

<b>Planning Reference No:</b>	08/1626/FUL
<b>Application Address:</b>	PACE Centre, Wheelock Street, Middlewich
<b>Proposal:</b>	Proposed foodstore development with associated parking servicing, landscaping and new retail building on Wheelock Street frontage (dual access)
<b>Applicant:</b>	Tesco Stores Ltd & Briden Investments Ltd
<b>Application Type:</b>	Full
<b>Registered:</b>	01-Sep-2009
<b>Grid Reference:</b>	370093 366333
<b>Ward:</b>	Middlewich
<b>Expiry Date:</b>	01-Dec-2008
<b>Date Report Prepared:</b>	22-Apr-2009

## **SUMMARY RECOMMENDATION: REFUSE**

### **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 REPORT**

On 24 March 2009 Congleton Borough Council's Planning Committee was minded to approve this application. In accordance with paragraph 6.1.2 of the Planning Protocol adopted in its Constitution, it resolved *That the application be DEFERRED in accordance with Minute P 177(a) of 3 May 1983 and paragraph 6.1.2 of the Borough Council's Protocol of Conduct in Relation to Planning Functions. Minded to approve the application contrary to a recommendation for refusal, the Committee deferred its determination of the application to the next meeting of the Committee in order to allow the officers to formulate appropriate conditions and to provide the Committee with any relevant further information.*

The practice of deferring applications recommended for refusal, where Members were considering granting permission, had been introduced in 1983 following a recommendation by the Local Government Ombudsman. Conditions are crucial to mitigation of harm. Together with Planning Agreements, they are the common means of making proposals acceptable which should otherwise be refused. They are an intrinsic part of an approval. Members need to know what conditions can and should be attached to a permission before they can form a view regarding acceptable or unacceptable detriment and before they can take an informed decision. However, Members will not usually have seen proposed conditions, nor received advice regarding their effectiveness, in a report which recommends refusal.

In these circumstances a deferral, so that conditions can be drafted and reported back to Committee, does not raise any presumption or legitimate expectation that a Committee has decided to approve an application in principle. The Committee's discretion is not fettered in any way. All the planning issues are to be examined afresh with impartial consideration at the further meeting, after which the Committee has a completely open choice to refuse the application or approve it subject to whatever conditions it agrees.

At the March committee, some Members may have expressed views for or against the application, some will have voted for or against the deferral. Whether conduct shows predetermination, as opposed to a mere predisposition, depends on the particular words and actions of each individual during and outside a meeting. In itself, being "minded-to" approve, subject to further information, is a mere predisposition: a Member's mind is still open to a final decision either way.

Of course, if an individual's own particular words or acts have gone beyond this general position: if, in fact or appearance, they are approaching the further report with a prejudgment and are not open to a change of inclination after hearing the Officers' advice, the public speeches and the committee debate, then they should declare a predetermination and take no part in that debate or vote.

## **DESCRIPTION OF SITE AND CONTEXT**

The application site comprises a piece of land totalling 1.25 hectares located within Middlewich town centre. The site has frontages onto 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 to various parts of the site 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 6m.

## **DETAILS OF PROPOSAL**

Planning permission is being sought for the erection of a new foodstore and for associated access and parking arrangements. The foodstore would have a

gross floor area of 2646 m<sup>2</sup> and would provide a net sales area of 1700 m<sup>2</sup>. The proposed store building would be sited approximately 45m back from Wheelock Street with part of the north western elevation of the building being adjacent to Darlington Street. The entrance to the store is on the eastern elevation, fronting the proposed car park, with vehicular access and egress from newly formed junctions onto Wheelock Street and Newton Heath/St Ann's Road. Pedestrian access is provided from two points off Wheelock Street and via Southway, an existing public footpath to the east of the site. The service yard for the store is proposed between the store building and a new retail building proposed to front onto Wheelock Street. This new retail building would provide an additional total floorspace of 72.5m<sup>2</sup>, within two retail units. The proposed foodstore would generally be single storey with a staff area proposed at first floor level. The proposed new retail units would be part two storey, part single storey and would be of a traditional design.

A number of amendments have been made to the originally proposed scheme. These include an amendment to the north east elevation resulting in the removal of the original gable feature and its replacement with a lower, simpler elevation; a reduction in the size of the service yard and changes to the landscaping and road layout at this point, amendments to the car park layout where it adjoins Southway and amendments to the size and design of the proposed new retail units.

More recently, an indicative scheme for the creation of 'off-site' public realm improvements to the area around Southway has also been submitted. This is to try and ensure that good linkages can be made between the application site and Wheelock Street. Indicative proposals to enhance the service yard area, possibly with public art, have also been submitted.

## **RELEVANT HISTORY**

07/0833/FUL Retail food superstore with ancillary parking plus 2 no. retail shops and offices. Withdrawn Oct 2007

08/1625/FUL Proposed foodstore development with associated parking servicing, landscaping and new retail building on Wheelock Street frontage (single access). Refused March 2009

## **POLICIES**

### **Regional Spatial Strategy**

DP1 – Spatial Principles

DP2 – Promote Sustainable Communities

DP3 – Promote Sustainable Economic Development

DP4 – Make 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  
RDF2 – Rural Areas  
W5 – Retail Development  
RT2 – Managing Travel Demand  
RT9 – Walking and Cycling  
EM1 (B) – Natural Environment  
EM1 (C) – Historic Environment  
EM1 (D) – Trees, Woodlands and Forests  
EM2 – Remediating Contaminated Land  
EM3 – Green Infrastructure  
EM5 – Integrated Water Management  
EM10 – A Regional Approach to Waste Management  
EM11 – Waste Management Principles  
EM17 – Decentralised Energy Supply

### **Local Plan Policy**

PS4 – Towns  
GR1 – New Development  
GR2 – Design  
GR4 & GR5 – Landscaping  
GR6 & GR7 – Amenity and Health  
GR9 & GR10 – Accessibility, Servicing & Parking Provision  
GR17 – Car Parking  
GR18 – Traffic Generation  
NR1 – Trees and woodlands  
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**

PPS1: Delivering Sustainable Development  
PPS6: Planning for Town Centres

### **CONSULTATIONS (External to Planning)**

**Highways:** recommend the scheme for approval subject to conditions and informative as detailed.

- Prior to first development the applicant will provide a detailed suite of design plans for all off-site highway works for approval by the LPA.
- Prior to first development the applicant will provide a staff Travel Plan for approval by the LPA and inclusion within a S.106 Legal Agreement.

- The applicants will provide a negotiated sum for the upgrade of local bus stop facilities in line with the offer in the e-mail from Waterman Boreham to Cheshire Highway Authority dated 13 - 02 - 09. This will be secured within the S.106 Agreement.

#### Informative

- The applicants will enter into and sign a S278 Agreement under the Highways Act 1980 with regard to all off-site highway works.

**Environmental Health:** suggest a number of conditions to be attached to any consent granted to cover matters such as contamination, hours of use, acoustic enclosure of equipment, hours of deliveries, use of car park, piling, hours of construction, external lighting, hours of floor floating, acoustic grade screening and attenuation in the service yard area.

**County Archaeologist:** initially requested trial trenching to be carried out as the site is within an Area of Archaeological Potential. This work was subsequently carried out to the satisfaction of the County Archaeologist and revealed that there is a dense distribution of post-medieval features across part of the site. These lie immediately below the topsoil and are unlikely to survive the landscaping that will accompany the creation of the site entrance. Part of the site will therefore need to be subject to a programme of excavation, recording and reporting before the main development works start. In other less archaeological sensitive parts of the site, an archaeological watching brief is suggested. Both these matters can be dealt with by condition.

**Environment Agency:** initially objected to the application as the submitted Flood Risk Assessment (FRA) does not comply with the requirements of PPS25. However, a revised FRA has now been submitted and the Agency now raise no objections subject the imposition of a condition requiring the development to be carried out in accordance with the revised FRA.

**United Utilities:** no objections to the proposal.

**Public Rights of Way Unit:** appears unlikely that the proposal would affect the nearby public right of way.

**English Heritage:** do not wish to offer any comment on this occasion and advise that the application should be determined in accordance with national and local policy guidance and on the basis of the Council's specialist conservation advice.

**Cheshire Fire & Rescue:** provided general comments regarding access for the fire service, water supplies and means of escape.

#### **VIEWS OF THE PARISH / TOWN COUNCIL**

**Middlewich Town Council:** initially commented that Wheelock Street is narrow and congested. The preferred highway layout would be a single

access off Wheelock Street with a two-way system operating between St Michaels Way and Darlington Street. It is considered to be poor planning to have two medium sized stores and two car parks adjacent to each other. It would be preferable to have just one larger store. This also makes sense for the economy of the town as two medium sized stores are not considered to be economically viable.

Additional comments received request that Members consider the planning issues of this application in accordance with their statutory responsibilities, but also take account of the wider context of potential economic regeneration of Middlewich Town Centre, through the link to the added value proposals offered by the North West Development Agency (NWDA) Investment Prospectus. Members should consider a conditional approval of the application, thus allowing all parties to continue constructive negotiations, leading to a positive conclusion that satisfies the responsibilities of the Planning Authority, the commercial needs of Tesco, but most of all to grasp this unique opportunity to create a vibrant retail heart for the town centre of Middlewich.

## **OTHER REPRESENTATIONS**

To date, 16 letters of representation from 13 separate addresses (one via Lady Ann Winteron MP) have been received in relation to this application and the parallel application (08/1625/FUL). Three letters are in support of the application, two are from a local retailer stating that a new supermarket in the suggested location could only be a positive addition for the town. The high street currently suffers because many locals currently go out of town for their weekly shop. Many traders complain about the parking in Wheelock Street and the additional parking provided by the proposed development would surely help to alleviate this problem. Approximately 120 new houses have been constructed at The Works development and it would be a good move to bring that new community across the High Street as if we are unable to offer a good range of shopping then they will go elsewhere. Employment at a store of this size will bring new people into a very quiet town and there may be additional traffic but this is all part of the passing trade that is needed to sustain a healthy high street. May be cross over with what the new store sells and what is currently available but believe that competition will drive us all to do better. Think it is imperative that the customer access for the store should only be from Wheelock Street. A further letter of support states that this project has been ongoing for 10 years and that this is the third developer to try to get the scheme off the ground. If planning permission is not granted, understand that it would be very unlikely that Tesco would stay with the developers and if that happened, whole project would be shelved for the foreseeable future. Would be a disaster for Middlewich as it would leave boarded up properties on the main street and would lose much needed jobs that this project would bring to the town.

The remaining letters raise objections to the application. The main points of objection raised are summarised below.

- Concern about trading monopoly
- Concern about size of service vehicles that would use the Wheelock Street entrance
- Wrong place to build a store as Somerfields is already operational and if it is to offer a similar range of produce as Somerfields, is it needed?
- Concern that the new store will have an adverse impact on other businesses in the town
- Concern about the small size of the car park and the knock on impact on local streets
- Concern about the loss of large trees
- Land on the outskirts of the town far better suited to a larger and more comprehensive store
- Concern that a new foodstore of the size proposed is unlikely to bring significant volumes of trade back to Middlewich from major supermarkets in nearby towns
- Retail units constructed on Wheelock Street 2/3 years ago remain empty therefore building more would be pointless
- Town centre already heavily congested for long periods, especially on weekdays
- Other developments e.g. landfill site at Kinderton Lodge, incinerator at Midpoint 18, retail development at Booseys, retail development at Town Bridge and housing development at Jersey Way will all make the traffic situation in Middlewich much worse than it is now
- Anticipated that a number of vehicles would exit the area using Darlington Street and Newton Heath and this would lead to an unacceptable level of traffic on these quiet, residential roads
- Most shoppers will use their cars as will many staff
- Concern about impact on existing sewer system and increased risk of flooding
- Concern about light pollution associated with the development
- Only reason that some of the buildings in this area are derelict is because they are owned by the applicant
- Concern about a lack of publicity about the application
- Concern about poor turning arrangements at the St Anns Road/Nantwich Road junction

**From Roger Tym & Partners (commissioned to carry out the Cheshire & Warrington Economic Alliance (CWEA) report)**

Overall, of the view that this proposal represents that best opportunity for Middlewich to realise the Vision and Objectives for it identified in the Investment Prospectus (in the absence of the availability for development of the former Somerfield/Co-op store). The proposal would capitalise on a key land asset of the town, allocated for retail development, to address an identified shortfall in retail provision and unsustainable leakage.

It will address traffic issues and accessibility within and through the town by virtue of highways improvements, and will improve the layout of the centre by adding depth.

However, it remains to be demonstrated that the proposal will create effective physical and functional linkages with Wheelock Street and deliver the 'circuit' that will maximise the likelihood of shoppers remaining in the town and of their expenditure being captured by local businesses and to the benefit of the local economy. That said, are of the opinion that this could be satisfactorily resolved after the determination of the application by virtue of the proposed condition suggested by the applicants.

## **APPLICANT'S SUPPORTING INFORMATION**

Numerous documents have been submitted in support of the application including a Planning, Design & Access Statement, a Transport Assessment, a Flood Risk Assessment, an Air Quality Assessment, a Statement of Public Consultation, a Archaeology and Cultural Heritage Assessment, an Initial Ecology Survey, a Bat Survey and a Arboricultural Survey. Full copies of these documents can be viewed on the application file.

In summary, the Planning, Design & Access Statement concludes that the site is allocated for retail development by a saved policy in the adopted Local Plan. The provision of a new foodstore on the site will significantly improve convenience goods provision in the town centre, and will reduce the outflow of shoppers to other surrounding stores and centres. The resulting clawback of shoppers and expenditure will result in a positive spin-off for existing town centre retailers. The setting of the site has been carefully considered when selecting the design for the store, the use of materials and the landscaping aspects of the scheme. This has resulted in an attractive scheme which is sympathetic to the character and appearance of the area, including the Conservation Area, whilst also providing a modern, energy efficient building appropriate for a foodstore use. The loss of existing high canopied structural trees has been minimised as far as possible, and vegetation retained where feasible and sustainable. The extensive semi-mature tree planting which is proposed will enhance the urban qualities of the site and will introduce significant soft landscaping elements within the streetscene. The scheme has also sought to ensure convenient access to the site. It promotes sustainable transport modes and also ensures easy manoeuvrability within and around the site for both customers and service vehicles.

Extensive additional information has also been submitted during the course of the application. Some of the additional information re-iterates the above, with the following additional points made.

- The scheme incorporates a number of sustainability measures, including a modern Combined Heat and Power (CHP) system, wind catchers on the roof, timber cladding panels and a glazed frontage, all of which help to reduce carbon dioxide emissions, and minimise the store's carbon footprint.
- The scheme results in a contemporary design of store which respects the character and appearance of the local area, and which contains a significant amount of new and replacement planting, landscaping and habitat provision within the site.



- The new store is intended to replace Tesco's lease of the existing Somerfield store, in order to stem the significant leakage of customers from the town who presently travel to other surrounding areas to undertake main food shopping trips. This will have a positive effect on the town centre, as it will result in increased footfall in the town and bring the benefits of spin off trade to other retailers.
- The new store will create 150-200 new jobs for the area, in an economic climate where the government has placed a high priority on job retention and creation.

The Market Towns Investment Prospectus (MTIP) commissioned by the CWEA has identified Middlewich as a town that has experienced market failure, which is inhibiting economic potential. The Tesco store represents an opportunity to facilitate the changes to address market failure.

Should the proposal proceed then Tesco will have the ability to re-assign the lease at the former Somerfield store to other retail uses, creating the 'retail circuit' envisaged by the MTIP report.

Indicative drawings have also been submitted to show how the area around Southway could be developed into an area of public space which would improve the public realm and improve links to the Tesco store. The public realm improvements would create a 'retail circuit' between the new store, the former Somerfield store and Wheelock Street. Public art would also be used on the entrance to the proposed service yard.

Concern has been expressed about the store entrance not fronting onto Wheelock Street, however there are other examples of stores that function in a similar way, which do not have entrances onto the main shopping street, but do successfully function as part of the town centre.

The scheme provides scope for transformational change sought from the MTIP report. It can also act as the catalyst for other projects within the town.

Replacement bat roosts included within the proposal would adequately compensate for loss of existing roosts while it is considered it is not necessary to provide replacement habitats on site. A suitable condition can be worded to provide mitigation off site. Furthermore, in order to address concerns over loss of trees on site, the applicant is willing to contribute to a local planting scheme to secure overall benefits.

As a consequence of these proposed measures, a list of suggested conditions is provided which could be imposed should the Committee be minded to approve the scheme.

## **OFFICER APPRAISAL**

### **Principal of 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 3000m<sup>2</sup> 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.

PPS6: Planning for Town Centres states that when considering applications for planning permission in town centres, applicants should demonstrate the need for the development, that the development is of an appropriate scale, that there are no more central sites for the development, that there are no unacceptable impacts on existing centres and that locations are accessible. However in cases such as this where the application relates to an allocated site in a town centre location, the only issues that need to be addressed are the scale of the development and its accessibility.

In terms of scale, the Local Plan indicates that the site is suitable for retail development up to 3000m<sup>2</sup> floorspace. As previously stated the total floorspace proposed is 2646m<sup>2</sup> (1700m<sup>2</sup> retail) for the foodstore and 72.5m<sup>2</sup> for the new retail units. This falls below the level stated in the Local Plan. 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.

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

### **Design, Appearance & 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 all 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 & PPS6 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.

There are a number of concerns regarding the design, appearance and visual impact of the proposal both in terms of the impact on the character and appearance of the Conservation Area and more generally on the character and appearance of the wider area. As noted in the site details section of the Local Plan, this is a sensitive site which requires a sensitive scheme. It is not considered that the proposed scheme adequately addresses the constraints of the site and there are particular concerns regarding the general design and appearance of the store, the position of the store within the site away from the Wheelock Street frontage and the implications that this has on the connectivity to Wheelock Street. Additionally there are concerns regarding the siting of the service yard close to Wheelock Street, the formation of a large vehicular access off Wheelock Street, the appearance of the Darlington Street frontage and the large amount of development on the site in the form of buildings and areas of hardstanding resulting in the significant loss of a large number of visually important trees. Strong objections have been received from both the Council's Conservation Officer and from the Council's Urban Design Advisor.

In its present form it is considered that the proposal would be harmful to the character and appearance of the area and it would not preserve or enhance the character and appearance of the Conservation Area. The proposal is therefore contrary to RSS policy EM1(C), Local Plan policies GR1, GR2 and BH9. With regard to the amended plans, the Council's Urban Design Advisor considers that most of the original concerns remain. Frontage development to Wheelock street is of a very weak design, the landscape area between Wheelock Street and the store frontage is now even less appropriate, no attempt made to increase the built frontage to Wheelock Street as requested, increase in wooded fringe to the eastern pathway is 'tokenistic' and the design of the store seems to have been weakened.

Whilst the views of the Urban Designer are noted, with regard to the design and appearance of the proposed new retail units fronting Wheelock Street, these are generally considered to be acceptable, subject to a number of relatively minor amendments.

The proposal for the improvement to the public realm around Southway has the potential to improve linkages to Wheelock Street, and could be of real benefit to the local area. However, it is outside the application site and includes land outside the control of the applicant, including Council owned land. This gives Officers concern as to whether such improvements could therefore be secured as part of any permission, and that any such condition would not meet the tests of government advice within Circular 11/95.

In addition, in order for this to be an effective option to maximise links and circulation it is also considered that alterations to the parking layout of the proposed store would be required. A hand drawn plan has been submitted to show how this could work, but again a question is raised as to whether it would work effectively and whether the loss of parking spaces is acceptable.

### **Impact on 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. The Council's Conservation Officer notes that the proposed car park would be extremely close to the listed building and considers that the proximity of the car park, with the limited screening proposed, would have a severe and adverse impact on the setting of the listed building. It is noted that there is a proposed retaining structure and that details of this and its impact on the setting of the listed building do not appear to have been submitted with the application.

Whilst the comments of the Conservation Officer are noted, the submitted plans indicate a distance of approximately 18.5m from the listed building to the retaining structure at the edge of the proposed car park. Given this distance and given that additional landscaping is proposed along this boundary, it is not considered that the setting of the listed building would be severely compromised.

## **Highways**

This application proposes access and egress to the site via Wheelock Street for both customers and service vehicles, with service vehicles accessing the service yard located just off the site entrance. Parking is to be provided within the site for 171 parking spaces, of which 11 are indicated as being disabled spaces and 7 as being family friendly 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.

Local Plan policies GR9, GR10, GR17 & GR18 relate to matters of highways and parking. Additionally PPS6 requires town centre developments to be accessible.

The Highways department do not raise any objections to the proposal subject agreement and the imposition of highways related conditions. The Highways department has had extensive negotiation with Tesco's traffic consultant and they have produced sufficient evidence to demonstrate that a traffic solution is available for the proposed development. The scheme therefore is acceptable subject to conditions regarding a Travel Plan, and off-site highways works as agreed with the Highways department and upgrading of bus stop facilities. It is considered these could be dealt with via a Section 278 agreement or an Unilateral Undertaking by the applicants.

## **Impact on Trees**

The site currently contains a large number of trees and the submission includes a landscape scheme and a comprehensive tree survey covering 132 trees. The survey grades the trees in accordance with BS 5837 and a number are afforded Grade A. It appears that the proposal would involve removal of the majority of trees from the site, with a relatively small number of trees being retained at some points within the site. Replacement planting is proposed as part of the application, this would primarily be in narrow belts along the site boundaries.

Local Plan policies GR4 & GR5 deal with landscaping and state that development will only be permitted where it respects or enhances the landscape character of an area and where landscaped areas are adequate and appropriate for the intended use. Policy NR1 states that development will not be permitted where it is apparent that there would be an adverse effect on existing healthy trees of amenity value. Policy BH9 also refers to the loss of important trees in the context of the impact of this on Conservation Area whilst Policies NR2 & NR4 relate to loss of habitat.

In this case, none of the trees on site are currently formally protected by Tree Preservation Orders. This is probably largely due to the fact that the site is allocated for retail development. However, whilst the site allocation is an important consideration, it is considered that the amount of trees to be lost as part of this proposal is unacceptable. In particular it is considered that the loss of trees along the Darlington Street frontage and along the pedestrian footpath would have a significant adverse impact on the visual amenity of the area. With regard to the revised landscape plan, taking into account the width of the planting bed and the required construction of a retaining wall, the Council's Landscape Officer is not convinced that all the trees indicated could be retained successfully without encroachment into their root protection areas and significant root damage.

## **Ecology**

An initial ecological survey was submitted with this application and during the course of the application a bat survey has also been provided. The bat survey found some evidence of roosting bats in a number of buildings on site and a generous replacement roost in the form of a bat loft to be located above the new retail units fronting Wheelock Street has been suggested as mitigation. The Council's Nature Conservation Officer considers that these proposals are acceptable to compensate for the loss of roosting habitat. However there is concern that there would be a significant reduction in the amount of available foraging/commuting habitat following the development. Whilst the proposed landscape buffer could be improved through the use of native species and whilst bat boxes could be provided and a small pond formed, the Council's Nature Conservation Officer is not convinced that this would result in enough habitat being available to retain bats on site following the development. In any event the proposal falls a long way short of achieving overall gain for nature conservation as is required by PPS9.

The applicants have recently provided a response to the Nature Conservation Officers comments. This states that provided that the replacement roost features are adequately compensated for in the new build, the provision of additional boxes is not essential for roost mitigation. With regard to foraging habitat, the species found on site (Pipistrelle Bats) tend to forage within 3-4km of the roost site and in principle therefore, it would be acceptable to create off-site foraging areas. The Council's Nature Conservation Officer notes the comments and fully supports the provision of off site habitat improvement. However, he considers that there may be potential for other species of bats that would require foraging habitat within 1km of the site (Brown Long Eared Bats). It was agreed previously that the bat mitigation for this scheme should be based on a 'worse case scenario' due to seasonal constraints of the submitted survey. Consequently off site habitat provision should also be offered within 1km of the site unless it is established from further survey work that Brown Long Eared Bats are absent from the site.

Notwithstanding the comments relating to off site provision of habitat, no indication has been given as to how and where this would be provided. In the absence of this, it is not considered that the impact of the proposal on

protected species and their habitats has been fully resolved. Whilst this clearly needs to be weighed against the fact that this is an allocated site, at this stage, as with the loss of trees, it is considered that the loss of habitat that would result from this development is unacceptable. Again Officers, remain concerned that the conditions suggested by the applicant's agent do not satisfy the relevant tests within Circular 11/95.

The additional views of the Council's Nature Conservation Officer have been passed onto the applicants and any further response received will be reported directly to committee. Therefore it may well be the case that after further discussion with the applicants that a resolution of this matter may be forthcoming and the ecology reason for refusal could be withdrawn.

### **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 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 Darlington Street and Newton Heath/St Ann's Road. The closest distance between the front elevations of properties on Darlington Street to the north west elevation of the building would be approximately 11-12m. This elevation would be blank and would have an eaves height above ground level of 4.5-5m, rising to a ridge height of 7.5-8m. This would appear to be consistent with the general scale of properties along Darlington Street and whilst this distance does not meet the guidelines stated in the Council's Supplementary Planning Guidance Note 2: Provision of Private Open Space in New Residential Development, in this case it is not considered that this relationship would have an unduly detrimental effect on the amenity of the residents of Darlington Street. There is also a close relationship between a single storey property located to the south west of the site and accessed off Newton Heath. The garden of this property adjoins the boundary of the site. A large number of trees are located to the rear of the site meaning that the outlook from the rear is limited. These trees are to be retained as part of this proposal. It is therefore considered that whilst the proposed foodstore would be located within 16m of the rear of this dwelling, the impact of the building on this dwelling would be acceptable.

Another issue to be considered is the impact of the comings and goings associated with the proposed use on the amenity of nearby residents. The proposed car park would be located close to a number of residential properties. However it is considered that the proposed site layout and

landscaping together with changes in site levels means that the impact of use of the car park on residents would be acceptable.

With regard to the impact of the proposed service yard, the Council's Environmental Health section has raised no objections in principle to the proposal. However should consent be granted for the proposal, Environmental Health have requested conditions regarding hours of use and deliveries, acoustic grade screening to the car park and attenuation to be undertaken in the service yard. No objections have been received to the scheme from residents on Darlington Street or from the resident of the single storey property located to the south west of the site.

## **Other Matters**

### Existing Somerfield site

Members may be aware that Tesco have recently acquired a long term lease on the Somerfield store located to the south east of the site on the opposite side of Southway. Tesco have made two applications to the Council for new signage and for a number of alterations to the existing store. Whilst the fact that Tesco propose to operate this store does not necessarily directly affect the determination of this application, the fact that they have some involvement with the adjacent site means that this may provide an opportunity to address the constraints and concerns associated with this current application to the benefit of the wider planning of the area.

### Employment Creation

It is stated that the equivalent of 118 full-time staff would be employed at the store (76 full-time & 126 part-time). Whilst this is a material consideration to be given significant weight, particularly in the current economic climate, it is not considered that this on its own outweighs other concerns relating to the proposal. As stated, there is no objection to the principle of a retail store on this site, rather objections are raised to the particular details of proposal submitted.

### CWEA funding

Reference is made to the Cheshire & Warrington Economic Alliance (CWEA) and the Market Town Investment Prospectus work which was carried out by independent consultants Roger Tym & Partners. This report has identified Middlewich as a town that is under-performing for a number of reasons, and that suffers high levels of retail 'leakage' e.g. residents have to go outside the town for their main shopping provision. Problems of traffic/congestion in the town are also identified. As a consequence the report has identified that there are opportunities for Middlewich, and that some limited levels of funding may be available from the NWDA to assist in improving the area. The Tesco scheme is viewed as a potential catalyst which may assist in improving investment in the area as a whole.

While the development of the site would be a significant investment in the town, the fact it may be a catalyst to release funding from other sources is not a material consideration for the planning merits of the application.



## **CONCLUSIONS AND REASON(S) FOR THE DECISION**

The site that is the subject of this application is allocated for retail development on the 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. However, it is considered that this proposal fails to respect the site location and constraints in particular its relationship with the Conservation Area and the wider area, the amount of existing trees on the site and the positive contribution that these make to the visual amenity of the area and the potential of the site to offer ecological benefits. It is not accepted that an alternative scheme could not be developed that would have a more positive impact on the area, would retain more trees and would offer ecological benefits. The proposals to improve the public realm around Southway would be welcomed, and while there remain some concerns about the ability to deliver this element, Members may consider that this, coupled with the economic issues, provides sufficient benefit to overcome the reasons for refusal.

## **RECOMMENDATION**

### **REFUSE for the following reasons:**

- 1 The proposed development by virtue of its size, siting and design, the design and appearance of the access and service yard and the associated loss of trees would have an unacceptable impact on the Middlewich Conservation Area of which the site forms a part. The proposal would neither preserve nor enhance the character or appearance of the Conservation Area. The development is therefore contrary to RSS Policies DP7 & EM1 and Local Plan Policies GR1, GR2 & BH9.
- 2 The proposed development fails to achieve an adequate quality of design to justify approval of planning permission. In reaching this conclusion regard was had to the size, siting and design of the proposed foodstore, the design and appearance of the access and service yard and the general layout of the site. It is therefore concluded that the proposal would detract from the character and appearance of the area, within which the site is located and be contrary to development plan and national planning policies which seek to promote high quality and inclusive design. The development is therefore contrary to RSS Policy DP7 and Local Plan Policies GR1 & GR2.
- 3 The proposed development would be contrary to the interests of nature conservation since it would adversely affect the habitat of protected species (namely bats) without any satisfactory measures of mitigation. The development is therefore contrary to RSS Policy EM1 and Local Plan Policies NR2 & NR4.
- 4 The proposed development by virtue of its size and siting would result in the direct loss of existing trees which are of amenity value to the area as a whole. The development is therefore contrary to RSS Policy EM1 and Local Plan Policies NR1 & BH9.

## **SUGGESTED CONDITIONS**

Notwithstanding the recommendation of refusal from Officers, as indicated earlier Congleton Borough Council's Planning Committee on 24 March 2009 deferred its determination of the application to the next meeting of the Committee in order to allow the officers to formulate appropriate conditions and to provide the Committee with any relevant further information. As a result a list of proposed conditions is drafted below, should Members wish to approve the application.

The applicant's agent has suggested a number of conditions however as indicated within the main report there is concern regarding those suggested for securing works to the public realm, off-site ecological enhancements and off-site planting scheme – and whether they meet the tests within the government Circular 11/95.

As background, conditions need to be able to meet the six tests and must be:

1. necessary
2. relevant to planning
3. relevant to the development to be permitted
4. enforceable
5. precise
6. reasonable in all other respects

### **Public Realm**

The suggested condition is: *The development hereby approved shall not be occupied until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority*

However, it is considered that the condition should be amended to read

“The development shall not commence until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority. The agreed scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.”

Members should however be aware that while this condition would be a valid condition, and satisfy the appropriate tests there are still questions over the legalities and practicalities of securing the area around Southway. This is because the land is not fully within the control of the applicant, and involves Council owned land on which there are also public toilets. Therefore at this

point in time there are unknown issues for assembling the land and implementing the public realm scheme.

## **Ecological Enhancements & Tree Planting**

Conditions suggested by the applicant are:

*Prior to the occupation of development, the applicant shall contribute towards an appropriate local ecological initiative which will result in overall gain in terms of ecological enhancement.*

*Prior to the occupation of the development, the applicant shall contribute to an appropriate scheme for the establishment and management of woodlands, or local planting scheme from which the public would derive benefit.*

In both respects it is considered that these conditions are imprecise and therefore do not satisfy the required tests. There is no indication of what the *local ecological initiative* would be, or where it would be. Similarly it is unknown what the *local planting scheme from which the public would derive benefit* is, where it would be or what it would comprise. It is therefore also unknown whether it would relate to the development. Officers do not feel that they can suggest alternatives that would provide the level of assurance necessary.

## **Conditions**

1. The development hereby approved shall commence within 3 years of the date of this permission.
2. The development hereby approved shall be carried out in total accordance with the approved plans numbered \*\*\*\* received by the Local Planning Authority on \*\*\*\*
3. No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of external surfaces of the \*\*\*\* hereby permitted have been submitted to and approved in writing by the Local Planning Authority.
4. The material and colour of all rainwater goods shall be \*\*\*\*.
5. All windows and doors in the external elevations of the proposed new retail units on Wheelock Street shall be fabricated in timber, which shall be painted or opaque stained and they shall be retained in such a form thereafter.
6. The hours of use of the proposed retail units shall be submitted to and approved in writing by the Local Planning Authority.

7. The hours of construction (and associated deliveries to the site) of the retail units hereby approved shall be restricted to 0800 to 1800 hours on Monday to Friday, 0800 to 1300 hours on Saturday, with no work at any other time including Sundays and Public Holidays.
8. No delivery vehicles associated with the activities of the store shall be on site or delivering before 0700 or after 2100.
9. Where piling of foundations is necessary this is to be undertaken between 9am – 5pm Monday to Friday and no works of this nature to be undertaken on Saturday, Sunday or Bank Holidays.
10. Should there be a requirement to undertake “floor floating” the process of mechanical smoothing of concrete to a floor area these operations are restricted to:  
Monday – Friday     07:30hrs – 20:00hrs  
Saturday               07:30hrs – 13:00hrs  
No works on Sundays or Bank Holidays
11. A scheme for the acoustic enclosure of any fans, compressors or other equipment with the potential to create noise, to be submitted to, and approved by, the Local Planning Authority prior to the commencement of development.
12. Prior to the use of the retail store and associated car park, acoustic grade screening shall be placed along the northern boundaries of the car park as detailed within the submitted noise assessment.
13. Prior to the commencement of development, further details shall be submitted regarding the attenuation that will be undertaken in the service yard area. The approved attenuation shall be provided to the satisfaction of the Local Planning Authority prior to the use of the service yard area.
14. The approved development shall be carried out in accordance with the submitted Air Quality Assessment.
15. Prior to the commencement of development details of how the car park is to be managed shall be submitted to and approved in writing by the Local Planning Authority. Such details shall detail whether the car park will be accessible after the store is closed and how the car park will be secured/patrolled.
16. The approved development shall not be occupied until the approved access that is required for the development has been constructed in accordance with the approved plans and has been formed and graded to the specification of the Local Planning Authority, which is available from the Highway Authority, and the required visibility splays have been provided, all to the complete satisfaction of the Local Planning Authority.

17. The approved access shall not be brought into use until visibility splays have been provided at each side of the point of access in accordance with plans which have first been submitted to and approved in writing by the Local Planning Authority. . The splays shall be kept clear of any object, vegetation or other obstruction of a height exceeding 1.0m above the level of the adjacent carriageway at all times.
18. The service facilities, as indicated on the approved plan, shall be provided prior to the occupation of the building and retained at all times thereafter so as to allow service vehicles to load and unload within the site. They shall at no time be used for the parking of cars or storage of goods or materials, which would prevent them from being available for the intended use.
19. Prior to the commencement of works involving the movement of materials in bulk to or from the site, facilities shall be provided as agreed with the Local Planning Authority, to prevent the deposition of extraneous matter (mud, debris, etc) on the public highway and shall thereafter be retained and used whenever the said operations are carried out.
20. Prior to the commencement of development a method statement shall be submitted to and approved in writing by the Local Planning Authority, which outlines the method of construction, details of deliveries to the site during construction, how and where materials will be unloaded and details of where contractor's vehicles will park. The development shall then be constructed in complete accordance with the method statement.
21. The approved development shall not be occupied until space has been laid out within the site for the parking of \*\*\*\* cars in accordance with drawing \*\*\*\*. Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter, unless otherwise approved by the Local Planning Authority.
22. Parking facilities for cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter. Before the development is commenced, details of cycle parking facilities and a covered and secure cycle store shall be submitted to and approved in writing by the Local Planning Authority.
23. Shower, changing, locker and drying facilities shall be provided prior to the occupation of the approved development and retained at all times thereafter to provide facilities to allow staff or visitors to shower, change and store and dry their clothing, in order to encourage cycling and walking to the premises. Before commencement of the development details of the proposed facilities, including the number of

showers and lockers, shall be submitted to and approved in writing by the Local Planning Authority.

24. Prior to commencement of development, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of boundary treatments, hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
25. The approved landscaping plan shall be completed in accordance with the following:-
  - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
  - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
  - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.
  - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
26. Prior to its installation details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
27. No development shall take place until the applicant, or his agent or successors in title, has secured the implementation of a programme of archaeological work, (to consist of a programme of excavation, recording, reporting and, if appropriate, publication) which should be carried out in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
28. No development shall commence until a desk top assessment to

identify and evaluate all potential sources and impacts of land and/or groundwater contamination affecting the site has been carried out by a suitably qualified person and submitted to the Local Planning Authority.

If following examination of the desk top assessment, the Local Planning Authority is of the opinion that there is the potential for contamination of the site by substances and/or landfill gas, in on or under the land or from sites in close proximity to the site in question, then a full investigation shall be carried out by a suitably qualified person to ascertain the nature and extent of contamination together with a detailed Method Statement which shall specify:

the precise form of any remediation works; and  
arrangements for the supervision and monitoring of the remediation works, which shall require a minimum of 3 days notice to be given to the Council's Scientific Officer prior to the works commencing.

The Method Statement shall be submitted to and approved in writing by the Local Planning Authority prior to any remediation works commencing. No development shall commence until the remediation works have been completed in accordance with the approved scheme and the Local Authority has confirmed the completion in writing.

29. Prior to commencement of development detailed plans showing the location, design and materials of proposed facilities for the disposal and storage of any refuse/recyclable materials, including details of any bin stores, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be available for use prior to the development being occupied and shall be permanently retained thereafter, unless otherwise first approved in writing by the Local Planning Authority.
30. Details of the existing ground levels, proposed ground levels and the level of proposed floor slabs shall be submitted before any development on the site first commences. Details which receive the written approval of the Local Planning Authority shall be implemented in full, unless alternative details are otherwise approved in writing by the Local Planning Authority.
31. The development shall be carried out in strict accordance with the ecological report submitted with the application, including provision of any proposed details of habitat protection / creation.
32. Prior to any works taking place that involve the loss of any hedgerow, tree or shrub between 1st March and 31st August in any year, a detailed survey shall be undertaken to check for the existence of nesting birds. Where nests are found, a 4m exclusion zone shall be created around the nest until breeding is complete. Completion of

nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any works involving the removal of the hedgerow, tree or shrub take place.

33. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species until the Local Planning Authority gives written consent to any variation.
34. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837 (Trees in Relation to Construction 2005: Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
  - a) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
  - b) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
  - c) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
35. The development shall be carried out in accordance with the Flood Risk Assessment submitted on \*\*\*.
36. The development shall not commence until a scheme has been submitted for the elevational treatment of the service yard has been agreed in writing with the Local Planning Authority. The agreed



scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.

37. The development shall not commence until a public realm scheme which secures environmental improvements to the Southway pedestrian route and enhances linkages between the proposed store and the existing retail units situated adjacent and on Wheelock Street has been agreed in writing with the Local Planning Authority. The agreed scheme shall be implemented in accordance with an agreed timetable prior to the occupation of the development and retained thereafter.

