



Appeal Decisions

Inquiry held on 30 September –
3 October 2008

Site visit made on 3 October 2008

by **D R Nicholson** RIBA IHBC

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
12 November 2008

Appeal A: APP/Q0505/A/08/2066756 163-167 Mill Road, Cambridge CB1 3BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Tesco Stores Ltd. against Cambridge City Council.
- The application Ref. 07/0811/FUL is dated 12 July 2007.
- The development proposed is the erection of a single storey extension to the rear of the unit and the installation of plant.

Appeal B: APP/Q0505/A/08/2073579 163-167 Mill Road, Cambridge CB1 3BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tesco Stores Ltd. against the decision of Cambridge City Council.
- The application Ref. 08/0099/FUL, dated 18 January 2008, was refused by notice dated 13 March 2008.
- The development proposed is the erection of a single storey extension to the rear of the unit and the installation of plant.

Preliminary Matters

1. Appeal B follows a re-submission of the same proposals as those in Appeal A. The Inquiry sat for 4 days, including an accompanied site visit on 3 October. I made an unaccompanied visit by car on 29 September 2008.

Decisions

2. **I dismiss Appeal A and I dismiss Appeal B.**

Main issues

3. The main issues are the effects of servicing the proposals on:
 - (a) highway safety along Mill Road;
 - (b) highway safety and parking provision in adjoining streets.

Planning History

4. Planning permission Ref. 71/826 was granted in 1972 for the erection of three lock-up shops at ground level, with offices over, on the appeal site. The shops therefore have an existing permission for the retail sale of goods (Class A1. Shops) under the Town and Country Planning (Use Classes) Order 1987.
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5. Condition 3 of the existing permission states: *No loading or unloading of goods, including fuel, shall take place otherwise than within the curtilage of the site.* The reason given was: *to avoid obstruction of the surrounding streets and to safeguard the amenities of adjacent premises.* There was disagreement at the Inquiry as to whether this condition is currently enforceable or as to its precise meaning. These matters are not before me. However, there was no disagreement that development requiring permission provides the possibility of imposing a condition to restrict loading or unloading.

Reasons

6. Mill Road is a local distributor road running out from Cambridge city centre. The appeal site is within part of the Mill Road (East) District Shopping Centre. The Centre contains a mix of commercial uses, mostly in small units. Exceptionally, a nearby branch of the Co-operative Stores (Co-op) extends to approximately 500m². The loop of roads, from Mill Road, along Catherine Street, around the junction with Fairfax Road, along Sedgwick Street, and past the appeal site back to Mill Road, is one-way only, in that direction. The site includes the existing shops and a service/parking area to the rear with access from Sedgwick Street. The front of the store is set back from the footway to the highway with an extra area of pavement behind bollards.
7. The site was last used as a motorists' discount store but is now vacant. The scheme in both appeals is for an extension of 98m², giving a ground floor area of 368m² plus external plant. The proposals would allow the appellant to operate one of its Tesco Express stores. There was no dispute between the main parties that the site is suitable for retail use and that the location would satisfy local and national planning policies in this regard. Indeed, I heard evidence, on behalf of the Council, that had the previous occupier sought this size of extension, it would probably have been granted. The previous use must have required deliveries but evidence on the details of these was not agreed.
8. The Tesco Express format requires six types of delivery. Four of these: mail, newspapers, bread, and milk, are made from small vehicles, belonging to other businesses, and are probably of short duration. The other two deliveries, chilled/frozen and ambient (room temperature) goods are delivered in 10.35m long rigid vehicles (not articulated) belonging to Tesco Stores Ltd. (Tesco). The Council's concerns relate to the effects of deliveries by these Tesco lorries.
9. The appellant has considered four alternative ways of servicing the proposed store with its own lorries. First, from a lay-by to be constructed within the footway alongside Mill Road, so that its lorries could draw off the carriageway before unloading. Second, by altering the regulations on Sedgwick Street to allow vehicles to enter the street directly from Mill Road far enough to reach the rear service area without negotiating the loop of roads. Third, by loading and unloading from lorries parked on the carriageway in Mill Road without a lay-by (but outside restricted hours). Fourth, using the rear yard via the loop of roads starting with Catherine Street.
10. The first option was excluded by the Highway Authority as the bay would occupy the footway which is part of the adopted highway. The second option would require a Traffic Regulation Order (TRO) to allow lorries to turn in from Mill Road. The appellant has offered to fund a TRO and associated works and,

while no signed undertaking is before me, I give some weight to this offer as it would facilitate deliveries and so efficiency. However, although originally given favourable consideration by an officer of the Highway Authority, when reviewed at a higher level, the Authority gave a different view (Document 5). The appellant accepted at the Inquiry that a TRO was now unlikely and, given the latest evidence, I find that there is no realistic prospect of a TRO. I have therefore restricted my deliberations to the third and fourth options.

11. It was accepted at the Inquiry that enforceable conditions could restrict the size of vehicles delivering to the site, whether from Mill Road or via Sedgwick Street. It would be open to me to consider limiting delivery lorries to those much smaller than the 10.35m long Tesco vehicles. However, I was told that restricting lorry size would not allow the appellant to implement its proposed operation, and that a permission with such a condition would be worthless to Tesco. I have therefore taken this possibility no further and reached my Decision on the basis that the proposal would result in two deliveries per day using 10.35m long lorries.

Issue (a): Mill Road Option

12. It is common ground that both Mill Road and Sedgwick Street form part of the historic street pattern and that carriageway and footpath widths are below what would be required by modern standards. Mill Road is subject to a 30 mph speed limit and has street lighting; its carriageway width between the junctions with Catherine Street and Sedgwick Street varies between 5.9m and 6.3m. There are loading restrictions in force between 0815 – 0915 and 1700 – 1800 along the kerb to Mill Road in front of the appeal site. There are pedestrian controlled crossings along Mill Road on either side of the site.
13. Accident statistics indicate that a cluster along Mill Road is amongst the joint 3rd worst sites in Cambridgeshire. The appellant has examined these statistics and suggested that the site should have been separated, in which case the locality would be much lower down the list at around 31st. However, a comparable exercise has not been carried out for the other sites in the county and so I give this suggestion limited weight. Of the accidents, a significant number involved pedal cyclists.
14. The existing traffic flows along Mill Road were not agreed. The appellant undertook a 12 hour survey in August, when there were roadworks, and recorded roughly 10,500 vehicles, including cyclists. A further count in September supported these figures (Document 7). A count for the Council recorded around 25% more traffic. It was agreed that Cambridge has an unusually high proportion of cyclists and that about 20% of traffic along Mill Road is by bicycle.
15. The Design Manual for Roads and Bridges (DMRB), Volume 5 Section 1 Part 3, 1999 (Document 6) includes a table to Advice Note TA 79/99, Traffic Capacity of Urban Roads, which identifies road types and determines theoretical road capacity. It was agreed that Mill Road is type UAP4 which, for a width of 6.1m, has a theoretical capacity of 750 vehicles per hour in the busiest direction. No capacity is given for roads below 6.1m in width and no guidance is given on bicycles. On the appellant's figures, the use of Mill Road is well within its theoretical capacity; the Council contends the road is at or beyond it.

16. I saw from my visits that, irrespective of theoretical capacity, the road is congested, both during and outside peak hours. I note that the road reduces to 5.9m wide near the appeal site, below the minimum figure for which the table in DMRB applies, and I saw that the high proportion of cyclists substantially reduces the free flow of vehicular traffic.
17. Most stores along Mill Road are small, probably have a relatively low turnover of goods compared with Tesco, and so require comparatively few deliveries, generally from small vehicles. Exceptionally, the Co-op uses delivery lorries of a similar size to Tesco. However, these deliveries are usually made to the rear yard off Catherine Street, not from Mill Road. The survey conducted for the Council identified one Heavy Goods Vehicle (HGV) delivering to a shop between Catherine Street and Sedgwick Street. This took around 10 minutes and caused a long queue of traffic. On my site visit, a delivery was made to a shop adjacent to the site in a wide but shorter van to that proposed by Tesco. I saw that this type of delivery caused traffic to back up appreciably, even though it was there for a relatively short time after 0915.
18. Under this option, the Tesco lorries would stand against the kerb close to the junction with Sedgwick Street. Wheeled cages would be used to manoeuvre goods from the lorry to the store. Deliveries from each lorry would be likely to take around 30 to 40 minutes each. From evidence of other deliveries along Mill Road, I find that a twice daily 30-40 minute delivery, even outside peak hours, would cause a considerable obstruction and for traffic to back up a long way. The appellant has suggested the possibility of imposing a condition restricting the duration of deliveries from Mill Road. However, not only would this be difficult to monitor, and so to enforce, but if the goods were not all unloaded during a shorter period, it would probably result in a further trip, further obstruction at another time, and a similar level of overall congestion.
19. The appellant has pointed to the pedestrian crossings on either side of the section of Mill Road in front of the appeal site, and argued that these lead naturally to platoons of traffic negotiating any obstruction. I accept that obstructions may slow vehicular traffic and do not necessarily lead to an increased risk to highway safety.
20. I heard evidence on cycling from, amongst others, the Cambridge Cycling Campaign (Document 11). This is local voluntary group with more than 1,000 fee-paying members which has some expert traffic knowledge and undertakes various cycling advocacy work; this was not challenged. In particular, I heard evidence on the behaviour of cyclists and saw for myself that not all cyclists in Cambridge necessarily abide by all traffic regulations all of the time. Rather, they can sometimes become frustrated by delays which can lead to risky manoeuvres and illegal use of pavements. Overtaking stationary vehicles was highlighted as a problem, and the general experience of cyclists on Mill Road was described as continual chaotic manoeuvres.
21. Even disregarding the effects on the free-flow of motorised traffic, obstructions and consequential delays are likely to cause a large number of alternative actions by cyclists. Given the pattern of behaviour of some cyclists, I consider that a significant number would take alternative action to get round the Tesco lorries which, in total, would be parked for at least an hour a day.

22. Many cyclists would be likely to try and overtake the stationary lorry. Depending on how close the lorry parked to the kerb, the remaining width of Mill Road against on-coming traffic would be up to 3.27m. Government advice in *Manual for Streets* paragraph 7.2.3 (Document 3) advises that widths between 2.75 – 3.25m should be avoided in most cases since they could result in drivers trying to squeeze past cyclists. Given that lorries will not always park accurately, the effective gap might well be at or below 3.25m. Adding the facts that Mill Road is used by a high proportion of cyclists and has had many accidents involving bicycles, I find that this risk would be considerable.
23. From the evidence, and my own observations, I expect that some cyclists would probably use the pavement to get round the delivery lorry. This of itself would be likely to lead to increased potential conflicts and the risk of accidents. Coupled with deliveries across the pavement by wheeled cages, I find that the potential for conflict between pedestrians, cyclists and delivery cages, and so subsequent injury, would be substantial and unacceptable.
24. The Highway Authority did not object to the proposed extension. However, in objecting to the lay-by option, it noted that significant movement of goods from any delivery vehicle to the store has a high potential for pedestrian conflicts, to the detriment of pedestrian safety. In my view, with or without a lay-by, pedestrian conflicts as a result of two 30-40 minute deliveries, using wheeled cages over the pavement, would be significant. Moreover, even if this could be managed, what was not referred to by the Highway Authority was the likely conflict between cages and cyclists illegally using the footway. I have noted that large vehicles deliver to the Co-op but also that this is a long-standing arrangement. In any event, the fact that there is an existing but less than ideal delivery arrangement to the Co-op is not a good reason to allow an unsatisfactory proposal to compound the existing problems.
25. For the above reasons, I find that the Mill Road delivery option would pose unacceptable risks to highway safety in general, and for cyclists in particular. This option would therefore conflict with current adopted Cambridge Local Plan Policy 8/2, which only permits developments where they do not have an unacceptable traffic impact. It would be contrary to paragraph 29 of Government advice in Planning Policy Guidance Note 13 (PPG13): *Transport*, which places great emphasis on people being able to travel safely, whatever their chosen mode, and expects that, in adapting existing development, the needs and safety of all in the community should be considered from the outset. On this issue I conclude that it would be unacceptable for 10.35m long lorries to load and unload from Mill Road. For the proposals to be made acceptable would require a condition preventing this. In my opinion this was also the purpose of the condition imposed in 1972. I have therefore gone on to consider the fourth option for deliveries.

Issue (b): Catherine Street/Sedgwick Street Loop Option

26. Catherine Street and Sedgwick Street are each around 450m long and lined with terraced houses. Including the junction with Fairfax Road, the total loop is approaching 1km in length. For most of both streets there are parking bays on both sides. These bays have been achieved by taking up a combination of road and footway so that cars park partly on the pavement. It is common ground that in some places the resulting footpath is reduced to 1.25m in width. For

- much of Sedgwick Street the gap between the parking bays was jointly recorded as 3m, or a little above, (Document 22). Moreover, not all cars park accurately, and on my visit the narrowest separation between cars was 2.82m.
27. There are refuse collections once a week and a public house on one corner (which must require deliveries). I saw that the road system is negotiated by some quite large lorries and assume that, on occasions, access is required for emergency vehicles. On the other hand, evidence demonstrated that poor parking in narrow streets does cause problems, such as when a car needs to be 'bounced' onto the pavement to make room for an on-coming lorry to pass (Document 11, photograph 5).
 28. Using this option, the proposals would lead to two 10.35m long delivery lorries around the loop of roads every day, in addition to any existing HGV traffic. The Tesco lorries are approximately 2.45m wide, plus mirrors. Given the separation distances between cars, there would be occasions when the 10.35m long lorries would have less than 20cm to spare on either side.
 29. In my assessment, negotiating the road system in a vehicle or on foot is already difficult, on account of the cars parked partly on the pavement, and the layout is already likely to cause occasional, if not frequent problems. The proposals would significantly increase the use of the loop by some of the largest lorries that can physically negotiate these streets. I find that this increase in use by large delivery lorries with little space on either side is likely to make obstruction and congestion much worse, and interfere with the free flow of traffic. Given the likely resulting use of the narrow pavements, and other consequential behaviour by some cyclists, I find that this would pose a significant increase in the risk of accidents, damage and injury to vehicles, cyclists and pedestrians around the loop.
 30. Lorries also need to access the rear servicing yard. By comparison, a short section of Catherine Street at the junction with Mill Road is two-way, which allows large delivery vehicles to reach the back of the Co-op without then negotiating the rest of the loop. However, evidence showed that delivery vehicles regularly reverse from Mill Road into the rear service area, and the appellant acknowledged that this is a matter of concern. While a similar manoeuvre is certainly not proposed for the appeal site, the fact that it takes place indicates to me the difficulty of large vehicles gaining access to the rear yard at the Co-op. Yet at their junctions with Mill Road, Catherine Street is wider than Sedgwick Street.
 31. The appellant has submitted swept path analyses to demonstrate that it is possible for Tesco lorries to access the rear service yard without mounting the pavement. I acknowledge that a banksman could be employed to assist lorry drivers to reverse accurately and safely into the rear yard, although they could not control traffic on Sedgwick Street. Nonetheless, the geometry of Sedgwick Street is such that reversing would be awkward and, as a result, very slow, and the manoeuvres observed at the Co-op support this assessment. Gaining access to the rear yard would therefore be likely to lead to further obstruction and congestion and, for similar reasons, this would add to the highway safety risks I have found for the rest of the loop.

32. On account of the long distance around the loop, the narrow pavements and separation between parked cars, the difficulty of access to the rear yard, the probable obstruction and congestion that all these problems would cause, and the likely resulting behaviour of cyclists, I conclude that the use of the loop and rear yard by Tesco lorries would pose unacceptable risks to highway safety. This option would not offer an adequate alternative means of servicing, but would also conflict with Local Plan Policy 8/2 and advice in PPG13.

Parking

33. The existing rear yard provides around 15 parking spaces and access to 3 more spaces for the adjacent estate agents. The proposed alternative of rear servicing would require much of the yard to be free of cars during deliveries and reduce the effective number of spaces available. PPG13 (paragraph 52) expects development plan policies to set maximum levels of parking as part of a package of measures to promote sustainable transport choices, enable schemes to fit into central urban sites, promote linked trips and access to development for those without use of a car, and to tackle congestion. There should be no minimum standards for development, other than parking for disabled people.
34. While the proposals might displace parking, and so add to demand for spaces in the surrounding streets, no evidence was put forward by the Council that reduced parking provision would compromise highway safety. The remaining provision would include a parking space for those with disabilities and hoops for bicycles. External waste storage could be prevented by a condition and there would be customer parking when deliveries were not taking place. With regard to parking, I find that the proposals would comply with Local Plan Policy 8/10 which, through parking standards, promotes lower levels of private car parking, and with advice in PPG13. Consequently the effect on parking provision is not a determining factor in my Decision.

Other Matters

Shopping Character

35. Mill Road is renowned for its small, independent traders. I was referred to a statement made by the Secretary of State for Communities and Local Government, in launching the consultation of draft Planning Policy Statement 6 (PPS6): *Planning for town centres*, expressing her commitment to defend the future of independent shops.
36. On the other hand, the proposed store is within the same Use Class as the previous trader. Draft PPS6, to which I give only limited weight at this early stage, refers to units of less than 1000m² while the proposal, even when extended, would only amount to some 370 m². Policy in the current PPS6 does not impose the requirement to demonstrate need within existing centres; indeed it states that it is not the role of the planning system to restrict competition, preserve existing commercial interests or to prevent innovation.
37. It follows that neither the Use Classes Order nor policy in PPS6 (current or draft) support objections on the grounds of competition, rather the reverse. For these reasons I give no weight to concerns over the effect of the proposal on the shopping character of Mill Road.

Noise

38. The proposed plant would include refrigeration and air conditioning. An acoustic report suggests that the noise from the refrigeration plant would be below the background level and that a condition could control the hours of operation of the air conditioning plant to prevent any significant nuisance to neighbours. From my site visit it appears that there are one or more bedrooms adjoining the rear of the site. The Council's Environmental Health Officer sought more information and objectors challenged some of the report. Further details were supplied during the course of the Inquiry.
39. Regardless of the details, I note that conditions could control the hours of operation and the noise level at the boundary with the residential properties. From the information submitted, I accept that it is feasible to adequately attenuate the proposed plant and that enforceable conditions could provide this certainty. I therefore find that, subject to conditions, the plant would not cause unacceptable noise.
40. Under the fourth option, there would be noise from deliveries at the rear of the site. No details were submitted on this point. Conditions were suggested limiting the hours of deliveries and, in the absence of details of the likely noise problems that might arise from deliveries, these could be extended to exclude early mornings, evenings and Sunday/Bank Holiday deliveries. Consequently I find that conditions could prevent noise arising from deliveries at unacceptable hours.

Benefits

41. I acknowledge that the proposals would enhance retail space and that parallel proposals could improve the appearance of the premises within the Shopping Centre. Given that the site is currently vacant, footfall would increase and the vitality and viability of the Centre would be enhanced. By some measures, the site is highly accessible and the proposals would offer the benefits of a parking space for people with disabilities and provision of more cycle racks. In these regards the proposals would comply with the Local Plan and government policy. Nonetheless, even taken together, these do not outweigh the harm I have found with regard to highway safety.

Fallback Position

42. The appellants have argued that the shops on the appeal site already exist, that use of the existing floorspace could cause the same issues, that the extension would not necessarily result in increase in delivery numbers, that neither the previous use nor the other shops cause recorded problems. I accept these points but, for the above reasons, they do not mean that I should permit development without imposing conditions on the size of delivery vehicles, which I consider would be necessary but which the appellant has rejected.
43. I accept that the appellant might be able to extend sideways, but this is not before me and I have limited information on existing movements to adjoining shops, conditions applying to neighbours or the likelihood that the existing businesses might relinquish their tenure.

Conclusions

44. For the reasons given above, I find that both of the realistically available servicing options would pose unacceptable risks to highway safety, which would not be outweighed by benefits or the fallback position. I therefore conclude that both appeals should be dismissed.

David Nicholson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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Thomas Yates	1 Sedgwick St., Cambridge CB1 3AJ
Cllr Nichola Harrison	233 St. Matthews Gardens, Cambridge CB1 2PS
Jannie Brightman	106 Gwydr St., Cambridge CB1 2LL
Sonia Cooter, No Mill Road Tesco Campaign	84 Lichfield Road, Cambridge CB1 3TP
Dr Ruth Deyermond, No Mill Road Tesco Campaign	94 Argyle Street, Cambridge CB1 3LS
Sheila Jeffrys	13 Sedgwick St., Cambridge CB1 3AJ
Cllr Miriam Lynn	75 Argyle Street, Cambridge CB1 3LS
Leonard Freeman	23 Hope Street, Cambridge CB1 3NA
Lulu Agate, Cambridge Friends of the Earth	5 Brackyn Road, Cambridge CB1 3PL
Martin Lucas-Smith	Cambridge Cycling Campaign
Robert Hardy	24 Romsey Rd., Cambridge CB1 3DD
Katie Preston	6 Golding Rd., Cambridge CB1 3RP

DOCUMENTS

- 1 Agreed drawing list
- 2 Appellant's opening statement
- 3 Extract from Manual for Streets
- 4 Traffic Appraisal Advice, May 1996, Chapter 3
- 5 Email from Jon Finney, Highway Authority, 29 September 2008
- 6 DMRB Volume 5 Section 1 Part 3, May 1999
- 7 Traffic and parking counts, Traffic Survey Solutions, for the appellant, 23 September 2008
- 8 Statement by Cllr. Nichola Harrison
- 9 Statement by Cllr. Kilian Bourke
- 10 Traffic Monitoring Report 2007
- 11 Statement by Martin Lucas-Smith for the Cambridge Cycling Campaign
- 12 Statement by Sonia Cooter for the 'No Mill Road Tesco' Campaign
- 13 Email from Alison Twyford to Chris Ackroyd, 18 September 2008
- 14 Photograph submitted of carpet delivery submitted by Rupert Lyons
- 15 Email from Tom Yates, 1 October 2008
- 16 Statement by Robert Hardy
- 17 Statement by Lulu Agate, co-ordinator Cambridge Friends of the Earth
- 18 Statement by Leonard Freeman
- 19 Appellant's reply to 'No Mill Road Tesco' comments on Acoustic Report
- 20 Drawing showing vehicle dimensions
- 21 Bundle of suggested conditions
- 22 Plan showing agreed dimensions taken on surrounding streets
- 23 'No Mill Road Tesco' final comments on Acoustic Report
- 24 Closing statement for the Council
- 25 Closing statement for the appellant
- 26 Statement of Common Ground and agreed conditions