

## East Area Committee

### MINUTES

**Date:** Thursday 20 August 2009  
**Time:** 10.00am – 12:30pm  
**Place:** St Phillips Church, 185 Mill Road

**Committee Manager:** John Blunt      **Telephone:** 01223 457086  
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Room 11, The Guildhall,  
Cambridge CB2 3QJ

#### **Council Members Present**

City Cllrs: Blencowe, Bradnack\*, Ellis-Miller, Howell\*, Shah, Smart, Walker and Wright  
County Cllrs: Bourke\*, Harrison\*, Sadiq\* and Sedgwick-Jell\*

\* indicates those Councillors who were present at the meeting, chose to speak in their role as community advocates and did not take part in the discussion of or vote on the item.

#### **Minutes**

This was a special meeting of the Committee held in accordance with Section 4a paragraph 43.1 of the Council's Constitution

#### **09/40      APOLOGIES FOR ABSENCE**

Cllrs Benstead, Hart, Herbert and Lynn,

#### **09/41      DECLARATIONS OF INTEREST**

The following Councillor declared a personal interest:

<b>Councillor</b>	<b>Agenda item</b>	<b>Interest</b>
Ellis-Miller	Planning Contravention Report	Lives in Sedgwick Street

On a point of personal explanation, Cllr Shah said that in previous discussions on planning applications by Tesco Stores Ltd he had declared a personal and prejudicial interest relating to his ownership of a business which provided financial services to a number of businesses along Mill Road. This was no longer the case. He also said that he owned a number of shares in Tesco Ltd, but not in sufficient quantity to constitute a prejudicial interest.

## **09/42 CHAIR'S OPENING REMARKS**

The Chair spoke about the measures that had been taken by the officers and members to respond to public concern about the apparent disregard by Tesco for conditions relating to deliveries and servicing of their Mill Road premises under the 1971 planning permission under which they would operate. He then set out the circumstances which had given rise to the request for a special meeting. He emphasised that the purpose of this meeting was solely to consider the enforcement action available to the Council in the event of a breach of planning conditions regarding deliveries and services.

On 6 August the Council's Planning Officer had sought a written assurance and raised a number of points around the issue of delivery to the Tesco premises in Mill Road. The Chair said that a response on these points dated 17 August had been received from CgMs acting for Tesco Stores Ltd, the text of which he read to the meeting. The letter confirmed Tesco Stores Ltd's intention to deliver from within the curtilage of the property in line with their planning permission.

The Chair went on to comment on the short notice for the meeting and his concern that, in his view, it had not been summoned in accordance with the Council's constitution, giving very little notice to members or residents and providing a report to members only the day before the meeting. Some members of the Committee had been away on holiday, others were at work and were unable to attend. Nevertheless he acknowledged the members present wished to continue with the meeting and that in view of the public concern it would be reasonable to do so and give residents the opportunity to comment.

## **09/43 PUBLIC SPEAKING**

In inviting residents to speak, the Chair explained the procedure for public speaking, allowing 3 minutes for each person who had registered before the meeting. He noted that a number of Councillors who were either ordinary or co-opted members of the Committee had expressed the wish to speak as community advocates, having already previously expressed a view on the issue and the more broader issue of the Tesco store. He informed them that, should they choose to speak as community advocates that this would mean they would not be able to take part in the subsequent discussion and decision-making.

- City Councillor Chris Howell

Cllr Howell said that he had taken no part in the discussion of previous planning applications and regretted that he and other members had not received a briefing on the issue under discussion in good time before this meeting, which he had been party to calling. He emphasised the view that Tesco should not be allowed to breach the planning permission relating to the site and encouraged those members making a decision on enforcement to pursue the matter vigorously.

He said that he would have preferred a discussion on the broader issues surrounding Tesco's occupation of the site at this meeting.

- City Councillor Ben Bradnack

Cllr Bradnack said that he did not vote on planning decisions at Area Committee, preferring to act as a Community advocate on behalf of residents.

- County Councillor Tariq Sadiq

Cllr Sadiq said that he similarly would not normally take part in planning issues as a County Councillor, but had already expressed a view on the issue and would take the opportunity to speak on the subject.

- County Councillor Sedgwick-Jell

Cllr Sedgwick-Jell said that there were traffic management implications for the County Council which formed the main issue of the discussion on which he would like to speak as the County Council was responsible for the highways.

The Chair then invited members of the public who had registered before the meeting to speak.

- Lulu Agate said that the Council should take action against any breach of the planning conditions whoever was responsible for the site.
- Ruth Deyermond said that there was more than one enforcement issue. The primary concern was for the Committee considering whether to enforce the planning conditions. She said that as the public had not had access to the report to members she was unsure whether they were aware that the No Mill Road Tesco Campaign was intending to take legal action against the Council possibly seeking Judicial Review in view of its failure to act in a timely manner against the apparent breach of planning conditions. She understood that Tesco Stores Ltd had given an undertaking to comply with planning conditions but in the event of their failing to meet this undertaking, the Council should be prepared to taken action. She said that within the last 24 hours Tesco's had effectively changed the use of what had

been office space on the first floor of the premises to a plant room for which they should have applied for a change of use.

On her final point, which she had been asked to put by Richard Rippin's, solicitor, that if action was not taken to prevent Tesco Stores opening, then the matter would be put before the High Court on Monday seeking that Judicial review of the Council.

The Chair said that he was not clear why the No Mill Road Tesco Campaign had taken this stance, the Council had to act within its ability to enforce the planning conditions which had originated in 1971, when the premises were three lock up shops. Further applications made by Tesco for the premises, now merged into one, had not changed the 1971 condition regarding servicing. This had been set out in the Planning Inspectors' decisions resulting from recent appeals against the Council's decision to refuse planning applications in March 2008 and earlier fairly recent appeals against non-determination of applications. He felt he had demonstrated the Council's robust response to legitimate public concern over aspects of the application and queried whether the petitioners behind the Campaign were all aware of the Campaign's proposals to take legal action against the Council.

He said he would invite the Council's Head of Legal Services to explain the need for making a decision without the public being present.

- Katie Preston said that there was general disquiet about the short notice for the meeting and that it showed a lack of understanding of the strength of public concern. The Campaign's website and meetings had signalled the intention to take legal action in the event of the Council failing to act. The petitioners felt well served by the Campaign and its leading members.
- Sheila Jeffrey (of Sedgwick Street on behalf of herself and a neighbour) was concerned at the proposals for delivery from Mill Road and said there had been numerous examples of breaches of the delivery restrictions which were a threat to the safety of the residents of Romsey. The narrow streets were not designed for the size of the delivery vehicles and vehicle drivers would have extreme difficulty in navigating the streets and negotiating the access to the rear of the property. The issue for residents was safety. In addition the car park would not provide sufficient space if used by customers' cars. She pointed out the issue of the possible change of use on the first floor at the site was evidence of Tesco's inability to comply with the conditions despite giving an undertaking and invited committee to adjourn the meeting so that they could see this for themselves.
- Len Freeman was concerned about the transparency of the situation, stating that the Council had a duty to enforce the condition. The width of any

delivery vehicles was as crucial as their length; there had been regular problems with damage to residents' vehicles by delivery lorries. Recently a fight had broken out in Sedgwick Street for just this reason and the situation would not be improved by additional regular deliveries in large vehicles. It was apparent that Tesco's had changed its approach by giving an undertaking as reported by the Chair. The Council would need to ensure that it obtained a legally enforceable commitment from the company.

- Martin Lucas-Smith (Cambridge Cycling Campaign) spoke with reference to traffic and safety issues. He said there were two delivery options and there had been a clear intention by the company to breach the planning conditions by delivering from Mill Road. It was clear that the condition was enforceable and the Committee should authorise the officers to take action to ensure enforcement of the condition if Tesco's did not abide by it. To allow delivery from the street would fly in the face of the £400,000 County Council remedial scheme. He asked whether deliveries of fittings for the store that had taken place were a breach of conditions. There was evidence that this had been carried out from Mill Road apparently in breach of the conditions. He also invited members to adjourn to see the apparent breach in respect of the use of the first floor.
- Mr Marks noted that a number of members were not in a position to take part in the discussion and decision-making and queried whether the Chair had placed himself in a similar position.

The Chair said that, in response to invitations to adjourn the meeting to view the premises, this option was open to members to comment on and resolve if they so wished.

In response, County Councillor Harrison said that the Council was in a less than ideal position procedurally and needed to get on with the business in hand. The public had the right to be heard and members needed to listen to them and acknowledge the contribution they had made and the strength of public feeling behind the campaign, which had done an amazing job.

The Chair invited the Head of Legal Services to explain why it was desirable for members to consider their decision without the public being present.

The Head of Legal Services set out the need for his and the Planning Officers' advice to be given to the Committee in a way so that it did not become publicly available. While the Council operated in an open a way as possible as far as possible, in this case it was an issue of technical privilege of the right to confidentiality, which it would not be of benefit to waive.

The Chair invited City and County Councillors who wished to speak as community advocates to do so.

- City Councillor Chris Howell said that there were a huge number of unanswered questions around this issue. He said that the Council should be doing everything possible to enforce compliance with planning conditions in the light of the breach by Tesco's. It was important to recognise the sensitivity of the issue to businesses up and down Mill Road, as was the success of Tesco's activities. The City and County Council should be looking at the situation to improve road safety and recognise the local community's concerns. He said that the Council should be taking preventative action and the undertaking by Tesco's should be viewed with a degree of scepticism as they had a history of contraventions. The Council should wait for a more enforceable commitment by Tesco. He urged the Committee to take appropriate and timely action to exercise the Council's powers, to use the full extent of what was available and not to take a reactive approach.
- City Councillor Ben Bradnack said that he supported the points made by Cllr Howell and that he had the same difficulty in putting any trust in undertakings given by Tesco. The Council was bound to take an impartial view and would have to test the validity of any undertaking. It was virtually impossible to negotiate the residential streets safely with the proposed vehicles and it was essential to take into account the advice given and the decisions by the Planning Inspectorate relating to the decision and conditions from 1971. The Council should recognise that Tesco's strategy was not deliverable and the conditions should be enforced on the grounds that the access was not acceptable.
- County Councillor Sadiq said the Council should take account of Tesco's behaviour and fluid approach. The current undertaking was unlikely to change the situation, which was a danger to the public and in particular to the Mill Road community. The Council should allow itself some flexibility to enforce the current conditions and any that might be made in the future.
- County Councillor Kilian Bourke said that in his view the statement by Tesco's did not provide a binding commitment. He suggested that the City Council's officers provide a conclusive definition of the term 'goods' which would enable the Committee to determine whether Tesco's had breached the undertaking already by delivery of equipment while fitting out the store. If this was the case the Council could take immediate action.
- County Councillor Simon Sedgwick-Jell referred to the planning permission decision from 1971 in which the difficulties inherent in delivery had been recognised, as Mill Road was the most dangerous road in the city. Delivery on the scale envisaged would make it significantly worse. The streets were

not negotiable by the delivery vehicles proposed. He said that officers should be delegated authority to take vigorous action in the event of a breach of conditions.

The Chair asked the Director of Environment and Planning to comment on the Council's approach on enforcement.

The Director of Environment and Planning said that the Council took a methodical and robust attitude to planning enforcement. It was important to act within the law and legal advice was sought before a decision to pursue a course of action was made. He agreed the allegation of an unapproved change of use needed to be pursued and this would be done as soon as possible. Officers had been diligent in monitoring the situation and working hard to obtain the best solution.

#### **09/44 EXCLUSION OF PRESS AND PUBLIC**

**Resolved** that the public be excluded from the meeting on the grounds that, if they were present, there would be disclosure to them of information defined as exempt from publication by categories 5 and 6 as defined in the Local Government (Access to Information) (Variation) Order 2006.

#### **09/45 CHAIR TO RULE UNDER SECTION 100(4)(B) OF THE LOCAL GOVERNMENT ACT 1972**

The Chair ruled that under Section 100(4)(B) Of The Local Government Act 1972 the officers' report should be considered despite not being made publicly available for five clear days prior to the meeting. The reason for this was that the information was not available at the time notice of the meeting was given.

#### **09/46 PLANNING ENFORCEMENT AT TESCO STORES, 163-167 MILL ROAD, CAMBRIDGE**

The Principal Development Control Officer referred to the history of the site, which was set out in the report, in particular the decisions, made at previous meetings of East Area Committee and by the Planning Inspectorate. He also referred to the Road Traffic Orders relating to Sedgwick Street and other nearby streets and the original planning conditions imposed on the site in question.

Members expressed concerns that even if the deliveries were carried out in compliance with the existing conditions it would be problematic for residents, given the size of delivery vehicles and the narrow streets. The contractors fitting out the stores had evidently found delivery difficulty to the extent that they had allegedly accessed the site from Mill Road. They considered whether it would

be possible to seek a restriction on the size of delivery vehicles, it was acknowledged that it would not be possible to enforce an existing condition unless there was evidence of a breach. The conditions would be applicable to other contractors delivering to the site.

The Planning Investigations and Obligation Manager had taken the opportunity to visit the site with reference to the reported change of use on the first floor. He said that there was no evidence of a change of use o at the site but would take the issue into account and investigate further.

A proposal that the recommendations be amended as shown below was carried by 6 votes to 0 (all members present voting in favour).

**Resolved** by 6 votes to 0 (all members present voting in favour), that in the light of assurances given by Tesco, including by letter dated 17 August 2009, and subject to receipt of a satisfactory undertaking on its part to comply with the condition regarding deliveries, no further action is taken at present; and that the Director of Environment and Planning and the head of Legal Services are given full delegated powers to take enforcement action in the event that Tesco breach the planning condition requiring no loading or unloading of goods, including fuel, to take place otherwise than within the cartilage of the site.

The Committee reconvened in public and the Chair read the decision to those present.

The meeting finished at 12.30 pm.

## Chair

Additional information for public:

City Council officers can also be emailed  
[firstname.lastname@cambridge.gov.uk](mailto:firstname.lastname@cambridge.gov.uk)

Information (including contact details) of the Members of the City Council can be found from this page:

<http://www.cambridge.gov.uk/ccm/navigation/about-the-council/councillors/>

Members of the County Council can be emailed:  
[Firstname.lastname@cambridgeshire.gov.uk](mailto:Firstname.lastname@cambridgeshire.gov.uk)