

Application No: 11/3737C

Location: PACE CENTRE, 63, WHEELLOCK STREET, MIDDLEWICH, CHESHIRE, CW10 9AB

Proposal: PROPOSED FOODSTORE DEVELOPMENT WITH ASSOCIATED PARKING, SERVICING AND LANDSCAPING, AND ADDITIONAL A1, A2 AND A3 UNITS

Applicant: TESCO STORES LTD.

Expiry Date: 24-Jan-2011

SUMMARY RECOMMENDATION: Approve with conditions subject to completion of a Section 106 Agreement relating to contributions towards highway works

MAIN ISSUES:

- Whether the principle of retail development is acceptable and if so, whether the scale proposed is appropriate
- Whether the design and appearance of the proposed foodstore, retail units and associated development is acceptable having regard to the impact on the character and appearance of the area, including the Conservation Area
- Whether the proposal would adversely affect the setting of the listed building at 8 Southway
- Whether the proposed access and parking facilities are adequate and acceptable
- Whether the proposed loss of trees from the site is acceptable
- Whether the proposal would result in any adverse impact on protected species and if so, whether adequate mitigation can be provided
- Whether the proposal has any adverse impact on the residential amenity of nearby residents
- Whether there are any other material considerations

REASON FOR REFERRAL

This application is before the Strategic Planning Board as it is for a retail development involving the formation of retail floorspace between 1000 – 9999sqm.

DESCRIPTION AND SITE CONTEXT

The application site comprises a parcel of land totalling 2.53 hectares, located within the Middlewich town centre. The site has frontages on to Wheelock Street, Darlington Street and Southway and contains a number of residential and commercial buildings, all of which would be demolished as part of this proposal. The site also contains a large number of trees. Vehicular access is currently taken from Wheelock Street, Darlington Street and Newton Heath. The site

rises up from Wheelock Street with a change in levels across the site of approximately 6 metres.

DETAILS OF PROPOSAL

Full planning permission is sought for the erection of a new superstore and associated car parking and servicing area and two additional units for A1, A2 or A3 use on the Wheelock Street frontage, to replace the existing buildings at this location.

The store would be situated in the area of the site currently occupied by the existing Tesco store. The front elevation would face onto Southway and what would become the car park, which would extend to the site boundary with Darlington Street. The store would be 75m wide and 65m. There would be a service yard on the boundary with St Ann's Walk.

Vehicular access to the car park would be from two points, a two way access from St Ann's road and an in only entrance only from Wheelock Street, adjacent to Ivy House. There would be pedestrian access from Wheelock Street, along Southway and adjacent to the new retail units, from Darlington Street and from St Ann's Road.

Two areas of public realm works are proposed, one adjacent to the new retail units on Wheelock Street and one immediately to the north of the store.

RELEVANT HISTORY

09/1686C 2009 Approval for foodstore with associated parking, servicing, landscaping and additional A1, A2 and A3 retail units

09/1739C 2009 Approval for change of use from residential to A1, A2, A3 and B1

08/1625/FUL 2009 Refusal for foodstore

08/1626/FUL 2009 Refusal for foodstore

07/0833/FUL 2007 Withdrawn application for foodstore

POLICIES

National Guidance

PPS1	Delivering Sustainable Development
PPS4	Planning for Sustainable Economic Growth
PPS5	Planning for the Historic Environment
PPS9	Biological & Geological Conservation
PPG13	Transport
PPS22	Renewable Energy
PPS23	Planning and Pollution Control
PPG24	Planning and Noise

Regional Spatial Strategy

DP1 Spatial Principles

DP2 Promote Sustainable Communities

DP3 Promote Sustainable Economic Development

DP4 Making the Best Use of Existing Resources and Infrastructure
 DP5 Manage Travel Demand: Reduce the Need to Travel, and Increase Accessibility
 DP6 Marry Opportunity and Need
 DP7 Promote Environmental Quality
 DP9 Reduce Emissions and Adapt to Climate Change
 RDF1 Spatial Priorities
 W5 Retail Development
 RT2 Managing Travel Demand
 RT9 Walking and Cycling
 EM1 Integrated Enhancement and Protection of the Region's Environmental Assets
 EM2 Remediating Contaminated Land
 EM3 Green Infrastructure
 EM5 Integrated Water Management
 EM 10 A Regional Approach to Waste Management
 EM11 Waste Management Principles
 EM17 Decentralised Energy Supply

Congleton Local Plan 2005

PS5	Towns
GR1	General Criteria for Development
GR2	Design
GR4 & GR5	Landscaping
GR6 & GR7	Amenity & Health
GR9 & GR10	Accessibility, Servicing and Parking Provision
GR17	Car Parking
GR18	Traffic Generation
GR19	Infrastructure
NR2	Statutory Sites
NR3	Habitats
NR4	Non-Statutory Sites
BH4	Listed Buildings
BH9	Conservation Areas
S1	Shopping Hierarchy
DP4	Retail Sites
DP7 & DP9	Development Requirements

OTHER MATERIAL CONSIDERATIONS

Written Ministerial Statement: Planning for Growth (23rd March 2011)

The Minister of State for Decentralisation issued this statement on 23rd March 2011 and advice from the Chief Planner, Steve Quartermain states that it is capable of being regarded as a material consideration. Inter alia it includes the following:

*“When deciding whether to grant planning permission, local planning authorities should support enterprise and facilitate housing, **economic** and other forms of sustainable development. Where relevant – and consistent with their statutory obligations – they should therefore:*

- (i) *consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after recent recession;*
- (ii) *take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing;*
- (iii) *consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased customer choice, more viable communities and more robust local economies(which may, where relevant, include matters such as job creation and business productivity);*
- (iv) *be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date;*
- (v) ensure that they do not impose unnecessary burdens on development.

The Government has also stated that there should be a presumption in favour of sustainable development, this states inter alia that: *“There is a presumption in favour of sustainable development at the heart of the planning system, which should be central to the approach taken to both plan-making and decision-taking. Local planning authorities should plan positively for new development, and approve all individual proposals wherever possible.”*

CONSULTATIONS (External to Planning)

Highways:

This site has been the subject of a number of applications over recent years, each to develop a food retail store on the site and offering variations on either the designed method of vehicular access to the site or the scale of development.

The previous proposal, Planning Application 09/1686C, was for a lesser scale proposal for the development of a foodstore (2,651 sqm), and offered an access proposal with a simple one-way access off Wheelock Street into the site car park for customer traffic, with all other traffic generated from a two-way access off St Ann’s Road.

A Transport Assessment was provided with that proposal which considered the changes in the way generated traffic would impact on the existing highway infrastructure, from the revised access options to the site.

In that application, all vehicular traffic leaving the site would be generated onto St Ann’s Road and distribute from that access, with only pedestrian traffic being generated onto Wheelock Street.

The related Transport Assessment offered a solution for the integration of the traffic generation to the existing highway network through the provision of signal junction improvements at the Newton Bank/A54 gyratory and a re-design of the Leadsmythy Street/A54 signals junction.

Cheshire Highway Authority accepted the Transport Assessment proposals in principle, subject to the provision of those junction improvements together with Travel Plan requirements, consideration of traffic management orders and improvements to the bus stop at the end of Wheelock Street.

In transport terms, the current application differs mainly in its proposed scale from the previous application at 5,162 sqm.

The Strategic Highways Manager has considered the current application detail and comparisons have been drawn between the previous application and this current one.

The primary consideration is how the changes in increased traffic generation will affect the resulting traffic impact onto the existing highway network, and whether the offered improvements will provide an acceptable solution in highway terms.

Whilst the proposed design offers a potentially workable solution to traffic management on the gyratory system, it has been identified that an Urban Traffic Control system should be added to the signal proposals to maximise the efficiency of the signals system itself. This UTC will interlink and coordinate the gyratory signals system so that they manage the traffic flows as efficiently as possible, maximising flow times and minimising queues held at the signals themselves.

Current Applications

Planning Applications 11/3737C & 11/4471C offer a larger scale proposal for the development of a foodstore, with a simple one-way access off Wheelock Street into the site car park for customer traffic, with all other traffic generated from a two-way access off St Ann's Road, as per the previous application.

Revised Transport Assessments have been provided for the current proposals which consider how the changes in the volume of generated traffic will impact on the existing highway infrastructure, from the revised access options to the site.

Clearly in these new applications, all vehicular traffic leaving the site will be assigned onto St Ann's Road and distribute from that access, with only pedestrian traffic being generated onto Wheelock Street.

The Strategic Highways Manager has considered this application detail and comparisons have been drawn between the previous application and this current one.

The primary consideration is how the changes in traffic generation will affect the resulting traffic impact onto the existing highway network, and whether the offered improvements will provide an acceptable solution in highway terms. However, it is noted that application 11/4471C proposes a store delivery access shared with the current Council car park. The Strategic Highway Manager notes concerns with such an arrangement.

To this end consultation has been made with the Traffic Signals Engineers who have assessed the proposed signal designs for the A54 gyratory at Newton Bank.

Whilst the proposed signal designs for the A54 gyratory at Newton Bank offer a potentially workable solution to traffic management on the gyratory system, it has been identified that an Urban Traffic Control system should be added to the signal proposals to maximise the efficiency of the signals system itself. This UTC will interlink and coordinate the gyratory

signals system so that they manage the traffic flows as efficiently as possible, maximising flow times and minimising queues held at the signals themselves.

The Strategic Highways Manager also considers that options for part-time working of the signals need to be investigated to minimise delay off-peak vehicle delay. For such a solution to prove workable it may require amendments to the submitted design in terms of the location of traffic signals and crossing points.

A54/Leadsmyth Street signalised junction.

In addition to the improvements and signalisation at the A54 Newton Bank gyratory, the applicants will also improve the A54/Leadsmyth Street junction, to a design to be agreed with Cheshire East Council which will meet the aims of the Traffic Signals Engineers who have a broad design available for detailed negotiation.

The proposed design will have the benefit of better turning movements and capacity, and will provide better pedestrian links to the town centre side of the junction.

Conclusions.

As a result the Strategic Highways Manager considers that there are no highway objections to the proposals in this current application, however should a planning permission be granted, conditions should be attached to that permission, in order to secure appropriate and reasonable related off-site highway works for local infrastructure improvements and in the interests of public highway safety. This will include a sum of £100,000 for the provision of the public realm of Wheelock Street in the vicinity of the access to the proposed car park. This should take the form of a Manual for Streets type public realm layout to slow traffic speeds along the length of Wheelock Street.

Environment Agency

We have no objection in principle to the proposed development but would wish to make the following comments.

The discharge of surface water from the proposed development is to mimic that which discharges from the existing site. If surface water is to discharge to mains sewer, the water company should be contacted for confirmation of the acceptable discharge rate. For discharges above the allowable rate, attenuation will be required for up to the 1% annual probability event, including allowances for climate change.

The discharge of surface water should, wherever practicable, be by Sustainable Drainage Systems (SuDS). SuDS, in the form of grassy swales, detention ponds, soakaways, permeable paving etc., can help to remove the harmful contaminants found in surface water and can help to reduce the discharge rate. Therefore we request that the following condition is imposed as set out below.

The development hereby permitted shall not be commenced until such time as; a scheme to limit the surface water run-off generated by the proposed development, has been submitted to and approved in writing by the local planning authority.

During times of severe rainfall overland flow of surface water could cause a flooding problem. The site layout is to be designed to contain any such flooding within the site, to ensure that

existing and new buildings are not affected and that safe access and egress is provided. Therefore we request that the following condition is imposed as set out below.

The development hereby permitted shall not be commenced until such time as; a scheme to manage the risk of flooding from overland flow of surface water, has been submitted to and approved in writing by the local planning authority

We consider that the controlled waters at this site are of low environmental sensitivity, therefore we will not be providing detailed site-specific advice or comments with regards to land contamination issues for this site.

The developer should address risks to controlled waters from contamination at the site, following the requirements of PPS23 and the Environment Agency 'Guiding Principles for Land Contamination'.

English Heritage

We have been consulted on a previous scheme for this site (09/1686C), which we objected to due to its harmful impact on Middlewich Conservation Area (designated 1981). The location of the food store was at that point facing Wheelock Street and Darlington Street. The currently proposed scheme uses the site for an already existing food store and we do not object to the proposal in principle. We would however still recommend considering the impact of the part of the scheme facing Wheelock Street on the setting of the Conservation Area and especially the street scene. We have also been consulted on a parallel scheme (11/4471C) for the same site where the difference between the two schemes is of a marginal character in connection to the service yard for the store. We do not wish to comment any further on this aspect, but will refer to this letter in responding to the consultation.

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

Cheshire Archaeology Planning Advisory Service

I have previously commented on proposals for the development of a food store on part of the present site, where it was advised that a programme of archaeological mitigation would be required in the event that planning permission was granted. This would consist of a watching brief across parts of the area with limited excavation on part of the Wheelock Street frontage. This advice followed the completion of a pre-determination desk-based assessment and field evaluation and noted that the remaining work could be secured by condition.

The present application includes the area noted above but is more extensive and includes land further east, which is currently occupied by an existing supermarket and car park. It is also supported by a wholly new archaeological desk-based assessment which has been prepared by On Site Archaeology on behalf of the applicants. This study accepts that the previously-defined mitigation remains appropriate and also concludes that a watching brief should be maintained in those parts of the site currently occupied by the supermarket and car park which have not been subject to late 19th-century and early 20th-century sand extraction. This recommendation results from records relating to the discovery of Roman pottery in this area which may relate to the presence of cremation burials.

I advise that the recommended programme of mitigation is appropriate and that, in summary, it should consist of:

Formal excavation in the extreme north-west of the application area measuring a maximum of 30m north to south and 40m east to west but subject to revision where cellars or other major disturbance are present.

A watching brief within the area of the present supermarket and car park (but restricted to those areas not subject to previous sand extraction) in order to explore the context of reports of the discovery of Roman pottery vessels in this area.

An inspection of the area of the proposed car public car park, following topsoil stripping, in order to check for any archaeological deposits.

A report on the work will also need to be produced.

This work may be secured by the condition given below:

No development shall take place within the area until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

The use of such a condition is in line with the guidance set out in Policy HE12 of *Planning Policy Statement 5: Planning for the Historic Environment* (Department for Communities and Local Government, 2010) and the accompanying *PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide* (Department for Communities and Local Government, Department for Culture Media and Sport, English Heritage, 2010).

The Cheshire Archaeology Planning Advisory Service does not carry out commercial fieldwork and the applicant will need to appoint an archaeological contractor to organise the archaeological mitigation. I will be able to supply a brief for the work and a list of archaeological contractors who work in the area on request. Alternatively, I will be able to discuss the details of the archaeological mitigation with the applicant's existing archaeological consultant.

Environmental Protection:

Request conditions relating to hours of construction, piling, floor floating, deliver times, acoustic fencing, acoustic enclosure of machinery and loading bay, lighting, air quality and contaminated land.

VIEWS OF TOWN/PARISH COUNCIL

"Councillor SN McGrory advised that whilst all conditions imposed upon planning permission 09/1686C, held by Tesco, should be applied to both new applications emphasis should be made to ensure specific conditions also be imposed on both new applications 11/3737C and 11/4471C.

He recommended that conditions 16, 19, 31, 35 and 47 were of importance to the Town and should be included on any application on this site.

It was also recommended that the Council supports the comments of the Conservation Officer regarding the connectivity of the site with Wheelock Street and all efforts to ensure the facade is kept in keeping with that of the area.

It was agreed to uphold the recommendations made.”

The previous comments made by the Council, that still remain the Council’s views, are:

- a. The Traffic Impact Assessment has not covered the impact the development will have upon St Anne’s Road. Local residents have raised many concerns regarding this issue.
- b. A section of the car park must remain free for the use of the community parking and facilities such as, but not limited to, a market.
- c. Delivery hours to be restricted to limit disturbance to local residents and local school start and end times.
- d. Improved Street Lighting to be installed along St Ann’s Walk improving visibility once acoustic fencing installed.
- e. Hedgerow to remain along St Ann’s Walk, in front of acoustic fencing. Improved Street Lighting to be installed along St Ann’s Walk improving visibility once acoustic fencing installed.
- f. There is a concern regarding the impact of increased traffic on Wheelock Street on the safety of pedestrians and it is recommended that the traffic impact study should consider whether there is a need for a pedestrian crossing facility in that street.
- g. This application has removed the landscaped buffer zone at the north of the development and it is recommended that a reduction be made to the car parking to allow for replacement public realm works.
- h. It is recommended that there should be a pedestrian accessibility study to cover a 100m radius from the development.

OTHER REPRESENTATIONS

At the time of report writing, 70 representations have been received relating to this application, including 2 petitions in opposition. The petitions contained 30 and 180 signatures respectively.

Forty of the representations were in opposition to the proposal and 27 in support and 1 gave a general comment.

The objections expressed the following concerns:

Land Use

- Over intensive development of the current use of the site
- The development would be too large and out of proportion with the existing development in Middlewich
- The site is suitable for development but not for the erection of a huge superstore with such a large car park
- Creation of excessive retail floorspace when combined with the existing approval at Boosey's Garden Centre
- The development would make Tesco the focus of the town rather than St Michael's church
- The presence of Tesco in Middlewich is already excessive
- The development is too large and would swamp the town centre
- The car park is equivalent in area to half of the High Street
- The development is more suited to an edge of town location
- The development would not have a petrol station, therefore it would be less attractive than other supermarkets
- Problems with drainage and flooding
- The erection of fencing along St Ann's Walk adjoining the service yard would create a 'muggers paradise'
- Loss of valuable houses to make room for a car park

Retail Issues

- The retail centre of Middlewich would be shifted away from Wheelock Street
- The claim of an increase in footfall is a fallacy. Data from other small market towns shows a reduction in footfall when a supermarket is built in the centre of a town
- The reference to a study in 2009 by Southampton University which found an increase in footfall was commissioned and paid for by Tesco
- Waste of the economic potential of Middlewich that would be harmful to the viability and vitality of the town centre
- The development would result in the closure of other retailers, especially due to the range of goods that would be offered in the proposed store
- Only 5% of supermarket turnover is returned to the local economy compared with just over half from independent retailers
- Lack of a retail impact assessment
- Tesco being able to undercut existing retailers in the town
- The shops on Wheelock Street will have less market share to the detriment of small businesses

Amenity

- Noise and anti-social behaviour on the car park when the store is closed
- Light pollution
- Noise pollution
- Reduction in local air quality

Highways

- Flawed traffic assessment, in particular in relation to other roads in the vicinity and the quantity of vehicles or the routes these vehicles will take
- The transport assessment does not make reference to the vehicular access and egress to the existing store
- The site has only one exit point which could lead to unacceptable levels of congestion creating adverse impact on local residents
- Increased traffic, especially HGV's , creating dangers for pedestrian and vehicular traffic in the local area
- Loss of parking provision with the removal of the Council car park leading to on-street parking elsewhere in the town

Heritage

- Adverse impact on local heritage assets
- Adverse impact on the buildings in the Conservation Area due to noise, vibration and gas emissions
- Lack of regard to the comments of English Heritage

Other Matters

- Inconsistencies with the submitted documentation
- The development is a means of putting more profit into the 'Tesco empire'
- Poor publicity given to the application
- A request has been received to make the mature trees along Southway, subject of a Tree Preservation Order

The representations in favour of the proposal put forward the following arguments in its favour:

- It will create more jobs for local Middlewich people
- Wider choice of goods in Middlewich, negating the need to travel elsewhere
- The environmentally friendly elements included in the construction of the store are to be welcomed
- The addition of free parking to the benefit of both Tesco and shops on Wheelock Street

The one general comment put forward the idea that the trees within the site or their wood could be turned into tree sculptures to the benefit of the locality

KEY ISSUES

Principle of the Development

Local Plan policy PS4 states that within the settlement zone lines there is a general presumption in favour of development provided that it is in keeping with the town's scale and character and does not conflict with other policies. Policy DP4(M1) allocates the site for general retail use. Policy DP9 states that a transport assessment is required to be prepared for the site before planning permission is granted. The site details section of the Local Plan provides information and guidance to assist in the development of all allocated sites, identifying features and policy considerations which need to be taken into account and setting

out development requirements which the Council will expect to be met. However, the information provided does not comprise a formal development brief.

With regard to this site, the site details section of the Local Plan states that the site is suitable for general retail uses, but other commercial or employment uses may be considered. Off-site highways improvements and traffic management measures are required. In view of its relationship with the Conservation Area a sensitive scheme is required which links with Wheelock Street. The layout should seek to retain existing trees within the site. In view of the sensitive location of the site and likely traffic implications for the town centre, a Development Brief and Transport Assessment are required for the site. The scale of development suggested in the site details section is 3000m² of retail floorspace. Whilst the site details section is not a formal development brief for the site, in the absence of this, it is considered that it is a material consideration to be given significant weight in the determination of the application.

PPS4: Planning for Sustainable Economic Growth, states that the Government's aim is to *"promote the vitality and viability of town and other centres as important places for communities. To do this the Government wants:*

- *New economic growth and development of main town centre uses to be focused in existing centres, with the aim of offering a wide range of services to communities in an attractive and safe environment and remedying deficiencies in provision in areas with poor access to facilities*
- *Competition between retailers and enhanced consumer choice through the provision of innovative and efficient shopping, leisure, tourism and local services in town centres, which allow genuine choice to meet the needs of the entire community (particularly socially excluded groups)*
- *The historic, archaeological and architectural heritage of centres to be conserved and, where appropriate, enhanced to provide a sense of place and a focus for the community and for civic activity*

Policy EC10 of this PPS states that:

Local Planning Authorities should adopt a positive and constructive approach towards planning applications for economic development. Planning applications that secure sustainable economic growth should be treated favourably.

All planning applications for economic development should be assessed against the following impact considerations:

- *Whether the proposal has been planned over the lifetime of the development to limit carbon dioxide emissions, and minimise vulnerability and provide resilience to, climate change*
- *The accessibility of the proposal by a choice of means of transport including walking, cycling, public transport and the car, the effect on local travel levels and congestion (especially to the trunk road network) after public transport and traffic management measures have been secured*
- *Whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions*
- *The impact on economic and physical regeneration in the area including the impact on deprived areas and social inclusion objectives*

- *The impact on local employment*

A large part of this site is defined as a retail allocation (DP4 (M1)), with the remainder containing the existing Tesco store and car parking. Almost the entire application site is defined as being within the Principal Shopping Area of Middlewich, apart from some small elements adjacent to St Ann's Road. In terms of scale, the Local Plan indicates that the retail allocation part of the site is suitable for retail development up to 3,000sqm net retail floorspace. The existing store has a gross internal floor area of 1,531sqm and the proposed new store would have a gross internal floor area of 5,091sqm with 3,215sqm net sales area. The previous approval (09/1686C) was for a store of 2,651sqm gross internal floor area, with 1,700sqm net sales area. As stated the allocated part of the site is designated as being suitable for retail development up to 3,000sqm net retail floorspace and this proposal would represent additional internal floorspace of 3,560sqm.

The applicant's state that it is apparent that the existing convenience stores within Middlewich fail to provide a suitable destination where the majority of residents can undertake a main food shopping trip. This they state is due to their relatively small floorspace and limited variety, range and choice of products on offer. It is stated that the proposed store, which is larger than existing stores in the town, would be able to better compete with stores in surrounding settlements. However it will not be so large so as to attract additional shoppers from beyond the Middlewich area. They consider that the size of store proposed broadly represents the most appropriate scale of foodstore which is capable of competing with surrounding superstores, yet remains of a scale which will principally meet the needs of Middlewich.

It is considered that on the basis of the information available, the size of store proposed is of an appropriate scale for Middlewich. It would offer a larger, broader range than existing foodstores and it is considered that its presence within the town centre would help to attract shoppers to the town centre. It is considered that provided that there are adequate links with the rest of the town centre, that this in turn would enhance its vitality and viability.

Concerns have been expressed about the combined impact of the Tesco scheme and the Morrisons scheme at Boosey's Garden Centre. For the sake of completeness, and for the benefit of Members, below is the conclusion from the White Young Green advice note given for the Boosey's Garden Centre site, which has relevance to this application:

"Based on the information set out [in the assessment], WYG advise that on balance, we believe that whilst there may be inevitably an impact on the retail trading of the enlarged or even the smaller Tesco scheme (LPA Ref 09/1686C) there needs to be balanced against the benefits of the proposed Morrisons.

We believe the introduction of Morrison's to Middlewich will bring enhanced competition and consumer choice through qualitative as well as quantitative benefits which will significantly outweigh this impact on an individual operator. We believe that on balance the introduction of either an enlarged Tesco store with a Morrison store, or the extant Tesco permission with a new Morrisons store will bring positive economic benefits to Middlewich.

It is evident that the Council is faced with a decision in relation to two potential foodstore developments within Middlewich. On the one hand, if the proposed Morrisons is approved

then Middlewich would have two consented schemes for two new foodstores (one edge-of-centre and one in-centre). If, on the other hand, the Council were to support Tesco's proposed larger store and refuse the Morrisons the outcome would simply reinforce Tesco's position in the town.

WYG believe that in seeking to address the need to claw back lost expenditure and provide greater competition and choice, then the combination of two new foodstores (including one enlarged Tesco) would have the greatest positive impact. Clearly, even with a larger Tesco store within Middlewich this would still only provide local residents with one operator and one brand. As evidenced people are leaving Middlewich due to preference for other brands, and therefore an enlarged Tesco store is unlikely to arrest this leakage of local expenditure.

Therefore, WYG believe that both schemes could exist without any significant harm being caused overall. As a result, WYG still conclude that the proposed Morrisons would not prejudice the planned investment by Tesco, and as envisaged with Morrisons entering the market has only helped to re-energise Tesco to progress their investment plans, which will also be to the benefit of the town.

If Tesco can secure a larger store within the town centre (despite the development of a new Morrisons on the edge of the centre) then this is clearly a positive step forward for the town centre and will help secure the future vitality and viability of the centre as a whole, as well as bring wider economic benefits that would not have been delivered.

Therefore, on balance, WYG believe that the proposed development at Boosey's Garden Centre satisfies the key retail tests set out in PPS4 as well"

In terms of accessibility, the site is located within the town centre, which is considered to be a sustainable location.

Design, Appearance and Visual Impact

Local Plan policies GR1 and GR2 relate to the design of new development and state that all development will be expected to be of a high standard, to conserve or enhance the character of the surrounding area. Matters such as height, scale, form and grouping, materials, the visual, physical and functional relationship of the proposal to neighbouring properties, the streetscene and to the locality generally need to be considered. Additionally proposals should respect existing features and provide for hard and soft landscaping as an integral part of the scheme. PPS1 & PPS4 also promote high quality and inclusive design.

With regard to Conservation Areas, policy BH9 states that planning permission will not be granted for proposals which, in the opinion of the Council, would have a detrimental effect on the existing special architectural and historic character or appearance of a Conservation Area as a result of a number of matters including design, siting, scale, use of materials, the significant loss of important trees and intrusiveness within the setting of a Conservation Area or in relation to existing views into, out of, within or across the area.

Officers had a number of concerns regarding the design, appearance and visual impact of the plans originally submitted with this application, particularly in relation to views of the store when approached from Wheelock Street and the overall stark appearance of the car park. Additionally there were concerns regarding the proposed areas of public realm.

Amended plans have been submitted in an attempt to address these concerns. Having regard to the stark appearance of the car park, the amendments include some additional planting along the centre of the car park, on the pedestrian route from Darlington Street. This would soften the appearance of this large area of hardstanding and make this route more attractive to pedestrians.

In response to Officer concerns relating to rather blank and uninviting elevation of the store, facing what is arguably the most important pedestrian access to the site on Wheelock Street, amended plans have also been submitted. These amendments have brought the entrance lobby to the corner of the north east elevation to provide a level of interest when approaching the store on Southway.

Impact on the Listed Building

Local Plan policy BH4 states that planning permission for proposals affecting the setting of a listed building will only be granted where the proposal would not adversely affect the setting of the listed building.

It is not considered that the proposal would adversely affect the setting of the listed building. The store building itself would be only 7m closer to it than the existing store and, the existing garden area to the property is being retained and that together some amendments to the proposed landscaping scheme would ensure that the setting of the Listed Building is maintained.

Amenity

Local Plan policy GR6 deals with amenity and health and states that any development adjoining or near to residential property will only be permitted where the proposal would not have an unduly detrimental effect on their amenity due to amongst other things, loss of privacy, loss of sunlight and daylight and traffic generation, access and parking.

Existing residential properties are located to the south east of the site on Southway, the south of the site on Newton Heath/St Ann's Road, the west of the site on Darlington Street, the north east on Wallcroft Gardens, the south on West Street and it is likely that some of the commercial properties on Wheelock Street to the north east contain residential uses at first floor. The closest relationship with residential properties and the proposed foodstore would be with properties on Wallcroft Gardens and Newton Heath/St Ann's Road. The closest distance between the side elevations of properties on Wallcroft Gardens to the north east elevation of the building would be approximately 20m. This elevation would be largely blank and would bring the building approximately 10m closer to these dwellings than the existing building. It is not considered that this relationship would have an unduly detrimental effect on the amenity of the residents of Wallcroft Gardens.

The other properties on Darlington Street, Newton Heath and St Ann's Road would be adjacent to the car park. Subject to adequate landscaping and boundary treatments, it is considered that there would not be significant adverse impact on their amenity.

The service yard would be within 10m of properties on West Street and it is considered necessary to require acoustic fencing on its boundary in order to protect residential amenity.

Highways

This application proposes access to the site via Wheelock Street and St Anns Road and egress via St Ann's Road. Service vehicles would access the service yard from a dedicated access off St Ann's Road. Parking is to be provided within the site for 327 parking spaces, of which 18 are indicated as being disabled spaces, 14 as being family friendly spaces and 26 being designated as Council long stay spaces. It is not clear at this stage how the proposed car park is to be managed in terms of use and duration of stay.

A Transport Assessment has been submitted in support of the application. This concludes that the site has good access to non-car modes of transport. It states that the capacity analysis of local junctions indicates that a number of these are operating at or over capacity and it is therefore proposed to carry out off site highway works as part of this proposal. It is suggested that there are no highway or transportation reasons why the proposed new foodstore should not be granted planning permission.

Impact on Trees

The site is located in the centre of Middlewich, on land to the rear of properties fronting Wheelock Street, Darlington Street, Newton Heath and St Ann's Road. It includes buildings, gardens, outbuildings, hard surfaced areas and the existing supermarket and associated car parking. The pedestrian link Southway runs through the site linking Wheelock Street and St Ann's Road. St Ann's walk runs to the south east and there is a bowling green and tennis courts to the east.

A large proportion of the western side of the existing site is dominated by tree cover in mature gardens. Whilst views into the site are partially restricted, trees are clearly visible from outside the site. On Darlington Street, the presence of trees helps to soften the views of the site from properties to the west. Trees make a significant contribution to the character of the footpath to the east on Southway where they define the boundary of the site. The trees are also visible from Newton Heath. There are significant level changes across the site.

The submission includes a tree survey dated October 2011 which is an update of a survey undertaken in 2008. In the survey, the trees have been graded in accordance with BS 5837:2005 Trees in Relation to Construction and a number are afforded Grade A. There is no arboricultural implications assessment however, as with previous proposals for the site, the current proposal would involve removal of the majority of trees from the site and there is little evidence of consideration being given to the retention of the higher grade trees. Opportunities for planting in mitigation of losses as part of the development are limited.

A request was received from a local resident to give protection to some of the trees in the form of a Tree Preservation Order. Whilst the loss of trees would be regrettable, given that the site is allocated for retail development and there is an extant planning permission for a new superstore on a large part of it, it would not be reasonable of the Council to undertake to protect the trees on the site.

Whilst an indicative scheme of new landscaping has been submitted, the proportion of the layout allowed for retained and proposed landscaping is relatively small. The loss of the large number of mature trees identified for removal is a significant concern, as is the loss of mature gardens and associated wildlife habitat. As identified above, within the proposed site layout, there is minimal mitigation for the losses.

As the site is allocated for development it is inevitable that the character of the area will change. The challenge must be to create an appropriate setting for the new development which respects the surrounding area, provides a new landscape framework and enhances the townscape. To this end it is considered that further, more detailed landscaping plans should be required by condition. During the course of the application additional information has been submitted regarding off site planting within Middlewich in order to mitigate the loss of trees and bat foraging areas following the development of the site.

Ecology

Additional bat surveys have been undertaken to update the survey work undertaken in support of previous applications at this site. The surveys were constrained by being undertaken slightly late in the survey season and by a failure to gain full access to some of the buildings on site. However, considering the past history of ecological surveys at this site it is considered that adequate data has been gathered to assess the likely impact of the proposed development on bats.

Four roosts of a single common bat species have been recorded within the buildings on site. One 'roost' is suspected as being only very temporary in nature and none of the roosts appear likely to support large colonies of bats and the presence of a maternity roost appears unlikely.

In the absence of mitigation the proposed development will have a moderate adverse impact on bats at the local scale, through the loss of roosts and foraging/commuting habitat. The demolition of the buildings would also pose the risk of disturbing, killing or injuring any animals present when works are undertaken on site.

The submitted report recommends mitigation/compensation proposals which include: the retention of a number of trees on site, the planting of additional trees, the construction of two 'bat towers', the erection of bat boxes and off-site habitat creation. It is considered that that thought may need to be given to securing the off-site habitat creation through a section 106 agreement as the land subject to this proposal appears likely to be outside the ownership of the applicant. In addition it is recommended that a 10 year management plan be prepared to ensure that the newly created habitats are successfully established.

Importantly a number of trees have been identified on site, which have the potential to support roosting bats. To enable a full assessment of the potential impacts of the proposed development to be assessed any trees with greater than moderate potential to support roosting bats should be subject to a detailed survey to establish the presence of roosting bats. These surveys are currently being undertaken and members will be given an update on the results prior to the committee meeting.

The potential adverse impact of additional lighting on bats had previously been identified in respect of the proposed development of this site. To ensure that the potential impacts of lighting are mitigated it is recommended that no direct lighting should be applied to any of the replacement roosts or foraging habitats.

Gardens are a local Biodiversity Action Plan (BAP) priority habitat and so a material consideration. It is considered that the loss of garden habitat at this site will not result in a

significant loss of biodiversity except in the context of the very immediate vicinity of the site and this impact could be mitigated for by the off-site habitat creation.

A number of BAP priority bird species have been recorded on site. The presence of these species is a material consideration. Whilst these species have suffered significant declines they are still relatively widespread in Cheshire and the causes of the declines of many bird species are not fully understood, but are likely to be linked to changes in farming practices in the wider countryside.

It is considered that the off-site habitat creation and on site landscaping together with the general conditions recommended for breeding birds below will help to mitigate any adverse impacts upon these species.

Potential habitat for breeding birds is present on site. If planning consent is granted conditions are required to ensure birds are not disturbed during the breeding season and that adequate provision for breeding birds is made as part of the development.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places,

- in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment

and provided that there is

- no satisfactory alternative and
- no detriment to the maintenance of the species population at favourable conservation status in their natural range

The UK implements the Directive in the Conservation of Habitats & Species Regulations 2010 which contain two layers of protection

- a requirement on Local Planning Authorities (“LPAs”) to have regard to the Directive’s requirements above, and
- a licensing system administered by Natural England.

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. “This may potentially justify a refusal of planning permission.”

PPS9 (2005) advises LPAs to ensure that appropriate weight is attached to protected species “Where granting planning permission would result in significant harm [LPAs] will need to be satisfied that the development cannot reasonably be located on any alternative site that would result in less or no harm. In the absence of such alternatives [LPAs] should ensure that, before planning permission is granted, adequate mitigation measures are put in place. Where significant harm cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought. If that significant harm cannot be prevented,

adequately mitigated against, or compensated for, then planning permission should be refused.”

PPS9 encourages the use of planning conditions or obligations where appropriate and again advises [LPAs] to “refuse permission where harm to the species or their habitats would result unless the need for, and benefits of, the development clearly outweigh that harm.”

The converse of this advice is that if issues of detriment to the species, satisfactory alternatives and public interest seem likely to be satisfied, no impediment to planning permission arises under the Directive and Regulations.

Having regard to this proposal, it is considered to meet the tests set out in the Conservation of Habitats & Species Regulations 2010:

1. The development is of overriding public interest

The proposal would result in an additional, larger foodstore within Middlewich town centre which would offer a wider choice to local consumers. This would provide economic benefits to Middlewich in form of jobs and investment and would provide a foodstore in an accessible and sustainable location.

2. There is no satisfactory alternative

This is a site which has been allocated for retail development and is considered to be the most suitable site for this type of development.

CONCLUSIONS

The site that is the subject of this application is allocated for retail development in the adopted local plan. Therefore the principle of retail development on the site is acceptable. The scale of retail development proposed by this application is also considered acceptable. It is considered that the amended plans addressed the previous concerns about the design and landscaping of the site and that the current proposal is for a store and associated development of an improved design. The relationship between the development and surrounding residents is considered to be acceptable. The highways works proposed, including off site works, are considered acceptable and will ensure that the local highway network will not be adversely affected.

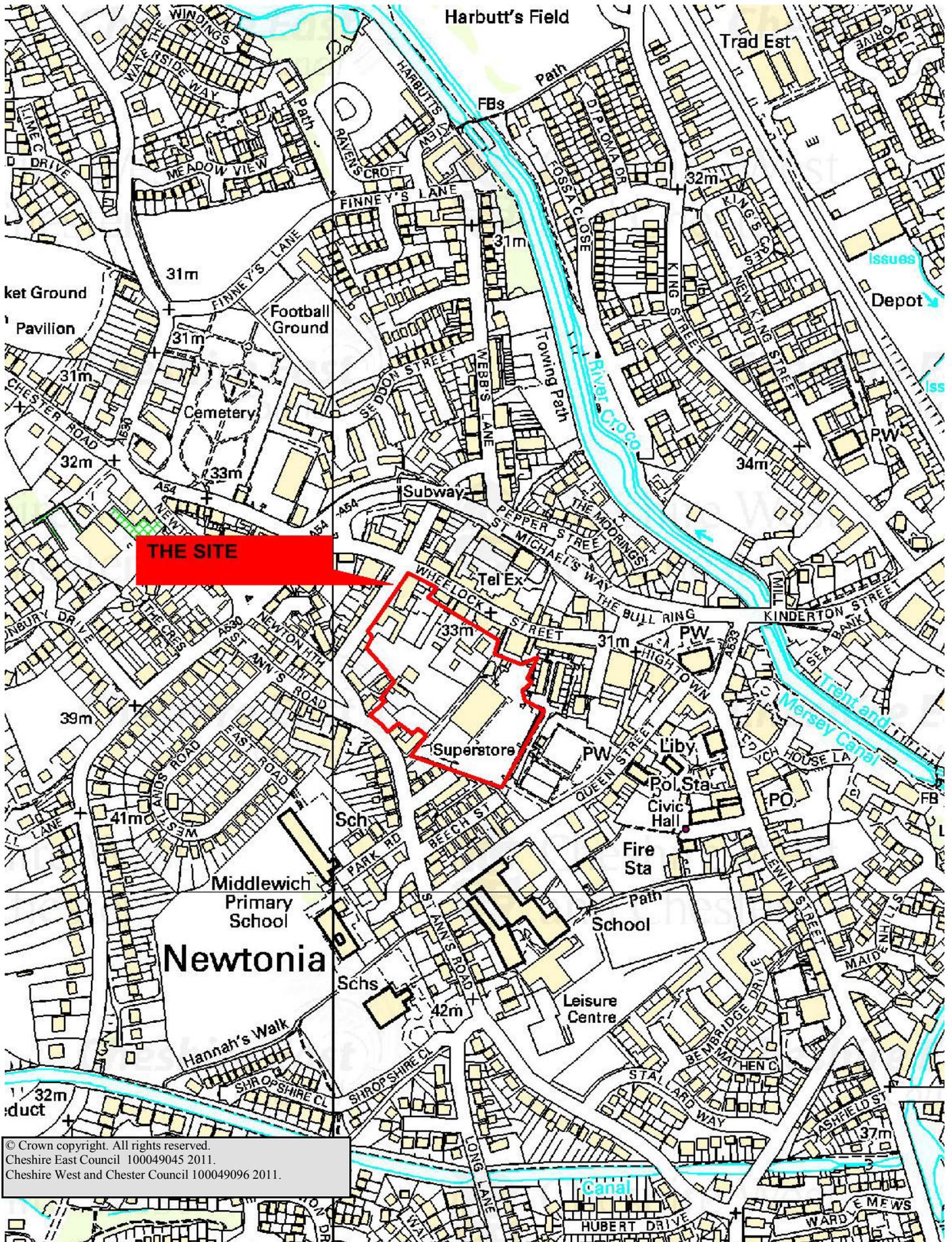
RECOMMENDATION:

Approve subject to the completion of a Section 106 Agreement and the following conditions:

- 1. Standard time limit**
- 2. Approved plans**
- 3. Facing and roofing materials to be submitted for approval**

4. Full details of all materials to be used in the areas of public realm to be submitted for approval
5. Details of decorative or preservative treatments to external timber cladding to be submitted for approval
6. Details of all fenestration to be submitted for approval
7. Submission of a landscaping scheme
8. Implementation of landscaping scheme
9. Details of the surfaces of the access road from Wheelock Street, internal paths and the surface treatment of the parking areas, street furniture, boundary treatment including railings and walls to be submitted for approval
10. Details of a 10 year management plan including long term design objectives, management responsibilities and maintenance schedules for all areas, including off site planting areas submitted for approval
11. Submission and implementation of an arboricultural method statement
12. Implementation of off site tree planting and habitat enhancement at Middlewich High School, Middlewich Primary School and St Mary's Catholic Primary School
13. Submission and approval of details of replacement pond at one of the off site locations
14. Measures for the protection of breeding birds
15. Submission of details for incorporation of features into the scheme for use by breeding birds
16. Full details of external lighting to be submitted for approval
17. Submission of a Phase II contaminated land site investigation
18. Construction hours limited to 8am to 6pm Monday to Friday and 9am to 2pm Saturday with no working on Sundays and Bank Holidays
19. Submission for approval of the hours of any piling if required
20. Floor floating limited to 7.30am to 8pm Monday to Friday, 7.30am to 1pm with no working on Sundays or Bank Holidays
21. Submission of full details of the CHP plant
22. Submission of full details of noise attenuation measures to be submitted for approval
23. Submission of details of the acoustic enclosure of fans, compressors or other equipment with the potential to create noise
24. Deliveries limited to 7am to 9pm Monday to Saturday and 8am to 5pm Sundays and Bank Holidays
25. Submission of details of the management of the car park, including details of a barrier across the Wheelock Street Access
26. Implementation of a programme of archaeological work
27. Submission of a scheme for the management of overland flow from surcharging of the site's surface water drainage system
28. Submission of a scheme for the provision and implementation of a surface water regulation system
29. Submission of construction method statement
30. Submission of details of the off site highway works
31. Prior to first trading the off site highway works shall be completed
32. Prior to first trading a travel plan shall be submitted and approved
33. The access off St Ann's Road Shall be constructed
34. Access constructed so as to prevent the discharge of surface water onto the public highway

- 35. Provision of wheel washing facilities**
- 36. Full details of parking layout to be submitted for approval**
- 37. Submission of details for the parking of cycles**
- 38. Submission of details of shower, changing, locker and drying facilities**
- 39. Service facilities provided prior to first occupation and retained thereafter**
- 40. Buildings shall not be occupied until all hardstanding, including car parks, driveways, footways, turning facilities and service areas are laid out, drained, surfaced and marked out**
- 41. Submission of hours of operation of the store to be submitted for approval**
- 42. Prior to first use of the Wheelock Street access and first trading/use of the foodstore, the residential use of the property at Ivy House (51 Wheelock Street) shall cease and the use of the building shall change in accordance with planning permission 09/1739C**



THE SITE

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Cheshire East Council 100049045 2011.
Cheshire West and Chester Council 100049096 2011.