



SHEPHERD+ WEDDERBURN

Statement of Case by East Dunbartonshire Council

In relation to an appeal by Tesco Stores Limited against refusal of planning permission for the redevelopment of a store at 7 Gavins Mill Road, Milngavie

DPEA Ref: PPA/200/2008

15 December 2010

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1. Introduction

- 1.1 This statement of case in relation to an appeal by Tesco Stores Limited against refusal of planning permission for the redevelopment of a store at 7 Gavins Mill Road, Milngavie is submitted on behalf of East Dunbartonshire Council.
- 1.2 The Council submits that their decision to refuse planning permission for the appellant's application for redevelopment remains the correct decision, primarily in terms of the detrimental effects of the design on surrounding area, retail impact and transport impact of the proposed store.
- 1.3 The Council submits that the appeal should be rejected and the decision of the Council upheld.

2. Hearing Session

- 2.1 The undernoted is a summary of the evidence to be presented by the Council at the Hearing Session on design and landscape matters and policy.
- 2.2 The Council will present evidence that the scale and massing of the proposed store does not accord with several policies adopted in the Local Plan in respect of design quality, impact on listed buildings, and impact on conservation areas.
- 2.3 The Council acknowledges that the building is of a bespoke design but considers that the scale and massing of the proposal is unacceptable and contrary to policies DQ2 (Design Quality) and DQ2A (General [Design Quality] Principles) of the adopted Local Plan. The proposed building will be immediately adjacent to Woodburn Way and will extend to a maximum height of 7 metres above the pavement. The proposed design will create a form of development which is not in keeping with the character of the area. The proposal will be highly visible from Woodburn Way, Main Street, Lennox Park, the Glasgow to Milngavie Railway line as one enters Milngavie (the main approach for West Highland Way walkers), Baldernock Road and houses in Glassford and South Glassford Streets, Garwhitter Drive, Briarwell Road and the South Mains Estate Station Road and the Crossveggate flats and in the Council's view would appear incongruous, particularly in relation to the conservation area and the Gavin's Mill listed building, discussed below.
- 2.4 The site lies between two of Milngavie's principal listed buildings – Gavin's Mill and the Railway Station – and the proposed building does not relate to either of them. The Council considers that the enormous scale of the building would totally dominate Gavin's Mill which is not only a listed building dating back to King David's time but is also, historically, the reason that Milngavie exists. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 imposes a duty on planning decision makers to pay special regard to the desirability of preserving a listed building or its setting. If a proposal has a detrimental impact on the setting of a listed building there is a strong presumption against planning permission being granted. The Council's view is that the scale and mass of the proposed store would overwhelm the listed building and have a significant impact on its setting contrary to Policy HE5 (Historic Gardens and Designed Landscapes) of the adopted Local Plan.
- 2.5 The proposal is also to be constructed within a designated conservation area. In general the design of the conservation area is typical of a small Scottish Victorian town being of two storeys in height and constructed of stone and slate. The appearance of the proposed building is, in the Council's opinion, contrary to policy HE7 (Conservation Areas and Townscape Protection Areas) of the adopted Local Plan. In the Council's view, the development is completely out of keeping with the conservation area and not only detracts from the setting of the town but also destroys the open aspect from the village on to Lennox Park.

3. Inquiry Sessions

- 3.1 The undernoted is a summary of the evidence to be presented by the Council at the Inquiry Sessions on retail impact and policy, and transport impact.

Retail Impact and Policy

- 3.2 The Council will present evidence that the appellants did not demonstrate during the application process that their proposal will enhance the vitality and viability of Milngavie town centre and Bearsden town centre. The impact of a town centre proposal greater than 2,000m² of comparison retail or 1,000m² convenience retail is a matter that the Glasgow & Clyde Valley Joint Structure Plan requires the applicants and Planning Authorities to assess. It is relevant to note in this respect that the Structure Plan Joint Committee rejected draft modifications to the Glasgow & Clyde Valley Joint Structure Plan in 2008, which would have had the effect of absolving town centre applicants of undertaking any impact assessments. Scottish Ministers ultimately accepted the Joint Committee's position and the draft modification that had been proposed was withdrawn. Consequently, this proposal, which would introduce an additional 4,778m² gross retail floorspace (3,193m² net), requires to be assessed against each of the relevant criteria in Schedule 6(c)(i) (Assessment of Significant Retail Development Proposals) of the Structure Plan.
- 3.3 Schedule 6(c)(i)(a) requires an analysis of expenditure compared to turnover in the appropriate catchment area. The conclusions of the structure plan review were that no additional convenience goods floor space was required within the Bearsden/Milngavie catchment area and that up to 6,000m² gross comparison was required to 2011. It would appear that the appellant is seeking planning permission for over 2,000m² net comparison floorspace and as the Report of Handling makes clear, around two thirds of the Structure Plan comparison opportunity has been met through the planning permission which the Council is minded to grant at the Halleys Garage site, Milngavie (2,790m²) and through the expansion of ASDA, Bearsden (1,189m²). This leaves around 2,000m² gross comparison floorspace available but no convenience floorspace requirement. The proposed store is therefore believed by the Council to be contrary to the clearly defined convenience and comparison floorspace requirements of the Milngavie and Bearsden areas.
- 3.4 Schedule 6(c)(i)(b) of the structure plan requires an assessment of impact including direct and cumulative impact on a number of town centres. Included within the list of town centres is Bearsden. No assessment has yet been carried out by the applicant of the impact which the current proposals would have on Bearsden town centre either in isolation or in cumulation with other developments. It was agreed at the pre-examination meeting which was held on 27 October 2010 that the appellant would produce a retail impact assessment taking into account the impact of the proposed store on Bearsden. The appellant has recently produced a draft retail capacity assessment and some queries have been raised in relation to that. To date, however, the Council has not yet seen any impact analysis which we understand to be in preparation. The Council will continue to cooperate with the appellant in respect of this and any other new material which becomes available to focus further the issues to be examined at the inquiry.
- 3.5 Milngavie and Bearsden have vital and vibrant shopping centres which provide good quality shops offering individual service, an interesting variety of goods, livelihoods for local shopkeepers, jobs for local employees and vital social centres for local people to meet and greet. The Council will present evidence that, in its view, the proposals are contrary to Policy RET 2 (Development Within Existing Shopping Centres) of the adopted Local Plan and the criterion set out in Schedule 6(c)(i)(d) of the approved Structure Plan.¹
- 3.6 The Council will present evidence that it rightly concluded that the proposal is contrary to the development plan and that, as such, the terms of paragraph 64 of the Scottish Planning Policy apply. Further evidence will be presented that the impact of the proposal on Bearsden town centre is a matter of concern to the Council and it considered it appropriate and justifiable to refuse planning permission to ensure that there would be no unacceptable impact on the vitality and viability of Bearsden town centre.

¹ The criterion in Schedule 6(c)(i)(d) requires that an assessment is made of the contribution of a proposal to the improvement of the vitality or viability of the town centre and the functional relationship with existing town centre facilities

Traffic Impact

- 3.7 The Council will present evidence that the potential traffic impact of the proposals is unacceptable. The traffic assessment of the proposals does not take account of the impact of the proposed mixed use development at Lower Kilmardinny/Westpark which has recently been granted planning permission and includes business use, sports facilities and around 550 houses. Although the Council's Roads Officers recommended that certain road improvement measures were conditioned as part of the Tesco proposals, they also highlighted that the cumulative impact of the Kilmardinny development had not been addressed and could prove to be highly significant. The Council's Roads Officers acknowledge that the cumulative impact of both developments would have a detrimental impact upon the operation of the local road network.
- 3.8 It was agreed at the pre-examination meeting which was held on 27 October 2010 that the appellant would produce a further cumulative network assessment in respect of the traffic impact of the proposed development. The Council has only very recently received this assessment and further information has been requested from the appellant. The Council will continue to cooperate with the appellant, however, to narrow down the issues to be examined at the inquiry based on this and any other new material.

Shepherd and Wedderburn LLP
15 December 2010

ANNEX**Part 1 – List of Witnesses****Hearing Session**

1. Iain Michie, BSc (Hons) DipSurv P&D MRTPI MRICS
 Partner, Montagu Evans
2. Councillor (Provost) Eric Gotts
 Member of East Dunbartonshire Planning Board
3. Councillor Amanda Stewart
 Member of East Dunbartonshire Planning Board

Inquiry Sessions

1. Iain Michie, BSc (Hons) DipSurv P&D MRTPI MRICS
 Partner, Montagu Evans
2. Duncan Birrell, B.Eng (Hons) C.Eng MICE MIHT
 Regional Director, Colin Buchanan

Part 2 – List of Documents

1. Approved Glasgow and Clyde Valley Joint Structure Plan 2008
2. Approved Fourth Alteration to the Glasgow and Clyde Valley Joint Structure Plan 2009
3. Adopted East Dunbartonshire Local Plan 2005
4. Finalised Draft East Dunbartonshire Local Plan 2
5. Scottish Planning Policy
6. Planning Advice Note 59 Improving Town Centres
7. Report of Handling of Planning Application
8. Retail Capacity Report 2009 by Roger Tym
9. Notice of Intention to Grant Planning Permission for Mixed Use Development at Lower Kilmardinny/Westpark 6 April 2009
10. Decision to Grant Planning Permission in respect of the above development (at Document 9) dated 21 June 2010
11. Report of 12 May 2009 in relation to non-food retail unit at Halley's Garage, Milngavie
12. Report of 26 October 2004 in relation to redevelopment of ASDA store at Milngavie Road, Bearsden
13. Milngavie Town Centre Conservation and Character Appraisal
14. Proposed Draft Modifications to the Glasgow and Clyde Valley Joint Structure Plan dated 30 November 2007
15. Report to the Glasgow and Clyde Valley Structure Plan Joint Committee 18 January 2008
16. Scottish Ministers Final Modifications to the Glasgow and Clyde Valley Joint Structure Plan 25 April 2008
17. Structure Plan Technical Report TR7/06

Part 3 – Proposed Planning Conditions

General

1. That the development to which this permission relates must be begun within three years of the date of this permission.

Reason

To accord with Section 58 of the Town and Country Planning (Scotland) Act 1997(as amended).

2. That no consent is given for the design of the Woodburn Way frontage. Prior to the commencement of any works on site, details of the specification and colour of the proposed external finishes, fenestration, roofing, shall be submitted for approval in writing by the Planning Authority.

Reason

To improve the visual appearance of the building along Woodburn Way

Transportation/Roads

3. That no consent is given for the proposed improvements to the access with Woodburn Way. No development shall take place until an updated drawing has been submitted to and approved by the Planning Authority, in consultation with Roads Service, demonstrating a suitable junction lining strategy / guidance markers.

Reason

To ensure the safe operation of the road network

4. That the retail store hereby permitted shall not open for trade prior to the construction of a mini-roundabout that provides access to the service yard and the Kwik-Fit building in accordance with details provided to and approved by the Planning Authority in consultation with the Roads Service.

Reason

To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the public road is not be diminished.

5. That no consent is given for the internal road layout in between vehicle service yard and southern end of the recycling vehicle manoeuvring lane. Prior to the commencement of any works on site, a revised road layout shall be submitted and approved by the Planning Authority, in consultation with Roads Service. As a minimum the plan shall include an appropriate mechanism to control the arrival of delivery vehicles in combination with a designated waiting area to be provided at the turning area for recycling vehicles. Such a plan shall also include the mini-roundabout required in condition 4.

Reason

To ensure the safe operation of the proposed access road and the public road network.

6. The retail store hereby permitted shall not open for trade prior to the provision of dropped kerbs and tactile paving at all crossing points within the development site to the satisfaction of the Planning Authority in consultation with the Roads Service.

Reason

To ensure that appropriate facilities are provided for pedestrians

7. The developer shall provide a yellow box on Woodburn Way across the access to the Marks & Spencer (M&S) car park, in accordance with Chapter 5 of the "Traffic Signs Manual" and in consultation with Strathclyde Traffic Management Police. The applicant shall also formalise the right turn storage lane from Woodburn Way to the M&S car park. All costs associated with the yellow box and lane markings shall be borne by the developer.

Reason

To ensure that vehicles entering or exiting the M&S car park can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the public road as a result of additional queues associated with the development proposal.

8. That the development hereby permitted shall not commence until an updated detailed plan of the proposed signal controlled pedestrian crossing on Woodburn Way has been submitted to and approved by the Planning Authority, in consultation with Roads Service. Details to be included (but not limited to) are:

- An appropriate location for the crossing.
- The location of signal poles, ducting, chambers, controller, pedestrian and vehicle detection equipment, tactile paving etc.
- The location of pedestrian guardrails.
- Connections with the existing pedestrian network.
- Advanced Stop Lines for cyclists.
- Anti-skid surfacing.
- Time-frame for implementation

All costs associated with the installation of the pedestrian crossing shall be borne by the developer.

Reason

To ensure that appropriate facilities are provided for pedestrians and to ensure that the movement of traffic and pedestrians is confined to the permitted means of access, thereby reducing the potential danger to and interference with the free flow of traffic on the public road.

9. The retail store hereby permitted shall not open for trade prior to the provision of a footway connection to a standard suitable for all pedestrians between the northbound bus stop on Woodburn Way and the proposed crossing. All costs associated with providing this facility shall be borne by the developer.

Reason

In the interest of public safety and to ensure that appropriate facilities are provided for pedestrians.

10. That no development shall commence on site until further road safety audits have been provided to the satisfaction of the Planning Authority in consultation with the Roads Service in accordance with the Design Manual for Roads & Bridges, HD 19/03.

Reason

To ensure that adequate levels of safety are maintained, and that any traffic problems identified are avoided

11. That no development shall commence on site until the following details have been submitted to and approved by the Planning Authority, in consultation with Transportation:
- updating the signal timings;
 - the provision of acceptable fixed time analysis that shows the network operating within Practical Reserve Capacity or with No Net Detriment, Or alternatively the provision of an Urban Traffic Control system over the network;
 - details of directional signage in particular pedestrian links from within the site to the Town Centre via the new signalised crossing and vice versa;
 - the final location of covered cycle stands should be provided near to the front of the store. Please note that these will need to be provided at a rate of 4 spaces per 100 car parking spaces plus a further 2 spaces;
 - confirmation that all new or improved signalised junctions and signalised crossings are be made Urban Traffic Control compatible.

All costs associated with providing this facility shall be borne by the developer and the retail store hereby approved shall not open for trade until the approved details have been brought into operation.

Reason

To ensure that any potential adverse effects on the road and pedestrian access network is minimised.

12. The retail store hereby permitted shall not open for trade until a scheme setting out car parking restrictions to be imposed at the proposed car park has been submitted to and approved by the Planning Authority in consultation with the Roads Service.

Reason

In order provide adequate provision of parking within the site and surrounding area.

Construction

13. That no development shall commence on site until a monitoring strategy and plan has been submitted and approved by the Planning Authority in consultation with EDC Biodiversity Officer, in order to implement the measures outlined in the Ecological Assessment (APEM dated June 2009) submitted with the application. All associated construction works shall be undertaken in accordance with this approved plan.

Reason

In the interests of biodiversity and the protection of the Allander Water during construction.

14. That no development shall commence on site until a silt and sediment management plan has been submitted to and approved by the Planning Authority. This plan shall identify on-site measures to stop any contaminated run-off into the Allander Water during construction. Such shall also include, but not limited to, dust suppression measures and other measures designed to prevent the deposition of deleterious materials onto the public highway by construction vehicles shall be submitted and agreed by the Planning Authority.

Reason

To protect the Allander Water during construction

15. That no development shall commence on site until a Construction Methodology Statement (CMS) has been submitted to and approved by the Planning Authority in consultation with the Roads Service. The CMS shall include details of haulage routes, location of site compound, store areas, on-site parking locations for construction workers, wheel wash facilities & road brush provision. The development shall be carried out at all times in accordance with the details of the CMS as approved, unless otherwise agreed in writing by the Planning Authority.

Reason

In the interest of protecting local amenity and the proximity of the site to residential properties and to ensure the Planning Authority retains effective control during the construction period

16. That no storage of materials shall take place on the public roadway or footway during construction. Any loading or unloading of vehicles shall take place within the curtilage of the site unless with the written agreement of the Planning Authority.

Reason

In the interests of public safety.

17. During the period of construction, all works and ancillary operations which are audible at the site boundary, or at such other places as may be agreed with the Council, shall be carried out only between the hours of 8.00am and 7.00pm, Monday to Friday inclusive; 8.00am and 1.00pm on a Saturday and at no time on a Sunday, or on a Bank Holiday.

Reason

In the interests of amenity and to ensure the mitigation of construction noise.

Updated Surveys

18. That no development shall commence on site until all updated wildlife surveys stated in the Ecological Assessment (APEM dated June 2009) submitted with the application, have been carried out and submitted and approved of the Planning Authority.

Reason

In the interests of nature conservation.

Flooding

19. That the southern vehicular access bridge is to have a soffit level no lower than the pedestrian bridge currently in that location;

Reason

To minimise any potential flooding beyond the site resulting from the construction works.

20. That no consent is given for the recommended works (walls and land raising) in 7-3 and 7-4 of the Flood Risk Assessment (Dr John Riddell dated January 2010) submitted with the application. No development shall commence on site until the developer has submitted and had approved by the Planning Authority, in consultation with SEPA, further details in order to demonstrate that these works will not have an adverse effect on flood risk elsewhere.

Reason

To minimise any potential flooding beyond the site resulting from the construction works.

Drainage/SUDS

21. That two additional gullies shall be installed at the bottom of the access ramp to the upper deck parking area on the left bank. No development shall commence on site until the locations of these have been submitted and approved by the Planning Authority.

Reason

To ensure there is adequate drainage to accommodate any excessive surface water run-off from the upper level car park deck ramp.

22. That any alterations to the existing fish ladder and/or any localised land raising will require the developer to submit amended details of such works and a detailed re-modelling of the watercourse for the written approval of the Planning Authority.

Reason

That the Planning Authority retains effective control and to ensure that no adverse effects are generated.

Lighting Plan

23. That, no development shall commence on site until the finalised details of external lighting, which shall be accompanied by an assessment carried out by suitably qualified consultants, relating to the potential light spillage from all lighting (includes external and internal lighting from the store windows), have been submitted to and approved by the Planning Authority. Such a plan shall include measures that will minimise artificial light pollution on the Allander Water. The development shall thereafter be carried out in accordance with the approved details.

Reason

In the interests of the protection of the migration corridor for salmonids of the Allander from artificial light sources in order to protect during hours of darkness.

Landscaping

24. That no consent is given for the design of the "Pedestrian and service vehicle access to Gavin's Mill". No development shall commence on site until an updated plan of this area has been submitted to and approved by the Planning Authority. As a minimum the plan shall include, pathway on the western side of the vehicular access bridge, the treatment of surfaces, details of bollards, balustrades, decorative features etc. The turning area must provide segregation in the form of a kerbed up stand. The Gavin's Mill turning area shared space access road must be raised to form an elongated speed table that meets the pedestrian footway. The development shall thereafter be carried out in accordance with the approved details.

Reason

In the interest of protecting on site amenity and the quality of open space

25. That no development shall commence on site until an updated plan of all pedestrian pathways in vicinity of Allander Water has been submitted to and approved by the Planning Authority. The plan shall include, but not limited to, the treatment of surfaces, details of bollards, balustrades, decorative features, public furniture etc. The retail store hereby permitted shall not open for trade until the approved measures are completed to the satisfaction of the Planning Authority.

Reason

In the interest of protecting on site amenity and the quality of open space

26. That no development shall commence on site until an updated scheme of landscaping has been submitted to and approved by the Planning Authority, maximising the use of native species and showing:
- the spacings, sizes, numbers and species of plant material in each planting bed, and
 - the spacings, numbers and species of new trees to be planted within the site;
 - planting to reduce any light pollution both from motor vehicles and lighting from the store building
 - the final ground levels and surface moulding to be provided;
 - whether soft or hard materials or permeable materials.

Reason

In the interest of protecting on site amenity and the quality of open space

27. That within 6 months of the retail store hereby permitted opening for trade the scheme of landscaping which has been approved under Condition 26 shall be implemented and maintained thereafter to the satisfaction of the Planning Authority, and that all trees, shrubs and other plants and materials shall be replaced whenever this becomes necessary.

Reason

In the interest of protecting on site amenity and the quality of open space

Sustainability and Materials

28. No development shall commence on site until details of how the re-use of demolition materials will be incorporated, have been submitted to and approved by the Planning Authority. Any additional sandstone required shall be natural sandstone to match the existing building.

Reason

In the interests of sustainability and amenity.

Operational

29. No fixed plant and/or machinery shall come into operation until the details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, are submitted to and approved by Planning Authority. The rating level of plant noise emitted from the site shall not exceed 43 dBA between 2300 hours and 0700 hours 7 days a week and 48 dBA between 0700 hours and 2300 hours 7 days a week. The noise levels shall be determined by measurement or calculation at the nearest noise sensitive property. The measurements and assessment shall be made in accordance with BS 4142:1997

Reason

In the interests of amenity and to protect noise sensitive properties from the adverse effects of noise.

30. That no development shall commence on site until a waste management plan has been submitted to and approved by the Planning Authority. As a minimum a plan shall include details of traffic movements relating to refuse collection and recycling facility operations and litter management outlining measures to prevent the accumulation of litter generated by the store operations in the Allander Water.

Reason

To promote sustainability and ensure protection of the Allander Water from litter

31. The retail store hereby permitted shall not open for trade until, a full Travel Plan has been submitted to and approved by the Planning Authority in consultation with Transport Planning.

The Travel Plan shall be based on the Framework provided within the Transportation Assessment.

Reason

In the interests of promoting sustainable transport methods

- 32.** That the amount of floorspace which may be constructed or used shall be restricted as follows
- The maximum gross floor area shall not exceed 10,221 square metres
 - The maximum net sales area shall not exceed 6,039 square metres
 - The maximum net floor area that may be used for the sale of comparison goods shall not exceed 50%

Reason

To ensure the protection of Town Centres within the locality

- 33.** That, notwithstanding the terms of Section 26(2)(a) of the Town and Country Planning (Scotland) Act 1997, no mezzanine floorspace may be constructed within the building hereby approved without the consent of the Planning Authority.

Reason

To ensure the protection of Town Centres within the locality

Part 4 – Heads of Planning Agreement

A section 75 planning agreement shall ensure:-

1. A financial contribution based on the Council's consistently applied formulae which relates to trip generation, to be agreed between the parties towards the A81 route corridor strategy. An estimate at this stage is currently suggested at £491,000.
2. A financial contribution to be agreed between the parties towards the: (i) upgrade or replacement of the Fish Ladder; (ii) public furniture and wayfinding signage; and (iii) pedestrian underpass enhancements.
3. Enhancement of landscaping and trees adjacent to intersection of Gavin's Mill Lane and Woodburn Way adjacent to the proposed new vehicle access to the service yard.