Committee Date: 12/06/2014  Application Number: 2014/02527/PA
Accepted: 10/04/2014  Application Type: Variation of Condition
Target Date: 10/07/2014
Ward: Handsworth Wood

Former GKN Factory, Old Walsall Road, Hamstead, Birmingham, B42 1HU

Application for variation of Condition 27 attached to planning approval 2013/01544/PA to allow for a pharmacy within the store

Applicant: Sainsbury's Supermarkets Ltd
c/o Agent
Agent: Turley Associates
   The Charlotte Building, 17 Gresse Street, London, W1T 1QL

Recommendation
Approve Subject To A Section 106 Legal Agreement

1. Proposal

1.1. Committee will recall considering an application for the development of a new Sainsbury's foodstore at this site last year under application 2013/01544/PA. Consent was granted subject to a section 106 agreement that secured financial contributions totalling £900,000 towards the delivery of industrial land at Aston Regional Investment Site (RIS) and towards railway station improvements at Hamstead and/or Aston.

1.2. The planning consent is subject to several planning conditions. Condition 27 stipulates “Notwithstanding the provisions of the Town and Country Planning (Use Classes Order 1987 or succeeding orders, the retail store approved shall not include the provision of a post office, pharmacy, dry cleaners, travel agents, laundrette, bank, building society, estate agents, photo processing centre, key cutting/shoe repairers or DVD/video game rental shop”. The reason for the condition is in order to maintain the vitality and viability of existing local centres in accordance with policies 7.13-7.31A of the adopted UDP 2005 and the guidance in the NPPF.

1.3. This application seeks to vary this condition to allow for the provision of a pharmacy within the store. The approved store would be 5342 square metres of gross internal floorspace which includes a small mezzanine area for a café and staff area. There would be a car park providing 302 car parking spaces for the store plus cycle parking. In addition, part of the site is to be developed to provide 1674 square metres of new industrial floorspace (4 units) with an associated 25 space car park.

1.4. The approved scheme includes various off-site highway works to mitigate the impact of the proposed development, including a new traffic island at the entrance of the store, other junction improvements to nearby junctions to the north, new pedestrian refuge on Old Walsall Road and re-siting of existing bus stops.
2. Site & Surroundings

2.1. The site is an existing industrial site that has been vacant and unused since 2009. The site comprises a range of large industrial buildings and associated offices, stores etc, which occupy approximately two thirds of the site together with large areas of open yard areas, enclosed by metal palisade fencing and gates. The office buildings to the west of the site are three storeys whilst the other buildings are tall single storey structures.

2.2. The applicant states that the buildings are not fit for occupation and have been de-listed for the purposes of building rates. They state that the problems with the buildings include structural defects, presence of asbestos, severely damaged roofs, irreparable fixtures and fittings and sub-standard services. A survey undertaken in 2011 identified the total cost of repair to be in the region of £1.54 million.

2.3. The site is located within a mixed use area. To the south of the site in Austin Way are several industrial premises that form part of the industrial estate to the south. The site to the immediate north is a petrol filling station, beyond which is a vacant office building. There are also industrial premises to the west on the opposite side of Hamstead Hill. Further to the north, 200 metres from the site boundary is the local centre of Hamstead, much of which is located within Sandwell. This centre contains local shops and services including local stores, restaurants, takeaways, a post office and a pharmacy.

2.4. Hamstead railway station is located to the north. Services on this line terminate at Birmingham New Street and Rugeley running approximately every 30 minutes. There are also local bus services that stop in the vicinity of the site on Hamstead Hill including the 651, 28, 51 and 886 services.

2.5. There is a large park to the west of the site which contains Hamstead Pavilion.

3. Planning History

3.1. 09/08/2013 – 2013/01544/PA – Demolition of existing buildings and construction of new food store (5342sqm GIA) (Class A1), employment units (1647sqm GIA) (Class B1, B2, B8), new access and associated highway works, car parking, landscaping and associated works – Approved subject to conditions and a s106 agreement.

4. Consultation/PP Responses

4.1. Press and Site Notices erected. MP, Handsworth Wood and Perry Barr ward members, residents associations, neighbouring businesses and residents notified. 26 representations received, of which 18 object on the following grounds:

- There is no need for another pharmacy as the existing pharmacy in the village meets residents needs
• The creation of a pharmacy in the store could force the closure of the existing local pharmacies which form strong links with customers
• A supermarket pharmacy will not provide the same level of service as our existing local pharmacies provide
• This will lead to job losses.
• Extra traffic

4.2. 8 letters of support have been received commenting as follows:

• This will not affect the local pharmacy in Hamstead village as local people will still use that shop.
• That pharmacy is closed on Saturdays and Bank Holidays where Sainsbury’s will be available so this will enhance choice and improve access for those needing emergency medication
• It will create new jobs
• The superstore should be built within a specific timeframe

4.3. Transportation Development – No objections.

4.4. West Midlands Police – No objections. Comments that as controlled drugs are to be stored on site there should be early consultation with the Police Drug Liaison Officer in relation to the location and standard of storage cabinet required.

4.5. Severn Trent Water – No objections, advise of the presence of public sewers located just within the site and recommend drainage condition.

4.6. West Midlands Fire Authority – No objections.

4.7. Network Rail – No comments.

5. Policy Context


6. Planning Considerations

6.1. When members considered the 2013 application for the proposed foodstore, detailed consideration was given to the issues of loss of industrial land, retail policy, economic impact on jobs and job creation, traffic impact, urban design, landscaping and trees, environmental issues including flood risk, noise, air quality, ecology and ground contamination and s106 obligations. Having granted consent for the proposed store it is not necessary or appropriate to re-consider those issues again for this section 73 application.

6.2. The determination of this application should therefore be considered solely with regard to the material considerations that relate to the creation of a pharmacy within the store.

6.3. The applicant has submitted a detailed planning statement to justify the proposal, the key points of which are summarised below:
• Sainsbury's is committed to the implementation of the permitted scheme. This proposal seeks to include a pharmacy to meet customer expectations and to compete primarily with the offer of other large format foodstores within the catchment thereby retaining expenditure in Hamstead.
• It is not anticipated that the pharmacy will have an adverse impact on Hamstead Centre which will continue to fulfil a top-up and convenience role.
• Hamstead centre comprises approximately 40 units four of which provide convenience shopping which includes a single pharmacy on Rocky Lane.
• In considering the application of the sequential approach the applicant states that whilst the NPPF and the recent Planning Practice Guidance is clear that there is a need to demonstrate flexibility, there is no policy requirement to disaggregate a recognised business model.
• They do not consider that the pharmacy will act as a destination in its own right, rather that it will be a complementary facility that is expected by their customers.
• Their interpretation is that it is not necessary to consider sites/existing units for the pharmacy alone. Notwithstanding this, they have considered the availability of sites in Hamstead and have concluded that there are no more centrally located vacant sites that could accommodate a pharmacy. As the site for the Sainsbury’s store is in an edge of centre location, this is considered to be a sequentially preferential location for the new pharmacy.
• In terms of the test of impact on town centre vitality and viability, they comment that the foodstore will act as a catalyst for growth in Hamstead, where expenditure is currently drawn out of the catchment to the Asda stores at Queslett and Perry Barr, and at Morrisons at Holyhead Road. These stores all have pharmacies. They also have independent pharmacies within close proximity, demonstrating that the inclusion of a pharmacy within a foodstore complements rather than impacts upon existing provision.
• A pharmacy within the Sainsbury's store will provide a complimentary facility and will draw trade principally from the existing supermarkets within the catchment as opposed to impacting on existing centres.
• The existing pharmacy on Rocky Lane is well suited to the top-up function provided by the centre in that it also sells a diverse range of goods including beauty products. Those that currently use ‘in store’ pharmacies will continue to do so, whilst the pharmacy on Rocky Lane will continue to provide a local facility attracting a mixture of local and pass-by trade.

6.4. Paragraph 24 of the NPPF deals with the sequential approach. The guidance sets out that where applications for town centre uses are proposed in ‘edge of centre’ locations, it should be demonstrated that there are no sequentially preferable sites to accommodate the proposed development that are well connected to the town centre. Applicants are required to demonstrate flexibility on issues such as format and scale. The recently published Planning Practice Guidance gives more guidance on the interpretation of applying the sequential approach. It advises that with due regard to the requirement to demonstrate flexibility where the proposal would be located in an ‘edge of centre’ or ‘out of centre’ location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly. It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal. If there are no suitable sequentially preferable locations, the sequential test is passed.
6.5. The site is in an ‘edge of centre’ location. The applicant’s key point is that Sainsburys do not operate stand-alone pharmacies, and that the requirement to demonstrate ‘flexibility’ in format and scale does not mean that they there is a requirement to disaggregate the pharmacy from the rest of the foodstore.

6.6. Notwithstanding their position, it is my view that it is entirely appropriate to consider whether or not there is a more centrally located unit that could accommodate the pharmacy to demonstrate compliance or otherwise with the sequential approach. The survey they have submitted demonstrates that there are no more centrally available sites, and thus the application has demonstrated compliance with the sequential approach.

6.7. I concur with the applicant’s assessment of the impact on the vitality and viability of Hamstead centre. In my view, an in store pharmacy is likely to appeal to those who wish to obtain prescriptions and related goods whilst doing their supermarket shopping, whilst those who visit the existing pharmacy within the centre will continue to do so. Even if there was evidence that the inclusion of a pharmacy would be likely to affect the trading of the existing pharmacy, the impact of the closure of one shop could not be concluded to undermine the vitality and viability of the centre as a whole, given that there are approximately 40 units in the centre that would continue to trade providing the existing range of shops and services. For these reasons I consider that the application has appropriately demonstrated that it accords with the NPPF.

6.8. As this application to vary this existing condition results in the need for a new planning consent to be issued, I have therefore recommended the same planning conditions and terms of the completed s106 agreement as previously agreed subject to an amendment to condition 27 deleting the pharmacy restriction.

7. Conclusion

7.1. The proposed inclusion of a pharmacy within the store will accord with the relevant policies in the UDP and NPPF regarding the sequential approach and impact on existing centres and is therefore recommended for approval.

8. Recommendation

8.1. That consideration of planning application 2014/02527/PA be deferred pending the completion of a suitable deed of variation to the completed s106 legal agreement attached to planning approval 2013/01544/PA which secures the following:

   a) A financial contribution of £800,000 to be paid upon the serving of the implementation notice (index linked to construction costs from the date of the Committee resolution to the date on which payment is made) towards the delivery of industrial land within the Aston Regional Investment Site (including site remediation, access and public realm works or other purpose as may be agreed in writing) so that the land is readily available for industrial use,

   b) A financial contribution of £100,000 to be paid upon the serving of the implementation notice (index linked to construction costs from the date of the Committee resolution to the date on which payment is made) towards the provision and improvement of passenger facilities at Aston Train Station and/or Hamstead Train Station (including CCTV upgrade, passenger waiting facilities,
ticket machines, cycle storage and passenger information systems or other such improvements as may be agreed in writing),
c) A commitment to engage with the City Council and other agencies to enter into a local training and employment scheme for the construction and operation of the development to target the employment of local people

8.2 That payment of a monitoring and administration fee associated with the legal agreement of £1500 be secured,

8.3 That the Director of Legal and Democratic Services be authorised to prepare, seal and complete the appropriate agreement,

8.4 That in the event of the s106 legal agreement not being completed to the satisfaction of the Local Planning Authority on or before 9th July 2014, that planning permission be refused for the following reason:

*In the absence of any suitable planning obligation to secure a financial contribution towards the delivery of industrial land, associated improvements to Aston/Hamstead Train Station(s) and local employment provision, that the proposed development conflicts with paragraphs 4.13-4.32, and 8.50-8.54 of the adopted UDP, the guidance contained in the Loss of Industrial Land to alternative uses SPD and the NPPF.*

8.5 That in the event of the above s106 agreement being completed to the satisfaction of the Local Planning Authority on or before 9th July 2014 that favourable consideration be given to the application 2014/02527/PA subject to the conditions listed below:

1. Requires the prior submission of Palaeoenvironmental/Dendrochronological Archaeological Work
2. Requires the prior submission of a contamination remediation scheme
3. Requires the prior submission of a contaminated land verification report
4. Requires the submission of unexpected contamination details if found
5. Requires the implementation of the Flood Risk Assessment
6. Requires the prior submission of a sustainable drainage scheme
7. Prevents infiltration of surface water drainage
8. Requires the prior submission of level details
9. Requires the prior submission of sample materials
10. Requires the prior submission of hard surfacing materials
11. Requires the prior submission of boundary treatment details
12. Requires the implementation of the approved landscaping scheme.
13. Requires the prior submission of a lighting scheme
14 Requires the prior submission of details of water supplies for firefighting
15 Requires implementation of the external works prior to first opening of the store
16 Protects retained trees from removal
17 Requires the implementation of tree protection
18 Requires tree replacement within 2 years post development
19 Requires the implementation of the recommendations contained in the submitted Ecological Assessment Report
20 Requires the prior submission of an additional ecological survey
21 Requires the prior submission of a goods delivery strategy
22 Limits the noise levels for Plant and Machinery
23 Requires the prior submission of a biomass boiler scheme
24 Requires the prior submission and completion of works for the S278/TRO Agreement
25 Requires the delivery and service area prior to occupation
26 Requires the applicants to join Travelwise
27 Prevents the provision of a post office, dry cleaners, travel agents, laundrette, bank, building society, estate agents, photo processing centre, key cutting/shoe repairers or DVD/video game rental shop within the store.
28 Prevents sub-division of the store or additional mezzanine floorspace
29 Defines the permitted maximum floorspace and net internal retail area
30 Prevents the use of the car park for temporary buildings, mobile food operators or vehicle washing
31 Requires the completion of the industrial units prior to the first opening of the store.
32 Requires the scheme to be in accordance with the listed approved plans
33 Limits the approval to 3 years (Full)

Case Officer: Stuart Morgans
Figure 1: View of site frontage from south