

AGENDA ITEM NO.7

PLANNING COMMITTEE

Date **29 AUGUST 2012**

Title **SUPPLEMENTARY REPORT – PLANNING APPLICATIONS F/YR11/0482/F, F/YR11/0895/O & F/YR11/0930/F.**

1. PURPOSE

The purpose of this report is to update Members in relation to the current food store planning applications located on Eastrea Road, Whittlesey and to also consider the content and conclusions of a report prepared by Roger Tym and Partners on behalf of the District Council which assesses the delivery prospects of a food store approved at Station Road, Whittlesey under planning application reference F/YR09/0582/O. The conclusions reached in the report form part of the consideration for the determination of applications F/YR11/0482/F, F/YR11/0895/O & F/YR11/0930/F.

This supplementary report also considers the contractual position between Tesco Stores Ltd and Harrier Developments Ltd in the delivery of a Tesco store either at the Station Road site or Eastrea Road. This matter also has relevance to the determination of the food store planning applications.

Submissions by third parties concerning the above matters and highway issues relating to the Station Road site are also considered.

2. KEY ISSUES

- Relationship of the Station Road food store consent to the current Eastrea Road applications.
- Content and conclusions reached by Roger Tym & Partners in their report: 'Foodstore Scheme at Station Road, Whittlesey – Commercial Assessment of Delivery Prospects'.
- Contractual position between Tesco Stores Ltd and Harrier Developments Ltd.
- Highway matters relating to the consented Station Road food store.
- Summary of responses received from members of the public.
- Impact of planning decisions.

3. RECOMMENDATION(S)

To consider the content of this report in relation to the recommendations set down within the attached Planning Application update reports.

Wards Affected	Whittlesey
Report Originator	Graham Nourse (Head of Planning) Ian Hunt (Chief Solicitor)
Contact Officer(s)	Graham Nourse (Head of Planning) Ian Hunt (Chief Solicitor)
Background Paper(s)	Planning Application reports ref F/YR11/0482/F, F/YR11/0895/O & F/YR11/0930/F.

This summary has been provided to give Members an overview of the links between the two planning applications for food stores on Eastrea Road. The report summarises the key issues which require detailed consideration of both sites and, therefore, is here to supplement the detailed site specific reports.

This report must be read in conjunction with the site specific reports.

1. INTRODUCTION

- 1.1 As Members are aware applications F/YR11/0482/F, F/YR11/0895/O & F/YR11/0930/F were deferred at the meeting of 9 May 2012 to enable an assessment to be undertaken on the commercial viability of the consented Station Road site (F/YR09/0582/O) should an approval for a supermarket be granted on Eastrea Road.
- 1.2 Roger Tym & Partners were instructed to prepare the report on behalf of the District Council and their conclusions are considered below (see report attached as Appendix A).
- 1.3 Issues raised during the Committee of 9 May 2012 included reference to the contractual position between Tesco Stores and Harrier Developments Ltd. Harrier has provided evidence to the Council of the current contractual arrangements between Tesco and Harrier. This evidence has been assessed by the Chief Solicitor and is considered below (see assessment by the Chief Solicitor at Appendix B).
- 1.4 Reference was also made at the previous Committee to highway issues relating to Station Road and in particular the impact of the railway crossing in terms of traffic movements. Traffic impact assessments have been received from Vectos Transport Planning Specialists on behalf of Sainsbury and by the Michael Thomas Consultancy submitted on behalf of Harrier Developments Ltd.
- 1.5 These matters are considered below and an assessment provided as to what weight should be given to the issues raised, in considering the final decisions for the current applications.

2. CONSIDERATIONS

- 2.1 In determining the two food store applications a key issue is the extant consent of a food store located at Station Road, Whittlesey. Harrier Developments Ltd, the applicant for current application ref F/YR11/0482/F, was also the applicant for the Station Road consent and have indicated that should their application on Eastrea Road be granted then they would agree to the Station Road consent not being implemented. This is on the understanding that the granting and implementation of two out of town food stores for Whittlesey would harm the vitality and viability of Whittlesey town centre – a fact confirmed by the Council's retail consultants Roger Tym and Partners in their initial report.
- 2.2 A key concern raised by members at the previous Committee was the issue of the deliverability of a food store at Station Road, taking into account its location and the nature of the existing highway network – the railway crossing on Station Road was identified as a key constraint. Roger Tym & Partners (RTP) were subsequently instructed to consider the commercial deliverability of the site taking these constraints into account.
- 2.3 In completing their report RTP considered the existing market overview for food store demand/development, an analysis of the current trading position and strategy of new store development for the main food store operators and the baseline viability of developing the site for the various food store operators. Consideration was also given to the impact of the level crossing and reference made to the contractual position between Harrier and Tesco.

- 2.4 RTP conclude that taken in isolation (i.e. discounting the possible alternative schemes on Eastrea Road) then the Station Road site would be viable for the top four food store operators which would include Tesco and Sainsbury. RTP note that if a store similar in size to the proposed Tesco or Sainsbury were to be developed on Eastrea Road then it is unlikely that a smaller format store would be developed by one of the other top four operators as they would want to compete on a like-for-like basis. A smaller format store operated by one of top four operators is also unlikely in their view to be viable.
- 2.5 RTP further conclude that other operators, i.e. Aldi and Lidl, would only wish to occupy part of the unit – once S106 contributions, Highway and other construction outlay is taken into account the scheme is likely to be unviable to other foodstore operators.
- 2.6 RTP also note that the Station Road site is made less attractive due to the location of the level crossing. They also query the contractual position between Tesco and Harrier. However, it must be noted that at the time of the RTP report they had only received assurances of the position from Harrier and Tesco they did not have the benefit of the Chief Solicitor's summary.
- 2.7 The RTP findings are matters for consideration when assessing whether the Station Road site remains a viable site should an Eastrea Road site be developed. However, it must be caveated that there is no guarantee that development of the Station Road site would not happen. RTP do acknowledge that a smaller operator, such as Lidl, may still be interested in part of the site and RTPs previous retail assessment of the proposed Sainsbury store does acknowledge that development of the Station Road site for Tesco remains a possibility. It is acknowledged that the RTP commercial assessment may be a fair reflection of the current overall national marketplace for food store development but does not in itself determine whether or not a food store would be developed on Station Road if an Eastrea store is approved as this will also be determined by individual contractual commitments and internal operator commercial considerations.
- 2.8 Further correspondence has been received from Contour Planning Services, acting on behalf of Harrier Developments, who take issue with some of the conclusions reached by RTP but consider that the conclusions reached by RTP in terms of the viability of Station Road are of no relevance given Tesco's contractual commitment to open a foodstore in the town (this matter is considered below). Contour suggest that to approve the Sainsbury scheme would lead to the development of two out of town food stores taking into account the extant consent at Station Road – this would be to the detriment of the town centre. Contour stress that planning decisions should be based on current local and national planning policy rather than choices between different retailers.
- 2.9 Moving now to the current contractual arrangements between Harrier Developments Ltd and Tesco stores in relation to development of a Tesco store either at Station Road or Eastrea Road. Since the previous Planning Committee, Harrier has provided further contractual evidence, now considered by the Chief Solicitor (see Appendix B).
- 2.10 In recent correspondence with the Council, Harrier have confirmed that Tesco initially contracted with them to provide a Tesco store at Station Road but as an alternative have also agreed to occupy the Eastrea Road site if permission is granted. Harrier confirms that they are in full control of the delivery of both sites, including the timescales for development. They confirm that Tesco Stores are under contract to proceed with the lease for the store at either site.
- 2.11 The Chief Solicitor has been provided with a copy of the legal agreement between the two parties. He summarises the contents of the legal agreement as follows:

- The Agreement provides an obligation on Harrier to seek planning permission for a suitable food store at Eastrea Road.
- In the event that alternative planning cannot be obtained for a suitable food store at Eastrea Road, then the existing planning consent at Station Road is defined as acceptable by both Harrier and Tesco.
- Harrier is obliged to construct the store either at Eastrea Road or in the event planning permission is not obtained at Station Road.
- Tesco is obliged to take a lease of the completed store; such lease to be for 25 years.

2.12 Officers consider the contractual position between Harrier and Tesco to be sound. There is a clear requirement for Harrier to provide a Tesco store at Station Road should the Eastrea Road application be refused. This is, therefore, a material factor in the determination of these applications, particularly when considering the viability of the Station Road site.

2.13 With regard to other matters relating to the Station Road site as noted above, Vectos have submitted an assessment of the Station Road level crossing on behalf of Sainsbury. They conclude that customers would be deterred from travelling to the foodstore site on Station Road for various reasons including the unreliability of travel due to the regular shutting of the level crossing, queuing and delays caused by the level crossing – this may deter people from visiting the Station Road site. Although acknowledging that the impact of the level crossing on a foodstore is a matter of judgment and circumstance, Vectos conclude that in isolation the Station Road site is constrained and some customers will not use it, in the event that an alternative store is constructed elsewhere Vectos conclude that trade to Station Road would be minimal.

2.14 The Michael Thomas Consultancy (MTC), on behalf of Harrier Developments Ltd, has provided a detailed assessment of the impact of the level crossing in response to the Vectos report. They have considered the peak operating hours for a foodstore at Station Road as being the Saturday mid-day peak period and the weekday PM peak period. They conclude that there is a 63.2% chance that a customer would not be stopped during those times and a 32.6% chance that a customer would be stopped on one journey only with a 4.2% chance of being stopped in both directions based on the survey data they gathered.

2.15 MTC note that customers stopped at the Saturday PM peak period have an average time delay of 2 minutes 11 seconds, which MTC do not consider a significant delay. Almost two thirds of customers would experience no delay at all over the return trip, whilst on average the delay is 27 seconds per trip. During the weekday PM peak period the average time delay is 2 minutes 10 seconds, which MTC do not consider a significant delay. They summarise these findings by noting that the average time delay imposed on customers to the Station Road site during peak times is 27 seconds for Saturday peak and 42 seconds for weekday PM peak periods, which they consider is not a significant constraint that will act as a deterrent to potential food store customers.

2.16 MTC note that compared with existing constraints on the A605, the level crossing on Station Road does not represent a significant increase in delay for customers to the Station Road site. MTC strongly disagree with the conclusions reached by Vectos.

2.17 It is perhaps not surprising that MTC and Vectos take an opposing view in relation to the level crossing but it is important for the Committee to take their views into consideration. For information CCC Highways did not raise objection to the Station Road scheme (F/YR09/0582/O) due to the presence of the level crossing.

2.18 As Members are aware there has been considerable public interest shown in these applications. To summarise a total of 750 letters were received in support of the Harrier

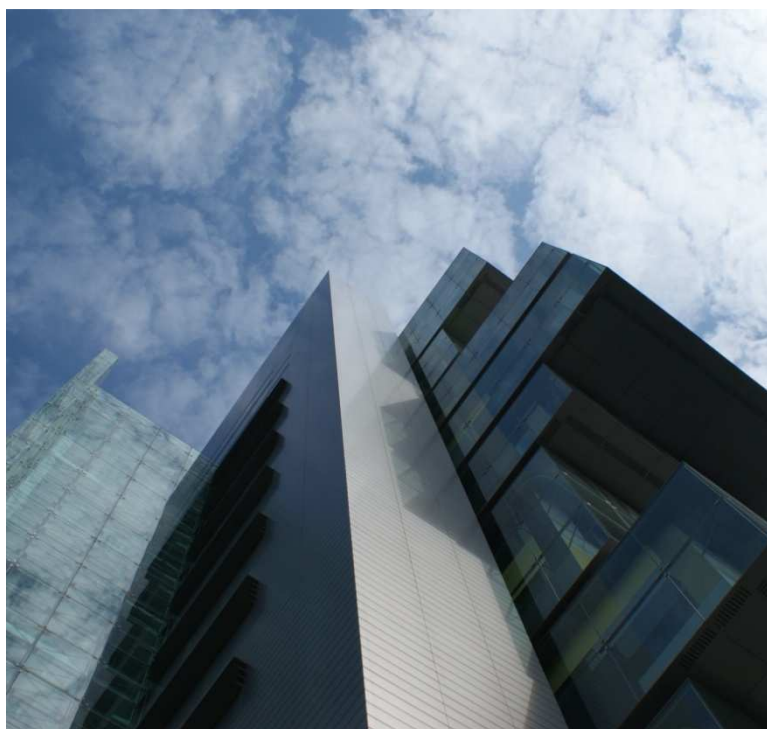
application (F/YR11/0482/F) with 16 objections received. A total of 262 letters have been received for the Sainsbury scheme (F/YR11/0930/F) with 7 letters of objection received.

3. CONCLUSIONS

- 3.1 Clearly the issues relating to the determination of the foodstore applications are complex and have generated a number of competing opinions from all parties involved in the applications. A significant key concern for officers throughout this process is the potential impact on the vitality and viability of the town centre. Based on previous RTP assessments on behalf of the Council it is accepted that Whittlesey can accommodate only one out of town store. An additional out of town store would harm the town centre and the existing food store offer within the town centre.
- 3.2 In assessing the matters discussed in the main body of this report the conclusion made within the RTP report that the Station Road would be less commercially viable should a foodstore on Eastrea Road be developed is quite clear. However, as noted this assumption does not guarantee that an alternative foodstore provider would not develop the Station Road site should an Eastrea Road site be developed. The contractual position between Tesco and Harrier is accepted as sound and in the event that the Harrier scheme on Eastrea Road is refused then it is highly likely that a Tesco store will be developed on Station Road. The issue concerning the impact of the level crossing on trade is unlikely to be a deterrent to this process.
- 3.3 Based on these facts, if the Sainsbury application (F/YR11/0930/F) is approved and the Harrier application (F/YR11/0482/F) is refused then with two consented developments there is a strong chance that two out of town stores will be constructed. In officers opinion this will significantly harm the vitality and viability of Whittlesey town centre. This is also considered to be the case should both the current Sainsburys and Tesco applications be approved.
- 3.4 Notwithstanding this fact it remains officers opinion that the Harrier site represents the most appropriate site for a foodstore taking into account issues of sustainability and current local and national planning policies. These are the primary reasons why officers consider this site to be the most appropriate location for a foodstore. Approval of this site does provide the additional benefit of enabling the Station Road consent not to be developed (as agreed by Harrier Developments).
- 3.5 In conclusion taking all of the above matters into consideration it is recommended that application F/YR11/0482/F is granted and applications F/YR11/0930/F & F/YR11/0895/O be refused as set down in the attached reports.

Fenland District Council

Foodstore Scheme at Station Road, Whittlesey – Commercial Assessment of Delivery Prospects



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The above table is to be completed in draft reports only to show the progress for ISO purposes

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1 SCOPE OF WORK AND BACKGROUND

Scope of Work

- 1.1 Roger Tym & Partners has been instructed by Fenland District Council to assess the likelihood of the existing permission for a foodstore scheme at Station Road, Whittlesey being implemented if permission is granted for a new larger foodstore at Eastrea Road, also in Whittlesey.

Existing Consent – Station Road

- 1.2 In June 2010, the District Council granted permission for a new foodstore at Station Road in Whittlesey with 3,304 sq.m (36,000 sq.ft) of gross floorspace and 2,272 sq.m (24,500 sq.ft) of sales area floorspace. The total site area is 2.78ha (6.9 acres). There is no condition in the consent to prohibit sub-dividing the unit or creating concessions. The application was submitted by Harrier Developments Ltd (HDL), and it is widely known publicly that Tesco is HDL's preferred operator for the site. There is an access restriction to the site due to the presence of a level crossing.

Sainsbury's Submitted Application – Eastrea Road

- 1.3 Sainsbury's has submitted an application in relation to a site on Eastrea Road (LPA ref. F/YR11/0930/F). Full planning permission is sought for a new foodstore with a petrol filling station and car parking. The store would comprise 5,184 sq.m (55,801 sq.ft) of gross internal floorspace with a sales area of 3,066 sq.m (33,000 sq.ft). Some 76 per cent of the sales area floorspace would be used for convenience retail goods with the remaining 24 per cent being used for comparison goods. It should be noted that the quantum of sales area floorspace proposed by Sainsbury's is one third greater than HDL's consented scheme at Station Road.

Tesco's Submitted Application – Eastrea Road

- 1.4 Despite HDL already having the ability to develop a foodstore in the town at Station Road. HDL is instead proposing to develop a site at Eastrea Road, adjacent to the Sainsbury's application site. HDL clearly considers that the Eastrea Road site is a more favourable proposition than the Station Road site as it does not have access restriction by way of a level crossing. The Eastrea Road site is subject to a live planning application (reference F/YR11/0482/F). The proposed store would have a gross internal area of 4,238 sq.m (45,617 sq.ft) and 2,460 sq.m (26,480 sq.ft) of sales area floorspace, of which 1,855 sq.m (20,000 sq.ft) would be for the sale of convenience retail goods and 605 sq.m (6,500 sq.ft) would be used for comparison retail goods.

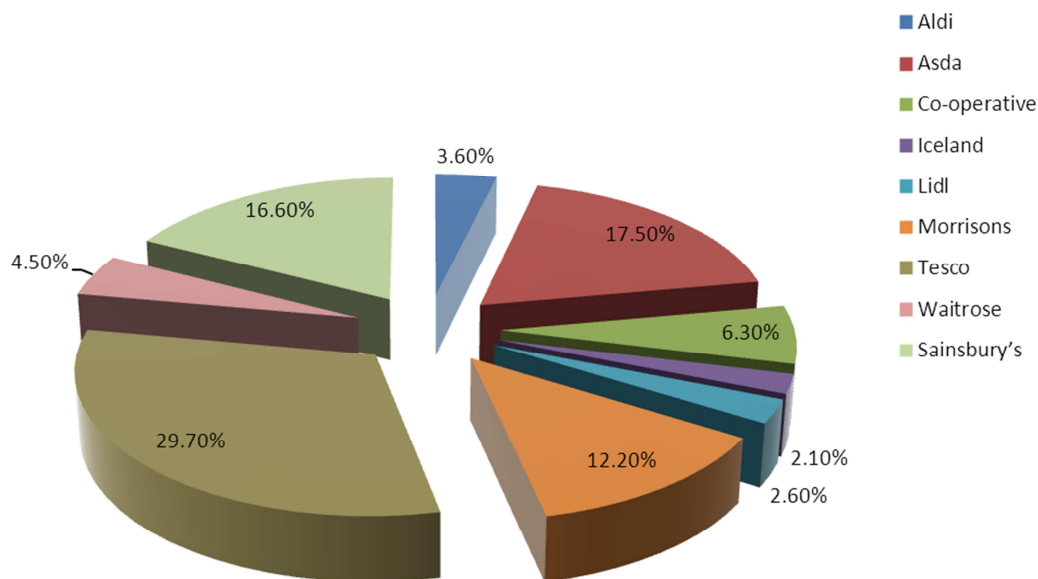
Our Approach

- 1.5 To assess the likelihood of a foodstore scheme being implemented at the Station Road site, we have undertaken the following work:
- brief assessment of the grocery market;
 - assessment of the top nine operators' current trading position and their requirements for new stores;
 - viability assessment of Station Road in isolation of any foodstore scheme at Eastrea Road;
 - telephone consultations with developers and agents active in the foodstore sector;
 - assessment of whether any of the nine operators would be interested in operating a foodstore at the Station Road site if a foodstore scheme came forward at Eastrea Road;
 - assessment of the impact of the level crossing on the attractiveness of the Station Road site to foodstore operators; and
 - evaluation of a letter from HDL's legal advisor (dated 15 June 2012) which outlines the contractual relationship between Tesco and HDL.

2 MARKET OVERVIEW

- 2.1 Despite the economic downturn the grocery market has been very resilient; it has seen growth where other aspects of the retail sector has seen contraction. Many foodstore operators have taken advantage of the gap created in the market, by the collapse of speculative development following the ‘credit crunch’ in 2007/08, and they have used this opportunity to increase expansion activity. Foodstore floorspace in the pipeline has grown by 57 per cent since September 2007¹.
- 2.2 However, proposed foodstore development is not all rosy as some major operators are reporting disappointing non-food sales growth at the very large store end. In light of this, some operators are scaling back their development programmes for major hypermarket developments.
- 2.3 Tesco is the largest foodstore operator in the UK by market share, followed by Asda and then Sainsbury’s. However, the latter two have a significantly smaller market share in comparison to Tesco. This is shown in Figure 2.1.

Figure 2.1 Market Share of the UK’s Nine Largest Foodstore Operators



Source: Kantar Worldpanel data for the 12 weeks to 19 February 2012

- 2.4 The grocery market is very competitive and there is a strong desire from all operators to increase market share. To increase market share, foodstore operators will:
- heavily discount items to invite existing customer to spend more, and attract new customers;
 - increase product lines, including food and non-food items; and
 - open new stores.

¹ CBRE Market View – Grocery Outlets in the Pipeline, July 2012

- 2.5 With consumer budgets tightening in recent years, foodstore operators' strategies to increase market share have focused on heavily discounting goods and opening new stores. In the following section of our report, we provide an analysis of the trading and acquisition strategies for the top nine foodstore operators, in order to quantify their current desire to continue opening stores.

3 ANALYSIS OF OPERATORS' CURRENT TRADING POSITION AND NEW STORE STRATEGY

Tesco

- 3.1 Tesco, the largest foodstore operator in the UK, by market share, has experienced significant growth over the last 20 years through an aggressive expansion programme. As part of the expansion programme Tesco has created bigger stores (hyper-markets) which have allowed it to venture into non-food sales through clothing, electrical, homewares and so on. In addition to the in-store service Tesco also offers home-delivery services and financial services.
- 3.2 After years of sustained success Tesco this year issued its first profit warning for 20 years after suffering poor sales performance over the crucial Christmas and New Year period. In a response to this, the company announced it was scaling back openings of big stores and store extensions. Tesco's current focus is on opening smaller stores and rolling out a heavy investment programme at existing stores to improve the performance of the company's existing portfolio.
- 3.3 Tesco is currently well represented in the area surrounding Whittlesey. with approximately 26,000 sq.m (279,000 sq.ft)² of floorspace over four stores within the area, the largest store being the very large Tesco Extra at Peterborough Serpentine.

Table 3.1 Tesco's Representation to Whittlesey

Location	Store Format	Size
Peterborough City Centre	Metro	3,478 sq.m (37,440 sq.ft)
Peterborough Serpentine	Extra	12,000 sq.m (130,000 sq.ft)
Peterborough Stanground	Express	367 sq.m (4,000 sq.ft)
Ramsey	Superstore	3,632 sq.m (39,000 sq.ft)
March	Superstore	6,400 (69,000 sq ft)

Sainsbury's

- 3.4 Where Tesco has recently struggled slightly, Sainsbury's in contrast appears to be performing well. In its recent financial statement³ Sainsbury's states that its market share is at its highest level for nearly a decade, with underlying operating profit up 6.9 per cent. An important element of developing the company's business is, however, through non-food

² Please note that all existing floorspace specified in this report has been sourced from the Valuation Office Agency website.

³ J Sainsbury Plc – Annual Report and Financial Statements 2012.

activities such as banking, pharmacy and energy. Notwithstanding this, expanding the food element is still core to the growth of the business.

- 3.5 Sainsbury's states that around 25 per cent of the population is not within a 15 minute drive of one of its stores. Sainsbury's strategy to grow space has three elements; convenience stores, extensions and new supermarkets. As Sainsbury's is under-represented in the North, the West, Wales, Scotland and Northern Ireland, these areas represent the company's focus on new store openings.
- 3.6 Sainsbury's has approximately 9,700 sq.m (104,500 sq.ft) less floorspace in the Whittlesey area than Tesco, with has an approximate total of 16,250 sq.m (175,000 sq.ft) of floorspace over three stores.

Table 3.2 Sainsbury's Representation in the Whittlesey Area

Location	Store Format	Size
Oxney Road – North East of Peterborough City Centre	Superstore	6,555 sq.m (70,500 sq.ft)
Flaxlands Bretton Centre – North West of Peterborough town centre	Superstore	6,692 sq.m (72,000 sq.ft)
Mill View, March – located East of Whittlesey	Superstore	3,000 sq.m (32,000 sq.ft)

Aldi

- 3.7 Aldi currently has two stores in Peterborough, namely a foodstore in Stanground on Whittlesey Road and another store to the north in Flaxland. The foodstore on Whittlesey Road is approximately 1,512 sq.m (16,275 sq.ft).
- 3.8 According to Aldi's website the firm has an active investment and development programme. Aldi is always looking for sites with a catchment population in excess of 10,000, their general site requirements are:
- preference to purchase freehold, town centre or edge of centre sites suitable for development (min. 0.8 acres); and
 - will consider: leasing new or existing space on retail parks, purchasing or leasing space within district centres, and existing retail premises.
- 3.9 Through telephone consultation Aldi detailed its operational requirements as follows:
- standard 1,400 sq.m (15,000 sq.ft) store format (but no bigger);
 - ground floor only;
 - space for 80 car parking spaces;
 - catchment population of 40,000 persons; and
 - town centre or close to town centre with main road frontage.

Asda

- 3.10 Asda's recent financial statement⁴ indicates that the company has been performing well, with like for like sales over the Christmas period up 1.0 per cent and retail data for the 12 weeks to January 2012 showing market out-performance of sales growth at the fastest rate of the top four supermarket operators.
- 3.11 Asda acquired the discount foodstore chain Netto, in May 2010, which has enabled Asda to increase its portfolio of small stores by 170 units.
- 3.12 In 2012 Asda's focus for investment will be in new or expanding its distribution centres as well as opening 25 new stores.
- 3.13 Asda currently has a superstore in Peterborough at the West Rivergate Centre, of approximately 6,450 sq.m (70,000 sq.ft). In addition, Asda is planning to open up a 3,440 sq.m (37,000 sq.ft) store later this year at the Brotherhood Shopping Park, which will sell only non-food goods.

Co-Operative Food

- 3.14 Co-Operative Food has grown significantly over the last few years, helped by its acquisition of the former Somerfield. The company's statistics show that about 60 per cent of the population shops in their stores. The Co-Operative is very well represented in the Peterborough area, with five stores and one store in Whittlesey itself. The Co-Operative store in Whittlesey is the former Somerfield building which is approximately 1,054 sq.m (11,345 sq.ft).
- 3.15 The Co-Operative has an on-going acquisition programme, with 32 new stores opened last year. The firm's current requirements are:
- 186 sq.m to 1,672 sq.m (2,000sq.ft to 18,000 sq.ft) sales area floorspace;
 - town centre or close to town centre with main road frontage;
 - new developments or walk-in opportunities;
 - leaseholds or freeholds; and
 - high streets and local community locations preferred.

Iceland

- 3.16 Following a recent management buy-out, The Iceland Group has been performing well with net profit before tax increasing to 18.5 per cent and 18 new stores opening⁵. In the light of this strong financial performance Iceland has on-going requirements for new stores. However, the majority of the company's new store openings have been through conversion of existing vacant units, for example, Iceland has acquired 51 former Woolworths stores since 2009.

⁴ Asda financial performance 2011

⁵ Iceland Foods Group Limited results for the 53 weeks ended 30 March 2012.

3.17 Iceland is currently represented in the area through three foodstores in Peterborough, with small foodstores ranging in size from 777 to 909 sq.m (8,360 to 9,784 sq.ft).

Lidl

3.18 Lidl is currently represented in Peterborough with a single store of 1,302 sq.m (14,000 sq.ft), off Westford Road to the north of the town.

3.19 According to Lidl's website the company is looking to expand its store network, with its requirements listed as:

- prominent sites in town, district, edge of centre or out of town locations;
- ideally main road frontage with easy access and strong pedestrian or traffic flow;
- freehold, leasehold or long leasehold opportunities;
- unit sizes flexible on design and scale between 743 to 1,765 sq.m (8,000 to 19,000 sq.ft), and
- 0.8 acres plus for stand alone units or up to 4 acres for mixed use scheme developments by Lidl in conjunction with or acting as a developer.

3.20 Telephone consultation with Lidl's property team indicates that the firm is ideally looking for stores with a gross external area of 1,580 sq.m (17,000 sq.ft), with a trading area of 1,022 sq.m (11,000 sq.ft). A store with consent for 2,272 sq.m (25,000 sq.ft) would therefore require sub-division.

Morrisons

3.21 Morrisons is actively looking for new stores as the company continues its expansion programme. In its recent trading statement⁶ Morrisons stated that there are 6.6m households which do not have a Morrisons store in close proximity. The firm's three year expansion programme to 2013/14 is for 185,800 sq.m (2.5 million sq.ft) of new floorspace.

3.22 Morrisons' property requirements are:

- development sites or existing buildings suitable for conversion;
- store size gross internal area 2,323 to 7,250 sq.m (25,000 to 78,000 sq.ft);
- customer car parking;
- freehold or leasehold; and
- all locations considered with or without planning permission.

3.23 A telephone consultation with the company's South East acquisition manager revealed that:

- Morrisons opened a foodstore with 2,044 sq.m (22,000 sq.ft) of sales area floorspace approximately 8 months ago in Stanground;
- any new store in Whittlesey will have an impact on the existing Morrisons store as it currently captures commuters from the Fens coming out of Peterborough;

⁶ Annual Report and Financial Statements 2011/2012

- Morrisons is unlikely to be interested in occupying the 2,323 sq.m (25,000 sq.ft) store on Station Road in the light of the competition and the fact Morrisons has recently opened up a store nearby, and
- the smaller store will be less of a draw, on a trade for trade basis, against competition from a store at Eastrea Road.

Waitrose

- 3.24 Waitrose, part of the John Lewis Partnership, is planning to nearly double its current number of stores within five years as part of its ambitious expansion plans. It hopes to increase its branches to 250 by the end of this year, with an additional 40 stores a year between 2011 and 2015, three-quarters of which will be convenience stores.
- 3.25 Waitrose's general store requirements are for units ranging from 279 to 650 sq.m (3,000 to 7,000 sq.ft) located within busy affluent areas. Waitrose currently has a large store in Peterborough of 3,198 sq.m (34,400 sq.ft).

4 BASELINE VIABILITY ANALYSIS OF STATION ROAD SITE FOR FOODSTORE USE

Approach and Assumptions

- 4.1 In our approach for the baseline viability analysis we have considered the Station Road site in isolation and have not taken into account the impact of permission being granted for another foodstore at Eastrea Road. We have taken this approach, solely within this section of the report, as the appraisals used in the viability analysis use market evidence of comparable foodstores which have been developed and traded. As we touched upon in earlier sections in our report, and explore in further detail below, there is no guarantee that a foodstore operator would occupy the Station Road site if the Eastrea Road site is developed. Given that there is much uncertainty on the demand side, with the potential competition from a development at Eastrea Road, we have assessed the Station Road site in isolation so that robust assumptions can be used in the viability appraisal.
- 4.2 To assess the viability we have undertaken a traditional residual appraisal, which is the preferred industry approach to assess a scheme's viability. In simple terms, the residual method works on the basis that a developer knows the end value of the scheme and knows the development costs (construction, interest and developer's profit), and by deducting one from the other the result indicates what the developer can afford to pay for the land. If the resulting land value is at a level attractive to the landowner the parties will treat. In simple terms the formula is expressed as:

Land Value	=	Net Development Value Minus Development Costs (construction, interest and developer's profit)
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- 4.3 There are many sensitivities involved within a residual appraisal which can have a dramatic impact on the overall viability. For the purposes for the appraisal we have made the following base assumptions:

Table 4.1 Assumptions for Our Residual Appraisal

Item	Cost
Planning Fees	£150,000
Survey Costs	£75,000
Building Regs	£50,000
Section 106 Obligations	Nil costs have been attributed to S.106 – these costs would need to be deducted from residual land value
Build Cost	£1,173 psm (£109 psf) – calculated from BCIS figure re-based for latest quarter and adjusted for the South East region
Externals	20% of build costs
Contingency	3%
Professional Fees	8%
Agency & Marketing Fees	Nil costs – assumed that landowner has brokered the deal directly with the operator
Developer profit	10% contractor profit assumed. As HDL is a developer and landowner we have assumed that HDL will initially take its margin from the construction of the unit. This is the baseline return HDL would seek, with any additional return to be deducted from the residual land value.
Highway Works	No allowance has been made for cost of highway works – this would need to be deducted from residual value
Finance costs	6.5%

4.4 The base assumptions specified above reflect the relatively fixed costs associated with the scheme. As the appraisals cover nine operators, we have made the following specific assumptions for each:

Top 4 Operators (Tesco, Sainsbury's, Asda & Morrisons)

4.5 We have assumed that any of the top four operators would operate the full 3,346 sq.m (36,000 sq.ft) of approved floorspace, as per the operators' broad requirements as described in Section 3. In line with market evidence we have applied a rent of £194 psm (£18 psf) and a yield of 4.75 per cent.

Aldi

4.6 Aldi is only likely to operate a 1,394 sq.m (15,000 sq.ft) store, therefore the balance of the building 1,951 sq.m (21,000 sq.ft) would need to be occupied by other retailers. For the Aldi

element of the unit we have assumed a rent of £194 psm (£18 psf), however the yield is increased to 6.75 per cent to reflect Aldi's covenant. Due to the uncertainty as to the type of occupier that could be attracted to the balance of the unit we have assumed a lower rent of £161 psm (£15psf) and we have increased the yield to 8 per cent. We have also assumed a void period of 12 months, with lettings spread over a 3 month period.

Lidl

- 4.7 Through the telephone consultation Lidl indicated that its general current requirements are for a maximum of 1,580 sq.m (17,000 sq.ft). For the purpose of the appraisal we have assumed a maximum sized foodstore with the balance of 1,765 sq.m (19,000 sq.ft) to be leased to other retailers. For the Lidl element we have assumed a rent of £194 psm (£18 psf), with a yield at 6.75 per cent to reflect covenant. Again on the balance of the unit we have assumed a lower rent of £161psm (£15psf) and a yield at 8 per cent, with void period as in paragraph 4.6 above.

Co-Operative

- 4.8 According to the Co-Operative's current requirements the maximum size foodstore the company would consider is 1,672 sq.m (18,000 sq.ft). For the purpose of the appraisal we have assumed a maximum sized foodstore with the balance of 1,672 sq.m (18,000 sq.ft) to be leased to other retailers. For the Co-Operative element we have assumed a rent of £194 psm (£18 psf), with a yield of 6.75 per cent. Again on the balance of the unit we have assumed a lower rent on this element of £161 psm (£15 psf) and a yield at 8 per cent, with void period as in paragraph 4.6 above.

Iceland

- 4.9 Based upon analysis of existing store sizes in the Peterborough area, we have assumed that Iceland would occupy a 930 sq.m (10,000 sq.ft) unit, again with the balance to be leased to other retailers. For the Iceland element we have assumed a rent of 161 psm (£15psf) with a yield of 7.25 per cent to reflect covenant. On the balance of the unit we have assumed the same rent of £161 psm (£15 psf), but we have increased the yield to 8 per cent. Given the larger quantum of non-foodstore space compared to the other scenarios above, we have extending the overall void period to 18 months and lettings spread over a 4 month period.

Waitrose

- 4.10 Waitrose's current size requirements for new foodstores is the smallest out of the nine operators analysed, at 650 sq.m (7,000 sq.ft). We have assumed a rent of £194 psm (£18 psf), with a yield of 4.75 per cent to reflect covenant. As Waitrose can create a destination in its own right it could attract other high brand retailers to occupy the balance of the unit. We have therefore assumed another national retailer would occupy the balance of the space and we would expect that a rent of £161 psm (£15psf) and yield at 6 per cent could be achieved. Given the larger quantum of space in this scenario we have again extended the overall void period to 18 months and lettings spread over a 4 month period.

Results of Residual Appraisals

- 4.11 The results of the nine residual appraisals based upon the assumptions described above are set out in Table 4.2:

Table 4.2 Findings from Our Appraisals

Operator	Residual Site Value	Value per Ha/Acre
Top 4 Operator (Tesco, Sainsbury's, Asda, Morrisons)	£6 million	£2.4m (£860,000)
Aldi	£940,000	£320,000 (£130,000)
Co-Operative	£1.19m	£404,000 (£163,000)
Iceland	Nil value (unviable to develop)	Nil value
Lidl	£1.11m	£375,000 (£150,000)
Waitrose	£2.16m	£780,000 (£312,000)

- 4.12 Please note that the viability under the scenarios where the foodstore operator occupies part of the unit could dramatically increase should the developer obtain a strong covenant to occupy the balance of the space. This has not been factored into our analysis, except for Waitrose, as the risk of this is low. We have therefore assumed that a local or regional based company would occupy the balance of the unit on a five year lease.
- 4.13 It is clear from our appraisals that the very keen yield and rent that can be achieved through securing one of the top 4 operators on the Station Road consent has a dramatic impact on viability. In this scenario there is sufficient margin for Section 106 Obligations and highway works to be met, with the landowner able to achieve a return on the land.
- 4.14 Outside the top four operators site viability is marginal, with a residual land value of between nil viability to £1.11m. In these scenarios once a deduction is made for Section 106 Obligations and highways works there may be little, if any value left to purchase the site – as such the scheme would not come forward for development.

5 TELEPHONE CONSULTATION

5.1 To gain a clearer understanding of the market we have undertaken telephone consultations with a developer who is actively working with foodstore operators to bring new stores forward, and a national commercial property agent. As not to prejudice these parties in acting with foodstore operators in future we cannot disclose details of the parties, nevertheless their comments are as follows:

Developer's View

- During Sir Terry Leahy's time at Tesco there was a real push for 'bigger is better'.
- Publicly the developer and Tesco will state that they will build out the Station Road store if they don't get consent at Eastrea Road, but this is likely to be a scare tactic.
- In light of Tesco's profit warning earlier this year, pressure has been exerted on the internal target rate of return – as a result this has increased. This means that new stores need to prove that they can perform better than once was required before.
- Tesco's focus now appears to be on foodstore only, with 4,645 sq.m (50,000 sq.ft) the optimum size to deliver all of the company's product lines. Anything bigger will require Tesco to deliver non-food elements, which in the current market is not as viable with consumers' restricted budgets for discretionary spend items.
- If Tesco is in a position whereby it is competing against an optimum sized store i.e. 4,645 sq.m (50,000 sq.ft), with a smaller store in an inferior location, it is highly likely that it will not be able to meet its internal target returns – as such, Tesco would not proceed with a new store.
- Sainsbury's are still committed to new store openings. Their main focus for new stores is predominantly in the north of England where they are unrepresented, but will consider other areas where they are not represented.
- Sainsbury's are still committed to opening large format stores as evidenced through their proposed 9,290 sq m (100,000 sq ft) store in Middlehaven, Middlesbrough.
- Recently Sainsbury's tried to promote an application for a 9,290 sq m (100,000 sq ft) foodstore in Ilkeston. Tesco were already represented with an 8,361 sq m (90,000 sq ft). A 9,290 sq m (100,000 sq ft) foodstore would have satisfied the remaining capacity in the town. Sainsbury's did not want a smaller format as the wanted to compete against Tesco's on a like-for-like basis.

National Agent's View

- General foodstore rents £130 to £269 psm (£12 to £25psf).
- In broad terms the very small convenience stores generate the highest rents. The law of diminution returns – that is, the larger the floorplate, the lower the rent – does not apply in the current market with foodstore rents. In the current market an optimum rent is generally achieved for a unit which can trade a full product range i.e. circa 4,645 sq.m (50,000 sq.ft). The foodstore operator then hopes it can generate an optimum return on cost. Foodstores which are larger or smaller than the optimum size will see a discount in the rent.

- Prime investment yields for the top four foodstore operators can be as low as 4.5 per cent if there are retail price index (rpi) annual increases for a 25 year lease. Five yearly open market rent reviews will see the yield increase to 4.75 per cent. Yields will move out to 6.75 per cent for the operators outside the top four, however, rents would remain the same.

6 IMPACT OF THE LEVEL CROSSING

- 6.1 Vectos sent a recent report to the District Council in relation to the level crossing at Station Road under email cover on 2 July 2012. The report, which is entitled ‘Station Road Level Crossing Constraints’ and is dated 27 June 2012, was commissioned by Sainsbury's. Against that background it is clear that the report is intended to convince the Council that the level crossing results in queuing traffic at Station Road and that this significantly reduces the likelihood of a foodstore operator being attracted to the Station Road site, although we have no reason to question the veracity of the survey-based factual data that are contained in the report.
- 6.2 It is clear from the factual data contained in the Vectos report that the level crossing is a significant barrier to gaining access to HDL's site at Station Road. Some of the key points raised in the Vectos report are as follows:
- the level crossing is either closed, or there is a queue due to its closure, for between 10 per cent and 62 per cent of each daytime hour depending on day and time;
 - there does not appear to be a discernible pattern to the closures, which therefore makes it difficult for drivers to plan to avoid them; and
 - Vectos observed a maximum queue length of 27 vehicles (175m).
- 6.3 Vectos concludes that potential customers would be deterred from travelling to a foodstore at Station Road because of the unreliability of travel, the queuing and the associated delays. We recognise that the Vectos report was commissioned by Sainsbury's but we agree that the level crossing does significantly affect the accessibility to the Station Road site, and therefore its attractiveness to prospective foodstore operators.
- 6.4 It is also notable that HDL's foodstore site at Station Road is separated from the majority of its catchment population (most of Whittlesey) by the level crossing. The unattractiveness of the Station Road site for convenience retail is further compounded as the population outwith this side of Whittlesey is mainly rural. The nearest large settlement to the south of Whittlesey is Ramsey (approximately 9 miles), which has its own 3,632 sq.m (39,000 sq.ft) Tesco superstore.

7 EVALUATION OF KEYSTONE LAW LETTER

- 7.1 Following the Planning Committee of 9 May 2012, HDL's solicitor, Keystone, provided a letter to the Council to explain the contractual relationship between HDL and Tesco.
- 7.2 Through our review of the letter it is clear that there is a contractual relationship between the two parties. The letter heavily focuses on the contractual obligations of HDL to bring forward the Station Road site. Unfortunately, however, the letter fails to address Tesco's total legal commitment to the project, especially its contractual options should another developer/foodstore operator obtain permission and develop another large format foodstore in Whittlesey.
- 7.3 As Tesco is an astute commercial operator we would expect it to have some 'wiggle room' and not just the contract being subject to planning and signing of lease 5 days after practical completion as stated in the letter. The letter therefore appears to be a far too simple interpretation of the likely contractual relationship.
- 7.4 To fully address the contractual relationship between the two parties, and hence Tesco's commitment to bringing forward the Station Road site, we would need to have sight of the agreement between the parties. We appreciate that the contract is commercially sensitive, but we would be prepared to sign a confidentiality agreement to allow us to analyse the 'agreement to lease' in order to provide us with comprehensive understanding of the situation.

8 SUMMARY

8.1 In summary, the main findings from our work, as described in this report, are as follows:

- Taken in isolation the Station Road development is viable if one of the top four foodstore operators were to agree to take a lease on the site.
- There is marginal market differential between the top four supermarkets. In the current market a circa 4,645 sq m (50,000 sq ft) foodstore provides the optimum trading proposition for a top four operator. A store of this size allows sufficient space to provide a full product range of food items and does not over exposure the operator, through a larger format, to promote non-food which currently is not performing as well due to households' restricted budgets.
- As evidenced through our consultation, a top four operator would want to compete on a like-for-like basis. It is therefore unlikely that one of the top four operators would bring forward a smaller store format on Station Road if a competing operator brings forward a larger format on Eastrea Road.
- Furthermore, as evidenced through our previous retail study⁷ Whittlesey can only support one foodstore. A smaller format store on Station Road competing against a large format store on Eastrea Road is unlikely to be a viable proposition to a top four operator. As the smaller store could not accommodate a full product range meaning it could not compete on a like-for-like sales basis. This would result in the Station Road operator not achieving its own internal rates of return. Therefore, the Station Road site would not be a viable proposition.
- Any of the non-top four operators would only occupy part of the unit, and unless the developer could attract additional occupiers with similar or better covenants then the scheme is likely to be unviable once allowances for S.106 Obligations and Highways have been made. It is therefore unlikely that the Station Road site would come forward with another foodstore operator.
- The Station Road site's unattractiveness to a foodstore operator is further compounded by the significant impact of the level crossing on access to the site. Furthermore, the settlement of any material size (Ramsey) already has its own foodstore.
- The letter provided by HDL's solicitor does not categorically state that the developer will definitely build out the Station Road site should Sainsbury's or another operator gain consent for another foodstore in Whittlesey.
- In addition, the Station Road site is in a much less attractive location due to the access restriction created by the level crossing.

⁷ FENLAND DISTRICT RETAIL STUDY UPDATE – July 2009

9 CONCLUSION

- 9.1 In the table below we have created a ‘risk assessment’ to determine the likelihood as to whether a foodstore scheme is likely to come forward at Station Road if a new larger format foodstore was implemented on Eastrea Road. This is based upon the two current applications (refs. F/YR11/0930/F and F/YR11/0482/F), which are still pending determination, on two separate sites on Eastrea Road
- 9.2 We have categorised against each of the nine major foodstore operators the ‘risk’ as to whether the site would come forward, ‘low risk’ being unlikely and ‘high risk’ being very likely.

Table 9.1 Summary ‘Risk Assessment’

Operator	Risk	Comment
Aldi	Low	Preference for road frontage. Scheme will be marginally viable once deduction is made for highway and Section 106. Significant additional risk for the landowner/developer with the vacant retail to lease, which would not be reflected in land value or developer return.
Asda	Low	With the opening of a new non-food store in Peterborough later this year Asda will be well represented in the area through large-scale food and non-food offer. Although we have no firm evidence on Asda’s existing requirements, the Station Road site is unlikely to be attractive given its small format and the inferior location.
Co-Operative	Low	Already has a foodstore in the town centre, so the Station Road site would act as direct competition. Preference for in-town locations. Residual land value generated would make development marginally viable.
Iceland	Low	Development unviable due to headline rents, yield, and large quantum of floorspace which would need to be occupied to non-supermarket operator(s).
Lidl	Low/medium	Currently underrepresented in the Peterborough area with just one foodstore to the north of the town. However, preference is for road frontage. Scheme will be marginally viable once deduction is made for highway and section 106. Significant additional risk for the landowner/developer with the vacant retail to lease, which would not be reflected in land value or developer return.
Morrisons	Low	Morrisons has already expressed concern about the impact a new store in Whittlesey will have on its new store in Stanground. Stated that it is unlikely to be interested in the Station Road site.
Tesco	Low	Would not be able to compete with the Eastrea Road site as store format too small to deliver full product range. In light of recent profit warning the focus is on stores which generate good return on capital, which is likely to be difficult given competition from a store which is better located with a full product range.
Waitrose	Low	Currently represented in nearby Peterborough with a large store format, a Whittlesey store would provide internal competition for high end food retail. Preference for town centre locations. Due to the small store size requirement the overall development requires a significant quantum of other retailers. Development is unlikely to be viable once highways and Section 106 costs are accounted for.

**Summary of an Agreement for the Grant of a Lease of a Retail Foodstore
to be constructed on the South Side of Eastrea Road, Whittlesey or (in
The alternative) on the North Side of Station Road, Whittlesey dated 24
February 2011**

Following a request from the planning committee on the 9th May 2012 I write the following opinion to assist in the consideration of planning application F/YR11/0482/F. The aim of this opinion is to assess the contractual position between Harrier Developments Limited (Harrier) the applicant and Tesco Stores Limited (Tesco); and whether or not the contractual position between the parties guarantees the delivery of a supermarket.

I have been provided with the following agreement for review:

- Agreement for the Grant of a Lease of a Retail Foodstore intended to be constructed on the South Side of Eastrea Road, Whittlesey or (in the alternative) on the North Side of Station Road Whittlesey Cambridgeshire dated the 24th February 2011 (Agreement).

The document provided was received on a confidential basis to produce this public summary; notwithstanding the delivery of the document on a confidential basis it did contain limited further redactions which were considered additionally financially sensitive.

I have reviewed the documents carefully and the redactions are, as far as can be ascertained from the remainder of the following clauses, those details which relate to the values of the financial interactions between the two parties or the precise calculation of these. I do not consider that the redactions impinge to any material extent on my ability to give this opinion.

The opinion is based on the information provided by both Harrier and Tesco; the documents are internally consistent and do not make reference to any other material documentation which has not been reviewed. I am assured by both parties that no other relevant documents exist and Tesco's lawyers have given their undertaking that so far as they are aware this is the case.

Further qualification must be recorded in respect of whether or not this is a static arrangement. It must be noted that this is a contractual Agreement between two commercial entities; therefore the Council has no rights to hold the parties to the terms of this Agreement or to enforce the provisions of the Agreement. This can only be done by the parties themselves.

The Agreement itself contains a number of provisions which would terminate or modify the agreement; where relevant these are detailed in the summary below. However, as with any commercial agreement it is open for the parties to either default in their obligations to each other or alternatively to agree to vary the terms of an agreement.

Without the detailed financial information which has been redacted from the Agreement it is not possible for me to evaluate the full value of this contract; notwithstanding this I accept the assertions to me that a full default on the terms of the Agreement would expose the relevant party to significant financial liabilities. A more likely scenario would be that of delay in the implementation of the works under the Agreement; this would require significantly less compensation but the commercial reality is that if there is a delay in the implementation of the works under the Agreement the other party will require compensation for lost revenue. That loss is not supported by income derived elsewhere within this project or the Agreement and therefore neither party would initiate such a negotiation lightly. Harrier have confirmed in writing confirming they will not be varying or modifying the Agreement as they wish to proceed with the development at the earliest opportunity. However, this statement cannot be enforced by the council.

The overall transaction under the Agreement is that Harrier are contracted and obligated to carry out the works to construct the retail food store to shell together with associated works at its cost on the south side of Eastrea Road, Whittlesey or (in the alternative) on the north side of Station Road, Whittlesey in accordance with the agreed Tesco building specification. Tesco is then to undertake the internal fit out works and accept a lease of the food store, paying rent on the same. Tesco does not have to fund the land purchase or the main build and associated works; this is the responsibility of Harrier.

The Agreement is subject to the grant of a "Satisfactory Planning Permission". A "Satisfactory Planning Permission" is defined as either a "Planning Permission" free from "Onerous Conditions" permitting the carrying out and completion of the Landlord's Works" (i.e. those works to be carried out by Harrier in accordance with the agreed Tesco building specification) with the food store to be constructed as part of those works being a "Format 30 Store" or as a "Format 25 Store" or a "Planning Permission" acknowledged by both the "Landlord ("Harrier") and the "Tenant" (Tesco) as being satisfactory. The preference within the Agreement is for the planning permission to relate to a "Format 30 Store" on the "Eastrea Road Site" and in line with this, Harrier has submitted the planning application reference number F/YR11/0482/F on 24 June 2011, thus discharging clause 5 of the Agreement.

Both the "Landlord ("Harrier") and the "Tenant" (Tesco) have confirmed that the draft planning conditions at the committee of the 9th May 2012 of the "Eastrea Road Site" contains no "Onerous Conditions" and if granted this planning permission would be a Satisfactory Planning Permission as defined in the Agreement.

Under the Agreement, if no planning permission has been obtained for the development of the "Format 30 Store" to be operated by Tesco on the "Eastrea Road Site" and nor has any revised planning permission been granted for a larger food store to be operated by Tesco on the "Station Road Site", Harrier is by 16 December 2012 (at its cost) to have applied for reserved matters approvals for all matters reserved for approval under the "Station Road Decision Notice" (planning permission reference number F/YR09/0582/O) by that date. Harrier is contracted and obligated to appeal those reserved matters applications if reserved matters approval is not forthcoming. Moreover the "Station Road Decision Notice" is a Satisfactory Planning Permission" for the purpose of discharging the "Satisfactory Planning Permission" pre-condition of the Agreement.

Upon approval of the reserved matters under the "Station Road Decision Notice" or following a grant of an alternative planning permission for a food store to be operated by Tesco at the "Eastrea Road Site" or the "Station Road Site", Harrier are contracted and obligated to carry out the works to construct the retail food store and associated works in accordance with the agreed Tesco building specification. Harrier is obliged to enter into a "Building Contract" within 6 months of the Agreement becoming unconditional to commence the retail food store works and must then complete these works within 15 months of the works commencing, subject to extension for reasonable delays in the building process.

Once Harrier has completed the basic construction Tesco is contracted and obligated to undertake the internal fit out works for the retail food store and to construct the petrol filling station as part of those fit out works.

A lease of the store to Tesco is to be completed with five working days of practical completion of the food store and the length of the lease will be for a period of 25 years (clause 3). The lease will permit Tesco to assign its interest in the site to a third party should it wish; however in doing this they will have to underwrite the financial obligations of the lease to Harrier.

When the building works have reached a particular stage, Harrier will serve Tesco a notice and no later than 12 weeks after this date Tesco are contracted and obligated to pay rent to Harrier; however Tesco is not compelled to open the food store or operate to any particular opening schedule. However, given the commercial reality of a fully functional food store on which rent and business rates are being paid, it is considered highly unlikely that the food store would be left unopened.

For the avoidance of doubt the Agreement is not conditioned in respect of any off site influences. The Agreement contains no break provisions whereby another rival food store is granted permission; accordingly following the terms of the Agreement if another food store were granted planning permission within Whittlesey there is no impact on the obligations to build one or other site under Harrier's control.

Summary (subject to the detail above);

- The Agreement provides an obligation on Harrier to seek planning permission for a suitable food store at Eastrea Road.
- In the event that alternative planning cannot be obtained for a suitable food store at Eastrea Road, then the existing planning consent at Station Road is defined as acceptable by both Harrier and Tesco.
- Harrier is obliged to construct the store either at Eastrea Road or in the event planning permission is not obtained at Station Road.
- Tesco is obliged to take a lease of the completed store; such lease to be for 25 years.

This is a summary of the contractual position detailing the main and material issues contained within the Agreement for the planning application by Harrier for a food store at Eastrea Road (F/YR11/0482/F) and the planning consent at Station Road (F/YR09/0582/O).

Ian Hunt
Chief Solicitor Fenland District Council
15th August 2012