1 APOLOGIES / SUBSTITUTES

Apologies for absence were received from Councillors G Catchpole, P Flegg, J Ford, M Pitchers and J Swainson.

Councillor N Brooks attended as a substitute for Councillor P Flegg.

Councillor M Cherry attended as a substitute for Councillor J Ford.

Councillor G Douce attended as a substitute for Councillor J Swainson.

Councillor K Patience attended as a substitute for Councillor M Pitchers.

Councillor S Woods attended as a substitute for Councillor G Catchpole.

2 DECLARATIONS OF INTEREST

Councillor Graham declared a Local Non Pecuniary Interest in Item 4 DC/12/1350/FUL – Tramway Hotel, London Road Pakefield, Lowestoft, as his wife was employed by Morrisons.

3 DECLARATIONS OF LOBBYING

All Members declared that they had been lobbied in respect of Item 4 – DC/12/1350/FUL – Tramway Hotel, London Road Pakefield, Lowestoft.

Although they had been lobbied, the Members felt that they could bring an open mind to the consideration of the application.

4 DC/12/1350/FUL – TRAMWAY HOTEL, LONDON ROAD PAKEFIELD, LOWESTOFT

The Planning Officer presented the application for two single storey rear extensions at the Tramway Hotel, London Road, Pakefield which was currently a public house, with ancillary accommodation on the first floor and a car park to the rear.

It was reported that under the Use Classes Order (2005), it was not necessary to request a change of use. This was because the applicant had provided evidence to show the lawful use of the premises was as a pub (A4 use) with ancillary letting accommodation, which under the Use Classes Order (2005) could change to a shop (A1 use), without the requirement for planning permission. Counsel Opinion had also been sought by the District Council in this respect, a copy of which was included as an appendix to the application, for information.
It was noted that the application had first been considered by the Committee at its meeting on 14 January 2014 and the application had been deferred in order to carry out a Members Site Visit, to obtain further legal opinion, gain advice on highways matters and investigate newts and asbestos on the site. It was reported that Counsel’s advice remained unchanged and a change of use was not required. In respect of the other issues raised at the 14 January 2014 meeting, it was reported that:

- Asbestos – Some low level asbestos had been found in the garage roof, which would be removed by a specialist company, in accordance with advice from Environmental Health.
- Newts – An ecology report had been submitted which stated that there was no evidence of newts on the site, as the habitat was unsuitable for them.
- Pakefield Schools – Evidence suggested that Pakefield High School and Pakefield Primary School were a sufficient distance from Tramway Hotel not to cause any difficulties and it was unlikely that youths would congregate around the shop in the future.
- Highways Matters – The Highways Department and Safer Neighbourhood Team had been contacted and no concerns had been raised in this respect.

Members viewed photographs, maps, plans and drawings as presented by the Planning Officer and were advised that the proposed extensions were minor in terms of their scale and visual impact and that the application was recommended for approval.

Councillor S Barker - Ward Councillor for Pakefield and County Councillor for Pakefield Division

Councillor Barker reported that the Tramway Hotel on the A12 South was the last in the set of Tesco’s strategic positions in Lowestoft, as the A12 North and the A146 both had a Tesco presence in and out of the town. However, the Tramway Hotel was different as its position at the junction of the A12 and Florence Road was already dangerous, particularly at peak times. The addition of a Tescos at this junction would exacerbate the traffic issues and increase the danger.

There were also concerns that from September 2014, there would be over 900 High School pupils commuting back and forth from the new Pakefield High School, and in addition there would be over 100 extra staff at the school, when its intake was increased by an entire year group. This would mean approximately 1300 young people travelling to and from school each day, which would be a significant impact upon an already busy road.

It was reported that the newly revamped Post Office had recently opened in the nearby Spar shop and there was concern that Tesco could take trade away from the Spar, which would affect the long term viability of the Post Office. The Post Office provided a vital service to those local people who cannot travel easily to other locations across South Lowestoft.

The Tramway Hotel had also been registered with Waveney District Council as an Asset of Community Value, which the local community would want to revitalise to become a building of community worth, serving all of the community, not a Tesco Express.

Mr B Blizzard – on behalf of the Objectors and Pakefield Opposing Tesco’s (POT)

Mr Blizzard stated that the most important issue was the usage classification of the Tramways Hotel. There was significant evidence to support its classification as ‘sui generis’ or mixed use and therefore permission for Change of Use should be sought prior to any other consideration. He reported that there were 6 bedrooms currently in use, which was a similar size to other guest houses in the area and families also used the accommodation on offer, therefore the premises could not be classified as a pub. The
Hotel Proprietors Act 1959 provided a clear definition of a hotel and the Tramway Hotel complied with this definition.

Concerns were raised regarding traffic issues and it was noted that when a similar sized Tesco’s Express was opened in Bradwell, the increase in traffic congestion and problems were much greater than anticipated. The small 13 space car park to the rear of the Tramway Hotel would also be insufficient and would cause issues, particularly in relation to deliveries. It was also suggested that the development would lead to a statutory noise nuisance for nearby residents.

Mr Woodward, Mr Roe and Mr Hanks – on behalf of the Applicant

Members were informed that there was no need for Tesco’s to apply for permission for Change of Use, as the building had deemed consent. The site was within a local shopping centre and would be fully accessible. It was reported that Tesco’s had listened to all of the concerns raised at the last meeting in January 2014 and as a result a Transport Survey had been undertaken which had predicted that only a small increase in traffic would be generated by the Tesco Express. The application was in line with the National Planning Policy Framework (NPPF) and had been supported by the Suffolk County Council Highways Officer. An Ecological Survey had also been completed which had reported that no protected species would be affected by the proposed development. The Tesco’s Express store would be fully compliant with all current legislation and would be accessible by the disabled.

The fencing alongside Florence Road would be replaced with iron railings, which would improve the appearance of the site. The operating hours and delivery hours would be controlled by conditions. The application was for sustainable development, within a local shopping centre, which would improve the facilities for the local community.

Questions

Clarification was provided that a typical Tesco Express store would be open from 6.00 am until midnight. A Member queried how the hours of operation and delivery would be effectively controlled to ensure that there would be minimum disturbance for local residents. Members were advised that there were currently no restrictions on opening hours on the building at the present time as the premises were covered by Licensing Regulations. However the Head of Planning & Coastal Management reported that opening hours and deliveries would be included within the Service Management Plan and would need to be approved by the Planning Department prior to the store opening.

A Member was concerned that a Change of Use application or a Certificate of Lawful Use had not been submitted and queried whether Tesco’s fully intended to open an Express Store on the site. It was reported that Tesco’s was committed to opening the store. However a Change of Use application and Certificate of Lawful Use were not legally required to be submitted, as there was deemed consent.

Further details were requested regarding the delivery lorries and it was confirmed that 8.4 metre lorries (16 tonnes) would be undertaking the deliveries. It was noted that a condition could be included in the Service Management Plan to ensure that the engines were turned off during deliveries in order to reduce noise nuisance. It was also reported that the route to the Tramways Hotel could be prescribed in the Service Management Plan to ensure that lorries approached via London Road, Pakefield and turned directly into the carpark, rather than approaching via other narrow or more congested roads. In response to a query from a Member, it was reported that conditions could be imposed for Tesco lorries, however vehicles from independent companies working for Tesco’s would not be covered by the conditions.
In respect of the Hotel Proprietors Act 1959, the Assistant Chief Executive provided clarification that the Act provided no specific legislative protection regarding the classification of a premises, but it provided a clear definition of a hotel.

In response to a request from a Member, the Assistant Chief Executive provided further information on Assets of Community Value, which had been introduced as part of the Localism Act 2011. It was noted that if an Asset of Community Value was to be put up for sale, the classification could potentially delay the sale by approximately 6 months in order for the local community to consider options for purchasing the Asset, although the vendor would still be able to sell their property to whoever they wished. However, it was reported that the Tramways Hotel was going to be leased to Tescos by the owners, therefore the classification did not affect the application in this case. In summary, it was confirmed that although the legislation was relatively new and had some limitations, it would not change the application under consideration.

A Member commented that the only disabled access to the Tramway Hotel was via the beer garden to the side of the premises, which was also the site for one of the proposed extensions. Reassurance was provided that the Tesco Express store would be compliant with the Disability and Discrimination Act (now the Equalities Act 2010) and all other building regulations, to ensure that the premises would be fully accessible for everyone. It was noted that the works to the building would be phased over time and the business could not operate until all the correct measures had been put in place. Confirmation was provided that planning permission would be required in order to widen a doorway or create an additional access.

With regard to signage and possible light pollution or disturbance, reassurance was provided that illuminated signage was covered by separate legislation and would require a separate application. Great care would be taken to ensure that the signage would be in keeping with the local area and it would be closely controlled.

In response to a query, further clarification was given that a Change of Use application and Certification of Lawful Use were not required on this occasion, in accordance with the National Planning Policy Framework (NPPF) and national guidelines. Further advice had also been sought in this respect and it was confirmed that the only application under consideration at this meeting was for 2 modest extensions to the rear of the building, which were recommended for approval.

A Member commented that it would be helpful if Tescos had talked to the local Ward Councillors and other representatives from the area in order to find a peaceful way forward, where residents concerns could be shared and allayed. It was reported that a note could be added to the conditions requesting Tescos to work with the local community.

**Debate**

There followed further discussion regarding the application, the classification of the premises and the advice which had been received from Counsel.

Councillor Douce moved a Motion that was duly seconded:

‘That the Tramway Hotel be recorded as mixed A4 and the appropriate C Class Use.’

There followed some detailed discussion in this respect. The Head of Planning & Coastal Management reported that this decision may not be within the power of the Committee and could therefore be ‘Ultra Vires’. Members were advised that the advice from Counsel and Officers had been very clear and that a Change of Use was not required in this case. The application was in accordance with the National Planning Policy Framework and the Council’s Development Management Policies. The application would bring much needed investment into the area, employment opportunities and greater choice for the local
community. A significant amount of research had been undertaken regarding this application and Officers were providing advice in the best interests of the Council. Members were strongly advised that any appeal undertaken by Tescos was likely to be granted, which would result in potential legal costs for the Council.

The Assistant Chief Executive reported that the Council could not force Tescos to submit a planning application and advised strongly that seeking to change the classification of the premises in this way may be unlawful. Members were then updated on the potential consequences of their decision. It was noted that Tescos could challenge the class use if it was approved by the Committee, or they could open the Tesco Express as they had previously evidenced that they do not need a change of use. The Council would then need to decide what action to take, if any, in this respect.

On being put to a vote, the above Motion was CARRIED.

There followed some discussion regarding the application for the 2 extensions to the rear of the building. A separate vote was taken on each of the decisions below:

**RESOLVED**

1) That the Tramway Hotel be recorded as mixed A4 and the appropriate C class use;

2) That the application for two single storey rear extensions be approved, subject to the following conditions:

   (a) The development hereby permitted shall be begun within a period of three years beginning with the date of this permission.

   (b) The development hereby permitted shall not be brought into use until it has been completed in all respects strictly in accordance with drawing numbers 10149-211 revision D, 10149-211 revision B and 10149-211 revision A, received 13 December 2012, 10149-222 received 14th January 2014, 10149-223 received 5th February 2014 and 10149-251 revision B received 4th March 2014, for which permission is hereby granted or which are subsequently submitted to and approved in writing by the Local Planning Authority and in compliance with any conditions imposed by the Local Planning Authority.

   (c) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

   (d) Samples of all external facing materials shall be submitted to and approved by the Local Planning Authority before development commences. Development shall be carried out in accordance with the approved samples.

   (e) That a note be added to request that Tescos meet with the Ward Councillors and members of the local business community to smooth the way forward for the opening of the Tesco Express.

The meeting concluded at 7.30 pm

Chairman