

## For Publication

### S52 Agreement of Town & Country Planning Act – Sainsburys Supermarket site, Rother Way, Chesterfield (EG350L)

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Meeting:	Cabinet Member for Economic Growth
Date:	10 April 2018
Cabinet portfolio:	Cabinet Member for Economic Growth
Report by:	Development Management & Conservation Manager

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#### **1.0 Purpose of report**

- 1.1 To report on amendments requested regarding the s52 agreement relating to the existing Sainsbury's Superstore site on Rother Way.

#### **2.0 Recommendations**

- 2.1 That the Cabinet Member for Economic Growth agrees the report as a basis for progressing the regularisation of the position and confirming that the restrictions in the s52 agreement will not be enforced.

#### **3.0 s52 Agreement**

- 3.1 A s52 agreement was dated 29<sup>th</sup> January 1988 in relation to the development of the whole Sainsbury's site (including extended building) and which limited the amount of gross internal area of the new store to a maximum of 12.5% of none convenience goods. It also restricted the sale of major electrical goods

defined as ovens, cookers and fridges as well as, furniture and carpets.

#### **4.0 2010 Supermarket Extension**

- 4.1 In 2008 Sainsbury's applied for planning permission for a major extension to the store and which was refused by notice on 14<sup>th</sup> July 2009. There was one main issue in the case which concerned whether the comparison goods element of the proposal would jeopardise the delivery of the Northern Gateway site and the Chesterfield Waterside development, and its effect on the vitality and viability of Chesterfield town centre, in the light of national and local policies.
- 4.2 Sainsbury's appealed the decision and which was considered at a public Inquiry in 2010.
- 4.3 The inspector as part of his decision accepted at para 20-21 of his report that there was nothing unusual about the proposed split between convenience and comparison shopping which would result from the appeal scheme. The inspector noted that the proportion of comparison floorspace would be lower than that approved by the Council at the Tesco store and in coming to his view on the proposed proportion of comparison floorspace, the inspector considered an appeal decision where the comparison floorspace was proposed to be increased from 20% to 30% and where the appeal was dismissed. However he commented that this decision was taken in the context of different national policy and that nearby stores did not have a significant percentage of comparison floorspace, unlike the situation at the time in Chesterfield. Overall, the inspector considered the proposal would deliver qualitative benefits and would deliver improvement in a number of areas where the existing store had clear deficiencies and the proposal would increase consumer choice and competition and improve the

quality of the existing provision. The inspector allowed the appeal.

- 4.4 Condition 9 of the appeal decision limits the net sales area of the extended store to a maximum of 1,899 square metres of comparison goods (including pet foods, health and beauty items and baby products).

## **5.0 Current Position**

- 5.1 The conditions of the planning permission issued by the inspector following the allowed appeal and referred to at paragraph 4.4 above provide an appropriate planning control regarding the limitation on the comparison/convenience split and which supersede the old s52 agreement requirements which are now considered to be void.
- 5.2 The only way of discharging a s52 agreement would be to apply to the Lands Tribunal for a discharge under section 84 of the Law of Property Act 1925. This procedure is not specifically geared to planning agreements however the Lands Tribunal may discharge a restrictive covenant if, given changes in the character of the property or neighbourhood or other circumstances of the land, the restriction is obsolete; if its existence prevents a reasonable user of the land; or if the modification or discharge will not harm the people entitled to benefit from it.
- 5.3 It is agreed that there is clearly a need to deal with and resolve the anomaly between the s52 agreement restrictions and what was accepted on appeal by the inspector and now provided on site and that it is necessary to discharge the requirements of what is now an obsolete agreement.
- 5.4 Section 1 of the Localism Act refers to a local authority's general power of competence and which confers power on the

authority to do something in any way whatever including a power to do it for a commercial purposes or otherwise for a charge, or without charge, and for the benefit of the authority, its area or persons resident or present in its area. It is considered that a simple agreement under the Localism Act and s106 of the Town and Country Planning Act can deal with the inconsistency between the original s52 agreement and the 2010 appeal decision to regularise the position and confirming that the restrictions in the s52 agreement will not be enforced.

## **6.0 Human resources/people management implications**

6.1 It is not considered that there are any implications for human resources.

## **7.0 Financial implications**

7.1 The legal cost of preparing an agreement will be met by Sainsbury's with all other costs being accommodated within existing budgetary and staffing provisions.

## **8.0 Legal and data protection implications**

8.1 The Localism Act and s106 of the Town and Country Planning Act require a prescribed process in accordance with regulations and in the interests of transparency. This matter is dealt with in line with the legislative requirements.

## **9.0 Consultation**

9.1 No consultation requirements arise out of the issues referred to in this report.

## **10.0 Risk Assessment**

10.1 The risks associated with this matter are insignificant since the report recommends a formal agreement accepting the changes which were agreed in 2010 and which have been implemented on site and which result in the old section 52 agreement being null and void.

### **11.0 Equalities Impact Assessment (EIA)**

11.1 No equalities issues are currently considered to be of relevance and an EIA is not considered to be necessary.

### **12.0 Alternative options and reasons for rejection**

12.1 The alternative option is to do nothing however. The course of action is being pursued by Sainsbury's as property owner and which deals with the existing s52 agreement which is now obsolete.

### **13.0 Recommendations**

13.1 That the Cabinet Member for Economic Growth agrees the report as a basis for progressing the regularisation of the position and confirming that the restrictions in the s52 agreement will not be enforced.

### **14.0 Reason for Recommendations**

14.1 To resolve an outstanding legal situation arising as a result of the existing s52 agreement being obsolete.

## Decision information

<b>Key decision number</b>	N/A
<b>Wards affected</b>	<b>Brimington South</b>
<b>Links to Council Plan priorities</b>	To increase the supply and quality of housing in Chesterfield Borough to meet current and future needs.

## Document information

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<b>Background documents</b> These are unpublished works which have been relied on to a material extent when the report was prepared.	
N/A	