

Merton Council

Planning Applications Committee

10 December 2020

Supplementary agenda – Urgent Item

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Planning Applications Committee

10th December 2020

Supplementary Planning Agenda

Item 15:

**Ref 19/P2387 - Tesco Site - Land at Burlington Road New Malden KT3
(West Barnes Ward)**

Officers have discussed the purpose of the report with the Chair of the Planning Applications Committee

The report addresses issues arising from the Council's reasons for refusal and which, were they to be pursued, would likely expose the Council to costs being sought by the appellant.

The report is presented as an urgent item and for Information purposes only

Reasons for Urgency: The Chair has agreed to the submission of this report as a matter of urgency given this is the earliest opportunity the matter can be brought before members by officers and given the timing of the commencement of the Public Inquiry on 8th December 2020.

SUPPLEMENTARY AGENDA

PLANNING APPLICATIONS COMMITTEE

10TH December 2020

	<u>APPLICATION NO.</u>	<u>DATE VALID</u>
	19/P2387	12/07/2019
Address/Site:	Tesco Site, 265 Burlington Road and 300 Beverley Way, New Malden, Surrey, KT3 4NE	
Ward:	West Barnes	

Proposal: DEMOLITION OF THE EXISTING BUILDINGS AT 265 BURLINGTON ROAD AND 300 BEVERLEY WAY AND ERECTION OF TWO BLOCKS OF DEVELOPMENT RANGING IN HEIGHT BETWEEN SEVEN AND 15 STOREYS AND COMPRISING 456 NEW HOMES, OF WHICH 114 WILL BE ONE BEDS, 290 WILL BE TWO BEDS AND 52 WILL BE THREE BEDS. 499SQM OF B1(A) OFFICE SPACE WILL BE ACCOMMODATED AT GROUND FLOOR LEVEL ALONG WITH 220 CAR PARKING SPACES, 830 CYCLE PARKING SPACES, A REALIGNED JUNCTION ONTO BURLINGTON ROAD, HARD AND SOFT LANDSCAPING AND ASSOCIATED RESIDENTIAL FACILITIES. THE APPLICATION ALSO INCLUDES MINOR CHANGES TO THE LAYOUT AND CONFIGURATION OF THE RETAINED TESCO CAR PARK

Contact Officer: Jonathan Lewis (020 8545 3287)

RECOMMENDATION

That the report and its conclusions be noted by members of the Planning Application Committee.

1. INTRODUCTION

- 1.1 This report presents to members, for information purposes only, an examination of an element of one of the two “reasons for refusal” which on the advice of the Council’s appointed traffic consultant is no longer being pursued at appeal given the likely risk to exposure to an application for costs by the appellants.
- 1.2 The report is being presented to members at the first available meeting of the Council’s Planning Applications Committee since proofs of evidence were exchanged in advance of the Public Inquiry that starts on 8th December.

2. Planning History/background.

2.1 On 13th February this year, the Planning Applications Committee considered an application for a major mixed use housing led development. A link to the report is below:

<https://democracy.merton.gov.uk/documents/s31143/Report%20-%20Tesco%20Site.pdf>

2.2 Members resolved to advise the Mayor of London that Merton Council was minded to refuse the application contrary to the Planning officer's recommendation. Member concerns focused on traffic, parking, and elements of design including bulk and massing.

A link to the minutes is below:

<https://democracy.merton.gov.uk/mgAi.aspx?ID=14087>

2.3 The "reasons for refusal" were as follows:

Townscape and visual impact.

Notwithstanding the metropolitan planning objective of optimising housing potential, as set out in policy 3.4 of the London Plan, the proposals by reason of their size, massing and bulk, would result in an overdevelopment of the site that would be overly dominant and unduly prominent, failing to relate positively and appropriately to local character to the detriment of the visual amenities of the area and failing to deliver a housing development of the highest quality in relation to its context. The proposals would be contrary to policies 3.5, 7.4 and 7.6 of the London Plan (2015), policy CS.14 of the Merton Core Planning Strategy (2011), and policy DM.D2 of the Merton Sites and Policies Plan (2014)

And

Transport and Parking

The proposals by reason of the number of units proposed, the location of the main vehicle access coupled with the prevailing intermittent road congestion arising from the operation of the nearby level crossing, and in the absence of a controlled parking zone or other additional parking controls operating locally, would be likely to:

(a) Exacerbate potential for congestion, already prevalent in the vicinity of the application site and at the nearby junction of West Barnes Lane and Burlington Road, precipitated by the level crossing that results in significant queuing, impacting on the road and various junctions and more so at the existing egress to the site, leading to a harmful impact on the overall environment including safety and the efficient operation of the highway network within the vicinity of the appeal site. The proposals would contribute towards a motorised vehicle dominant environment which diminishes the quality of environment for pedestrians and cyclists and does not encourage sustainable modes of movement;

- (b) Exacerbate pressure on kerbside parking locally to the detriment of the amenities of existing residents, as a controlled parking zone or other additional parking controls operating locally, could not be implemented unilaterally by the Council as Traffic Authority on the basis of a S106 undertaking, any such proposal being subject to consultation processes and Cabinet member approval and thus any outcome cannot be pre-judged; and

The proposals would be contrary to policies 6.3 and 6.10 of the London Plan (2016), Policies CS18 and CS20 of the Merton Core Planning Strategy (2011), and policy DM.T2 of the Merton Sites and Policies Plan (2014).

- 2.4 While the Council notified the Mayor of the resolution of the Planning Applications Committee, an appeal was lodged by the applicant against non-determination as, until such time as the Mayor of London issued his decision as to whether or not to support the Council's decision, the application remained undetermined.

3. Transport reason for refusal - First part.

- 3.1 The transport related reason for refusal for this planning application is split into two parts. The first part focuses on the potential of the scheme to exacerbate congestion issues, whilst the second part focuses on the potential of the scheme to exacerbate pressure on kerbside parking within the local area. Commentary below relates to the first part - the potential for the scheme to exacerbate congestion issues.
- 3.2 The original Transport Assessment submitted as part of the planning application used a combination of transport data from comparable developments sites, coupled with Census 2011 Journey to Work modal split data, in order to calculate the overall net increase in vehicle movements to and from the site. It is important to note the reference to 'a net increase' in vehicle movements, as the Transport Assessment process enables the traffic generation potential of the extant use of the site to be factored in to this assessment process. This work resulted in a calculated net increase in 59 two way vehicle trips in the AM peak and 39 two way vehicle trips in the PM peak. These figures were included in the Planning Applications Committee Report of February 2020.
- 3.3 As part of the appellant's Transport Proof of Evidence, submitted in November 2020, the appellant has put forward an alternative traffic assessment methodology for the extant and proposed uses for the site. This methodology removes the use of Census 2011 Journey to Work data and relies on the site survey data from the comparable development sites used in the original Transport Assessment. The appellant sets out an alternative approach to looking at impacts on the site's junction with Burlington Road, which forms part of the first draft reason for refusal.

The revised assessment approach results in a net increase in 22 two way vehicle trips in the AM peak and 14 two way vehicle trips in the PM peak.

- 3.4 The Council's Transport Consultant who has been employed to support the appeal has reviewed the alternative assessment approach put forward by the appellant and considers the revised methodology to be sound. On this basis, given the extent of the reduction in anticipated vehicle trips based on the revised method, it is no longer considered that a technical case can be maintained as part of the appeal for this element of the transport reason for refusal. Therefore, the Council's Transport Consultant has recommended that the traffic component of the reason for refusal (part (a) above) can no longer be defended on technical grounds at the Public Inquiry.
- 3.5 Officers can confirm that the advice provided by the transport consultant has been the subject of proper examination including on-line meetings and is considered to be sound.

4. Implications and consequences of advice from transport consultant.

- 4.1 Late withdrawal of a reason for refusal or the submission of new information can raise issues of one or other party at an Inquiry seeking to recoup costs on the grounds of unreasonable behaviour that has led to costs being unnecessarily incurred. Detailed guidance on the topic of claims for costs may found via the following link: [Claim planning appeal costs - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- 4.2 Pursuing a ground for refusal where evidence is based on increasingly historic data, in this case the 2011 census, in the knowledge that more robust and up to date data has been presented by the appellant significantly weakens the Council's case.
- 4.3 The Council may in effect find itself in a position where its professional witness concedes that the traffic ground for refusal cannot be effectively defended thereby exposing the Council to a claim for costs by the appellant.
- 4.4 The matter of costs arising from pursuing the first part of the traffic and transport "reason for refusal" has been reviewed jointly by planning officers, the traffic consultant and the Council's appointed counsel for the Inquiry. The first part of the traffic and transport reason for refusal is not to be pursued at the inquiry and counsel is supportive of this position.

- 4.5 The matter of costs is also relevant to the revised trip assessment approach tabled by the appellant in their proof of evidence given the advanced stage in preparation for the Inquiry.
- 4.6 In order to address these matters before the start of the Inquiry, officers have met with the appellant's team including their planning advisor and traffic consultant with the developer, Redrow Homes, also in attendance. This has provided an opportunity for both parties to revisit the scope of transport matters to be scrutinised at the Inquiry in advance of its commencement. The two key outcomes from the meeting are:
- 1). The transport reason for refusal has been amended accordingly. To ensure the smooth process of the public inquiry the text of an amended "reason for refusal" has been forwarded to the Planning Inspector.
 - 2). It has been agreed between the Council and Appellant that neither side will be making an application for costs in relation to this issue as both parties have worked "collaboratively and in good faith".
- 4.7 The amended text for the reason for refusal is shown below with the deleted text scored through.

The proposals by reason of the number of units proposed, ~~the location of the main vehicle access coupled with the prevailing intermittent road congestion arising from the operation of the nearby level crossing, and in the absence of a controlled parking zone or other additional parking controls operating locally, would be likely to:~~

- ~~Exacerbate potential for congestion, already prevalent in the vicinity of the application site and at the nearby junction of West Barnes Lane and Burlington Road, precipitated by the level crossing that results in significant queuing, impacting on the road and various junctions and more so at the existing egress to the site, leading to a harmful impact on the overall environment including safety and the efficient operation of the highway network within the vicinity of the appeal site. The proposals would contribute towards a motorised vehicle dominant environment which diminishes the quality of environment for pedestrians and cyclists and does not encourage sustainable modes of movement; —~~

- Exacerbate pressure on kerbside parking locally to the detriment of the amenities of existing residents, as a controlled parking zone or other additional parking controls operating locally, could not be implemented unilaterally by the Council as Traffic Authority on the basis of a S106 undertaking, any such proposal being subject to consultation processes and Cabinet member approval and thus any outcome cannot be pre-judged; and

The proposals would be contrary to policies 6.3 and 6.10 of the London Plan (2016), policies CS18 and CS20 of the Merton Core Planning Strategy (2011), and policy DM.T2 of the Merton Sites and Policies Plan (2014).

5. Summary and Conclusion.

- 5.1 Council officers in consultation with its appointed transport expert witness have responded promptly and proactively to new traffic assessment data presented by the appellant following the exchange of proofs of evidence.
- 5.2 Advice from the Council's expert witness on transport matters has led officers to conclude that the first part of its transport and parking "reason for refusal" is severely weakened to the extent that it could expose the Council to an application for costs if pursued at the Inquiry and should not be pursued. The officers' position is supported by Merton's appointed counsel for the inquiry.
- 5.3 The Inquiry is proceeding on the basis of the Council continuing to defend robustly its position with regards to the second part of the transport reason for refusal. There are no changes to the design grounds for refusal and which its design expert witness is defending.
- 5.4 It has been agreed between the Council and Appellant that neither side will be making an application for costs in relation to this issue

RECOMMENDATION.

That the report and its conclusions be noted by members of the Planning Application Committee.

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