

## Appeal Decision Notice

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Decision by Trevor A Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P-PPA-200-2008
- Site address: 7 Gavin's Mill Road, Milngavie, Glasgow, G62 6NB
- Appeal by Tesco Stores Limited against the decision by East Dunbartonshire Council
- Application for planning permission TP/ED/09/0638 dated 17 July 2009 refused by notice dated 29 April 2010
- The development proposed: redevelopment of existing store to form new class 1 retail store with associated deck car parking, servicing, recycling centre etc.
- Date of public hearing/inquiry sessions: 1 - 3 February 2011. Accompanied site inspection on 4 February and unaccompanied on 1 March 2011

Date of appeal decision: 18 March 2011

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### Decision

I dismiss the appeal and refuse planning permission.

### Preliminary matters

1. There were a number of criticisms of the appellant's handling of the original application, both in written submissions and at the inquiry. None of these is relevant to my determination of the appeal. There was also strong underlying feeling about Tesco as the appellant/developer. I stated at the inquiry that my responsibility is to determine the appeal proposals before me, and that the identity of the appellant or store operator is not relevant to this.

2. Under the Environmental Impact Assessment (Scotland) Regulations 1999, the proposal would be a Schedule 2 development as an urban development project including the construction of shopping centres and car parks over the 0.5 hectare threshold. This would necessitate the production of an environmental impact assessment if the proposals were considered to have significant environmental effects. The council screened the proposals under regulation 5 and concluded that they would not have significant environmental effects, so an assessment would not be required. This judgement was challenged by third parties before the inquiry, and having considered the evidence carefully I accepted the council's decision.



3. In any case the appellant has produced comprehensive reports to demonstrate actual and potential environmental impacts and how any potential environmental effects could be mitigated. I consider these to provide sufficient information to enable me to address any relevant issues in my determination.

## Reasoning

4. The key determining issues in this appeal are the impact of the proposed development on the site and surrounding area, including the setting of listed buildings and the conservation area, on the vitality and viability of the town centre, and that of Bearsden, and on the traffic network in the area, taking into account national policy and guidance, the terms of the development plan, and other material considerations.

## National policy

5. The latest Scottish Government policy guidance is set out in Scottish Planning Policy, published in February 2010. It is therefore up to date and carries significant weight. Town centres and retailing are dealt with in paragraphs 52 to 65. Paragraph 52 identifies town centres as a key element of the economic and social fabric of Scotland, acting as centres of employment and services for local communities, making an important contribution to sustainable economic growth. It adds that retail and leisure activities are fundamental to the concentration of other activities located in town centres, and that planning authorities should support a diverse range of commercial activities in town centres.

6. Paragraph 57 states that planning authorities should assess how centres can accommodate development. It urges developers, when considering the format, design and scale of proposals, to take account of the setting of the centre. It adds that new development should integrate successfully and create effective links with the surrounding urban fabric.

7. Paragraphs 62 to 65 set out the sequential approach to be used for selecting locations for all retail uses unless the development plan identifies an exception. This requires locations to be considered first in town centres before edge of or out of centre sites. It says that where development for town centre uses is proposed within a town centre, an assessment of its impact on similar uses within the centre will not be necessary.

8. In the case of the appeal proposals the site is that of an existing superstore and car park, which lies within the town centre of Milngavie as designated in the adopted East Dunbartonshire local plan. Subject to the caveats stated above, the proposals are strongly supported by national policy.

## The development plan

9. The development plan comprises the Glasgow and Clyde Valley Joint Structure Plan, approved 2008, and the East Dunbartonshire Local Plan, adopted 2005. The relevant policies drawn to my attention are 9 and 10, together with schedules 6(c) (i), (ii) and (iv) of the structure plan, and DQ 2, DQ 2 A, HE 5, HE 7, and RET 2 of the local plan.

10. As the appeal site is already in use as a superstore the principle of the proposed development is not at issue. The development plan policies referred to relate to design and built heritage, and retail impact. I will deal with these in the order they were dealt with at the hearing/inquiry, namely design and related issues, then retail. Traffic issues are dealt with under other material considerations.

## Design

11. Policy DQ 2 expects high quality design in all developments, and that development should be compatible with the amenity and character of the area within which it is located. It presumes against development proposals which do not have regard to factors set out in policies DQ 2 A-E, the relevant one in this case being DQ 2 A. This sets out nine criteria of which (a) is quoted in reasons for refusal 1 and 2. The policy states that high quality design of new developments will be expected, and in assessing planning applications the council will pay particular regard to the following: “(a) Scale, massing, materials, fenestration – especially on prominent frontages and corner sites. Developments should generally take recognition of, and reinforce or complement the character of their surrounds.”

12. Design is very subjective, and what is to one person a bold statement of modern architecture introducing new but sympathetic forms to an existing townscape, will to another be an ugly edifice totally out of keeping with its surroundings. The planning officials’ report to the planning board dated 13 April 2010 (EDC 7) notes that the scale of the proposed building would be considerable larger in the context of the area and create a significant visual alteration, particularly to the street scene along Woodburn Way. It points out that the building would be significantly larger than the existing store, but that this would be below the height of other town centre buildings, notably Marks and Spencer, because it would sit on the lower ground of the existing car park.

13. The report places some emphasis on the views of Architecture + Design Scotland, Scottish Ministers’ principal advisor on building design, and particularly the way good design can be incorporated into the environment. In this case it has no objection to the scale of the proposed building but considers it has not realised the full potential, especially with regard to the entry sequence and design of the Woodburn Way façade. It suggests that in the event of planning permission being granted, conditions should be imposed to ensure the Woodburn Way façade is redesigned, together with other improvements on points of detail. Officials accepted this advice and concluded that any potential adverse effects of the building could be adequately mitigated. Proposed conditions would have included improving the design of the Woodburn Way façade, landscaping, and the area around Gavin’s Mill.

14. To help me assess the design a third party asked me to visit the recently opened Tesco superstore at Maryhill shopping centre as part of my unaccompanied site inspections. The appellant cautioned that this store was not of the same design as the appeal proposal, and should not be used as a comparison. Whilst I accept this point, there are several similarities in the design principles of both buildings, notably under store parking, and a tall glass fronted atrium at the front of the store, containing traveller access to the main sales area at first floor level.

15. Apart from that the two sites are in totally different settings, the Maryhill one facing onto a very busy urban main road with relatively tall tenement buildings and even taller blocks of flats in the vicinity. These have the effect of reducing the impact of the superstore's height, so that it is to some extent mitigated. The back of the store opens onto a large car park, and adjacent to the access road is a recycling area similar to the one proposed for the appeal site. This appears to work well. The under store car park was bright and well lit, with easily accessible spaces for disabled and mother and toddler parking similar to those proposed for Milngavie.

16. Whilst the main road frontage fits in reasonably well in a varied street scene, the back of the store is clad in coloured sheeting. Whilst reflecting the colour of the tenement sandstone it does nothing to conceal the very large scale of the building, and without the signs it could easily be taken as a modern warehouse or factory. It would not be out of place in an out of centre shopping development.

17. In contrast, the appeal proposals suggest a design that, whilst basically a large warehouse type building characteristic of modern superstores, has been carefully considered to fit into a somewhat restricted site. The rationale for this is set out in the appellant's design synopsis (TSL 34), which sets out different permutations of store and car park within the overall site. The particular advantage of the appeal proposal compared to other options examined is that it goes some way to disguising the size of the store by setting it against the embankment of Woodburn Way. It would thus be seen from the Way, or the back of the town centre buildings, as a single, albeit relatively high, storey, but still below the height of the back of the Marks and Spencer building, referred to above.

18. The use of contemporary materials, including extensive glazing, larch cladding and smooth cement render in varying relationships, together with more traditional sandstone, and differing design elements on different elevations, would provide a modern building of greater interest than the standard modern superstore. In addition, the height of the two tier decked car park would be lower in than that of the existing store, which it would replace, and be free of the roof top service paraphernalia that intrudes into and damages the view over the existing store when seen from higher ground, notably on the edge of Lennox Park.

19. That said, the criticism of the design of the main building is not so much about the detail but the sheer scale of the building. This is particularly so in terms of the Woodburn Way façade, notably its length in comparison to other buildings in the town centre. It was pointed out that the Way is effectively a by-pass, marking the edge of the original town centre and planted with trees to provide a rural outlook.

20. Circumstances have changed however, and the Way now divides the centre into two parts, the original centre and the superstore site. I deal with the relationship to the town centre conservation area below, but at this stage I note that the backs of the buildings, which face the Way are not of significant merit and look out over car parks. Under the appeal proposals the trees along the south-east side of the way would be felled to be replaced by the new building. However, change is inherent in town centres, and I do not consider there to be a fundamental urban design flaw in setting a building along the south-

east side the Way, effectively enclosing that side of the street. If anything it could potentially serve to emphasise the poor townscape qualities of the car parks opposite.

21. That said, I note the concerns expressed by Architecture + Design Scotland, referred to above and accepted by the council's planning officials. In trying to address the problem of a long and potentially bland façade different design elements have been introduced, including some glazed display units and different colouring. In my view these reflect more the characteristics of a discredited 1960's building, and do not match the undoubted qualities shown elsewhere in the design. I accept that some of the materials and finishes aim to reflect those of the Marks and Spencer store, a contemporary design in its time, and not displeasing, but a more independent approach may be appropriate. This could be addressed by further consideration of the design.

22. Concern was also expressed at the inquiry about the appearance and scale of the proposed 11 roof vents on the main roof and two over the atrium. These would be there to provide passive ventilation within the building. They remind me of ventilation stacks found on older ocean vessels, and could look somewhat incongruous. The appellant stated that alternative ventilation could be provided, with low level vents, should this be necessary. This is not therefore a defining issue for the appeal.

23. In relation to the scale, third parties have addressed this in relation to the impact on the overall townscape through views over the site, both in the immediate vicinity and the wider area. For example, it is claimed that it would destroy the favourable impression gained by the many visitors to the town who arrive by train, including those travelling through Milngavie to walk the West Highland Way, which starts in the town centre.

24. To assess this, on my unaccompanied site inspections I took the train from Bearsden to Milngavie, taking particular note of what is seen on the approach to the station. Following the treed setting of Lennox Park the immediate foreground is unattractive, looking over the loading bay at the north-east corner of the store with its metal palisade fence and plethora of waste bins, goods trolleys and the like. Beyond this is an overflow car park and recycling centre in full view from the train. In contrast, under the new proposals the train would pass the access ramp to the upper floor of the car park and the largely screened new recycling centre, looking to the new store beyond.

25. The medium distance views over the existing car park would be lost, being replaced by the new building, but I do not consider that would detract unacceptably from the approach to the station. In any case these views are fleeting, and for passengers arriving on the eastern platform, are quickly lost as they descend from the train on the side away from the view to exit through the station away from the appeal site. Overall the approach could well be improved.

26. From higher ground, and notably properties to the north-east of the town centre the new building would be prominent within the wider urban view, and some of the present greenery would obviously be lost. This must be seen, however, within the context of overlooking a built up area, where the urban structure is likely to change over time and individual views subject to alteration. Lighting patterns are also subject to change, and the

fact that buildings may be lit all night, to facilitate 24 hour opening, provided residential amenity is not affected, is a factor of modern living. Views from individual properties are not a planning matter as long as the residential amenity of properties is not unduly affected.

27. In this case residential properties are some distance from the appeal site, with the closest ones generally being well screened from it. I find that the wider visual impact of the proposed development does not provide any justification for dismissing the appeal.

28. Drawing these matters together in terms of policies DQ 2 and DQ 2 A I find that the appeal proposals present a carefully considered design that shows many aspects of high quality, including use of materials. I accept however the validity of the views of Architecture + Design Scotland, also agreed by planning officials, the council and third parties, that the present design falls short of the otherwise generally high standard in relation to the Woodburn Way façade and some aspects of the entry sequence. I deal with the latter below, but for these reasons I find the proposals do not meet the requirements of policies DQ 2 and DQ 2 A.

#### Listed buildings

29. Policy HE 5 states that the council will protect listed buildings and their settings from inappropriate development. I also have a responsibility under section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in considering whether to grant planning permission for a development which affects the setting of a listed building, to have special regard to the desirability of preserving its setting. This is dealt with below.

30. Two listed buildings that could be affected by the proposals have been drawn to my attention, Milngavie railway station and Gavin's Mill. Both are listed category B. Only the latter is referred to in the reasons for refusal.

31. The most significant part of the station in listing terms is the old station block on the east side of the east platform. This has been restored and is in active use for station functions, including ticket sales, waiting rooms and general offices. It is on that part of the station farthest away from the appeal site, and is fairly well screened from it by trees and the Kwik Fit building. At present the parts of the appeal site closest to the station are used for overflow parking, the recycling centre and the service/delivery yard for the present store. None of this presents an attractive outlook, although arguably it is sufficiently distant from the station buildings, taking into account the urban location, that it is not unduly prejudicial to the setting.

32. Under the new proposals the recycling centre would be closer to the station, but better screened, and the service yard would be replaced by the access ramp to the new car park. The new building would be partially obscured by the existing screening and the remaining view would not be unattractive within the urban context. I find there would be no adverse impact on the setting of the station as a listed building.

33. Gavin's Mill is located adjacent to the south-west corner of the appeal site. Formerly a flour mill it is now occupied as a Chinese restaurant. From the evidence of photographs

submitted to the inquiry there have clearly been a number of changes to the building over the years, including the removal of some timber additions. This is most likely to have taken place before listing in 1971. The main structure is in tact, including the water wheel on the south side of the building, seen from the footpath into Lennox Park. From that approach to the mill the buildings are seen in a sylvan setting on the bank of the Allander Water, which provided a water supply through a lade to the north.

34. At the inquiry evidence was provided of the mill's significance to the history of Milngavie, including giving the town its name. The evidence suggests it seen locally as the most important listed building in the town. Its category B designation indicates its regional importance despite the removal of earlier features. What I must assess however is the impact the proposed development would have on the building, with regard to the development plan and my statutory duties, irrespective of local feeling about it.

35. At present the front of the building looks out over a small garden and decked seating area that form its immediate curtilage. In front of this a paved footway leads uphill to the underpass to the west part of the town centre, under Woodburn Way. On the other side of the footpath is the existing superstore car park. Apart from the sylvan setting framing the Allander Water, referred to above, the setting is not particularly attractive, the building effectively being hemmed in between the retaining wall supporting Allander Way on its west side and the car park in front. The latter does at least give an open aspect to the frontage, albeit with the mill being seen beyond parked cars.

36. Under the appeal proposals the area in front of the curtilage would be landscaped, including improvements to open out the footway and provide a better approach to the underpass. This would provide a small 'arena' like area in front of the mill, forming part of the route to and from the underpass, and also pedestrian and service vehicle access to the mill. On the north-east side of this open area, some 33 metres from the front of the mill according to my measurements taken from drawing 958(PL)002 – Ground Floor Plan, would be the south-west wall of the main building, stepped down from the main roof line, and about 11.1 metres above the car park level. The outer edge of the overhead walkway would be about three metres closer.

37. The submitted plans do not assist the task of assessing the impact on Gavin's Mill. For example, drawing 958(PL)005 – elevations, shows the height of southern ridge of the mill as approximately three metres above Woodburn Way, where as, from my own visual estimates it is about one metre below it. In addition the outline of the mill is inaccurate, showing the southern gable end as much larger than the northern one, with a similar discrepancy between ridge heights. Whilst the southern gable is wider and higher than the northern one, the differences are relatively small. Drawing 958(PL)007 – Site Sections also shows the ridge of the mill (section 2-2) appearing above the road level of Woodburn Way.

38. In response to my questioning of this it was explained at the hearing that the drawings were diagrammatic and that this was an architectural technique, and the buildings were shown as having the same floor level so that a true comparison could be made between the heights of the buildings. Had a note of this been placed on the drawing this explanation would have been more credible. From my experience I am unaware of such a

technique, and I find it unhelpful, presenting a false impression of the relationship between the existing and proposed building, that is only revealed by an examination on site.

39. From my own measurements from the plans referred to above, and my estimations from my visual observations, the height of the step down part of the store roof would be some 6.35 metres above the north ridge line of Gavin's Mill. The south-west wall of the store, from the retaining wall of Woodburn Way to the point where it curves to meet the main store frontage would be some 44 metres. The lower part of the elevation would be open to the car park, and have a somewhat utilitarian appearance. There would be a large glazed area forming the café window, with larch cladding to the remaining upper part of the elevation. The elevated footway from Woodburn Way would descend across the façade from west to east.

40. Other than its sheer height, I have no difficulty with the upper part in itself, which displays some of the good design and materials qualities previously referred to. The problem regarding the height of the building, so relatively close to the mill, is already recognised by the step down in the roof level. The exact extent of this is unclear, as there is a discrepancy in drawing 958(PL)005 – Elevations between the length of the main roof as shown in south-east and north-west elevations. From comparisons with other drawings the former appears to be correct. As this area would house the café, which appears to have more than adequate headroom, there may be scope for detailed changes here that would disguise or reduce the effective height of the wall.

41. At ground level the presence of the relatively open car park, and the width of the opening detract from the otherwise potentially improved landscaped area that would be created in front of the mill. The council suggests the appellant's case is that a poor quality setting can be replaced by a very good quality setting, and argues that the key determining issue as to whether a change to the existing setting is harmful is not whether the quality would improve, but the appropriateness of that change in the context of the listed building. It quotes paragraph 113 of Scottish Planning Policy, which says, in summary, that the design, scale and siting affecting the setting of a listed building should be appropriate to the character and appearance of the building and setting.

42. Drawing these points together, I find the height of the proposed building would dominate Gavin's Mill and, because of this, and the open car park area, would detract significantly from, and be harmful to its setting. The proposals would thus be contrary to policy HE 5. I appreciate the appellant has put forward proposals to mitigate this impact, and these are considered below.

#### The conservation area

43. The conservation area covers, in broad terms, the area of the older part of the town centre to the west of Woodburn Way, and mixed use and residential areas to the north of Station Road. There are two small outliers that include the list buildings of the station and Gavin's Mill, together with their immediate curtilages.



44. Policy HE 7 states that development outwith a conservation area, but which could affect its visual setting, must also be sympathetic to the special character of the area. This character derives from the older building form within the area, and differs according to the varying uses. The character of the station is defined by that use, and the original buildings. The Gavin's Mill part of the area includes some of the adjacent woodland and when seen from the north, ignoring the parked cars, has retained much of its original rural riverside character.

45. For the reasons set out above in relation to the station as a listed building, this part of the conservation area is unlikely to be affected by the proposed development. At worst the impact would probably be neutral.

46. The situation at Gavin's Mill is different. Despite the presence of parked cars the mill's setting still remains relatively open. This would change significantly by the construction of the new building, with its 11 metre or thereby high wall virtually adjacent to the conservation area boundary. This would obviously bring about a dramatic change to the setting of this part of the conservation area. As it would remove the open setting, this would adversely affect the area's special character.

47. Looking at the impact on the setting of the older part of the town centre, this would arise from the new façade of the building along Woodburn Way. The part of the conservation area adjacent the west side of the Way, the setting of which would be affected by the proposed development, comprises the car parks and the rear of town centre buildings referred to above. Its character does not have any special merit. Although the trees on the east side of the Way would be removed, the new building, presenting one storey to the way, and provided the façade is redesigned as previously discussed, would not have an adverse impact on the character of the area.

48. Drawing these points together, because of the adverse impact on the special character of the conservation area at Gavin's Mill the proposals are contrary to policy HE 7.

## Retail

49. There was some debate at the inquiry as to the meaning of structure plan strategic policy 1, and the extent to which it supports development in Milngavie. The policy refers to schedule 1(a), which sets out town centre renewal priorities, and town centres to be safeguarded. Milngavie is in the latter list. Safeguarding is not defined, but supporting paragraph 8.3 says that town centres provide the focal points of community life. The metropolitan development strategy therefore requires a presumption in favour of safeguarding the network of centres set out in strategic policy 1(a). I am satisfied that the broad principle of development in Milngavie town centre is supported by this policy.

50. Schedule 6(c)(i) criterion (d) is referred to in reason for refusal 4. The reason states that the proposals would conflict with the criterion, which seeks the improvement of the vitality or viability of town centres. Schedule 6(c)(i) as a whole sets out 11 criteria for the

assessment of significant proposals for retail development. The relevant ones in this case are (a) and (b) concerning retail impact; (d) vitality and viability, and (i) proposed additional floorspace.

51. This latter criterion relates to schedule 6(c)(iv). It carries forward a figure from the 2000 structure plan for 6,000 square metres gross floorspace provision for comparison retailing in the Bearsden/Milngavie area. Supporting paragraph 12.27 says that the retail capacity assessment for the structure plan for both comparison and convenience retailing is projected only to 2011. There is no projection beyond that date. The appellant points out that the design year for the proposed store is 2015, and that the council's consultants compiling the East Dunbartonshire Retail Capacity study conclude there is capacity in both convenience and comparison markets for new floorspace in this period.

52. The council points to the conclusions of the committee report, which confirms that permission for 3,000 square metres has recently been granted permission at the Halley's garage site in Milngavie, with a further 1,500 square metres expansion in comparison goods at the superstore in Bearsden. This leaves a further capacity of 1,500 square metres. Given the lack of any projections for capacity beyond 2011 I do not consider there is any major conflict with criterion 6(c)9(i)(i) or schedule 6(c)(iv).

53. Schedule 6(c)(i) concerns all significant retail developments, whether or not in town centres. Given the lack of any requirement in Scottish Planning Policy for retail assessments for development within town centres, the thrust of criteria (a) and (b) appears to be aimed on the impact that edge or out of centre developments would have on town centres. The appellant notes that as the appeal proposals are located within the Milngavie town centre they will have a positive impact on the centre. The main concern here of the council and third party comments is that the proposals would have an adverse impact on the rest of the town centre, and in the council's case that of Bearsden. For the reason just set out this relates more to criterion (d) than to (a) or (b).

54. Criterion (d) seeks a contribution to the improvement of the vitality or viability of town centres, and the functional relationship with existing town centre facilities. As the appeal site is within the town centre the overall vitality and viability of the centre as a whole would be improved. That is not to say that there would not be some adverse impact, at least in the short term, on some shops in the older part of the centre. Submissions have been provided by third parties as to the effects of superstores on town centres, but most of this relates to out of centre stores. The appellant's retail analysis suggests a 5.5% figure for loss of trade to existing Milngavie shops, not allowing for any spin off trade from the new store. It is suggested the shop most likely to suffer loss of trade would be Marks and Spencer, and that would also apply to Marks and Spencer in Bearsden, with a similar overall trading loss to that centre. It is suggested that the new store would bring additional spin off trade to Milngavie, but that this could be at the expense of Bearsden. It was acknowledged that such spin off trade cannot be readily quantified.

55. Part of the debate at the inquiry was hypothetical, concerning patterns of shoppers in relation to the proposed new store, compared to the superstore in Bearsden and the existing town centres of Milngavie and Bearsden. Some of this related to preferences

between store operators, but this does not assist my determination. It was also suggested that because the council has recently granted planning permission for a major new store on the edge of Bishopbriggs it cannot be overly concerned at the impact of that additional floorspace on existing town centres, but I find this unhelpful.

56. The appeal proposals would increase the functional relationships between the site and the older part of the town centre by improving the existing underpass link and adding a surface crossing of Woodburn Way. That is in line with criterion (d). Third parties argue that increased walking distances and wider ranges of goods in the new store would discourage such inter-relationships. The range of goods and services in the new store could be restricted by conditions, for example to prevent postal or hair dressing services being provided. I am also satisfied that the improved links would be likely to overcome the potentially greater walking distances to the old part of the centre, and in any case these would be marginal.

57. From my unaccompanied site inspections of both Milngavie and Bearsden town centres both appeared to be thriving, with many independent shops in niche markets. My own judgement is that both centres appeared relatively robust. Whilst I take third parties' points about the initial adverse impact on Milngavie town centre following the opening of the existing supermarket on the appeal site, and the time it took to recover, I consider it unlikely that this would be repeated to the same extent.

58. Looking at criterion (i) I have already referred above to the additional floorspace capacity requirements in schedule 6(c)(iv) up to 2011. Whilst the proposals would increase capacity beyond the 6,000 square metre figures set out in the schedule, given there are no projections beyond 2011 I do not consider this to be an issue justifying refusal of the proposals. Overall I find the proposal does not conflict with schedule 6(c)(i) to an extent that is significant.

59. Opinions differed at the inquiry as to the relevance of strategic policies 9 and 10. Supporting paragraph 15.2 says that strategic policy 9 identifies criteria to be applied in the assessment of any planning proposal made through a planning application. The policy is therefore relevant. Sub section A sets out criteria for developments that exceed certain thresholds, which is the case here for retail developments. The relevant criteria for retailing are references to schedule 6(c)(i) and (iv). I have concluded above that that any conflict with these would not be significant.

60. Sub-section B refers to the location of development and, in relation to retailing, the sequential test. I have already found the proposals comply with this. Sub-section C concerns detailed infrastructure requirements over which I find no difficulty. Drawing all these points together I find the only potential conflict with the structure plan is the issue of exceeding the floor space requirements in schedule 6(c)(iv). For the reasons already given I find this does not justify the refusal of planning permission, and that an assessment against strategic policy 10 is not necessary.

61. Local plan policy RET 2 concerns development within existing shopping centres. It says that retail development in existing shopping centres will be supported subject to five

criteria. The relevant ones here, quoted in the reasons for refusal, are a) sustain or enhance the range or quality of shopping provision and the vitality and viability of the centre, and b) being in keeping with the scale and character of the centre.

62. According to the appellant customers at the present store criticise it for lack of range and size options compared to other modern superstores. I have no reason to doubt this. From what I saw at my own site inspection the existing store, although large and appearing to carry a wide range of goods, has a dated feel compared to the Bearsden and Maryhill superstores. Whatever the criticisms of the size of the proposed store, I am in no doubt that it would enhance the range and quality of shopping in Milngavie.

63. I have studied carefully the various documents submitted to the inquiry about retail impact and capacity. As noted above there are no projections as to spin off trade from the proposed new store to Milngavie town centre as a whole. Given improvements to the links between the store site and the older part of the town centre, I find it probable that there would be long term benefits, even though there could be some short term closures of some businesses. However it is not the roll of the planning system to protect individual shops from competition, and as in the past it is likely that Milngavie would recover from any short term adverse impact. Looking at the strict wording of criterion a) the centre as a whole would have improved vitality and viability because of the new store, albeit that a major proportion would be from the store itself. The key issue is the impact on the vitality and viability of the old part of Milngavie town centre. In my judgement, based on experience and study of the submitted documents, any adverse impact would not be significant enough to refuse planning permission for a proposed development strongly supported by national policy.

64. With regard to scale and issues I have found an issue with the size and design of the building in relation to the setting of Gavin's Mill, and in that respect it does not meet the requirements of criterion b).

65. Taking the development plan as a whole I find, with the exception of the impact on the setting of Gavin's Mill as a listed building, any conflict with the plan is not sufficient to justify the refusal of planning permission. I note this conclusion accords with that of the committee report, which balanced the benefits of the scheme in terms of job creation and improvements to the quality of retailing against potential adverse impacts.

## Other material considerations

### Traffic

66. Reason for refusal 6 stated that the proposed development would increase traffic movement and congestion to the detriment of the local road network. It added that this would have an adverse impact on air quality, but this was not contested further. Following the procedural meeting, by agreement between the council and the appellant, further studies were carried out to assess the additional impact of the proposed mixed use development at Kilmardiny on the east side of the A81 Milngavie Road, south of the town centre, recently granted planning permission.

67. Following this, and further discussions between the two parties, agreement was reached over a package of mitigation measures that would resolve the legitimate traffic and transportation concerns held by the council at the time it took its decision to refuse planning permission, and in the light of the Kilmardinny decision. This would be secured by legal agreement. The council did not therefore contest reason for refusal 6.

68. The principal concern of third party evidence on traffic grounds is the adequacy of the analytical programme TRANSYT used to model the capacity of the junctions on Station Road and Woodburn Way. The parameters used to calibrate the model and the manner in which it was used were criticised. The omission of the Marks and Spencer junction on Woodburn Way was considered inappropriate, as this is considered to cause significant problems at present, without the potential additional traffic from a new superstore. Specific criticism was made of the modelling of the Gavin's Mill junction for east bound traffic on Woodburn Way.

69. The original committee report showed that problems raised could be addressed by mitigation measures, notably on the A81 corridor and specifically to junctions along Woodburn Way. This was assessed before the Kilmardinny development was given planning permission, but the subsequent studies have satisfied the council in this respect and enabled the agreement in principle with the appellant regarding mitigation measures necessary because of the impact of the development.

70. The evidence provided at the inquiry, by the appellant and the third parties, was conflicting. The appellant did not accept the criticism of the traffic studies. It accepted there would be impacts from the proposed development, and that the traffic studies showing this were professionally carried out. The purpose of the agreed mitigation measures was to counter the impacts as part of normal development procedures. This view has been accepted by the council in carrying out its own assessments and reaching its agreement with the appellant.

71. I accept that the work has been carried out in a professional manner. There will always be situations where professional opinions differ. Given the council's acceptance of the work carried out, by its own officers and professional transport consultants, I am persuaded that the adverse impacts arising from the proposals, especially to junctions along the A81 in the vicinity of the appeal site, can be resolved by the proposed mitigation measures.

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

72. I have referred to above my responsibility under section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in considering whether to grant planning permission for a development which affects the setting of a listed building, to have special regard to the desirability of preserving its setting.

73. The council refers to a recent High Court case *Garner v Elmbridge Borough Council [2011] EWHC 86 Admin*). This confirms that the House of Lords approach in *South Lakeland District Council v Secretary of State for the Environment [1992] 2AC1*, in relation

to development in conservation areas, applies equally to developments which affect the setting of listed buildings. Supported by *Campbell v City of Edinburgh Council 1999 SLT 1009* in interpreting the application to Scottish law, the council says I must consider whether the proposed superstore conflicts with the objective of preserving the setting of Gavin's Mill. Secondly, if so there is a strong presumption against the grant of planning permission which can only be overridden if I conclude the superstore is desirable on the ground of some other public interest.

74. The appellant has not commented on this, but it did produce for the inquiry (TSL 35) a response to the proposed conditions regarding the appearance of the proposed building along Woodburn Way and opposite Gavin's Mill. The latter treatment consists effectively of introducing two areas of stone walling that would serve to screen part of the underfloor car park from view. One stretch of wall would form part of a security office. The other would have a display of local ecology. Whilst these features would be partially effective in doing this it does not address the issue of the height of the building so close to the Mill.

75. These proposals would give the impression of being a piecemeal addition to the design, rather than a fundamental assessment. The proposals for the Woodburn Way façade, which include additional tree planting and a feature window, can be similarly criticised as they do not address sufficiently the deficiencies of the proposed design. They may show however there are ways to address the issues raised.

76. Overall, in relation to my section 59 responsibilities, I stand by my conclusions regarding Gavin's Mill set out above that the proposals would be damaging to the setting of the listed building and contrary to section 59 of this Act.

#### Parking and layout

77. Third parties state that the present 305 space car park is inadequate for peak time use, and that the proposed 568 spaces, allowing for increased use, would not be enough. This is contrary to the officials' view in the committee report, and that of the appellant. Scottish planning policy sets only maximum levels of parking, with a theoretical figure for the proposed development of up to 700 spaces, but probably significantly less depending on the breakdown between convenience and comparison space. The policy states that maximum levels are set to encourage modal shift to other forms of transport. In these circumstances I have no difficulty with the 568 spaces proposed.

78. There is also third party criticism of the layout of the internal access roads and parking areas, especially unnecessary potential conflict between vehicles and pedestrians and difficulty in managing parking areas. Splitting disabled parking bays between two parking areas, lack of a designated stop for dial-a-bus services, and poor location of recycling facilities are amongst criticisms made.

79. Without suitable signage there would be some scope for confusion at times of peak demand as access to the upper parking deck would have to be chosen before either of the surface level car parks would be reached by vehicles. However it is unlikely that an operator with the experience of the appellant would discourage customers by having a

parking system that was not user friendly. There are systems commonly in use in town centres that indicate the availability of parking spaces that could presumably easily be used here. I have no difficulty in the splitting of disabled spaces into two areas, providing a choice between open parking with direct sales floor access, or the covered area with access via the travellers.

80. Comment was also made about parking for the Gavin's Mill restaurant customers. At present there is no dedicated parking for this, and customers use the supermarket car park, presumably parking as close to the restaurant as space allows. I see no reason why this informal arrangement should not continue. Given the small number of spaces needed, and presumably in the main outwith peak shopping hours, it would not be in the appellant's interests to attract bad publicity through changing this arrangement.

81. Other criticisms concern footpath layout, and particularly the route of the Allander Way, which runs through the appeal site. It is claimed this would be partly in shade because of its location close the walls of the high sided building. In fact the Allander Way follows the line of the existing access road, and then the path alongside the station. There may be some overshadowing, but in reality the present route is not particularly attractive, passing the service entrance to the existing store. For the reasons given above relating to the arrival of railway passengers, the walkway under the proposed scheme could arguably be an improvement to that existing.

82. Issues relating to dial-a-bus pick up could be resolved by detail alterations. There is for example a turning area for recycling and other vehicles that could presumably be adapted. Other detailed criticisms of the layout do not give me concern.

#### Disabled facilities

83. Third parties claimed the council had not handled the original application properly in terms of disabled access and discrimination legislation. It is not the task of a planning authority to use planning legislation to police other legislation, except where there is a direct relationship between the two. Following this criticism the council has considered its responsibilities under the Disability Discrimination Acts of 1995 and 2005, and those for developers. The council is content that it has followed all appropriate and necessary procedures designed to respect the rights of people with disabilities in relation to the application. I have no reason to doubt this view, and it does not affect my determination of the appeal.

#### The natural environment

84. The present site benefits from the presence of the Allander Water flowing through it. The most attractive part is the area of the fish pass, which starts just downstream from the bridge over Woodburn Way. This is presently in need of repair and upgrading, with prominent adjacent signage noting bodies with responsibilities relating to the pass. It is claimed that the proposals would effectively canalise a large portion of the Water through the site, although to some extent this occurs with the present flow in front of the existing building.

85. The appellant submitted an ecological assessment, which was reviewed by East Dunbartonshire Council Greenspace and the results generally accepted. The main impacts would arise during construction, and it would be important that all the mitigation measures proposed should be implemented through a construction method statement. It is concluded that after construction the impact on the natural environment would be indiscernible from the present, and I accept this.

86. It does note however the presence of substantial amounts of litter within the present water channel. I confirmed this during my own site inspection, particularly on the stretch of the Water that runs in front of the existing store. It is recommended that a condition be imposed on any permission granted to ensure that a litter and waste plan is submitted and implemented to deal with any issues arising from the larger store.

#### Other matters

87. I have considered all the other matters raised. These include potential flooding and drainage. I have not come across anything that justifies a different decision.

#### Conclusions

88. Drawing all these issues together I find the proposed development does not depart significantly from the development plan except in relation to the setting of Gavin's Mill and the conservation area. In relation to Gavin's Mill there is also conflict with section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. In addition there are also unresolved concerns about the design of the façade along Woodburn Way. Despite the undoubted benefits of the proposals, not least in employment and bringing the overall level of new trade to the town centre, I find these do not carry sufficient weight to overcome the development plan conflict and section 59 responsibility and thus justify the granting of planning permission.

89. The appellant says it finds itself in an extraordinary position, complying with retail planning policies designed to stop retailers trading out of town centres, yet opposed by the council and third parties. I have found in favour of the appellant in this retail policy judgement.

90. However, the appellant was aware from its negotiations with officials, the wording of the committee report, and the proposed conditions, about the concerns over the Woodburn Way frontage and the impact on the setting of Gavin's Mill and the conservation area. There should be no surprise over the council's concerns about these aspects of the development.

91. The appellant has agreed with the views of officials that these issues could have been left for resolution after the granting of planning permission through the use of a condition. Circular 4/1998 regarding the use of conditions in planning permissions sets out six tests to ensure that conditions are fair, reasonable and practical. One of these relates to precision. In this case the specific solutions required to resolve the problems at issue are far from certain, so such a condition would be imprecise and contrary to the circular. Architecture +



Design Scotland referred to the unfulfilled design potential, particularly regarding the Woodburn Way façade. The impact on Gavin's Mill is a statutory matter. Both need addressing very carefully, to show that potential changes to the design are properly addressed, taking full account of the concerns expressed.

92. The appellant quotes paragraph 83 of annex A to the circular. This concerns potential modifications to development through the use of conditions. It sets out two tests as to whether a modification would amount to a substantial difference. The relevant one here is whether those who have shown an interest in it would wish to comment on the modification. I believe this to be the case here, as the issues have raised very strong concerns. A fresh application would provide an opportunity for reasoned discussion between the appellant and the council and further consultation with interested relevant parties. I do not consider the use of a condition to resolve these matters would be appropriate in this case.

93. The appeal should therefore be dismissed because of the problems with the design of the proposed building as it affects Woodburn Way and the setting of the conservation area, and the setting of Gavin's Mill as a listed building.

*Trevor A Croft*

Reporter