



City of Westminster

# Officer Decision Report

<b>Decision Maker:</b>	Executive Director of Innovation & Change
<b>Date:</b>	20 December 2023
<b>Classification</b>	For General Release
<b>Title:</b>	Designation of supermarket, ground floor 2-4 Dean Street as an Asset of Community Value
<b>Wards Affected:</b>	West End
<b>Financial Summary:</b>	The owner can seek compensation from the Council for any loss or expenses they may have incurred at the time when the land/property was listed, which they would not have incurred had the land not been listed Section 14(2) ACV (England) Regulations 2012. .

## 1.0 Reasons for decision

### It is a valid community nomination

- 1.1 To be valid, a nomination can be made by a “voluntary or community body”, as defined in Regulation 5 of the 2012 Regulations. The Society has made the nomination as “a charity” (Regulation 5(1)(c)). The Charity Commission for England and Wales Register of Charities confirms that the Society is a registered charity (Registration no, 1146589).
- 1.2 To make a valid nomination the Society have a local connection. This is defined in Regulation 4(a), which states that a body will have a local connection with land in a local authority’s area if the body’s activities are wholly or partly concerned with the local authority’s area. The Society’s charitable objectives relate solely to Soho, which falls wholly within the Council’s area, so the local connection test is satisfied. The Property lies within the Society’s “area of benefit”, as set out in its governing document. Additionally, the Charity Commission confirms that the Society operates within the City of Westminster.

The use as a food supermarket selling a broad range of fresh food and basic products at competitive prices makes a significant contribution to local life and furthers the social wellbeing of the local community

- 1.3 Policy 14 in the council's City Plan states that Major, District and Local Centres will provide a mix of commercial and community uses to meet residents' day to day shopping needs, provide local employment opportunities, and support opportunities for community interaction.
- 1.4 There is a demonstrable need for access to a broad range of fresh food at competitive prices to meet the Soho community's diverse needs:
  - 30% of soho residents live in social housing, and there are 25 families living Soho who have been identified via the low income family tracker are particularly vulnerable in the cost of living crisis.
  - Soho is in the 30-40% most deprived neighbourhoods in the country according to the Index of Multiple Deprivation
  - The Priority Places for Food Index<sup>1</sup> developed by the Economic Social and Research Council, identifies neighbourhoods that are most vulnerable to increases in the cost of living and which have a lack of accessibility to cheap, healthy, and sustainable sources of food. The index ranks Soho in the first decile (highest priority) for social-demographic barriers to food, and is in the second decile for food support for families.
- 1.5 There is a growing body of evidence that suggests supermarkets can make significant contributions to local life and/or further social wellbeing with research by the University of Cambridge<sup>2</sup> finding that supermarkets are a lynchpin for local communities. As a large food retailer open long hours the use also contributes to local life by providing a source of good quality entry level local jobs.
- 1.6 All supermarkets within the neighbourhood have a much more limited range; the only supermarkets nearby with broad ranges are much further away (Tesco Covent Garden and St James). The supermarkets within the designated neighbourhood boundaries of Soho are high-end shops such as Whole Foods, specialty sellers, or more expensive local supermarkets such as Co-Op. None of these operators have personal consents nor are their ownership arrangements known (e.g short leases, expiring leases etc) so their continued operation is not wholly reliable.
- 1.7 A review of 15 items selected from the Office of National Statistics 'Basket of goods' were price checked at the Dean Street Tesco and the Berwick Street Co-Op on Friday 15 December. The cost of the basket was approximately 10% cheaper at Tesco with a broader range of products, including own brand and discount products available in the Tesco.

---

<sup>1</sup> [Priority Places \(priority-places-explorer.azurewebsites.net\)](https://priority-places-explorer.azurewebsites.net/)

<sup>2</sup> [supermarkets and community wellbeing framework 261022.pdf \(cam.ac.uk\)](#)

- 1.8 The Soho Society has demonstrated community support for the use as a supermarket. A Change.org petition opposing the redevelopment of the site secured 218 signatures between August and December 2023.
- 1.9 As the largest supermarket in Soho selling a broad range of fresh food and basic products at competitive prices, there is therefore a strong case that this use is contributing to Policy 14 in the City Plan and making a significant contribution to local life by meeting the diverse shopping needs and providing job opportunities for the local community, as well as workers and visitors.

## **2.0 Background, including policy context**

- 2.1 The Soho Society nominated Tesco Supermarket, 2-4 Dean Street, London, W1D 3RF to be designated as an Asset of Community Value.
- 2.2 The following reasons were set out in support of the nomination:
- The Tesco Metro is the only large supermarket within Soho;
  - The supermarket provides an important facility for residents, workers and visitors;
  - It is important for Soho's residential community of approximately 3,000 people to have a large supermarket within the neighbourhood;
  - Other supermarkets located within the neighbourhood have limited range and/or are too costly.
- 2.3 The ACV nomination was formally received on 27 October 2023. The receipt of the nomination was confirmed to the Soho Society on 1 November 2023. The freehold owners of the property, Hines UK, and the leaseholder, Tesco Stores Ltd, were notified of the nomination on 2 November 2023. The council has eight weeks to make a determination, which is due by 22 December 2023.
- 2.4 The Localism Act 2011 introduced a Community Right to Bid scheme which allows councils to designate properties as 'assets of community value'. The process allows valid nominators to identify and nominate assets within their locality that they believe to be of intrinsic value to the community and the social wellbeing of their locality, to request that they are provided with sufficient notice and opportunity to bid to purchase the asset should it be proposed for sale.
- 2.5 Nominations are tested against two main criteria:
- 1) it a valid nomination from a valid nominator<sup>3</sup>; and
  - 2) the building or land has a non-ancillary use, either currently or in the recent past, which makes a significant contribution to local life and/or furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use of the

---

<sup>3</sup> Nominations must be submitted by one of four types of valid nominators: 1) a community council; 2) a neighbourhood forum; 3) a charity or community interest company; and 4) an unincorporated body (where it can provide names and addresses of 21 members on the electoral roll in Westminster or a neighbouring borough). All nominators must operate within or have interests within Westminster.

building or land which make a significant contribution to local life and/or will the social interests or social wellbeing of the local community<sup>4</sup>.

### **3.0 Legal implications**

3.1 Designation as an Asset of Community Value has two main effects:

1) Moratorium of property sale

The owner of an ACV must inform the local authority in writing of their intention to dispose of it. This notification triggers a six week moratorium period during which the asset cannot be sold. During this time, community groups can express interest in being treated as a potential bidder for the listed ACV. If valid expressions of interest are received within this timeframe, the moratorium period is extended to a full six months starting from the date the owner gave notice of their intention to dispose of the asset. This period is intended to provide the local community time to develop a proposal and raise the required capital to bid for the property when it comes onto the open market at the end of the moratorium period. However, community groups do not have right of first refusal, and the property owner retains the right to sell it to whoever they choose at the end of the moratorium. The property can be sold during the moratorium to an eligible community group.

2) Material planning consideration

ACV listing can be considered a material planning consideration. The community value provided by the asset can be considered in the determination of a planning application affecting the designated property.

3.2 Designation does not prevent the change of use or redevelopment of the property if planning permission is granted.

3.3 If the council indicates its intention to designate an ACV, the property owner has the right to request a review, which is undertaken within the council by an officer of necessary seniority who was not involved in the initial decision. The outcome of a review can be further challenged at a Tier 1 Tribunal. The nominator and third parties do not have a right to request a review or to appeal. If a property is listed and subsequently de-listed following a review.

3.4 The owner can seek compensation from the Council for any loss or expenses they may have incurred at the time when the land/property was listed, which they would not have incurred had the land not been listed Section 14(2) ACV (England) Regulations 2012. .

3.5 If a land or building is successfully included in the list of ACVs, it will remain listed for five years unless a listing review leads to the de-listing of an asset prior to the end of that term.

---

<sup>4</sup> Social interests are defined in the Act and include cultural, recreational and sporting interests. Wellbeing is not defined in the Act or Regulations, but is generally regarded and supported in case law to be the things that people value in their life and that contributes to their happiness, health and safety.

3.6 ACV designation refers to the property (i.e. the land and/or building nominated), and not to any particular use. In the case of the Tesco nomination, the nominated land is described as the current supermarket at the ground floor, 2-4 Dean Street.

#### **4.0 Equalities**

4.1 Under the Equalities Act 2010 the council has a “public sector equality duty”. This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it.

4.2 The council is also required to have due regard to the need to take steps to take account of disabled persons’ disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life.

4.3 The 2010 Act states that “having due regard” to the need to promote equality of opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

4.4 The courts have held that “due regard” in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equality’s implications of the decision.

4.5 The decision has been subject to an equalities impact assessment to ensure the 2010 Act duties are complied with.

#### **5.0 Consultation**

5.1 The freehold owners of the property, Hines UK, and the leaseholder, Tesco Stores Ltd, were notified of the nomination on 2 November 2023.

5.2 A number of council departments were consulted on the application, including Town Planning & Building Control, Public Health and Legal, and officer views were taken into account in forming this decision.

## 6.0 Financial implications

- 6.1 The owner can seek compensation from the Council for any loss or expenses they may have incurred at the time when the land/property was listed, which they would not have incurred had the land not been listed Section 14(2) ACV (England) Regulations 2012. .

# Appendix A Nomination Checklist

<b>Name of Nominated ACV</b>	Tesco Supermarket	
<b>Address</b>	2-4 Dean Street	
<b>Date of Nomination</b>	27 October 2023	
<b>End date of 8-week consideration period</b>	22 December 2023	
<b>PART 1 – VALIDATION CHECK</b>	<b>Officer Comments</b>	<b>Complete?</b>
1. <b>Does the application include a description of the nominated land including its proposed boundaries?</b>	No map but accurate description.	Yes
2. <b>Is the land or building(s) within the City of Westminster?</b> Buildings can include part of a building (Note if partly in Westminster and partly in a neighbouring authority we must co-operate on decision). Neighbouring authority = if part of the boundary of that authority's area is also part of the boundary of Westminster (see para 1 ACV Regulations)	Yes	Yes
3. <b>Is the land of building(s) exempt from listing as per the Localism Act 2011?</b>	No, not residential, a caravan site or operational land	Yes

<p>4. <b>Does the application include a statement of all the information that have on the names of current occupant(s) of the land, the names and current or last known addresses of all those holding freehold of leasehold estate in the land?</b></p>	<p>Yes</p>	<p>Yes</p>
<p>5. <b>Is the applicants an eligible community group?</b></p> <p>Voluntary or community body (regs)</p> <p>=</p> <ul style="list-style-type: none"> <li>• A body designated as a neighbourhood forum s61F TCPA 1990</li> <li>• A Parish council</li> <li>• An unincorporated body whose member include at least 21 individuals (must be local members which means a member who is registered at an address in the local authority's area or in an neighbouring authority's area as a local government elector), and which does not distribute any surplus it makes is wholly or partly applied for the benefit of the authority's area of the neighbouring authority's area</li> <li>• A charity</li> <li>• A company limited by guarantee that does not distribute any surplus it makes to its members</li> <li>• An industrial and provident society which does not distribute any surplus to its members</li> <li>• A community interest company (CIC)</li> </ul>	<p>Registered Company (charity)</p> <p>Confirmed with Charity Commission (registration no. 1146589)</p> <p>Local interest:</p> <ul style="list-style-type: none"> <li>- Soho Society's charitable objectives relate solely to Soho, which falls wholly within the Council's area, so the local connection test is satisfied</li> <li>- The Property lies within the Society's "area of benefit", as set out in its governing document</li> <li>- Charity Commission confirms that the Society operates within the City of Westminster</li> </ul>	<p>Yes</p>

<p>Local connection = the body's activities are wholly or partly concerned with authority's area or with a neighbouring authority's area (ACV regs) and are surplus it makes is wholly or partly applied for the benefit of the authority's area or neighbouring authority's area.</p>		
<p>6. <b>Has the group provided sufficient information to demonstrate that the land is of Community Value?</b></p>	?	
<p><b>PART 2 – STATUTORY TEST (once PART 1 has been completed)</b></p>	<p><b>Officer comments</b></p>	<p><b>Completed?</b></p>
<p>7. <b>Is the land of community value? (Localism Act 2011)</b></p> <p>Does an actual non-ancillary use of the land or building further the social well-being or social interest of the local community?</p> <p><b>AND</b> It is realistic to think that there can continue to be non-ancillary use of the land or building which will further (in the same or a different way) the social well-being or social interests of the local community</p> <p><b>OR</b></p> <p>There is a time in the recent past when an actual non-ancillary use of the land or building furthered the social well-being or interests of the local community;</p> <p><b>AND</b> it is realistic to think that there is a time in the next 5 years when there could be non-ancillary use of the land or buildings that would further (whether or not in the same way as previously) the social well-being or social interests of the local community</p>	<p><b>Social well-being or social interest</b></p> <p>It's a supermarket</p> <p>Many other supermarkets within 1000m, at least three within designated boundaries of Soho Neighbourhood area</p> <p>Is there anything special about the Tesco?</p> <p>It's a Tesco Metro (approx.. 750sqm – less than the average 'large supermarket' of over 1k sqm but relatively larger than the others in Soho, nearby ones much larger ie Oxford Street)</p> <p>Good location (apparently most population is concentrated around here but it's not central within Soho)</p> <p><b>Recent Past</b></p> <p>Operational since 2003</p> <p><b>Non – Ancillary</b></p> <p>Supermarket</p> <p><b>Local community</b></p> <p>Soho residents but also used by visitors from around the world and commuters</p> <p><b>Realistic to think it can continue</b></p> <p>No reason why not although property freeholder (Hines) wants to demolish but application (23/00484/FULL) refused</p>	



# Appendix B Population density map of Soho



## Legend

### PopulationDensity\_UK

Population Density

- Highest
- Very high
- High
- Low
- Very low
- Lowest

Map produced by Urban Observatory based on 2011 Census data

# Appendix C Basket of goods comparison

	Tesco, Dean Street	Co-op, Berwick Street
6 medium eggs	1.55	1.55
White bread, basic	85p	76p
White bread, mid range	1.55	1.55
White bread premium	1.75	2.40
Milk, 2 pints	1.30	1.35
Milk, 4 pints	1.55	1.65
Beans, branded	1.15	1.80
Mature cheddar, 400g, own brand	3.30	3.40
Butter, 250g	1.80	1.50 (reduced from 2.20)
Tea bags, 80	PG 2.50	Own band 'gold' 2.40
Tin tomatoes, branded	1.10	1.25
4 Toilet rolls	1.85	2.65
Apples x 6 gala	1.95	2.05
Apples x6	1.10 (small)	1.75 (seasonal)
Bananas, small bag	85p	1.15
Total	24.15	27.91

*Prices checked by WCC officer on Friday 15 December 2023*