



Late Observations Sheet  
**DEVELOPMENT CONTROL COMMITTEE**  
**08 August 2013 at 7.00 pm**

**Late Observations**

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DEVELOPMENT CONTROL COMMITTEE

8 August 2013

LATE OBSERVATION SHEET

Item 4.1 SE/13/00134/FUL Land at Station Road & Fircroft Way, Edenbridge TN8 6HQ

Corrections

- Page 25 4<sup>th</sup> paragraph down - J signs should read £ symbol.
- The Edenbridge Town Council comments should read ‘...further North **up Station Road** from Four Elms Road...’

Added comments

- It should be noted that the Coop has raised objection to the planning application. While the concerns raised have been considered in the main body of the report, they are highlighted here for ease of reference:

The scheme is likely to result in a significant adverse impact on the town centre in terms of turnover, linked trips and overall vitality and viability

The scheme would result in the loss of important B Class land recognised as such in the Council's Employment land review.

Queries raised over the retail assessment figures that have been produced.

Comments: The two reasons for objection to this scheme are the recommended reasons or refusal of the application.

The Council commissioned an independent retail assessment of the scheme to check against the submitted retail figures. This found discrepancies as detailed in the GVA report.

Page 14 para 9 – the applicant has advised that an additional unit on the land has become vacant. It is one of the B8/B2 uses and equates to 829 sqm.

- Para 64-67 – as outlined in the in the GVA report para 5.1-5.10, the assessment of sequentially has taken a flexible approach to issues such as format and scale. It has concluded that even taking a flexible approach, the scheme meets the test of sequentiality.
- The most recent draft 106 agreement is attached as Appendix 1.
- Sainsbury's have clarified that in their figures, they have made no allowance for any positive impact of the foodstore proposals either in isolation or cumulatively. They also take the Tesco figures at face value which does not imply that they agree with the assessment.

## Supplementary Information

### Late Observations

- Councillor Scholey has advised that due to a prior booked holiday, he shall not be able to attend the DCC meeting on August 8<sup>th</sup>. He has requested that the attached statements be included in late observations. His comments are attached as Appendix 2.
- An addendum has been produced to GVA's critique of the Retail Impact Assessments carried out to support the Sainsbury's and Tesco planning applications. It is attached as an Appendix 3 for members' information. This report was primarily commissioned to assess the cumulative impact of the two stores. Para 20 of the report provides GVA's estimate of this and further detail is set out in tables 1-4 of the appendices.

Impact on the town centre as a whole' means impact on retail trade in comparison and convenience goods in the town centre as a whole.

The addendum also provides estimates of the impact on the town centre excluding the Co-op and Tesco Express. Para 18 and tables 5 and 6 of the appendices set out GVA's estimate that the impact of each store individually is approx. 6% and that the cumulative impact is approx. 12%. Whilst the Sainsbury's store would be larger, GVA believe that the impact on the town centre as a whole (see above) excluding the Co-op and Tesco Express would be the same for both stores individually because the comparison goods floorspace at the Sainsbury's store will compete more directly with other large supermarkets/superstores than comparison goods in the town centre. They believe the opposite will be true of the proposed Tesco. It follows that the greater impact in the town centre forecast as a result of the Sainsbury's store is due to its more substantial forecast impact on the Co-op and Tesco Express (which make up the vast majority of existing convenience goods trade).

The original GVA report was not sufficiently clear about how the impact on the town centre as a whole (again, see above) of the Sainsbury's (26.5%) and Tesco (11.7%) proposals individually was calculated, which led to a number of the questions. A breakdown of this has now been incorporated into the addendum (tables A-F of the appendices).

- The Eden Valley Chamber of Commerce have sent in a letter to advise that following debate and presentation sabot ach proposal, they held a vote among members in which over 50% voted. The vote was 88% in favour of the Sainsbury's proposal and the remainder of the votes were split between Tesco and neither store.

They consider that Sainsbury's would bring positive benefits to Edenbridge helping to make it a destination town and increasing investment opportunities. The size and location is seen as a positive as it would retain shoppers in town. The fuels station will have a positive effect on all residents and bring down the local price of petrol. The store will bring 200 jobs to Edenbridge and offer other opportunities to local businesses during the building and completion phase. The proposal takes account of the wishes of local residents as well as local businesses. It doesn't affect any residents of the town. His type of investment sends out a strong message to other potential inward investors. Sainsbury's will settle into and support the whole community and invest in the chambers efforts to promote Edenbridge.

- Bradford Electrical, the current retail unit on site has contacted the Council to confirm that they have acquired a property in Edenbridge High Street that they can relocate to.

- The landowner of the site has sent in a letter to the Council to state that he considers permission should be granted for the Sainsbury's scheme because of its size – it would attract shoppers to stay in Edenbridge which would benefit the High Street. The store will offer an online home delivery service, includes provision of a petrol filling station, is bounded on one side by a railway line and is not close to any residential properties unlike Tesco.

The landowner has aimed to assist companies on site to relocate within Edenbridge. Two have already moved and a third is negotiating. His own company will move and a further company has moved to within 100m of the site.

The existing properties are at or very close to the end of their economic life. If permission is refused he would, in all possibility be forced to demolish the properties and the site would remain a hoarded space.

Employment numbers since he has been there have never been close to the level offered by Sainsbury's and have fallen off in recent years

- 175 additional notifications of support for Sainsbury's have been received. The additional comments raised are that:

the Sainsbury's scheme is preferable to the Tesco proposal  
Sainsbury's have involved the community at all stages of the process

- 1 additional notification of objection for Sainsbury's has been received. The points raised have already been covered in para 35 of the report.

**Item 4.2 SE/13/00935/FUL Land North West of Junction with St Johns Way, Station Road, Edenbridge TN8 6EB**

**Corrections**

- Page 51 - The Unilateral agreement has not yet been signed and as such the recommendation needs to be amended to read:

**A) Recommendation:** That the Chief Planning Officer be given delegated powers to grant planning permission subject to:

- The completion of a Unilateral Undertaking within three months of the date of this meeting.
- and subject to the following conditions:-.....[insert conditions 1-25 as detailed on pages 51-55 of the committee report]

**B) Recommendation:** In the event that the applicant does not complete the unilateral undertaking within three months, the planning application shall be refused for the following grounds:

In the absence of a completed unilateral undertaking, the proposal would have an adverse impact on highway safety, traffic flow and the vitality and viability of the town centre. As such the proposal is contrary to EN1 of the Sevenoaks Local Plan and SP9 of the Sevenoaks Core Strategy 2011.

## Supplementary Information

- Page 5 condition 24 - '...a scheme for the management of deliveries *and parking* shall be submitted...'
- Page 52 condition 8 – the condition should read 'The net retail sales floor area of the approved foodstore shall not exceed 1300 sqm. Within this approved maximum floorspace, no more than 130 sqm of the net retail sales area shall be used for the display and sale of comparison goods.'
- Page 55 condition 25 – amended to read The development hereby permitted shall be carried out in accordance with the following approved plans: 3395/P600, 3395/P300, 3395/P100, 3395/P601, 3395/P002a, 3395/P003, 3395/P201, 3395/P200, 2658/D01E and PBA drawing 28200-002-13
- Page 57 paragraph 2 – parking provision is 122 spaces. 2010 sqm at ground floor and 160 sqm at first floor
- Page 91 paragraph 124 – this should read 37% and 47%.

### Added comments

- It should be noted that the Coop has raised objection to the planning application. While the concerns raised have been considered in the main body of the report, they are highlighted here for ease of reference:

The scheme in isolation and cumulatively with the Sainsbury's application is likely to result in a significant adverse impact on Edenbridge Town centre in terms of turnover, linked trips and overall vitality and viability.

The scheme would result in the loss of important Class B land recognised as such in the Council's Employment Land Review.

Comments: An independent retail assessment has been commissioned by the Council to check against the submitted retail figures. The impact of the Tesco store in isolation has been thoroughly assessed and is considered to be acceptable and that it would not have an unacceptable impact on the vitality and viability of the town centre.

In concurrence with Coop's view, it is concluded the retail consultant and the Council that the cumulative impact of the Sainsbury's and Tesco store would be unacceptable.

While the Tesco store would result in the loss of employment land which is a policy objection to the scheme, it is considered that the benefit of the amount of job creation on the site in combination with the small level of loss of employment land weighs against it as a material planning consideration

- Para 68-70 – as outlined in the in the GVA report para 6.1-6.6, the assessment of sequentially has taken a flexible approach to issues such as format and scale. It has concluded that even taking a flexible approach, the scheme meets the test of sequentiality.

The most recent draft Unilateral Undertaking is attached at Appendix 4.

### Late Observations

- Councillor Scholey has advised that due to a prior booked holiday, he shall not be able to attend the DCC meeting on August 8<sup>th</sup>. He has requested that the attached statements be included in late observations. His comments are attached as an Appendix 5.
- An addendum has been produced to GVA's critique of the Retail Impact Assessments carried out to support the Sainsbury's and Tesco planning applications. It is attached as Appendix 3 for members' information. This report was primarily commissioned to assess the cumulative impact of the two stores. Para 20 of the report provides GVA's estimate of this and further detail is set out in tables 1-4 of the appendices.

'Impact on the town centre as a whole' means impact on trade in comparison and convenience goods in the town centre as a whole.

The addendum also provides estimates of the impact on the town centre excluding the Co-op and Tesco Express. Para 18 and tables 5 and 6 of the appendices set out GVA's estimate that the impact of each store individually is approx. 6% and that the cumulative impact is approx. 12%. Whilst the Sainsbury's store would be larger, GVA believe that the impact on the town centre as a whole (see above) excluding the Co-op and Tesco Express would be the same for both stores individually because the comparison goods floorspace at the Sainsbury's store will compete more directly with other large supermarkets/superstores than comparison goods in the town centre. They believe the opposite will be true of the proposed Tesco. It follows that the greater impact in the town centre forecast as a result of the Sainsbury's store is due to its more substantial forecast impact on the Co-op and Tesco Express (which make up the vast majority of existing convenience goods trade).

The original GVA report was not sufficiently clear about how the impact on the town centre as a whole (again, see above) of the Sainsbury's (26.5%) and Tesco (11.7%) proposals individually was calculated, which led to a number of the questions. A breakdown of this has now been incorporated into the addendum (tables A-F of the appendices).

- The Eden Valley Chamber of Commerce have sent in a letter to advise that following debate and presentation about each proposal, they held a vote among members in which over 50% voted. The vote was 88% in favour of the Sainsbury's proposal and the remainder of the votes were split between Tesco and neither store.
- 42 additional notifications of support for Tesco have been received. The points raised have already been covered in para 40 of the report.
- 94 additional notifications of objection for Tesco's have been received. The additional points raised are that:

the Sainsbury's scheme is preferable to the Tesco proposal  
the store will not attract enough shoppers to Edenbridge  
the new access would have an unacceptable impact on traffic and highway safety  
Tesco have had little interaction with residents in the town

## Supplementary Information

### Item 4.3 SE/13/00820/FUL Bamptons, 2 Crownfields, Sevenoaks TN13 1EE

It has been brought to the attention of officers that a letter from the applicant has been sent to Members of the Committee and officers wish to clarify the position on several of the points raised.

The covenant which is attached to the land has no bearing on the consideration of the planning application since it is a civil matter.

All measurements referred to in the officer's report, including those within the paragraphs referred to by the applicant, have been taken from the plans submitted and are wholly accurate. The discrepancy in relation to the height measurements appears to come about from the fact that the applicant has taken measurements from the proposed front elevation. However, officers have based their measurements on the height of the building in relation to the retained levels of the site, the height that is shown in the two side elevations.

It is acknowledged that the roof design of the proposed house is different to that of the approved building. However, these changes do nothing to reduce the increase in bulk, size and built form that the proposed house represents compared with the approved building.

1 South Park has the appearance of a single storey property from the street to the front of the plot, with a steeply pitched roof that provides further accommodation. As levels drop to the rear of the house it is acknowledged that an additional storey has been created at a lower ground floor level.

In terms of the overall design of the approved scheme, the Inspector was satisfied that all elements of it were acceptable in terms of an assessment of the potential impact on the character and appearance of the area. This included the parking area to the front of the property, bin store and cycle store.

Paragraph 41 of the officer's report simply sets out the relevant content of the Sevenoaks Residential Character Area Assessment SPD. The report goes on to explain the harm that the proposal would have due to the excessive size of the proposed dwelling and the impact compared with the approved scheme.

Officer's would argue that the most open views of the property would in fact be from the front of the site and further along Crownfields to the south where views of the site are available through the frontage of 4 Crownfields and an appreciation of the size of the house would be provided.

Finally, the information submitted in relation to the Code for Sustainable Homes is not a Code for Sustainable Homes Design Certificate, which is required by the Council to demonstrate that the development will achieve the necessary level prior to the commencement of development. However, as stated within the officer's report this is a matter that can be dealt with by way of condition.

For the reasons above, the letter provided by the applicant does not alter the overall conclusions and recommendation for refusal held within the main papers.



Item 4.4 SE/13/00481/FUL New Beacon School, Brittain's Lane, Sevenoaks TN13 2PB

Further Information

Two further letters of objection has been received (making a total of 4 separate neighbours objecting), the issues raised, namely highway safety, are addressed in the report. One letter made reference to possible traffic calming measures along Brittain's Lane and traffic reduction schemes for the school.

Given the lack of objection from KCC Highways, it is not considered that these measures are necessary.

Please see below the full text of the KCC Highway Officers response (25<sup>th</sup> June 2013)

*I am very grateful for the additional information that has been provided, demonstrating a traffic management plan within New Beacon School and for the revised access details (plan and cross section). If approved there would be three accesses to this school – one entry only, one exit only and one two way. Additional parking is also to be provided under separate approvals.*

*I would agree that there appears to be a better distribution of vehicle movements within the school and thereby reduced congestion both within the school and for Brittain's Lane with this management plan. I confirm therefore that I have no objection to these proposals with respect to highway matters.*

*The access arrangements shown on Drawing 11-006BEA-SP(60)601 rev:A are satisfactory, showing an appropriate width for entry only and the gates are suitably set back from the highway. Contrary to my previous perceptions regarding differences in gradient I no longer consider that a S278 agreement will be necessary to ensure appropriate construction details and integration with Brittain's Lane.*

*However planning permission does not convey any approval for construction of the required vehicular crossing, or any other works within the highway for which a statutory licence must be obtained. Applicants should contact Kent County Council - Highways and Transportation (web: [www.kent.gov.uk/roads\\_and\\_transport.aspx](http://www.kent.gov.uk/roads_and_transport.aspx) or telephone: 0300 333 5539) in order to obtain the necessary Application Pack.*

*I hope the above is helpful but if I can be of any further assistance, please do not hesitate to contact me.*

Officer's Recommendation

No new issues have been raised, and the Officer's recommendation remains unchanged.

Item 4.5 SE/13/00360/HOUSE Moorcroft Place, Mapleton Road, Westerham TN16 1PS

Comments from Westerham Town Council – received 1<sup>st</sup> August 2013

**WTC objects to this application** having reconsidered and re-read the supporting documents. The new documents fail to show any special circumstances that would clearly outweigh the harm to the environment. It is inappropriate to have such a high

## Supplementary Information

*security fence in a quiet rural environment that is 'beyond what is classed as normal'. There is no evidence of specific threats or police involvement which would warrant such security measures. Also members of the public who use the road verge legally, adjacent to the gates to the property, have been challenged by guards coming from within this property to do so.*

*WTC original objection stands - to quote from the Sevenoaks Countryside Assessment of the LDF 2011 Landscape Description page 100, "The Westerham and Brasted Chart is an undulating woodland landscape and within this there are occasional irregular small scale fields enclosed by the woodland". One such meadow lies in front of the house. The Town Council is opposed to the introduction of any light pollution to this environment which is an Area of Outstanding Natural Beauty and should not be confused with more suburban areas. The CCTV cameras could also be intrusive to those using the adjacent footpath and bridleway.*

*The fence constructed will obstruct wildlife, is over 2 metres, and is unsympathetic to its surroundings.*

*Councillors considered that all of these security measures are far from discreet and indeed are unacceptably intrusive and draw attention to this property in a way which has a negative impact on its surroundings.*

*In conclusion, WTC considers that the introduction of this scheme is insensitive and not in keeping with this nationally important "Historic Landscape" and should not be permitted.*

### Comments from Councillor Bracken received 5<sup>th</sup> August 2013

A statement has been submitted by Councillor Bracken who is unable to attend - this is attached as Appendix 6.

### Additional photograph received from applicant today

A photograph for Camera 6 has been submitted showing a view of trees and the fence being considered by this application.

DATED \_\_\_\_\_ 2013

- (1) JOHN SURTEES LIMITED
- (2) SAINSBURY'S SUPERMARKETS LTD
- (3) THE DISTRICT COUNCIL OF SEVENOAKS
- (4) KENT COUNTY COUNCIL

**AGREEMENT**

**relating to land at  
Station Road  
and Fircroft Way  
Edenbridge  
TN8 6HQ**

**pursuant to  
Section 106 of the  
Town and Country Planning  
Act 1990 (as amended)**

LawrenceGraham

**THIS AGREEMENT** is made the day of

2013

**BETWEEN:**

- (1) **JOHN SURTEES LIMITED** (Company Registration No. 594362) whose registered office is at 14A Station Road West Oxted Surrey RH8 9EP("the Owner")
- (2) **SAINSBURY'S SUPERMARKETS LTD** (Company Registration No 3261722) of 33 Holborn London EC1 N 2HT ("Sainsbury's")
- (3) **THE DISTRICT COUNCIL OF SEVENOAKS** of Council Offices Argyle Road Sevenoaks Kent TN13 2AU ("the Council")
- (4) **KENT COUNTY COUNCIL** of County Hall Maidstone Kent ME14 1XQ ("the County Council")

**1. WHEREAS**

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title Absolute of the Property under Title Numbers K541720 K500069 K536360 and K327589
- 1.2 Sainsbury's has the benefit of an agreement for sale in relation to the Property
- 1.3 The Planning Application for the Development of the Property was submitted to the Council and validated on 18 January 2013 and the Council has resolved to grant permission conditionally subject to conclusion of this Agreement
- 1.4 The Council considers it expedient in the interests of the proper planning of its area that the Development of the Property should be restricted or regulated in accordance with this Agreement

**2. DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

"1990 Act"	the Town and Country Planning Act 1990 (as amended) or any statutory re-enactment thereof
"the Agreement"	this planning obligation made pursuant to Section 106 of the Act
"the Application"	a planning application in respect of the Development on the Property submitted to the Council for which a resolution to grant permission has been passed conditionally under reference number 13/00134/FUL subject to completion of this Agreement
"the Development"	demolition of existing buildings and erection of a food store, along with car parking, recycling centre, servicing arrangements, junction improvement, access and landscaping. Erection of a petrol filling station
"Edenbridge Public Toilets"	the existing public toilets at Market Yard Edenbridge
"Edenbridge Public Toilets"	the sum of £40,000

Contribution"	
"Electrical Infrastructure Contribution"	the sum of £10,000 as a contribution towards electrical infrastructure in Edenbridge town centre to enable lighting and displays to be erected for town centre promotional events such as the annual Fun Day and for Christmas lights
"Implementation Date"	the date on which the first Material Operation is carried out on the Property pursuant to the Planning Permission
"Information Display Area"	an area displaying (but not limited to) tourist information, bus timetables, pedestrian/cycle routes between the store and town centre and the wider area, promotional material for local groups and businesses and advertisements relating thereto
"Local Highway Alterations Contribution"	the sum of £10,000
"Material Operation"	<p>a material operation as defined by section 56(4) of the 1990 Act in relation to the Development but disregarding any of the following:</p> <ul style="list-style-type: none"> <li>(a) demolition of existing structures on the Property</li> <li>(b) decontamination treatment of the Property</li> <li>(c) site remediation work</li> <li>(d) ground works associated with decontamination treatment of the Property and site remediation works or archaeological investigation</li> <li>(e) the erection of boundary structures or other site security or safety measures</li> <li>(f) diversion and laying of services</li> </ul>
"Motorsport Heritage Wall"	a display area recognising and celebrating the history of the Property as a base for the motorsport industry
"Off-Site Highway Works"	works to rebuild the junction of Station Road and Fircroft Way including a roundabout, signalised pedestrian crossing across Station Road, widened footways on both sides of Station Road, a lay-by for south bound buses on Station Road and changes to the footway of Fircroft Way to create access to the proposed service yard for the Development
"Opening for Trade"	the date upon which the Store is open to the public for retail trading and "Open to Trade" and "Trade" shall be interpreted accordingly

"the Parties"	means the Council the Owner and the County Council
"Plan"	the plan annexed hereto
"the Planning Permission"	planning permission granted for the Development
"the Property"	the land shown edged in red on the Plan annexed hereto save for those areas within the area edged red which are public highway
"the Secretary of State"	means the Secretary of State for Communities and Local Government or any other minister charged with performing the functions of the Secretary of State under the 1990 Act
"Shop Front Improvement Scheme Contribution"	the sum of £40,000 for the purpose of improving the appearance of shop fronts within Edenbridge town centre
"the Store"	the retail store proposed as part of the Development
"Town Council"	Edenbridge Town Council
"Town History Lecterns"	lecterns providing map based information on the heritage and history of Edenbridge, to be located at appropriate locations within Edenbridge town centre
"Town History Lecterns Contribution"	the sum of £10,000
"Training and Recruitment Plan"	a scheme for provision of skills and training incentives for colleagues within the Store including (but not limited to) (a) opportunities to gain nationally recognised qualifications at NVQ Level 2 (or equivalent) in core subjects such as maths and English, as well as in retail and (b) opportunities to be involved in apprentices at a Sainsbury's Food College in core retail skills sectors such as bakery, meat and fish and (c) opportunities to study for a Retail Technical Certificate

**3. NOW THIS DEED WITNESSETH AS FOLLOWS:-**

- 3.1 This Agreement is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of Section 106 as aforesaid and shall be enforceable by the Council as local planning authority against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute

- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation
- 3.5 It is hereby agreed between the Parties that save for the provisions of clause 8.2 hereof which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date
- 3.6 Nothing in this Agreement shall be construed as prohibiting limiting or affecting any right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted by the Council or the Secretary of State on appeal or by reference to him after the date of this Agreement and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute a Material Operation under the terms of this Agreement
- 3.7 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after it has parted with its interest in the Property or the part in respect of which such breach occurs (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest)
- 3.8 The Council hereby agrees to grant the Planning Permission on the date hereof
- 3.9 The Parties save where the context states otherwise shall include their successors in title

#### **4. SERVICE PROVISIONS**

- 4.1.1 Any notice or other written communication to be served upon or given by one party to any other under the terms of this Deed shall be deemed to have been validly served or given if transmitted by facsimile (and confirmed by transmission confirmation slip) delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing
- 4.1.2 The address for any notice or other written communication shall only be within the United Kingdom and is:
- 4.1.2.1 for the Sainsbury's at 33 Holborn London EC1N 2HT For the attention of Mr Andrew Pepler
  - 4.1.2.2 for the Owner at the address indicated at paragraph (1) above for the attention of [                    ]
  - 4.1.2.3 for the Council marked at the address indicated at paragraph (3) above for the attention of the Head of Planning
  - 4.1.2.4 for the County Council at the address indicated at paragraph (4) of this Deed
- 4.1.3 Any notice or other written communication to be given by the Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council by an officer or duly authorised signatory

#### **5. OBLIGATIONS OF THE OWNER AND SAINSBURY'S TO THE COUNCIL**

Sainsbury's and the Owner covenant with the Council s follows:

- 5.1 To use reasonable endeavours during the construction phase of the Development to employ labour and subcontractors based within the Council's administrative area and to allow such companies to tender for the work if they so wish
- 5.2 To use reasonable endeavours to ensure that recruitment for employment within the Store is targeted at those living within a 10 mile radius of the store and to give reasonable prior notice of vacancies to Edenbridge Town Council and Sevenoaks Edenbridge CXK Group and other appropriate bodies who are able to support such applicants
- PROVIDED THAT nothing within this clause 5.2 shall require the recruitment of local candidates without suitable skills for the available employment positions
- 5.3 Prior to Opening for Trade to submit a Training and Recruitment Plan to the Council for approval and thereafter to implement the terms of the approved Training and Recruitment Plan to the Council's reasonable satisfaction. In the event that the Training and Recruitment Plan is not approved by the Council to make such amendments thereto as the Council may reasonably require and re-submit the Training and Recruitment Plan as soon as reasonably practicable and such process shall continue until the Training and Recruitment Plan has been approved.
- 5.4 No part of the area within the Store to be used for the sale of comparison goods shall be used for the sale of prescription optical or pharmaceutical items, fridges, freezers, washing machines, dishwashers and ovens.
- 5.5 No part of the Store shall be used for concession space such as dry cleaners, key cutting service, shoe repairs, photographic services, opticians or post office counter services.
- 5.6 Within 21 days from the Opening for Trade the Information Display Area shall be provided within the foyer of the Store and thereafter maintained unless otherwise approved in writing with the Council.
- 5.7 Within 21 days from the Opening for Trade to install a Motorsport Heritage Wall within the Store in a location to be approved by the Council and thereafter maintained unless otherwise approved in writing by the Council
- 5.8 To procure for a period of 5 years from Opening for Trade a bus service operating on three days each week between the hours of 0930 and 1430 servicing the local area between the Store and Edenbridge town centre in accordance with a detailed route to be approved by the Council such service to operate free of charge for customers of the Store
- 5.9 Prior to Opening for Trade to pay the Town History Lecterns Contribution to the Council to be used by the Council (in association with the Town Council) for the provision of two Town History Lecterns within Edenbridge town centre
- 5.10 Prior to Opening for Trade to pay the Shop Front Improvement Scheme Contribution to the Council to be used by the Council (in association with the Town Council) for the purpose of improving the appearance of existing shop fronts within Edenbridge town centre
- 5.11 Prior to Opening for Trade to pay the Edenbridge Public Toilets Contribution to be used by the Council (in association with the Town Council) for improving the Edenbridge Public Toilets



- 5.12 Prior to Opening for Trade to pay the Electrical Infrastructure Contribution to the Council to be used (in association with the Town Council) for the purpose of providing and maintaining additional Christmas lights within Edenbridge town centre

**6. OBLIGATIONS OF THE OWNER AND SAINSBURY'S TO THE COUNTY COUNCIL**

- 6.1 Prior to Opening for Trade to procure satisfactory completion of the Off-Site Highway Improvements
- 6.2 Prior to Opening for Trade to pay the Local Highways Alterations Contribution to be used for the purpose of carrying out highway alterations within the vicinity of the Property including yellow lines and signage to mitigate against the parking impact of the Development and to install additional signage on Station Road to prevent delivery lorries travelling in the wrong direction

**7. COVENANTS BY THE COUNCIL**

The Council and County Council covenant with the Owner and Sainsbury's that upon receipt of any payments under this Agreement it will apply the principal and interest of such sums exclusively towards the purposes set out in this Agreement only **PROVIDED THAT** if the whole or any part of such sums have not been expended by the Council or County Council as the case may be for the purposes set out in this Agreement at the expiration of a period of five years from receipt in full of the payments the Council or County Council as the case may be will forthwith pay the unexpended balance together with duly apportioned interest (such interest to be calculated from the date of payment to the Council or County Council as the case may be to the date of repayment at the base rate from time to time of Lloyds TSB Bank plc) to the person who paid the relevant contribution

**8. IT IS HEREBY AGREED AND DECLARED BY THE PARTIES HERETO THAT:-**

- 8.1 This Agreement shall be registered as a Local Land Charge and registered in the Charges Register at Land Registry with office copies being provided to the council within 14 days of registration
- 8.2 Sainsbury's agree to pay the Council and County Council's reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement
- 8.3 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development or is modified (other than by agreement with or at the request of the Owner or Sainsbury's) this Agreement shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement
- 8.4 Where any consent approval or agreement is required under the terms of this Agreement such consent approval or agreement shall not be unreasonably withheld or delayed
- 8.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

**9. DISPUTE PROVISIONS**

- 9.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional

qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 9.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 8.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 9.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 9.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

**IN WITNESS** whereof the Council has caused its Common Seal to be hereunto affixed and the Owner and Sainsbury's have executed this instrument as a Deed the day and year first before written

**EXECUTED AS A DEED** by  
**JOHN SURTESS LIMITED**  
acting by a Director  
and its Secretary or by two Directors

.....  
Director

.....  
Director/Secretary

Executed as a Deed by affixing the  
common seal of **SAINSBURY'S**  
**SUPERMARKETS LTD** in the  
presence of:

.....  
Authorised Signatory

.....  
Authorised Signatory

The common seal of  
**THE DISTRICT COUNCIL OF SEVENOAKS**  
was hereunto been affixed in the  
presence of:

.....  
Head of Law

The common seal of  
**KENT COUNTY COUNCIL**  
was hereunto been affixed in the  
presence of:

.....

Authorised Signatory

**Planning Application by Sainsbury for Store on Station Road, Edenbridge****13/00134**

This is the most popular planning application I have experienced in the fourteen years since I was elected onto Edenbridge Town Council. It is very popular with the residents of the town and by the Chamber of Commerce which represents many of the retailers in Edenbridge town centre; only Tesco, the Co-op and a handful of residents think that it is wrong for Edenbridge!

By common consent, Edenbridge residents go to neighbouring towns for 50% or more of their shopping, either because the goods they require cannot be bought in Edenbridge or because the available quality or price does not meet their aspirations. The proposed Sainsbury store would be located within the town envelope, although outside the town centre, and would eliminate much of the need for residents to leave the town for their shopping.

A key question which has to be addressed is whether this proposed store would cause unacceptable damage to the town centre retailers. The report by GVA, commissioned by SDC addresses this issue. It needs to be read with care since their conclusion that the whole town centre will lose 26.5% of its turnover is misleading, it refers only to convenience and comparison goods. Only two of the 79 retail traders in Edenbridge town centre sell significant quantities of these groups of goods, namely Co-op and Tesco Express.

In the nearly forty years I have lived in Edenbridge, the town centre has changed radically. Most of the convenience and comparison stores have closed in response to competition from neighbouring town stores such as Morrison in Oxted; Sainsbury in East Grinstead, Sevenoaks, Tonbridge and Tunbridge Wells; Tesco in Sevenoaks; Waitrose in Sevenoaks and Tonbridge. Approximately 50% of this type of trade has already migrated from Edenbridge town. However the town centre has remained vibrant by attracting traders who sell a range of goods and services not readily obtained from supermarkets or the internet.

The proposed Sainsbury store would bring two benefits to Edenbridge town, albeit not the town centre. Firstly residents would have a comparison / convenience store providing the range and quality of goods they aspire to within the town envelope. Secondly a range of goods which cannot currently be purchased in the town (clothing, shoes etc) will be locally available.

There is no doubt that two town centre stores (Co-op and Tesco Express) will face effective competition for the first time in a number of years. Both Sainsbury and Tesco have calculated how much trade they intend to try to take from these two stores. However, both of the Co-op and Tesco Express stores are owned and managed by established national companies with adequate resources. If they have the will they ought to be able to compete with the new stores on a level playing field. No evidence is presented that a well-run modern town centre store the size of the Co-op, with its own ample car park, has intrinsic

## Supplementary Information

disadvantages against an edge-of-town store. Resident surveys in Edenbridge are coloured by the dissatisfaction with customer service which has been provided by the Co-op exploiting its monopoly situation (the Co-op even sold out of date produce to the Leader of SDC).

Tesco Extra is a convenience store close to the local primary school, post office, two pharmacies and the weekly market. All these generate passing trade which will not be lost to edge of town stores.

The only estimates available suggest that granting planning permission to both the Sainsbury and Tesco applications on town centre comparison and convenience stores would be the arithmetic sum of the two applications if approved alone. However this analysis assumes that both Sainsbury and Tesco will achieve their respective company averages and does not factor in the potential for the two new stores to directly compete with and impact on each other, which in reality they will do. Thus there is no evidence or reliable estimates to show that two new approved stores will have a significantly greater impact on town centre traders than Sainsbury alone.

90% of Edenbridge residents are asking the Development Control Committee to extend the shopping facilities in Edenbridge so their choices are those which are normally available in this decade. Please approve the Sainsbury planning application.

J Scholey  
31 July 2013



## Addendum to Edenbridge Foodstore Critique

### Sevenoaks District Council

#### Introduction and advice to date

1. In May 2013, GVA undertook an independent critique of the retail assessments supporting proposals by Sainsbury's and Tesco, both seeking to develop new foodstores in out of centre locations in Edenbridge.
2. Our report considered the proposals individually and highlighted various concerns relating to the technical analysis underpinning both assessments. One concern related to the estimated level of trade diversion from existing stores in Edenbridge town centre (namely the Co-op and Tesco Express) which we considered to be understated. We also highlighted a disparity over the estimated turnover of the Co-op in Edenbridge which has a subsequent bearing when judging the 'significance' of impact identified on this store and the town centre as a whole.
3. Having considered the evidence underpinning both applications and drawing on our own sensitivity analysis, our overall advice to the Council was that the impact of either store would be broadly acceptable in isolation (the Tesco more so given its smaller scale and lower turnover) subject to appropriate conditions. The outputs of our impact sensitivity testing for each store in isolation, is set out in Table 1.

**Table 1: GVA Estimated SOLUS Impact on Edenbridge Town Centre**

Edenbridge Town Centre	Sainsbury's Solus Impact (%) 2018	Tesco Solus Impact (%) 2016
Co-op	49%	21%
Tesco Express	30%	16%
Local Stores	-	2%
Town Centre 'as a whole' <sup>1</sup>	26.5%	11.7%

Source: GVA

4. Given the anticipated impact of the Sainsbury's store in isolation (which we judged to be just within the limits of acceptability), we considered the combined effect of

<sup>1</sup> Includes comparison goods turnover.

allowing both stores would lead to a significant impact on Edenbridge town centre. However, our critique did not specifically quantify the cumulative impact.

### The Applicants' Cumulative Impact Assessments

- Since completing our report, Sainsbury's have produced a cumulative impact assessment. Tesco have also undertaken a cumulative impact assessment which was included in their original retail assessment. Table 2 below sets out the results of the applicants' respective assessments.

**Table 2: Applicants' Estimated Cumulative Impact on Edenbridge (Convenience Goods)**

Edenbridge Town Centre	2018 Cumulative Impact (%)	
	Tesco's Assessment	Sainsbury's Assessment
Co-op	37%	54%
Tesco Express	47%	46%
Local Stores, Edenbridge	1%	-
Town Centre 'as a whole' <sup>2</sup>	20.5%	32.7%

Source: Table 12, Tesco Retail Assessment (March 2013) & Table A (WYG via email 10<sup>th</sup> July 2013)

- Both applicants have adopted a broad brush approach which draws on the other's trade draw analysis. Both applicants have assessed cumulative impact at 2018. As a minor criticism, neither applicant has made any adjustment to Tesco's estimated turnover to allow for growth in sales between 2016 and 2018. In addition, we note that Tesco has assumed a higher level of inflow to the Sainsbury's store (20% compared to 5% estimated by Sainsbury's). We do not consider this a realistic or justified assumption and as such consider Tesco's analysis to have far understated the potential cumulative impact of the two stores.
- It is also relevant to note that in providing a cumulative impact assessment, Sainsbury's have revised the estimated trade draw patterns associated with their proposed store (as presented in their original assessment). The revised assessment assumes an increased level of trade draw from Zone 1 (from 50% to 65%); reduces the anticipated trade draw from Zones 2-4 (from 15% to 10%); and maintains an estimated inflow of 5%.
- No commentary has been provided by Sainsbury's to explain or justify the adjustments made. However, the revised assumptions are more closely aligned with our own

<sup>2</sup> Include comparison goods turnover. Calculated by GVA using the applicants' assessments.



professional view and they go some way to addressing a number of concerns highlighted in our original report. For ease of reference Table 3 below compares Sainsbury's original impact assessment (Table 10) to the revised 'solus' figures presented in their cumulative assessment (Table A).

**Table 3: Comparison between Sainsbury's Impact Assessments in January and July 2013**

Edenbridge Town Centre	2018 Solus Impact (%)	
	Sainsbury's Assessment (Table 10, Jan 2013)	Sainsbury's Assessment (Table A, July 2013)
Co-op	35%	45%
Tesco Express	25%	31%
Local Stores, Edenbridge	-	-
Town Centre 'as a whole' <sup>3</sup>	19.6%	24.6%

Source: Table 10, Sainsbury's Retail Assessment (Jan 2013) and Table A (WYG via email 10<sup>th</sup> July 2013)

9. The revised Impact figures produced by Sainsbury's are broadly consistent with the results of our independent analysis (presented in Table 1 above). Notwithstanding some minor criticisms, we would regard Sainsbury's cumulative impact assessment (Table 2 above) as the more reliable between the two applicants.

### GVA's Independent Cumulative Impact Assessment

10. In advance of receiving Sainsbury's updated assessment, the Council instructed GVA to undertake a cumulative impact assessment. This adopted the same broad brush approach as the applicants and drew on the outputs of our critique in respect of the individual trade draw patterns associated with each store (para 5.13-5.20 of the main report).
11. The results of our cumulative analysis is broadly consistent with Sainsbury's, both identifying a cumulative impact of 46% on the Tesco Express in Edenbridge town centre. We identify a marginally greater impact of 64% on the Co-op (compared to Sainsbury's 54%). However, our analysis assumes that both the Sainsbury's and Tesco will achieve their respective company averages (i.e. 'worst case') and does not factor in the potential for the two new stores to directly compete with and impact on each other, which in reality they will do.

<sup>3</sup> Includes comparison goods turnover. Calculated by GVA using the Applicant's assessment.

12. As highlighted in our original report, there remains a degree of uncertainty over the current turnover of the Co-op, with Tesco's figures identifying a lower turnover at 2018 (£8.25) relative to Sainsbury's (£12.49). Therefore to apply the same estimated trade draw assumptions as above, to the lower turnover would imply a much greater level of impact in percentage terms (96% rather than 64%). This is the consequence of a purely arithmetic exercise which we do not consider to be a realistic reflection of the practical implications of the two stores on the Co-op. Whilst it is not possible to verify which turnover is the more accurate, as set out in paragraph 6.16 of our main report, the Tesco estimate may be understated in any event.
13. In terms of the practical implications for the Co-op store, in our experience, it is very rare for a multiple retail operator to cease trading in a location where it has a strong presence as they will generally seek to maintain representation. Multiple operators also have the benefit of using their wider portfolio to bolster stores which under trade. In the circumstances however, it is very difficult to say that the Co-op would not cease trading based on the potential losses of over half its turnover at 2018 (even on Sainsbury's figures). If the Co-op were to close, this would remove a key anchor from the town centre. This would have a negative knock-on effect for other shops and services in the town centre as a direct result of the reduced propensity for linked trips.
14. It is feasible that the Tesco Express could close in the event that Tesco's application is successful irrespective of whether the Sainsbury's is also granted planning consent or not. Our advice remains that The Council should seek to clarify Tesco's position in this respect and to establish whether they would be willing to enter into a legal contract to maintain this store for an agreed period of time (e.g. 3 years).

### **Impact on the Town Centre 'as a whole'**

15. The above commentary focuses solely on the convenience turnover of existing stores and does not consider the impact on the town centre 'as a whole', i.e. also having regard to the comparison goods turnover of the town centre and the proposed stores.
16. On the basis that Tesco propose only a small element of comparison floorspace (130 sqm net) they have not undertaken a detailed impact assessment for comparison goods and their household survey did not ask any questions about comparison shopping patterns. We can therefore only rely on Sainsbury's evidence which estimates the comparison turnover of the town centre is £14.1m at 2018.
17. In broad terms, it is estimated that the proposed stores would each divert approximately £0.85m comparison goods trade from the town centre at 2018. This

reflects the difference in scope to compete on a like-for-like basis and divert comparison trade from foodstores in the wider area, the Tesco being more limited in this respect.

18. The combined effect of both stores therefore equates to a total comparison goods trade draw of £1.7m from the town centre. Without taking into account the convenience turnover of the Co-op and Tesco Express, this would equate to a cumulative impact of c.12% (which compares to a solus impact of approximately 6% of each store, associated with the £0.85m trade draw set out above). The difference between the two sets of evidence in this instance is minimal due to the fact that the turnover of the Co-op is the main point of difference.
19. The figures excluding the Co-op and Tesco Express have been provided at the request of the Council. However, it is important to acknowledge that these stores are the main convenience anchors in the town centre and perform an impact role in contributing to its overall vitality and viability (as noted by the Sainsbury's survey evidence). As we have previously highlighted in our main report, any material impact on these stores and a consequent reduction in the propensity for linked trips is not favourable and a substantial reduction will lead to a significant impact on the town centre as a whole.
20. If we also take into account the estimated convenience turnover of the town centre post-development, this equates to an overall **cumulative impact of between 37% - 43% on the town centre as a whole** which we consider would be regarded as significant. Again the reason for the difference in impact in percentage terms arises from the differing turnover estimates between Sainsbury's and Tesco's survey evidence - Sainsbury's evidence again being the more optimistic. As highlighted above, it is also relevant to note that the majority of trade diversion from the town centre is attributed to the Sainsbury's store (£7.8m) whereas the trade draw associated with the Tesco is more limited (£3m).

### Conclusion

21. This supplementary analysis reinforces the view that the cumulative impact of two stores on Edenbridge town centre will be significant in retail planning terms. In light of the above and given the uncertainty over the turnover of the Co-op and the potential significant impact on this store alone (and its potential closure as a result), we would not recommend approving both proposals, but we recognise that the Council should take into account all relevant material considerations in reaching its decision on both applications.



## GVA Tesco and Sainsbury's Impact Assessment Critique

### Impact on the Town Centre as a whole

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#### Sainsbury's

**Table A: Convenience Goods Turnover and Estimated Trade Draw**

Store	Estimated Turnover (£m)	Trade Draw (£m)
Co-op	£12.49	£6.18
Tesco Express	£2.57	£0.77
Local Stores	£0.31	-
<b>Total</b>	<b>£15.37</b>	<b>£6.95</b>

**Table B: Comparison Goods Turnover and Estimated Trade Draw**

	Estimated Turnover (£m)	Trade Draw (£m)
Edenbridge town centre	£14.10	£0.85

**Table C: Total Trade Draw - Impact on the town centre as a whole**

	Estimated Turnover (£m)	Trade Draw (£m)
Convenience Goods	£15.37	£6.95
Comparison Goods	£14.10	£0.85
<b>Total</b>	<b>£29.47</b>	<b>£7.8</b>
<b>Impact on Town Centre</b>	-	<b>26.5%</b>

**Tesco****Table D: Convenience Goods Turnover and Estimated Trade Draw**

Store	Estimated Turnover (£m)	Trade Draw (£m)
Co-op	£8.05	£1.70
Tesco Express	£2.52	£0.39
Local Stores	£0.46	£0.01
<b>Total</b>	<b>£11.03</b>	<b>£2.10</b>

**Table E: Comparison Goods Turnover and Estimated Trade Draw**

	Estimated Turnover (£m)	Trade Draw (£m)
Edenbridge town centre	£14.10	£0.85

**Table F: Total Trade Draw - Impact on the town centre as a whole**

	Estimated Turnover (£m)	Trade Draw (£m)
Convenience Goods	£11.03	£2.10
Comparison Goods	£14.10	£0.85
<b>Total</b>	<b>£25.13</b>	<b>£2.95</b>
<b>Impact on Town Centre</b>		<b>11.7%</b>

# Supplementary Information

Table 1: Cumulative Impact Assessment based on Tesco's Survey Evidence

Convenience Goods	2018 Turnover Pre-Development	Tesco Trade Draw (\$m)	Sainsbury's Trade Draw (\$m)	2018 Turnover Post-Development (\$m)	Cumulative Impact (Note A) (%)
Co-op, Edenbridge	£8.25	£1.76	£6.18	£0.31	-96.2%
Tesco Express, Edenbridge	£2.58	£0.40	£0.77	£1.41	-45.3%
Local Stores, Edenbridge	£0.47	£0.01	£0.00	£0.46	-2.1%
Morrisons, Oxted	£24.12	£5.23	£5.46	£13.43	-44.3%
Other Stores within the catchment	£18.33	£0.62	£1.13	£16.58	-9.5%
Sainsbury's, Sevenoaks	£3.96	£1.56	£1.46	£0.94	-76.3%
Tesco, Riverhead	£4.67	£1.46	£1.43	£1.78	-61.9%
Sainsbury's East Grinstead	£6.22	£1.95	£2.99	£1.28	-79.4%
Waltrose, East Grinstead	£2.24	£0.35	£1.44	£0.45	-79.9%
Other stores outside the catchment	£19.94	£1.43	£1.68	£16.83	-15.6%
Internet/delivery	£3.44	-	£0.82	£2.62	-23.8%
<b>TOTAL</b>	<b>£94.22</b>	<b>£14.77</b>	<b>£23.36</b>	<b>£56.09</b>	

Note A: It is acknowledged that whilst the impact on certain stores beyond Edenbridge may appear high in percentage terms, we accept that this reflects the fact that the household survey has not captured the full turnover of those stores. In reality, taking into account the full turnover of these stores, we would expect the impact to be substantially less.

Table 2: Cumulative Impact Assessment based on Sainsbury's Survey Evidence

Convenience Goods	2018 Turnover Pre-Development	Sainsbury's Trade Draw (£m)	Tesco Trade Draw (£m)	2018 Turnover Post-Development (£m)	Cumulative Impact (Note A) (%)
Co-op, Edenbridge	£12.49	£6.18	£1.76	£4.55	-63.6%
Tesco Express, Edenbridge	£2.57	£0.77	£0.40	£1.40	-45.5%
Local Stores, Edenbridge	£0.31	£0.00	£0.01	£0.30	-3.2%
Morrisons, Oxted	£27.87	£5.46	£5.23	£17.18	-38.4%
Waitrose, Oxted	£6.98	£0.55	-	£6.43	-7.9%
Aldi, East Grinstead	£7.27	£0.37	-	£6.90	-5.1%
Sainsbury's East Grinstead	£25.57	£2.99	£1.95	£20.63	-19.3%
Waitrose, East Grinstead	£5.88	£1.44	£0.35	£4.09	-30.4%
Sainsbury's, Sevenoaks	£3.96	£1.46	£1.56	£0.94	-76.3%
Tesco, Riverhead	£6.95	£1.43	£1.46	£4.06	-41.6%
Waitrose, Sevenoaks	£1.62	£0.00	-	£1.62	0.0%
Co-op Westerham	£2.21	£0.11	-	£2.10	-5.0%
Others in survey area	£13.43	£0.10	£0.62	£12.71	-5.4%
Others beyond survey area	£20.15	£1.68	£1.43	£17.04	-15.4%
Internet	£5.85	£0.62	-	£5.03	-14.0%
<b>TOTAL</b>	<b>£143.11</b>	<b>£23.36</b>	<b>£14.77</b>	<b>£104.98</b>	

Note A: It is acknowledged that whilst the impact on certain stores beyond Edenbridge may appear high in percentage terms, we accept that this reflects the fact that the household survey has not captured the full turnover of these stores. In reality, taking into account the full turnover of these stores, we would expect the impact to be substantially less.

**Table 3: Cumulative Impact Assessment based on Tesco's Survey Evidence**

Edenbridge Town Centre	2018 Turnover Pre-Development	Sainsbury's Trade Draw (\$m)	Tesco Trade Draw (\$m)	2018 Turnover Post-Development	Impact (%)
1. Comparison Goods	14.10	0.85	0.85	12.40	-12.06%
2. Convenience Goods (including Co-op and Tesco Express)	11.30	6.95	2.17	2.18	-80.71%
<b>Town Centre as a whole (i.e. 1 + 2)</b>	<b>25.40</b>	<b>7.8</b>	<b>3.02</b>	<b>14.58</b>	<b>-42.60%</b>

**Table 5: Cumulative Impact Assessment based on Sainsbury's Survey Evidence**

Edenbridge Town Centre	2018 Turnover Pre-Development	Sainsbury's Trade Draw (\$m)	Tesco Trade Draw (\$m)	2018 Turnover Post-Development	Impact (%)
1. Comparison Goods	14.10	0.85	0.85	12.40	-12.06%
2. Convenience Goods (excluding Co-op and Tesco Express)	0.47	0.01	0	0.46	-2.13%
<b>Town Centre as a whole (i.e. 1 + 2)</b>	<b>14.57</b>	<b>0.86</b>	<b>0.85</b>	<b>12.86</b>	<b>-11.74%</b>

**Table 4: Cumulative Impact Assessment based on Sainsbury's Survey Evidence**

Edenbridge Town Centre	2018 Turnover Pre-Development	Sainsbury's Trade Draw (\$m)	Tesco Trade Draw (\$m)	2018 Turnover Post-Development	Impact (%)
1. Comparison Goods	14.10	0.85	0.85	12.40	-12.06%
2. Convenience Goods (including Co-op and Tesco Express)	15.37	6.95	2.17	6.25	-59.34%
<b>Town Centre as a whole (i.e. 1 + 2)</b>	<b>29.47</b>	<b>7.8</b>	<b>3.02</b>	<b>18.65</b>	<b>-36.72%</b>

**Table 6: Cumulative Impact Assessment based on Tesco's Survey Evidence**

Edenbridge Town Centre	2018 Turnover Pre-Development	Sainsbury's Trade Draw (\$m)	Tesco Trade Draw (\$m)	2018 Turnover Post-Development	Impact (%)
1. Comparison Goods	14.10	0.85	0.85	12.40	-12.06%
2. Convenience Goods (excluding Co-op and Tesco Express)	0.31	0	0.01	0.30	-3.23%
<b>Town Centre as a whole (i.e. 1 + 2)</b>	<b>14.41</b>	<b>0.85</b>	<b>0.86</b>	<b>12.70</b>	<b>-11.87%</b>



Dated \_\_\_\_\_ 2013

**STEED INVESTMENTS LIMITED**

and

**TESCO STORES LIMITED**

and

**COOPER ESTATES LIMITED**

and

**FI-GLASS LIMITED**

and

**LLOYDS TSB BANK PLC**

and

**SEVENOAKS DISTRICT COUNCIL**

and

**KENT COUNTY COUNCIL**

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**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER SECTION 106 OF THE TOWN  
AND COUNTRY PLANNING ACT 1990**

relating to land at Station Road Edenbridge

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**KEYSTONE LAW**

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This Deed is dated \_\_\_\_\_ 2013

- (1) **Steed Investments Limited** incorporated and registered in Jersey with company number 110078 whose registered office is at 95-97 Halkett Place St Helier Jersey JE1 1BX (the **Developer**); and
- (2) **Tesco Stores Limited** (company no 519500) whose registered office is at Tesco House Delamare Road Cheshunt Herts EN8 9SL (the **Tenant**); and
- (3) **Cooper Estates Limited** incorporated and registered in England and Wales company number 282612 whose registered office is at Claremont House 65c Main Road Longfield Kent DA3 7QT (the **First Owner**); and
- (4) **Fi-Glass Limited** incorporated and registered in England and Wales company number 657003 whose registered office is at Beech House Hophurst Hill Crawley Down West Sussex RH10 4LN (the **Second Owner**); and
- (5) **Lloyds TSB Bank PLC** incorporated and registered in England and Wales with company number 2065 of No:9292 Securities Operational Service Centre, PO Box 6000 125 Colmore Row Birmingham B3 3SF (the **Mortgagee**); and
- (6) **Sevenoaks District Council** of Council Offices, Argyle Road, Sevenoaks, Kent TN13 1HG (the **Council**); and
- (7) **Kent County Council** of Invicta House, County Hall, Maidstone, Kent ME14 1XX (the **County Council**).

#### Background

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) The County Council is the highway authority for the area in which the Property is situated for the purposes of the Highways Act 1980 and a local planning authority for the purposes of Section 106 of the Act.
- (C) The First Owner is the freehold owner of part of the Property registered with title numbers K832160, K354745 and K94544.
- (D) The Second Owner is the freehold owner of the Property registered with title numbers K791739, K248519, K135878 and K605545 and in the case of title numbers K791739, K248519 and K135878 subject to a mortgage in favour of the Mortgagee dated 20 July 2000.
- (E) The Developer has made the Planning Application and is proposing to carry out the Development.
- (F) The Developer intends to develop the Property pursuant to the Planning Permission and has entered into a sale contracts conditional on Planning Permission with the First Owner and the Second Owner.
- (G) The Developer has entered into an agreement for lease conditional on Planning Permission with Tenant who is the tenant in occupation of the Existing Store under a lease dated the 28<sup>th</sup> July 2005.
- (H) Pursuant to the Planning Application the First Owner, the Second Owner, the Tenant and the Developer give this undertaking to the Council and the County Council to perform or procure the performance of the obligations set out in this Deed.

# Supplementary Information

## Agreed terms

### 1 Definitions and interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Deed:

<b>Base Rate</b>	the base rate from time to time of National Westminster Bank plc.
<b>Use Class A1</b>	Class A1 (Shops) defined in the Town and Country Planning (Use Classes) Order 1987 (as amended).
<b>Commencement</b>	<p>the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations:</p> <ul style="list-style-type: none"><li>• demolition works;</li><li>• site clearance;</li><li>• ground investigations;</li><li>• site survey works;</li><li>• temporary access construction works;</li><li>• archaeological investigation; and</li><li>• erection of any fences and hoardings around the Property.</li></ul>
<b>Contributions</b>	together the Town Centre Contribution and the Highways Contribution.
<b>Councils</b>	together the Council and the County Council.
<b>Default Interest Rate</b>	4% per annum above the Base Rate.
<b>Development</b>	the development of the Property described in the Planning Application.
<b>Existing Store</b>	the existing Tesco Express store at 39-41 High Street Edenbridge TN8 5AD.
<b>Excluded uses</b>	the use of the New Store (or part of it) as a pharmacy, post office, bank, opticians, dry cleaners, hair or beauty salon or coffee shop.
<b>Highways Contribution</b>	The sum of £10,000 towards the County Council's costs for the provision of double yellow line waiting restrictions, the creation of a new bus stop and other highway works as are approved by the Developer and the Tenant (acting reasonably) in the vicinity of the Development.

<b>Index Linked</b>	increased in accordance with the following formula:  Amount payable = the Contribution x (A/B) where:  A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.  B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this Deed.
<b>New Store</b>	the foodstore to be constructed as part of the Development.
<b>Opening Date</b>	the date the New Store opens for the sale of goods to the public in accordance with Use Class A1.
<b>Owners</b>	together the First Owner and the Second Owner.
<b>Plan</b>	the plan attached to this Deed.
<b>Property</b>	the freehold land at shown edged red on the Plan and registered at HM Land Registry with absolute title under title numbers K791739, K248519, K135878, K605545, K832160, K354745 and K94544.
<b>Planning Application</b>	an application for planning permission registered by the Council on 27 March 2013 under reference number 13/00935/FUL.
<b>Planning Permission</b>	the planning permission to be granted by the Council or the Secretary of State on appeal in respect of the Planning Application.
<b>Secretary of State</b>	the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any planning appeal.
<b>TCPA 1990</b>	Town and Country Planning Act 1990.
<b>Town Centre Contribution</b>	the sum of £40,000 towards the costs of the Council in promoting initiatives to preserve and enhance existing commercial activity in the retail areas of Edenbridge and its environs so as to ameliorate the impact of the Development.
<b>Working Day</b>	a day (other than a Saturday, Sunday or public holiday in England when banks in London are open for business).

1.2. Clause headings shall not affect the interpretation of this Deed.

1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## Supplementary Information

- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Councils the successors to its respective statutory functions.
- 1.8. A reference to a statute or statutory provision is a reference to it as it is in force at the date of this Deed; provided that, as between the parties, no such amendment, extension or re-enactment shall apply to the deed to the extent that it would impose any new or extended obligation, liability or restriction, on, or otherwise adversely affect the rights of, any party.
- 1.9. A reference to a statute or statutory provision shall include any subordinate legislation made as at the date of this Deed under that statute or statutory provision.
- 1.10. References to clauses and plans are to the clauses and plans of this Deed.
- 1.11. An obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.13. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

### **2 Statutory provisions**

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in clause 3 of this Deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owners, the Tenant and the Developer with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.
- 2.3 This Deed shall come into effect on the date of the Planning Permission.
- 2.4 The obligations contained in clause 3 of this Deed are enforceable by the Councils in accordance with section 106 of the TCPA 1990 from the date of Commencement.

### **3 Covenants with the Councils**

- 3.1 The Owners and the Tenant covenant with the Councils in the terms set out in Part 1 of the Schedule.
- 3.2 The Owners and the Developer covenant with the Council in the terms set out in Part 2 of the Schedule.
- 3.3 The Tenant covenants with the Council in the terms set out in Part 3 of the Schedule.

- 3.4 The Tenant and the Developer shall indemnify and keep indemnified the Owners indemnified against all contributions, liabilities, proceedings, costs, claims, demands and expenses for any losses, claims and demands resulting from any breach of this Deed by the Tenant or the Developer respectively.

**4. Indexation of Contributions**

- 4.1. The Contributions shall be Index Linked.
- 4.2. Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Councils shall advise the Tenant and the Developer in writing.

**5. Mortgagee's consent**

- 5.1. The Mortgagee consents to the completion of this Deed and declares that its interest in the part of the Property registered with title numbers K791739, K248519 and K135878 shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the relevant part of the Property.
- 5.2. The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of any part of the Property.

**6. Release**

No person shall be liable for any breach of an obligation, restriction or covenant contained in this Deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest.

**7. Determination of Deed**

- 7.1. This Deed shall be determined and have no further effect if the Planning Permission:
- 7.1.1. expires before the date of Commencement;
- 7.1.2. is varied or revoked other than at the request of the Owners, the Tenant or the Developer; or
- 7.1.3. is quashed following a successful legal challenge.

**8. Local land charge**

This Deed is a local land charge and shall be registered as such by the Council.

**9. Interest on late payment**

If the Town Centre Contribution has not been paid to the Council or the Highways Contribution has not been paid to the County Council prior to or on the Opening Date, the Tenant shall pay interest on such part of the Contributions as remain unpaid for the period from the due date to and including the date of payment at the Default Interest Rate.

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### 10. Councils' costs

The Developer shall pay to the Councils on the date of this Deed the Councils' reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, completion and registration of this Deed.

### 11. Notices

11.1. Any notice or other communication required to be given under this Deed shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded/special delivery or by commercial courier, to any person required to receive the notice or communication at its address set out in this Deed or as otherwise specified by the relevant person by notice in writing to each other person.

11.2. Any notice or other communication shall be deemed to have been duly received:

11.2.1. if delivered personally, when left at the address and for the contact referred to in this clause;

11.2.2. if sent by pre-paid first class post or recorded/special delivery, at 9.00 am on the second Working Day after posting; or

11.2.3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

### 12. Third party rights

No person other than a party to this undertaking, and their respective successors and permitted assigns, and the Councils and the successors to their respective statutory functions shall have any rights to enforce any term of this Deed.

### 13. Severance

13.1. If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.

13.2. If any invalid, unenforceable or illegal provision of this Deed would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

### 14. Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



**Schedule**

**Part 1**

The Owner and the Tenant covenant with the Councils in the following terms:

**1 The Contributions**

- 1.1 to pay the Town Centre Contribution to the Council on or before the Opening Date; and
- 1.2 to pay the Highways Contribution to the County Council on or before the Opening Date; and
- 1.3 to give at least 10 Working Days written notice to the Councils of the Opening Date.

**2 Excluded Uses**

Not to use the Development for any of the Excluded uses.

**3 Employment Partnership**

- 3.1 3 months prior to the Opening Date the Tenant shall submit for the Council's approval details of a bespoke employment partnership between the Tenant, the Council, Edenbridge Town Council and Job Centre Plus for the recruitment of staff at the New Store. The objective of the partnership is to secure local employment and that a proportion of jobs are for the long term unemployed.
- 3.2 For so long as Tesco Stores Limited (or any related company) is the tenant or occupier of the New Store to operate the bespoke employment partnership in accordance with the details as they are approved from time to time under paragraph 3.1.

**Part 2**

The Owner and the Developer covenant with the Council to procure that its appointed building contractors take reasonable steps to engage workers and sub-contractors from job centres and companies located within the administrative district of Sevenoaks when reasonably possible and practicable having regard to the building programme and the Developer's obligations under the agreement for lease with the Tenant.

**Part 3**

The Tenant covenants with the Council in the following terms:

- 1.1. for at least 3 years from the Opening Date to continue to operate the Existing Store or to procure (in the case of assignment or underletting) that it continues to operate for the sale of goods to the public within Use Class A1 save where prevented by force majeure or by a competent authority or by law; and
- 1.2. (in the event of an assignment or sub-letting) to assign or sub-let the Existing Store only to an assignee or sub-tenant whose identity is notified to the Council and who covenants to operate the Existing Store for Use Class A1 uses only for at least 3 years from the Opening Date.



**Planning Application by Tesco for Food store on Station Road, Edenbridge**

13/00935

This application is for a food store which Tesco have stated is what Edenbridge needs. It would be built on a site which is allocated for employment use in the Local Plan. There is an extant planning approval to operate a warehouse on part of the site. However a number of sites in this area of allocated employment land are already used for retail purposes (e.g. Bradfords, EasiStore, Jaques, Champions, On The Run, Whitmores). Therefore changing this site to retail would not be out of character with the area.

The proposal would undoubtedly provide much needed competition with the existing provisions in Edenbridge which many residents find unsatisfactory. However it is for a modest size store so it will not attract too much trade from the town centre. Because of this it would not attract the many of the Edenbridge residents who go to neighbouring towns for their shopping. By common consent 50% of goods (by value) used by Edenbridge households are purchased from outside the town.

Thus this application is a missed opportunity. Also it will compete and take trade from itself in the town centre's Tesco Express. This generates the risk that the town centre store will be closed in due course. Although it is possible to insist on a condition that Tesco keep the town centre store operating for say three years, there can be no certainty beyond this period, nor that Tesco would permit a competitor to take over the building.

Although this proposal had risks, it appeared to be acceptable until Tesco presented its revised application with the customer car park entry and exit onto St Johns Way which would lead to loss of amenity to residents of the St Johns Road estate which local residents and I think is unacceptable.

The proposed entry of customers' cars into the food store will cause problems for residents of this estate at busy times. After turning off Station road via a roundabout, customers will have to turn right across the route of residents leaving the estate only 1.5 car lengths from the roundabout. There is no provision of a central refuge for customers to move into and wait for a gap in the on-coming traffic; they will have to block the route onto the housing estate. Kent Highways are satisfied that this is not a safety hazard, but it undoubtedly damages the amenity of those who live in the houses immediately opposite and those whose only entry and exit route is along St Johns Way.

Overall, the risk of losing a food store in the town centre combined with the damage to the amenities of those living on the St Johns Way estates and the failure of the Tesco development to address the expressed aspirations of residents to purchase improved ranges and qualities of goods in the town make this application very second rate compared with the Sainsbury proposal, and in my opinion render it unsuitable for approval. However if the Committee believe that despite these issues that this application should be approved, there

ought to be an additional condition. The design of the roundabout should be aesthetically improved and a refuge for drivers waiting to turn right into the store included.

J Scholey  
31 July 2013

Dear colleagues

Members will recall that Westerham Town Council and I spoke against approving this retrospective planning application on the grounds that:

- The applicant failed to provide incontrovertible evidence of “very special circumstances” which “clearly outweigh” the harm to the Green Belt as a result of the erection of the CCTV cameras and fencing
- The cameras will introduce on the privacy of local residents using public rights of way (contrary to policy EN1) and cause light pollution (contrary to NPPF)
- It is clear from the additional information submitted by the applicant that the cameras do rotate, their recording angles will be controlled by the applicant, and it is therefore highly likely that the cameras may intrude on the privacy of residents (at the applicant’s sole discretion)
- Most importantly, the applicant has failed again to demonstrate “very special circumstances” justifying what the applicant concedes are “security measures...beyond what would be classed as normal” (Officer’s Report para 6)
- The only argument that the applicant can muster is a spurious syllogism which goes like this:
  - Wealthy people who attract publicity are subject to increased threat of crime
  - The applicant is wealthy and “the family” attracts publicity
  - *Therefore* the applicant is vulnerable to criminal elements
- Not one shred of evidence—***an actual and credible threat***-- is offered to support this argument for *this particular applicant*—in fact, the best the applicant can do is cite an instance of journalist surrounding the outskirts of the property on public land where they have a legitimate right to be
- I urge you to decline to approve this application on the grounds that no such “very special circumstances” have been shown to justify these extraordinary security measures which by definition harm the Green Belt

Cllr Elaine Bracken, Local Member, Westerham and Crockham Hill

