

A supermarket chain has taken over a shop on my High Street. Does it need planning permission?

What can you do if a supermarket wants to open a store on your High Street? Increasingly, the 'Express' format stores are becoming popular with the major supermarket chains. Part of the reason is that they often don't need planning permission to convert existing buildings to shops. Why?

Planning rules dictate the existing High Street premises can be used as retail outlets without the need for planning permission. This includes:

- pubs, restaurants, cafes and take-aways
- banks and other professional services
- all other general services such as hairdressers and dry cleaners

Because the planning system does not take into account the type or ownership of a store, this should not be your area of focus if you want to oppose any plans. Instead, you should first check the existing planning permissions for the building or site to see if any restrictive conditions apply to it. In Mill Road, Cambridge, a condition prevented any on-street deliveries to the site; this caused Tesco huge problems, and they can still only deliver to the back of the site in much smaller lorries as a result.

There are only certain circumstances in which a planning application will be needed for a supermarket to operate from an existing retail outlet:

- **Where there is a restrictions on the type of goods sold**

If there is an existing planning condition which restricts the type of goods that can be sold and the new store wants to sell a different range of goods, they will need to submit a planning application. The distinction here is between 'comparison' and 'convenience' goods:

- 'Convenience goods' are commonly groceries and other food items
- 'Comparison goods' are non-food goods such as clothing, electricals, kitchenware, etc

If the existing store is restricted by a planning condition so that it can only sell mostly comparison goods, then a new supermarket would have to apply to vary this condition so that it could sell predominantly convenience goods. An objection could therefore be lodged against this application.

Also, new stores need licences to sell alcohol (these licences are different from planning permissions). If this has the potential to create anti-social behaviour in the area, then they could be refused. Some councils have designated 'cumulative impact zones' (CIZs) whereby the number of licensed premises in an area can be a reason to turn an application down for another such licenced premises. Brighton & Hove and Bristol City are two such councils which have implemented CIZs.

Action: Check with the Council whether there are any conditions that may limit the use of the building or site - and make sure that if the store is open, it is complying with these conditions. Check also whether an alcohol licence has been applied for – most supermarkets will want to sell alcohol – and whether there is a CIZ.

- **Where new supporting items are needed**

A new Express store will need new signage and normally cash machines (ATMs), external air conditioning and refrigeration condenser units (plant) as well. Planning applications have to be submitted for these uses and you can therefore object to these applications. Whilst it is rare that they are refused and a store is prevented from opening, residents of Great Shelford in Cambridgeshire were successful in getting permission refused for a new shop front, cash machine and lit sign in January 2011, but were unsuccessful in objecting to refrigeration condenser and air conditioning units. In August 2008, Tesco was refused permission for any external air conditioning or refrigeration units at a site in Mill Road, Cambridge. The store opened, but it was smaller and significantly more expensive to run as a result. This can help to make it very difficult and less profitable for chain stores which prefer commonly branded signage.

Action: Check with the Council whether a proposed new store has any of these supporting items and therefore whether they have applied for planning permission for them.

- **If the store is to be expanded**

Where the greatest opportunity lies to challenge a new Express store is if it is seeking an enlarged store through a proposed extension – this is common in order for the store to be large enough to be of ‘Express’ size. This would require a planning application. The central test that should be the focus of any objection is:

- Would the effects of an extended store be more harmful than if the store was opened in the existing unit?

So what possible ‘effects’ can be identified? These broadly come under three areas, all of which were successfully used as justification for the refusal at appeal of a Tesco Express store in Sunninghill, Berkshire:

- Accessibility
- Servicing
- Noise

Accessibility

There are two main issues here:

- accessibility by public transport and bicycle
- accessibility for those parking a car near the store

If a store has poor access by bus or train, or lacks dedicated cycle lanes and facilities (e.g. cycle racks), then this is a valid reason for objection.

For parking, there are several considerations if there is likely to be a lack of available parking:

- How many dedicated parking spaces are provided by the existing store for shoppers? If the new store provides less (which it often does when expansion is proposed), then how many less parking spaces will it provide?
- What is the parking situation elsewhere in the immediate area? Are car parks and other parking areas full, particularly at peak times? Is there anywhere else to park? Do people tend to park illegally when

there are no available parking spaces, creating safety issues? The latter is a common issue where an ATM is proposed, as drivers will commonly pull right onto the adjacent pavement to use them. So these arguments can be used when there is only a minor application for a new ATM as well as in respect of a new store.

Servicing

Possible points of objection are:

- How is the proposed store to be serviced? If lorries are to go into a service area to the rear of a store, is there enough room to turn vehicles round or will they have to reverse back out? Reversing lorries are a safety hazard.
- If lorries service a store by parking on the street, does this impede the pavement and passing pedestrians? Consider the impact of wheeling dozens of large, metal cages across the pavement and into the path of people with children in pushchairs, people in wheelchairs or with limited sight - is this going to be safe?
- If lorries service from the street, does it create an obstruction to the flow of traffic and a hazard to other road users? A typical Express store requires 35 deliveries or more a week (in total, taking around 2 hours a day) by large vehicles at least 10 metres long.
- What is the location of the store? Is it on a road with a high accident rate? Would the delivery path bring lorries close to sensitive locations, such as the entrance to a primary school?

At Mill Road, Cambridge, the August 2008 refusal of permission for external air conditioning and refrigeration units was successfully argued on the basis that deliveries were a relevant issue when applying for external plant. This was because they were able to show that the plant was necessary for the store to open (no refrigeration and air conditioning units = no convenience store) and the deliveries were therefore a necessary consequence of the plant. Chilled and frozen goods deliveries are always a direct consequence of plant, so their delivery is directly linked to plant. They were then able to argue on the detrimental impact of the 14 deliveries a week this would create.

Noise

Noise can be a form of pollution, restricted by local planning policy. Convenience stores are noisy operations, often in locations very close to people's homes. Possible points of objection are:

- How many deliveries are proposed per day and when will they be? A large number of deliveries is an issue, particularly at weekends, early mornings and evenings when residents are commonly at home.
- Has a noise assessment been submitted with the application? The store will have to prove that it won't cause a noise problem and to do this the application must include a noise assessment with all the relevant information. If one hasn't been submitted, force your council to insist on it (they cannot make a valid judgement about the application without one). Does the assessment take into consideration common servicing noises, particularly the loading and unloading of metal roll cages but also the noise of refrigeration units on a vehicle and the vehicle's reversing bleeper?
- What would be the noise pollution impact of refrigeration and air conditioning plant? Refrigeration plant needs to run 24 hours a day, and air conditioning will also run during part of what are classified as the

hours of night time (11pm-7am), when councils are stricter about noise levels. Are there nearby homes that would be affected by this noise?

Action: look at the planning application and see how it addresses these issues. Discuss your concerns with your local councillor. Find out if anyone in your campaign knows about noise issues and can look at the technical documents.

Always try to get the planning application decided by the planning committee, rather than under delegated powers (i.e. by the planning officer). Councillors are elected members so will worry more about the implications of their decision when there is significant public interest. For most councils, a certain number of objections automatically means the application is referred to the planning committee for a decision.

If a store does open

Do not despair, continued action has often resulted in indirect success. For example, a Tesco Express was opened in Mill Road, Cambridge, in August 2009. Despite this, the No Mill Road campaign group has continued encouraging people to support their local stores. As a result, not one local store has closed and it is believed that the Tesco store was losing £35,000 a week as people actively chose not to shop there. If this continues then even a major supermarket chain would shut down a store.

And it is possible to win. Tesco recently withdrew an application to turn a pub into a store in Herne Bay, Kent.

Listing pubs as assets of community value

Whilst it is not possible to stop an existing shop or pub from being sold, there are now opportunities for local communities to buy these assets themselves and therefore prevent them from being used as a supermarket. The Localism Act has recognised that the loss of pubs, local shops and other facilities in many communities has a detrimental impact on the social fabric of that community. It has introduced the right for communities to identify them as 'assets of community value'.

If a community interest group considers that a pub or shop "furthers the social wellbeing or social interests of the local community" then it can apply to its local council to have it listed on a register of community assets. This has the effect of ensuring that the community has 6 weeks from the moment the current owner intends to sell the property to decide whether it wishes to bid to buy it. If the community does wish to bid, then they have a further 6 months to put its bid together – the property cannot be sold before this time.

This does not mean that the owner has to sell the property to the community group, simply that it gives them time to be able to assemble a bid. It is also up to the local council to define a "community interest group"; such a group would have to have some form of legal status as opposed to just being a group of interested individuals.

Whilst an item is on the asset list, this is treated as a 'material consideration' in determining any planning application. So for example, if the owner wants to open a supermarket in a former pub building and submits an application to extend the building in order to make it appropriate for operation as a supermarket, its listing on the asset register is relevant in determining whether the application should be approved. It is vital that you make this fact clear in objecting to any planning application where a building is included on an asset register.

Action for Market Towns has produced a short briefing summary about assets of community value. It can be

downloaded here: <http://towns.org.uk/files/Community-Right-to-Buy-briefing.pdf>

Action: Consider whether there are any buildings which could be under threat in your community and apply to your local authority to have them listed as an asset of community value. If you do not have a community interest group set up, then lobby your local parish council or residents association to do this on your behalf.

You can find the nomination form on your local council website. Factors to include in your nomination include: whether the site is a listed building; whether it is located in a conservation area; how long it has served the community as a pub; the reason for closure; whether there are any other community-run pubs in the local area; whether it would be likely to raise the funds to buy the site; and what efforts have been made or are planned for community consultation for a community-run pub.