Worthing
BOROUGH COUNCIL

Portland House
Richmond Road
Worthing BN11 1LF

APPLICATION NO. WB/10/0966/FULL

TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE MANAGEMENT ORDER) 2010

Mr Alex Christopher
CgMs Consulting
26 Holborn Viaduct
London
EC1A 2AT

PROPOSAL: Change of use of existing floorspace (Sui Generis) to A1 Use Class.

LOCATION : Former Caffyns Motors 24-26 Goring Road Goring-By-Sea Worthing

DATE REGISTERED 3rd December 2010

APPLICANT : Tesco Stores Ltd & Caffyns PLC

WORTHING BOROUGH COUNCIL, under the above Act and Order, gives you notice that its decision upon your application described above and in the approved plans which accompanied the application, or as subsequently amended prior to consideration, is to

GRANT PERMISSION subject to the following conditions:-

1. The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

   Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.

Cont.....

[redacted]

Dated : 13th April 2011

Executive Head of Planning,
Regeneration and Wellbeing

Note: Your attention is drawn to the notes and advice overleaf.

2. The development hereby permitted shall be carried out in accordance with the following approved plans except as where specified in any other condition attached to this permission:-

F9D10-003 A(00)01
F9D10-003 A(00)02
F9D10-003 A(00)03
F9D10-003 A(00)34
F9D10-003 A(00)82
F9D10-003 A(00)100
101GA

Reason: For the avoidance of doubt and in the interests of proper planning.

3. No (A1) retail unit shall comprise more than 404 sq metres gross internal floorspace (including by insertion of any mezzanine floor).

Reason: To ensure the scale of any retail unit is compatible with the character and function of the Goring Road District Centre in accordance with Worthing Core Strategy Policy 6: Retail.

4. The premises shall not be open for trade or business except between the hours of 7am and 11pm on any day.

Reason: To safeguard the amenities of the occupiers of neighbouring residential properties in accordance with saved Worthing Local Plan Policies H18 and RES7.

5. Notwithstanding the submitted drawings, no use hereby permitted shall commence unless and until details and siting of all plant associated with the said use, including the air conditioning units and refrigeration condensers and allied ducting and enclosure, together with noise mitigation measures, have been submitted to and approved by the Local Planning Authority and implemented in accordance with any such approval. Thereafter the approved plant shall be maintained in accordance with the manufacturer's instructions.

Reason: To protect the nearby dwellings from unacceptable noise and disturbance in accordance with saved Worthing Local Plan Policies H18 and RES7.

6. No air conditioning units shall operate between 11pm and 7am.

Reason: To protect the nearby dwellings from unacceptable noise and disturbance in accordance with Saved Worthing Local Plan policies H18 and RES7.

Cont.....

7. No deliveries to or collections from the premises shall:

   a) be made from the rear (north side) of the site, or
   b) take place outside of the hours of 7am to 9pm, except by agreement in writing by the Local Planning Authority.

   Reason: To safeguard the amenities of the occupiers of neighbouring residential properties in accordance with saved Worthing Local Plan Policies H18 and RES7

8. Notwithstanding the submitted drawings, the use hereby approved shall not commence unless and until the details of the refuse and recycling storage facilities, including their siting and the movement and storage of refuse/recycling material within and from/to the building and curtilage have been submitted to and approved by the Local Planning Authority and the agreed scheme implemented. In any event, no refuse/recycling material shall be removed from the rear of the building or deposited at the rear of the building after 9pm.

   Reason: To ensure the waste and recyclable material is handled in a safe, efficient, visually acceptable and sustainable manner and to safeguard the amenities of the occupiers of neighbouring residential properties in accordance with saved Worthing Local Plan Policies BE1, H18 and RES7.

9. The use hereby approved shall not commence unless and until a scheme of sound insulation between the use hereby permitted and the flats above has been submitted to and approved by the Local Planning Authority and implemented in accordance with any such approval.

   Reason: To safeguard the amenities of the occupiers of neighbouring residential properties in accordance with saved Worthing Local Plan Policies H18 and RES7.

10. The use hereby approved shall not commence unless and until the delivery/collections bay (lay-by) and allied bollards as shown in drawing 101GA or such variant as may be agreed by the Local Planning Authority, have been implemented.

    Reason: To ensure collections and deliveries are made in a safe, efficient and neighbourly manner with minimum disruption to the free flow of traffic and to safeguard the amenities of the occupiers of neighbouring residential properties in accordance with saved Worthing Local Plan Policies H18 and RES7 and PPG13: Transport.

Cont.....

11. The forecourt of the premises shall be kept open and free from obstructions to pedestrian movement, including trolleys and other operational equipment and chattels and refuse/recycling awaiting collection, consistent with conditions 8 and 13 of this planning permission .

Reason: To maximise the space outside the premises for pedestrian movement in view of the incursion into the footway caused by the lay-by and to avoid unnecessary or unsightly visual clutter in accordance with saved Worthing Local Plan Policies H18 and RES7 and PPG13: Transport.

12. The use hereby approved shall not commence unless and until a scheme for customer and staff cycle parking has been submitted to and approved by the Local Planning Authority and implemented in accordance with any such approval.

Reason: To minimise car usage in view of the absence of any on-site car parking and to encourage this sustainable and healthy mode of transport in accordance with saved Worthing Local Plan Policy BE1 and PPG13: Transport.

13. The use hereby approved shall not be carried on unless and until a Servicing Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall detail servicing arrangements, including the number and timings of deliveries and include details of refuse collection. The use shall not operate other than in full accordance with any such approval or variation agreed in writing by the Local Planning Authority.

Reason: In the interests of road safety in accordance with PPG13.

INFORMATIVES

1. Reason for approval

This application has been decided in compliance with S.38 of the Planning and Compulsory Purchase Act 2004 (As Amended) which requires the application to be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

The relevant Development Plan policies are:-

Saved Worthing Local Plan Policies

RES7 - Control of Polluting Development
RES12 - Provision of Infrastructure
H18 - Amenity of Residents
BE1 - Design Quality
TR9 - Parking Requirements for Development
S11 - Ground Floor Uses in Core Areas of District and Neighbourhood Shopping Centres

Cont.....

South East Regional Spatial Strategy Policies

SP3 - Urban Focus and Urban Renaissance
CC1 - Sustainable Development
CC2 - Climate Change
CC3 - Resource Use
CC6 - Infrastructure and Implementation
CC7 - Communities and Character of the Environment
T1 - Manage and Invest
T2 - Mobility Management
T4 - Parking
NRM10 - Noise
TC2 - New Development and Redevelopment in Town Centres
RE3 - Employment and Land Provision
BE1 - Management for an Urban Renaissance
SCT1 - Core Strategy 2011
SCT3 - Management of Existing Employment Sites and Premises
SCT4 - Employment Priority in New Land Allocations

The other relevant material considerations, include

All representations and consultation responses received

National Policy and guidance:

Planning Policy Statement 1: Delivering Sustainable Development and Climate Change Supplement;
PPG13 Transport;
PPS4: Planning for Sustainable Economic Growth,

Worthing Core Strategy:

Policy 4: Protecting Employment Opportunities
Policy 6: Retail

The Council finds that the proposal would occupy vacant premises in the heart of the District Centre for retail use and restore an otherwise significant break in the commercial frontage. Whilst strong local concerns have been expressed by the local community over the potential impact on the vitality, viability and character of the local centre by another Tesco Express in the town, the proposal is compatible with established retail and economic planning policy and would directly generate a significant number of jobs and contribute to the centre's offer. The size of the units is limited by condition. Competition impacts are dealt with separately by the Competition Commission.

The premises are close to a number of homes and concerns have been raised on this matter. However, the supporting information submitted has demonstrated that the use could be acceptably accommodated by appropriate controls over such matters as the design and siting of the plant, trading and delivery hours, deliveries and collections generally and noise insulation.

Cont.....

The site is sustainably located and although the Highway Authority does not anticipate any overspill parking due to the modest size of the premises and existing facilities, the applicants have agreed as a precautionary measure to monitor any impacts and contribute a sum towards any necessary remedial measures in view of concerns raised. Whilst concerns were raised on access issues, the front servicing arrangements are considered safe and efficient and compatible with the character of the centre and leave adequate space for pedestrians and the retention of an open forecourt is controlled by condition.

Subject to the conditions imposed and the completed suitable unilateral legal undertaking (S.106) received to secure the parking study and bonded sum for any required remedial works, the proposal is acceptable.

This information is only intended as a summary of the reasons for grant of planning permission. For further details on the decision please see the application report which is available from the Planning Reception at Portland House, Richmond Road, Worthing.

2. The Highway Authority (West Sussex County Council) advises that the applicant will need to provide the lay-by by way of a Section 278 Agreement of the Highways Act 1980 and for the necessary Traffic Regulation Order to be provided as part of this. Relocation of other street furniture maintained by West Sussex County Council as well as the closure of the two existing accesses would also be undertaken by way of this Agreement. The Traffic Regulation Order will be subject to the statutory process. The applicant is advised to contact West Sussex County Council at Highways and Transport, West Sussex County Council, The Grange, Tower Street, CHICHESTER, West Sussex. PO19 1RG

3. This planning permission is the subject of a unilateral undertaking which covenants the owners/operator to carry out a "before" and "after" parking survey in the local area and bond a sum of £5000 towards any necessary remedial parking control measures

This information is only intended as a summary of the reasons for grant of planning permission. For further details on the decision please see the application report which is available from the Planning Reception at Portland House, Richmond Road, Worthing.

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30/3/2011

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Deed of Undertaking

Tesco Stores Limited

and

Caffyns Plc

to

Worthing Borough Council

in relation to land known as 24-26 Goring Road, Worthing

30 March 2011

TLG\CKR\T715.01535

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DEVELOPER OBLIGATIONS 6

THIS DEED OF UNDERTAKING is made the 30 March 2011

GIVEN BY

(1) **TESCO STORES LIMITED** (Company No. 00519500) whose registered office is at Tesco House Delamere Road Cheshunt Hertfordshire EN8 9SL (the "**Developer**"); and

(2) **CAFFYNS Plc** (Company No. 00105664) whose registered office is at Saffrons Rooms Meads Road Eastbourne Sussex BN20 7DR (the "**Owner**");

TO

(3) **WORTHING BOROUGH COUNCIL** of Town Hall Chapel Road Worthing West Sussex BN11 1HA (the "**Council**")

WHEREAS

(A) The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated

(B) The Owner is the freehold owner of the Property with title absolute registered under Land Registry Title Number SX450 and consents to the Developer offering this Deed of Undertaking so as to bind its freehold interest in the Property

(C) The Developer has by an agreement dated 21 September 2010 (as amended on 20 December 2010 and 18 February 2011) agreed to lease part of the Property from the Owner subject to the Planning Permission being granted

(D) The Developer submitted the Planning Application to the Council on 3 December 2010 for the Development which if granted would enable the development of a Tesco Express store in the Property

(E) The Developer is mindful of concerns raised during discussions with the Council regarding the impact of the Development on on-street parking in the Roads and in order to address these concerns is willing to offer this Deed of Undertaking to the Council to create planning obligations to secure the carrying out of parking surveys and any necessary consequential financial contribution

NOW THIS DEED WITNESSES AS FOLLOWS

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Deed of Undertaking the following words and expressions shall have the following meanings unless the context otherwise requires:

"**the Act**" means the Town and Country Planning Act 1990 (as amended)

"**Development**" means the change of use of the ground floor of the Property from sui generis use as a car dealership to use within class A1 of the Order

"**First Parking Survey**" means a two day survey to monitor the parking conditions in the Roads to establish the baseline position prior to the Occupation of the Property

"**Occupation**" means the beneficial occupation of the Property for commercial trade within class A1 of the Order and for the avoidance of doubt shall not include occupation for the purposes of construction or fitting out or occupation for marketing or display or occupation in relation to security operations and "**Occupy**" "**Occupying**" and "**Occupied**" shall be construed accordingly

"**Occupation Date**" means the date that the Property is first Occupied pursuant to the Planning Permission

"**Order**" means the Town and County Planning (Use Classes) Order 1987 (as amended)

"**Parking Contribution**" means the sum of up to £5,000 to be paid to the Council pursuant to paragraph 1 of schedule 1 and to be used by the Council for the purpose of improving parking conditions in the Roads

"**Parking Report**" means a report summarising the results of the First Parking Survey and Second Parking Survey and the impact of the Development (if any) on the parking conditions in the Roads

"**Plan**" means the plan annexed hereto with reference number F9D10-003A(00)01 Revision B

"**Planning Application**" means the application for full planning permission for the Development with reference number WB/10/0966/FULL validated by the Council on 3 December 2010

"**Planning Permission**" means the planning permission to be granted pursuant to the Planning Application

"**Property**" means that part of land at 24-26 Goring Road Worthing shown for the purposes of identification only edged red on the Plan

"**Roads**" means various roads within approximately 250 metres walking distance of the Property as agreed with the Council in accordance with paragraph 1.1 of schedule 1 herein

"**Second Parking Survey**" means a two day survey based on the methodology adopted for the First Parking Survey to monitor the parking conditions in the Roads following the Occupation of the Property

"**Working Day**" means any day of the week other than Saturday Sunday or any bank holiday and any other day upon which the Council's offices are closed to the public

1.2 Where in this Deed of Undertaking reference is made to a clause paragraph schedule recital plan annex or appendix such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital in this Deed of Undertaking or to a plan annex or appendix attached to this Deed of Undertaking

1.3 Where in any schedule or part of a schedule reference is made to a paragraph such reference shall (unless the context otherwise requires) be to a paragraph of that schedule or (if relevant) part of a schedule

1.4 References in this Deed of Undertaking to the Developer the Owner or any one or more of them shall include reference to their respective successors in title and assigns and to persons claiming through or under them in relation to all or any part of the Property save where the context otherwise requires and references to the Council shall include reference to any successor bodies exercising any of the powers currently vested in the Council in relation to this Deed of Undertaking

1.5 Words including the singular meaning where the context so admits include the plural meaning and vice versa

1.6 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies and other corporate bodies and also firms and all such words shall be construed interchangeably in that manner

1.7 The word "including" means including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly

1.8 The clause and paragraph headings in the body of this Deed of Undertaking and in the schedules hereto do not form part of this Deed of Undertaking and shall not be taken into account in its construction or interpretation

2. ENABLING PROVISIONS

2.1 This Deed of Undertaking is executed by the parties hereto as a deed and is made pursuant to section 106 of the Act and all other powers so them enabling

2.2 The covenants and other obligations on the part of the Developer in this Deed of Undertaking are planning obligations made pursuant to and for the purposes of section 106 of the Act and shall be binding upon the Owner's freehold interest in the Property and are enforceable by the Council pursuant to the said section 106

3. CONDITIONALITY

This Deed of Undertaking is conditional and shall only come into effect upon the Occupation Date except for clauses 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and paragraphs 1.1 and 1.2 of schedule 1 all of which provisions shall together with this clause come into effect upon the date hereof

4. DEVELOPER'S OBLIGATION TO THE COUNCIL

The Developer on behalf of itself and its successors in title to the Property covenants with the Council to comply with the obligations imposed upon it in schedule 1 of this Deed of Undertaking

5. QUASHING OR REVOCATION OF PLANNING PERMISSION

If the Planning Permission is quashed or modified without the Developer's consent or is revoked or if it expires or lapses before the Occupation Date this Deed of Undertaking shall cease to have effect

6. MISCELLANEOUS PROVISIONS

6.1 Without prejudice to the terms of this Deed of Undertaking and the obligations imposed on the Developer herein nothing in this Deed of Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission) granted by the Council after the date of this Deed of Undertaking

6.2 All considerations given and payments made in accordance with the provisions of this Deed of Undertaking shall be exclusive of VAT properly payable in respect thereof and at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this Deed of Undertaking and to the extent that VAT had not been previously charged in respect of that supply the person making the supply shall issue a VAT notice to the person to whom the supply was made and the VAT shall be paid accordingly

6.3 If any provision of this Deed of Undertaking is declared by any court to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed of Undertaking shall continue in full force and effect and the parties shall amend that provision in accordance with the decision of the court provided that any party may seek the consent of the others to the termination of this Deed of Undertaking on such terms (including the

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Rev	Description	Date	PM
B	DEMISE LINE AMENDED	30.11.10	
A	DEMISE LINE AMENDED	08.08.10	

REVISIONS

FACTOR 9 DESIGN
ARCHITECTU RAL DESIGN S ERVICES

FACTOR 9 DESIGN
Waterloo Court, 10 Theed Street, Southwark, London, SE1 8ST
07764687471 Email : email@factor9design.co.uk

CLIENT

TITLE

24-26 GORING ROAD,
WORTHING
LOCATION PLAN

FACTOR 9 DESIGN LIMITED
© Copyright Reserved 2008
Do not scale – check dims. on site.

Scale : 1/1250 @ A4 Drawn by : AH
Date :© MARCH 10 Checked by :

Drawing No:
F9D10-003 A(00)01

A	B	C	D	E	F	G	H	
J	K	L	M	N	P	Q	R	
S	T	U	V	W	X	Y	Z	

entering into of another agreement) as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties

6.4 No waiver (whether express or implied) by the Council of any breach of this Deed of Undertaking shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations contained in the said Deed of Undertaking or from acting upon any subsequent breach or default in respect thereof by any party hereto its successors in title or assigns or any person claiming through or under it an interest in the Property

6.5 All interest earned on sums paid to the Council under this Deed of Undertaking shall be taken to form part of the principal sum and may be expended by the Council accordingly

6.6 The applicable law for this Deed of Undertaking shall be English law

7. **DISPUTES**

7.1 Where the parties are in dispute or disagreement or have any differences relating to any matter the subject of or connected with this Deed of Undertaking or its meaning or construction then (without prejudice to any provision in this Deed of Undertaking which specifies a particular timescale for the resolution or determination of any matter) the parties shall use their reasonable endeavours to resolve the same within 20 Working Days of the dispute arising

7.2 Failing the resolution of any such dispute disagreement or difference within the said 20 Working Days or within such other period as may be specified in this Deed of Undertaking in relation to the resolution or determination of the matter in question the dispute disagreement or difference shall be referred for determination in accordance with the provisions of this clause 7 on the reference of any of the parties to the dispute

7.3 The dispute disagreement or difference shall be referred to the decision of a single expert (the "Expert") qualified to deal with the subject matter of the dispute disagreement or difference who shall either be jointly nominated by the parties within a period of five Working Days following a failure of the parties to resolve the dispute disagreement or difference pursuant to clause 7.2 or failing agreement on such nomination the expert shall be nominated by the President for the time being of the Law Society

7.4 The determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties

7.5 The terms of reference of any Expert appointed to determine a dispute disagreement or difference shall include the following:

(a) he shall call for representations from all parties with ten Working Days of a reference to him under this Deed of Undertaking and shall require the parties to exchange representations within this period

(b) he shall allow the parties ten Working Days from the expiry of the ten Working Days period referred to in clause 7.5(a) to make counter-representations

(c) any representations or counter-representations received out of time shall be disregarded by the Expert

(d) he shall provide the parties with a written decision (including his reasons) within ten Working Days of the last date for receipt of counter-representations

(e) he shall be entitled to call for such independent expert advice as he shall think fit

(f) his costs and the costs of any independent expert advice called for by the Expert shall be included in his award

7.6 Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the dispute disagreement or difference in question

8. LIABILITY UNDER THE DEED OF UNDERTAKING

8.1 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed of Undertaking:

(a) to the extent that such breach relates to any part of the Property in which that person has no interest and/or

(b) which occurs after he has parted with his interest in the Property or if it be part only that part in respect of which such breach occurs save for any prior breach for which he shall continue to be liable

9. LOCAL LAND CHARGE

This Deed of Undertaking is a local land charge is shall be registered as such by the Council

10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

10.1 It is not intended that any person who is not a party to this Deed of Undertaking shall have rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms

SCHEDULE 1

DEVELOPER OBLIGATIONS

1. **PARKING SURVEYS**

1.1 Prior to the Occupation Date the Developer shall submit to the Council for approval a methodology for the First Parking Survey and Second Parking Survey

1.2 The Developer shall carry out the First Parking Survey prior to the Occupation Date in accordance with the approved methodology

1.3 The Developer shall carry out the Second Parking Strategy not earlier than 3 months and not later than 6 months following Occupation in accordance with the approved methodology

1.4 Within 2 months of completing the Second Parking Survey the Developer shall submit the Parking Report to the Council

1.5 If having reviewed the Parking Report the Council reasonably consider that improvements are required to the parking conditions in the Roads then the Developer shall pay the Parking Contribution to the Council within 28 days of receiving a request for such payment from the Council

IN WITNESS WHEREOF this Deed of Undertaking has been executed by the Owner and Developer as a deed and delivered on the date first above written

Signed as a deed by TIM ROBINSON)
as attorney for **TESCO STORES LIMITED**)
in the presence of:

[redacted]

Signature of Witness [redacted]

Name (in BLOCK CAPITALS) LEE NICOLL

Address 7 LUNARDI COURT
PUCKERIDGE SG11 1UT

Occupation CHARTERED SURVEYOR.

Executed as a deed by **CAFFYNS PLC**)
acting by a director)
in the presence of:

[redacted]

Signature of Witness [redacted]

Name (in BLOCK CAPITALS) BARBARA ROBINSON.

Address 3, TILCHESTER HOUSE, 12, STANLEY ROAD,
EASTBOURNE, EAST SUSSEX, BN20 7JX.

Occupation HUMAN RESOURCES MANAGER