties, the noise mitigation measures proposed (and to be controlled by the proposed conditions), that the hours proposed are not 24 hour opening and do not involve those conventionally characterised as the "unsociable hours" it is recommended that this condition should also be included with the decision notice. This presents a specific limitation, in lieu of an approach of requesting details to be submitted.

4. OUTCOME OF REFERRAL TO SECRETARY OF STATE

4.1 The Council received notification from the Secretary of State that the application will not be 'called in' and that the council should proceed to determine it. An extract of the minutes of the Committee's determination of 27th January are reproduced as Appendix B. The Committee is invited to affirm that the fully drafted permission (Appendix A) accurately reflects this resolution (subject to the determination on condition 36 discussed above).

5. CONCLUSION

5.1 It is considered that the proposed opening times are acceptable due to the distances to adjoining properties and noise mitigation measures to be put in place, they are not 24 hour opening and are do not propose unsociable hours and therefore should be included with the decision notice, as specific limitations, in lieu of an approach of requesting details to be submitted.

5.2 It is intended that, after Committee authorisation, that the opening times are included as a condition in the decision notice to be issued after the referral to the Secretary of State.

5.3 The draft decision Notice reflects the Committee's intentions and confirmation as to its accuracy is requested.

Background Papers:

- Committee papers 27th January 2010.
- Planning Application 10/00178/FUL

Officer to contact: J Worley, Head of Regulatory Services 01664 502359

APPENDIX A : DRAFT DECISION NOTICE

Town and Country Planning Act 1990



APPROVAL OF PLANNING PERMISSION

Name and Address of Applicant

Sainsbury's Supermarket Limited
C/o Agent

Name and Address of Agent (if any)

Mr Andrew Astin - Indigo Planning Limited
36 Park Row
Leeds
West Yorkshire
LS1 5JL

Part 1 - Particulars of Application

Date of Application

12.03.10

Application No.

10/00178/FUL

Particulars and location of development:

Redevelopment of the site for a new foodstore (Class A1 Use) with associated car parking, access, highway works, landscaping and servicing. (Amendments proposed site plan and proposed elevations)

Car Park Nottingham Road Melton Mowbray

Part II - Particulars of decision

In pursuance of its powers under the Town and Country Planning Act 1990, the Melton Borough Council grants permission for the carrying out of the development referred to in Part 1 hereof in accordance with the application form and plans submitted, subject to the following conditions :-

1. The development shall be begun before the expiration of three years from the date of this permission.
2. The development shall be carried out in accordance with the amended plans as follows;
Site Layout: drawing no.ARCH/2008-63/P03 Rev E submitted on the 29th October 2010.
Elevations: drawing no. ARCH/2008-63/P04 Rev B submitted on the 2nd July 2010.
Trees: drawing no's GC.33342.004 Rev C; GC.33342.100, GC.33342.003 Rev B and GC.33342.002 Rev B.
Landscaping: drawing no. GC.33342.004.C
And the following plans; ARCH/2008-063/P08, ARCH/2008-063/P10, ARCH/2008-063/P12, ARCH/2008-063/P11, ARCH/2008-063/P07; ARCH/2008-063/P05; ARCH/2008-063/P09 and 30223150R Rev B submitted with the application.
3. No development shall start on site until representative samples of the materials to be used in the construction of all external surfaces have been submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. Prior to the first use of the development hereby permitted, details of the artwork on the service yard wall shall be submitted to and agreed in writing by the Local Planning Authority. The artwork shall be carried out in accordance with the approved details.

5. Prior to the first use of the development hereby permitted, the applicants shall construct and complete the proposed access works shown for illustrative purposes on Motion Transport Planning's plan numbered 100102 - 10 (amended to show extra width of carriageway). All works shall be designed in constructed accordance with standards contained within the Design Manual for Roads and Bridges.
6. Prior to the first use of the development hereby permitted, the applicants shall relocate and open for use by the public, and entirely at their own expense, the existing pelican pedestrian crossing on Nottingham Road as shown on the proposed site plan numbered ARCH/2008-063/P03 Rev E . All works shall be designed and constructed in accordance with standards contained within the Design Manual for Roads and Bridges.
7. No gates shall be erected to the main customer vehicular access.
8. All existing vehicular accesses shall be closed permanently within one week of the new access being brought into use and the existing vehicular crossings reinstated in accordance with a scheme which shall be submitted and approved in writing prior to the commencement of development .
9. Before the development commences, details of the routeing of construction traffic shall be submitted to and approved by the Local Planning Authority. During the period of construction, all traffic to and from the site shall use the agreed route at all times unless an alternative route is submitted to and approved in writing by the Local Planning Authority.
10. Prior to the first occupation of the development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall follow the principles set out in the Interim Travel Plan contained in the Transport Assessment by Motion Transport Planning dated 10th February 2010 and shall include medium and long term targets for sustainable travel arrangements; measures for ongoing monitoring; a commitment to delivering the objectives; and mechanisms to achieve the objectives by the occupiers of the development. The development shall be implemented only in accordance with the approved Travel Plan.
11. For the period of the construction of the development, vehicle parking facilities shall be provided within the site and no vehicles associated with the development shall be parked otherwise than within the site.
12. Vehicle wheel cleansing facilities shall be provided within the site and all vehicles exiting the site shall have all tyres and wheels cleaned, as may be necessary, before entering the Highway to prevent the deposition of extraneous matter on the public highway . The wheel washing facilities provided shall be so maintained for the construction period of the development hereby permitted.
13. The proposed building comprised in the development shall not be brought into use until such time as the proposed access roads, car parking, motorcycle parking, turning and manoeuvring areas shown on the drawing no.ARCH/2008-63/P03 Rev E submitted on the 29th October 2010 have been provided, hard surfaced, marked out and made available for use. Once provided they shall thereafter be permanently so retained.
14. The proposed building shall not be brought into use until such time as the proposed covered cycle parking as shown on drawing ARCH/2008-63/P03 Rev E has been provided and made available for use. Once provided the cycle parking shall thereafter be permanently so retained.
15. The vehicular access gates, barriers, bollards, chains or other such obstructions shall be erected in accordance with the details shown on drawing no. ARCH/2008-63/P03 Rev E.

16. The footpath shown on drawing no. ARCH/2008-63/P03 Rev E shall be constructed in accordance with the following requirements:
 - a minimum width of 3m throughout.
 - The full width of the path will be available at all times, any bollards, columns or other store features (permanent or temporary) will be outside the confines of the highway.
 - The footpath will be delineated on either side by edging strips.
 - Anywhere the footpath crosses an internal road it will be a minimum of 5m from a junction, marked clearly on the ground and with a minimum 1m visibility splay on either side.
17. Noise as a result of the use of the service yard arising from the moving of vehicles (including any beepers or other forms of audible warning mechanism installed), loading and unloading of goods (including the machinery use to carry out the loading and unloading), amplified announcements or warnings shall not exceed 60dB LAmax at any time, at any locations representing the external facades of nearby residential dwellings nor shall it exceed an internal noise level of nearby residential dwellings of 45dB LAmax with windows partially open. For the purposes of this condition 'service yard' is defined as the entirety of the land labelled as such on the site plan approved reference ARCH/2008-63/P03 Rev E submitted on the 29th October 2010 between the boundary wall to Nottingham Rd and the east elevation of the building and 'residential property' is defined as nos. 7 – 27 Nottingham Rd (odd numbers) and nos. 1- 59 Fernie Rd (odd numbers)
18. No vehicles shall depart or be allowed entry into the Goods On Line Service Area (as identified in the plans hereby approved) between the hours of 23:00 - 07:00). For the purposes of this decision, the 'Goods On Line Service Area' is defined as the part of the site between the part of the building labelled "G.O.L" on the site plan approved (reference ARCH/2008-63/P03 Rev E submitted on the 29th October 2010) and the west boundary of the site.
19. Prior to the first occupation of the development hereby permitted a Service Yard Management Plan, detailing how delivery of good will operate in the yard and mitigation measures to reduce disturbance to nearby properties, shall be submitted to and approved in writing by the Local Planning Authority. The Service Yard Management Plan shall be implemented in accordance with the agreed scheme and maintained thereafter.
20. Before the development commences, details of the acoustic barrier, which should be a 2.5 metre solid construction fence sufficient to limit the noise arising from the development within the garden of 44 Stirling Road to a maximum of 43.1 dB LAeq (1 hour), shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
21. Prior to commencement of development, a scheme for the management of traffic using the service yard shall be submitted to and approved by the Local Planning Authority. The service yard shall subsequently be operated in full accordance with the approved scheme at all times.
22. Development shall not begin until a surface water drainage limitation scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed and brought into use.

The scheme shall also include:

- Details of how the scheme shall be maintained and managed after completion.
- Sustainable drainage techniques or SuDS incorporated into the design.
Any outflow from the site must be limited to the maximum allowable rate, i.e. no increase in the rate &/or volume of run-off.
- The surface water drainage system must deal with the surface water run-off from the site up to the critical 1% Annual Probability of Flooding (or 1 in a 100-year flood) event, including an allowance for climate change (i.e. for the lifetime of the development). Drainage calculations must be included to demonstrate this (e.g. MicroDrainage or similar sewer modelling package calculations which include the necessary attenuation volume).

23. Prior to the commencement of development, a working method statement to cover watercourse culvert diversion works shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme.
24. The development hereby permitted shall not be commenced until such time as a scheme to install oil and petrol separators has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.
25. No works to existing vegetation on the site shall take place during the bird breeding season (March to end August) to protect any nesting birds, unless approved in writing by the Local Planning Authority.
26. Prior to the commencement of the development, a method of works indicating the measures to be used to protect the dismantled railway and associated habitat shall be submitted to the Local Planning Authority and approved in writing. The development shall be carried out in accordance with the approved details.
27. No retained tree or hedgerow shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard (3998 (Tree Work)). If any retained tree or hedgerow is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the local planning authority within 5 years from the date of the occupation of the building for its permitted use. The erection of fencing for the protection of any retained tree or hedgerow shall be in place before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.
28. No development shall commence on site until all existing trees that are to be retained have been securely fenced off by the erection of post and rail fencing to coincide with the canopy of the tree(s), or other fencing as may be agreed with the Local Planning Authority, to comply with BS5837. In addition all hedgerows that are to be retained shall be protected similarly by fencing erected at least 1m from the hedgerow. Within the fenced off areas there shall be no alteration to ground levels, no compaction of the soil, no stacking or storing of any materials and any service trenches shall be dug and backfilled by hand. Any tree roots with a diameter of 5 cms or more shall be left unsevered.
29. Notwithstanding the provisions of Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended or any re-enactment thereof), no more than 34% of the net sales area of the retail building hereby approved shall be used for the sale of comparison goods.
30. The net sales area of the retail building hereby permitted shall not exceed 3516 sq.m. There shall be no additional use (for retail use) of the storage areas, first floor area, external space or any other part of the building.
31. No development shall start on site until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. This scheme shall indicate full details of the treatment proposed for all hard and soft ground surfaces and boundaries together with the species and materials proposed, their disposition and existing and finished levels or contours. The scheme shall also indicate and specify all existing trees and hedgerows on the land which shall be retained in their entirety, unless otherwise agreed in writing by the Local Planning Authority, together with measures for their protection in the course of development.

32. The approved landscape scheme (both hard and soft) shall be carried out before the occupation of the buildings or the completion of the development, whichever is the sooner; unless otherwise approved in writing by the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
33. Before the installation of any external lighting details shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.
34. Prior to commencement of development, a scheme for the provision of training and employment opportunities in the surrounding area shall be submitted to and approved by the Local Planning Authority. The scheme shall subsequently be operated at all times that the development is operational.
35. Prior to commencement of development, a scheme for the management of the car park shall be submitted to and approved by the Local Planning Authority. The car park shall subsequently be operated at all times in full accordance with the approved scheme..
36. The hereby permitted development shall not be open for trading otherwise than between the hours of :
 - 7am and 10pm on Mondays to Saturdays
 - 10am and 4pm on Sundays

The reasons for the conditions are:-

1. To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
- 2.. For the avoidance of any doubt.
3. To enable the Local Planning Authority to retain control over the external appearance as no details have been submitted
4. To enable the Local Planning Authority to retain control over the external appearance as no details have been submitted
5. In the interest of highway safety.
6. In the interest of highway safety.
7. To enable a vehicle to stand clear of the highway in order to protect the free and safe passage of traffic, including pedestrians, in the public highway.
8. To reduce the number of vehicular accesses to the site and consequently to reduce the number of potential conflict points.
9. To ensure that construction traffic associated with the development does not use unsatisfactory roads to and from the site.
10. To ensure that adequate steps are taken to provide a transport choice/a choice in mode of travel to and from the site.
11. To ensure that adequate off-street parking provision is made to reduce the possibilities of development of the site leading to on-street parking problems in the area during construction.
12. To reduce the possibility of deleterious material (mud, stones etc) being deposited in the highway and becoming a hazard for road users.

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13. In the interest of highway safety.
14. In the interests of the sustainability of the development and to encourage alternative transport choice
15. In the interest of highway safety.
16. To ensure the satisfactory provision of the proposed footpath.
17. In the interest of residential amenity.
18. In the interest of residential amenity.
19. To ensure the satisfactory management of the Service Yard, in the interest of residential amenity.
20. To ensure the satisfactory level of noise protection in the interest of residential amenity.
21. In the interest of highway safety and residential amenities.
22. To prevent the increased risk of flooding, to improve and protect water quality, and ensure future maintenance of the system.
23. The construction phase of the proposed development and culvert diversion of the watercourse poses significant risks of interruption to flows.
24. To protect the water environment.
25. In the interest of protected species.
26. To ensure adequate protection of the railway embankment.
27. To ensure the adequate protection of trees in the site.
28. To ensure the adequate protection of trees in the site.
29. To ensure the use remains compatible with the surrounding area and its impact on the viability and vitality of the town centre.
30. To ensure the use remains compatible with the surrounding area and its impact on the viability and vitality of the town centre.
31. To ensure satisfactory landscaping is provided within a reasonable period.
32. To provide a reasonable period for the replacement of any planting.
33. In the interest of the character and appearance of the area and residential amenity.
34. To ensure the satisfactory provision of training and employment.
35. To ensure the satisfactory provision of off street parking in the interest of highway safety.
36. To ensure that the use remain compatible with the surrounding area and in the interest of residential amenities.

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Reasons for the Grant of Planning Permission

Under Article 31 of The Town and Country Planning, (Development Management Procedure) (England) Order 2010 the following is a summary of the reasons and development plan considerations relevant to this decision.

A summary of the applicable Development Plan Policies:

The proposed development lies within the Town Envelope of Melton Mowbray and proposes a foodstore, Class A1 use. Policies OS1 and BE1 of the Adopted Local Plan allow such development provided it is compatible with the surrounding area, would be satisfactorily accessed and provide sufficient car parking and would not be detrimental to residential amenities. PPS 4 requires the broadening of retail choice, increase competition, efficient shopping and economic growth as well as having no impact on town centre viability or vitality.

A summary of the reasons for granting permission:

The site is not allocated for any specific use in the Adopted Melton Local Plan, but is within the Town Envelope. The proposal is considered to accord with policies OS1 and BE1 Adopted Local Plan in terms of its impact on infrastructure, design and access issues etc (i.e. fulfilling the criteria of these policies).

It is considered that there is sufficient information to make an adequately informed and reasoned decision. The application is considered to accord with national policy (in particular PPS4 and the policy tests in EC17 regarding the sequential approach and impact assessment), regional and local planning policy. The application will bring in terms of enhanced consumer choice, increased competition, improved access to foodstore provision, new investment, employment creation. The impact upon highways is acceptable subject to conditions and the contents of the s106 Agreement. The impact upon residential amenities has been assessed and considered acceptable due to the design and location and the proposal is easily accessible by public transport, walking and cycling which complies with Sustainable Development objectives of PPS1 and PPG13. The design of the building is in keeping with the surrounding area and would not be detrimental to the character of the area. The regeneration of the site is also considered to improve the character of the area.

Condition 29 and 30 are imposed to safeguard the retail function of the town. Condition 3 and 4 are to safeguard the character of the area. Conditions 5 - 16 are imposed in the interest of highway safety. Conditions 22 – 24 are to ensure satisfactory drainage is provide. Conditions 16 and 17 are in the interest of protecting the historic environment whilst conditions 17-21 and 33 are in the interest of residential amenity and 25 - 28 are to safeguard the natural environment. Condition 31 and 32 are to ensure adequate landscaping. The specific reasons for each condition are set out above.

NOTES TO APPLICANT:-

1. In condition 27 "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

Approved Plans

This permission authorises only the development shown on the approved plans. Any changes will require a further planning permission, without which they will be unauthorized and open to enforcement action to remedy the breach of planning control.

Conditions

Please note that a written request to discharge a condition now requires a fee to be submitted of £25 for domestic works and £85 for all other types. Requests to discharge conditions should be made on the attached form or through the website www.planningportal.gov.uk Forms can also be obtained from the Council on 01664 502502 and from the website www.melton.gov.uk , 'Planning Application Forms and guidance' page. The Council is required to determine such requests within 8 weeks of submission.

Commencing development without complying with the terms of conditions renders this permission null and void and therefore the entire development unauthorized. It is only capable of being rectified by a further retrospective application for the total scheme.

17.02.11

Head of Regulatory Services
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APPENDIX B: EXTRACT FROM THE MINUTES OF THE COMMITTEE MEETING OF 27TH JANUARY 2011

DETERMINATION : Permit subject to :-

(i) referral to the Secretary of State under the Consultation Direction 2009;

(ii) Completion of S106 Legal Agreement for:-

- **Bus shelter Enhancement Scheme**
- **Pedestrian Crossing Scheme**
- **Town Centre Linkage Scheme**
- **Town Centre Management Scheme**
- **Town Centre Promotional Board**

(iii) conditions as set out in the report(the precise wording for each condition delegated to the Head of Regulatory Services) but with the alteration to condition 34 preventing 24 hour opening and;

(iv) that the discharge of condition 34 should be determined by Development Committee;

and for the following reason(s) :-

- 1. the application proposes the erection of a food store with associated access, parking, highway improvements and landscaping. The location was considered to be acceptable in terms of applying the sequential approach and retail impact and accordingly meets the requirements of PPS4. The impact upon highways was acceptable subject to conditions and legal agreement requests. The impact upon residential amenities had been assessed and considered acceptable due to the design and location and the proposal was easily accessible by public transport, walking and cycling which complied with Sustainable Development objectives. The design of the building whilst not groundbreaking was in keeping with the surrounding area and would not be detrimental to the character of the area. The regeneration of the site was considered to improve the character of the area and the proposed landscaping would enhance the development and mitigate for the loss of some of the mature trees within the site. The application was therefore complies with National, Regional and Local Policy and was considered to be acceptable;**
- 2. the site was not allocated for any specific use in the Adopted Melton Local Plan, but was within the Town Envelope. The proposal is considered to accord with policies OS1 and BE1 Adopted Local Plan in terms of its impact on infrastructure, design and access issues etc (i.e. fulfilling the criteria of these policies). PPS4 provides the current policy framework as more recent policy – effectively replaces policy S2 and the approach of being guided by PPS4 was the correct one;**
- 3. the emerging MLDF Core Strategy had reached preferred options stage in January 2008 and the weight to attached to it was limited. The Town Centre masterplan was prepared to identify regeneration options to inform the a future Town Centre Area Action Plan and as such was not established or adopted policy and attracts limited weight;**
- 4. the application was considered to comply with national, regional and local planning policy but it was recognised that some issues are concluded on a more subjective basis (e.g. design issues). It was considered that there was sufficient information contained within the report to make an adequately informed and reasoned decision. The application was considered to accord with national policy (in particular PPS4 and the policy tests in EC17) and regional and local planning policy. The application would bring in terms of enhanced consumer choice, increased competition, improved access to foodstore provision, new investment, employment creation.**