

# UNEX GROUP

Our Ref: JPW/SLB/Asda Appeal

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14th January 2014

Mrs. J. Orton,  
Solicitor,  
Forest Heath District Council,  
District Offices,  
College Heath Road,  
Mildenhall,  
Suffolk,  
IP28 7EY.

BY EMAIL & POST: Jane.Orton@westsuffolk.gov.uk

Dear Mrs. Orton,

**Reference: F/2012/0704/FUL**

**Address: Tesco/Unit 1, Oaks Business Park, Fordham Road, Newmarket**

**Erection of a Tesco Superstore (9,870m<sup>2</sup>) to replace existing (5,223m<sup>2</sup>); replacement petrol filling station; provision of car parking (654 spaces – existing 388); landscaping and ancillary works. (Major Development and Development Affecting a Public Right of Way). (Duplicate Application)**

I write on behalf of Unex (No 3) Ltd, whose appeal against the Council's refusal of planning permission and listed building consent for its proposed ASDA food store and associated development at 196-198 and 218-222 High Street, Newmarket ("the Unex Site"), is listed to be heard at a public inquiry before an Inspector on 25-28 February 2014.

As you may be aware, the ASDA and Tesco schemes were considered by the Council's Planning Committee at the same meeting on 22nd May 2013. Proposals by Morrisons and Sainsbury's were also considered at that meeting. The context for that consideration was the Council's acknowledgment that there was a need for new food stores in Newmarket. The question for the Planning Committee was, in essence, which of the proposals should be preferred.

The Council acknowledged that in retail policy terms the ASDA Scheme was sequentially preferable to all the other schemes due to its significantly closer proximity to the town centre. This remains the Council's position at the forthcoming inquiry. The reason why the Committee nonetheless preferred the Tesco scheme to the ASDA scheme was that it considered that the latter would be contrary to the Council's planning policies relating to the protection of racehorse training establishments ("RTEs") and would cause unacceptable harm to heritage assets. Had it not been for these concerns, it is clear that the Council would have preferred the ASDA scheme to the Tesco scheme due to its closer proximity to the town centre.

The strength of the RTE protection and heritage objections to the ASDA scheme is imminently about to be tested before an independently appointed Inspector. Both Unex and the Council will shortly be exchanging detailed proofs of evidence on these matters on 28 January 2014. By their very nature, these proofs of evidence will contain information and analysis which was not before Committee members, for example;

- (i) the planning history of the Unex Site
- (ii) an independent analysis of the impact on the conservation area of the Unex proposals

- (iii) Evidence regarding the condition of the listed buildings and the fact that these will not be restored and returned to beneficial use if the ASDA scheme does not proceed
- (iv) the implications of the Council's grant of permission to Morrisons on 31 December 2013 and
- (v) the threat to the vitality and viability of the town centre if the Tesco and Morrisons schemes proceed.

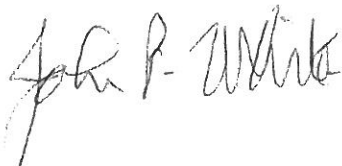
This new evidence will amount to material considerations not only for the Inspector's consideration of the ASDA scheme but also for the Council's consideration of the Tesco scheme, since if the new evidence is accepted the result may be that the objections to the ASDA scheme are not upheld and the ASDA scheme therefore becomes preferable to the Tesco scheme due to its advantages in retail policy terms.

It is well established that where new material considerations or information arises following a planning committee's resolution to grant planning permission but before the decision notice is granted, those new material considerations must be taken into account before permission is granted. See *R (Kides) v. South Cambridgeshire DC* [2003] 1 P&CR 19, where Jonathan Parker LJ held at para. 125:

"...where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, s.70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty."

We therefore request your confirmation that, upon receipt of the proofs of evidence, the Council's officers will report back to the Committee so that it can re-consider the Tesco application in the light of this new evidence. If you fail to do so and permission is granted to Tesco without this new evidence being taken back to committee, the Council will leave itself open to a judicial review claim seeking the quashing of that permission together with the associated costs of that claim.

Yours sincerely,



J.F. WHITE

Solicitor for and on behalf  
of the Unex Group