

Borough Green **561267 157100** **4 August 2009** **TM/09/01510/FL**
Borough Green And
Long Mill

Proposal: Redevelopment of existing petrol filling station and neighbouring garden land to provide a replacement petrol filling station and retail sales building (Tesco Express) and alterations to access

Location: Land To The Rear And 84 - 106 Maidstone Road Borough Green Sevenoaks Kent

Applicant: Esso Petroleum

1. Description:

- 1.1 Members will recall this application was reported to Area 2 Planning Committee on 4 August 2010 when the decision was deferred to allow for officers to carry out further exploration of the retail and highway safety impacts; and to refine suggested reason 1 to refer to the full extent of residential harm and to overdevelopment of a small site.
- 1.2 Subsequent to that Committee meeting, an appeal has been lodged against the non-determination of the application. Accordingly, this report seeks a resolution from Members to determine what the Council's decision would have been, if they were still in a position to determine the application. Members' resolution will be taken forward and used as the basis for the Council's case in connection with the current appeal.
- 1.3 A full description of the application and the site can be found in the previous report which is provided as an Annex to this report.

2. Consultees:

- 2.1 No additional consultee responses have been received since publication of the previous Supplementary Report, which is also attached as an Annex to this report.

3. Determining Issues:

- 3.1 Members will recall that the application was deferred to allow for officers to carry out further exploration of the retail and highway safety impacts of the proposal. Accordingly, due to the locally controversial nature of the application, I commissioned further work to be carried out by Nathaniel Lichfield and Partners (NLP) to supplement that carried out previously and reported to Members in August. In addition, an independent Transport Consultant, Peter Brett Associates, has been commissioned to give highway advice on the proposal.

- 3.2 The original report produced by NLP was thorough and took in to account all aspects of the proposal and its potential impacts. The report also highlighted that the proposed development was only marginally above the threshold (200 sq m) where a Retail impact analysis would be required. The questions raised by Members at APC2 in August were concerned with the way in which data was sourced and formulated and queried the accuracy of the data presented to them (albeit in summary) in the previous Committee report.
- 3.3 NLP have therefore provided expanded comments on the methodology used in deriving their technical assumptions (in particular the derivation of the turnover of the existing facilities in Borough Green); provided clarification on the scope for seeking to establish the “actual” turnover of these existing facilities; and offered further comments on the anticipated retail impact on the existing facilities in Borough Green.
- 3.4 Firstly, NLP refer to PPS4 (Policy EC.14) which states that the “*type of evidence and analysis required in impact assessments should be proportionate to the scale and nature of the proposal and its likely impact.*” This point seeks to clarify that the proposed floorspace is around 10% of the threshold within PPS4 of 2500 sq m, above which proposals for retail and leisure developments will be required to submit a retail impact analysis.
- 3.5 The main analysis carried out previously by NLP identified the existing convenience retail facilities within Borough Green and their floorspace. This was derived from two sources, the publication “*Institute of Grocery Distribution*” (which identifies the floorspace of the larger stores), and their on-site assessment. NLP then applied a sales density (£ per sq m) to this existing floorspace which was applied from published “*company average*” turnover levels for stores where this information was available, and from their own judgements where this was not available.
- 3.6 NLP stress that it is very difficult, and usually not possible, to gauge “*actual*” turnover levels for all existing retailers (indeed such information is often commercially confidential and there is no obligation on operators to divulge this). Accordingly, there are four ways to seek to assess the turnover of these retailers (both individually and in aggregate):
- Request information from each retailer– in reality this simply will not be provided by every retailer and, even if it is, it is impossible to verify the accuracy of any such information provided.
 - Undertake a household survey - whilst the resultant data generally provides a better guide for larger stores, it tends to be less accurate for facilities and centres further down the retail hierarchy (such as, for example, Borough Green). This reflects the fact that an individual’s convenience expenditure will generally be split across a number of locations, reflecting a pattern of individual

main food and top-up shopping trips. Surveys tend to focus on the locations where the most frequent trips take place and the accordingly the turnover of smaller centres tends to be underestimated.

- Seek individual shopper diaries for an area - this is an extremely labour intensive (and complex) process, which seeks to compile data on the often complex shopping trips of residents to address any under-estimation of the turnover of these smaller facilities. It is necessary for the costs of undertaking such a process to be proportionate to the benefits arising from the data obtained. On the basis of PPS4 and NLP's professional advice they do not regard this as feasible or proportionate in this case and indeed they advise that they would not use it for much larger schemes either.
- Derive a judgement based on location, observations and experience of similar facilities. Retail analysis in locations such as Borough Green tends to focus on the broad levels of turnover likely to be achieved by individual stores. Such an assessment is drawn from a number of sources including published data (which identifies company average levels), experience of similar facilities elsewhere nationwide and a process of calibration - for example by observing the levels of throughput in the store and features such as queues at checkouts etc. This is the normal approach in circumstances such as this and indeed for many much larger proposals.

3.7 Moving on to the impact of the proposal on Borough Green District Centre, NLP state the following:

"You will be aware that our analysis of the impact arising on Borough Green District Centre is more than a simple assessment of the likely level of expenditure diverted from the convenience facilities. It responds to the guidance within PPS4 (policies EC10 and EC16) for a proportionate analysis of the impacts arising, assessing a number of factors over and above *"the impact of the proposal on in-centre trade/turnover"*. Our analysis is summarised within our January 2010 Briefing Note (paras 5.7 to 5.10). We concluded *"overall, in a position where the centre appears healthy, has a diversity of uses and the main convenience store appears to trade well (and will remain attractive to passing trade), we considered that the level of impact was unlikely to materially harm Borough Green or undermine the balance of uses."*

"Our earlier analysis reflects advice within the Practice Guidance on need, impact and the sequential approach stating (para D.38) that *"it is important that the impacts are considered on the vitality and viability of the whole of the centre or centres, not simply on individual facilities which may be similar to the proposed development"*. It goes on to state that in each case it is important that impact assessments are accompanied by an assessment of the current performance and health of existing centres.

“The practice guidance concludes (para D.39) that *“the significance of any impacts will be a matter of informed judgement and depend on the individual circumstances of the locality and type of centre or facility”*.”

- 3.8 In summary, the type of evidence and analysis used by NLP in assessing the retail impact of the proposal is, in my view, proportionate to the scale and nature of the proposal and its likely impact. The assessment therefore complies with PPS4 and Practice Guidance. NLP is a national Planning Practice who specialises in retail planning and has demonstrated that it has applied the appropriate type and level of assessment to this application. I therefore consider my assessment of the proposal in relation to retail impact, as set out at paragraphs 6.13 – 6.30 of the previous Committee Report, is robust and fully takes account of the impact of the development on the vitality and viability of Borough Green District Centre. I do not therefore consider there to be a valid reason for refusal of this scheme based on retail impact.
- 3.9 For clarification, the term “District Centre” is a term set out within the retail hierarchy identified within Policy R1 of the DLA DPD and Policy CP22 of the TMBCS. This term is not a replacement for “Rural Service Centre” which also applies to Borough Green, which relates to the hierarchy of towns and villages in more general terms (i.e. not specific to retail).
- 3.10 In relation to the impact on highway safety, Peter Brett Associates (PBA) was commissioned to independently assess the application. These additional highway comments should be considered alongside the existing highway advice received from Kent Highway Services.
- 3.11 PBA does not agree with the projected vehicle trip numbers provided by the applicant [rising from 643 trips per day (514 fuel/129 retail) and 45 trips per peak hour (36 fuel/9 retail) to 900 trips per day (514 fuel/386 retail) and 63 trips per peak hour (36 fuel/27 retail)], which equates to a rise from 7.5 to 10.5 trips per pump peak hour. Using the TRICS database it is considered that such a site would equate to 7.9 trips per pump per peak hour *without retail* and 12.3 trip per pump per peak hour *with retail*. These rates rise to 8.4 and 14.4 respectively for a Saturday peak hour. Daily trip rates are therefore expected to be 104.2 *without retail* and 168.4 *with retail* per pump for a weekday, and 93.3 *without retail* and 178.3 *with retail* per pump for a weekend day.
- 3.12 The above figures are set out in table form below.

3.13 Trips per day

Applicants data		PBA assessment (based on TRICS)	
Existing	Proposed	Without retail	With retail
643 (514 fuel/ 129 retail)	900 (514 fuel/ 386 retail)		1010

Trips per peak hours (weekdays)

Applicants data		PBA assessment (based on TRICS)	
Existing	Proposed	Without retail	With retail
45 (36 fuel/ 9 retail)	63 (36 fuel/ 27 retail)		74

Trips per pump per peak hours

PBA figures derived from Applicants data		PBA assessment (based on TRICS)	
Existing	Proposed	Existing without retail	Proposed with retail
7.5	10.5	7.9 (8.4 Sats)	12.3 (14.4 Sats)

3.14 In summary, applying the *with retail* rates the proposed trips would equate to 74 trips in the weekday peak hour and 1010 trips per week day and 86 and 1070 trips per peak hour and per day at the weekend.

- 3.15 PBA go further to state that “assuming the Applicants low base flow the predicted increase could equate to a daily rise of between 57% and 66% (643 vehicles to 1010 or 1070 vehicles). If the Applicant’s base flows are derived from observed data then it is conceivable that the proposed development could perform at a slightly lower rate than that returned by the TRICS analysis but an increase in excess of 40% should be anticipated.”
- 3.16 Furthermore, “Paragraph 3.10 of the D&A Statement asserts that there will be no negative impact from the proposed redevelopment but doesn’t substantiate this instead states that there will be a 40% increase in vehicular traffic. The Applicant does not propose any off-site mitigation to address this increase in vehicular travel and makes no reference to an increase in pedestrian traffic. This includes no proposed mitigation for the increased turning movements from the A25 of which a proportion will be right-turning trips arriving from the west.”
- 3.17 In relation to Service Vehicle Access PBA states that: “The provided swept-path for the tanker does not represent a path through which the tanker would be able to stop parallel to the tank access points without manoeuvring within the adjoining parking spaces. The Applicant does refer to a number of spaces being coned off and suggests that the site could be partially closed during fuel deliveries. Under these circumstances it would be feasible for the tanker to use adjoining spaces for access and circulation. The Applicant should therefore, either provide evidence that the site can operate acceptably whilst open for trade or alternatively, provide refined details of how the site would be managed during deliveries. Furthermore the Applicant should demonstrate that the tanker is able to negotiate any stanchions and pump protection at the southern point of the canopy / forecourt. This is not fully clear from the plans provided.”
- 3.18 With regard to Pedestrian Access, PBA considers “the revised vehicle accesses for the redevelopment push the entry point hard against the eastern site boundary. This results in the effective public footway ending some 2-3m before the site boundary. Whilst vehicles should not be leaving the site from the eastern access, pedestrians will not be able to see into the site to assure themselves that this is the case as they cross the access which is approximately 10m wide. Furthermore the kerb line proposed to the egress point does not facilitate comfortable pedestrian movement. The Applicant should respond to these points providing justification for this long taper to the egress and giving justification as to the pedestrian safety at the access point taking account of the probable increase in walk-in trips to the development’s improved retail offer.”
- 3.19 Finally, with regard to on Site Vehicular Movement: “It is PBA’s view that the use of the northern pump location (closest to the road) could result in vehicles blocking the site access, or running the risk of collisions with other entering vehicles, should one vehicle need to wait for the pump position to be vacated. The distance between the road frontage access and first pumping position is no worse than the

existing arrangement but the forward visibility to vehicles using or queuing for the pump is significantly reduced through the relocation of the access and pumps towards the eastern boundary of the site.

3.20 *“Under normal operation, the locations of the other fuel pumps should not result in queuing vehicles blocking access to the retail parking spaces at the rear of the development. It is only likely that on-site circulation would be impeded when two or more larger vehicle seek access to the same pumps at the same time, particularly as stated, at the northern pumping position.”*

3.21 In summary, PBA raises the following concerns in relation to the appeal proposal:

- Vehicle trips generated as a result of the proposed redevelopment have been underestimated, but some of these trips could be diverted trips from other facilities and should not therefore represent an absolute increase in overall network flow but would represent an increase in movements at the application site. PBA note that a proportion of these additional movements would be right-turning trips arriving from the west and no mitigation has been proposed in order to accommodate this.
- The amendments to the proposed site access and egress would not represent a significant increase in the overall distance for pedestrians to cross but the site access would be positioned in an inferior location for pedestrians and the need for a longer taper for left turning egress is questioned.
- It has not been demonstrated that the site can accommodate a fuel tanker and negotiate all stanchions and pump protection at the southern point of the canopy/forecourt.
- Insufficient evidence has been provided to demonstrate that the revised access arrangement would not impact on the safe use of the pumping position nearest the road frontage thus increasing the probability of vehicular collisions at that point.

3.22 As a result of the additional highway advice and retail advice received since the previous Committee meeting, I remain of the view that a retail objection to the proposal cannot be substantiated. However I am not convinced that there would be no additional harm to highway safety for the reasons set out above.

3.23 The applicant has been notified of the summarised findings of the PBA advice and asked to provide additional information in advance of the Committee date. If a response from the applicant is received, any comments/additional information will be presented to Members through the Supplementary Report.

3.24 However, in light of the above highway advice, I am of the view that an additional reason for refusal on highway grounds could be substantiated, in that there is insufficient evidence that harm would not be caused as a result of the points set

out in paragraphs 4.11 - 4.19 above. In the circumstances of the current appeal a resolution must be made as to the grounds upon which the Council considers the proposal to be unacceptable. Accordingly, in light of the additional evidence provided by PBA, I consider it reasonable in the circumstances of the current appeal to put forward an additional reason for refusal on highway grounds.

3.25 The reason for refusal provided to Members within the August Committee Report has been redrafted to address Members' concerns in relation to the extent of the harm and overdevelopment of a small site.

4. Recommendation:

4.1 The Planning Inspectorate and the applicant be advised that, had the Council been in a position to determine the application, it would have **Refused Planning Permission** for the following reasons:

- 1 The proposal, by virtue of the change of use and redevelopment of garden land associated with 3 Crouch Lane, results in the introduction and overdevelopment of commercial use in unacceptable juxtaposition to neighbouring dwellings and gardens at Fairseat House and Normanhurst Road and 3 Crouch Lane itself. As a result of this, and because the scale, intensity and layout of the proposed development constitute overdevelopment of this small site, the proposal would result in an undue level of noise, disturbance and light pollution to these properties, harming residential amenity contrary to Policies CP1 and CP24 of the Tonbridge and Malling Borough Core Strategy 2007 and Policy SQ1 of the Tonbridge and Malling Borough Managing Development and the Environment Development Plan Document 2010.
- 2 The proposal represents a town centre use proposed on land outside the designated District Centre and would result in encroachment onto garden land which is not Previously Developed Land suitable for re-use and is therefore contrary to PPS3 (Housing) and PPS4 (Planning for Economic Growth).
- 3 The Council is not satisfied, based on the submitted information and evidence currently before it, that the proposal would not give rise to harm to highway safety due to the following concerns which result in individual and cumulative impacts:
 - The applicant has significantly underestimated the additional trip generation likely to be occasioned by the proposed development, and the proposal includes no proposed mitigation for the increased turning movements from the A25 of which a proportion will be right-turning trips arriving from the west.
 - The proposed alterations to the location and layout of the site access and egress points are likely to result in additional hazards to pedestrian safety.
 - It is not fully clear whether a fuel tanker would be able to negotiate all stanchions and pump protection at the southern point of the canopy/forecourt.

- Insufficient evidence has been provided to demonstrate that the revised access arrangement would not impact on the safe use of the pumping position nearest the road frontage and so increasing the probability of vehicular collisions at that point.

The proposal does not therefore accord with Policy SQ8 of the Tonbridge and Malling Borough Managing Development and the Environment Development Plan Document 2010.

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