

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
PUBLIC LOCAL INQUIRY INTO PLANNING APPEAL BY TESCO STORES LTD**

**PROPOSED DEVELOPMENT AT 7 GAVIN MILLS ROAD, MILNGAVIE, G62 6NB –  
DPEA REFERENCE P-PPA-200-2008**

**NOTE OF MATTERS AGREED AT OR ARISING FROM THE PRE-EXAMINATION  
MEETING HELD AT 2.0 PM ON THURSDAY 27 OCTOBER AT KESSINGTON HALL, 58  
MILNGAVIE ROAD, BEARSDEN**

**Background**

1. This note confirms the arrangements for the public local inquiry, following the discussion at the meeting.
2. Trevor Croft, an Inquiry Reporter with the Scottish Government, has been appointed by Scottish Ministers to determine the appeal by Tesco Stores Ltd against East Dunbartonshire Council's refusal to grant planning permission for the redevelopment of the existing retail store to form a new class 1 retail store with associated deck car parking, servicing, recycling centre, landscaping and access improvements. He has decided to hear certain evidence about the development in public.

**Inquiry start date, duration and venue**

3. The inquiry will start at 10.00 am on **Tuesday 1 February 2010**. It is expected to last for seven days, until **Thursday 10 February**. On the second and subsequent days the inquiry may start earlier at 9.30 am. It will normally sit until about 4.30 or 4.45 pm, with a break of one hour for lunch, except of Friday 4 February when it will adjourn by 1.0 pm. There will be no sitting on Monday 7 February.
4. The inquiry will be held in **Milngavie Town Hall**.

**Parties who intend taking part in the inquiry**

5. **The appellant's** case will be presented by senior counsel, instructed by Mr Kenneth Carruthers, solicitor, Semple Fraser. There are likely to be two witnesses dealing with overall design matters (see below), and one each retail impact, and transport. Other witnesses may be necessary depending on cases presented by other parties.
6. **The council's** case will be presented by Mr Ewan MacLeod, solicitor, Shepherd and Wedderburn. There are likely to be two witnesses dealing with overall design matters, and one each retail impact, and transport.
7. **We Like Milngavie** will also act on behalf of Milngavie Community Council and possibly private individuals. Its case will be presented by Mr Robin Brown, with other witnesses as necessary. Mr Robert Lapraik, acting as an individual, is likely to take part in the design hearing.

**The inquiry procedure rules**

8. The reporter explained that the legislation governing appeals changed in August 2009. An appellant is now no longer able to introduce new material to the reporter that was not before the planning authority when it made its decision, unless there are

exceptional circumstances. The right of an appellant or planning authority to be heard has also been removed, and this is now at the discretion of the reporter. In this respect the reporter decides what the procedure will be, whether written submissions, site inspection, or an oral procedure by hearing or inquiry sessions. The appellant and planning authority may request a particular procedure, but these requests are not binding.

9. Procedures are governed by The Town and Country Planning (Appeals) (Scotland) Regulations 2008. These include the new rules for hearing and inquiry sessions, at schedules 1 and 2 of the regulations respectively. They can be found at [www.oqps.gov.uk/legislation/ssi/ssi2008ssi/20080434\\_en\\_1](http://www.oqps.gov.uk/legislation/ssi/ssi2008ssi/20080434_en_1) on the internet.

### **Form of the inquiry and scope of evidence**

10. The reporter decided that he requires further information on overall design related matters, retail impact and transport, and their relationship to the development plan. This is primarily because the council refused planning permission against the advice of its planning officials, and he needs to know the detailed reasoning why this was done, and to enable the reasoning to be tested in public. Any other matters are either covered adequately by the information already placed before the council or can be dealt with by written submissions. The council stated that it does not wish to pursue matters related to air quality, and this was accepted by the appellant.

11. The form of the inquiry will be a hearing session on overall design matters, and inquiry sessions on retail impact and transport. The overall design matters will include the specific design proposals for the development, the potential impact on the immediate surrounding area, the town centre conservation area, and the setting of listed buildings. He considers these are issues primarily of opinion that lend themselves to the discussion format of a hearing session. Retail impact and transport are more concerned with factual matters drawn from professional studies, where the studies' data and opinions expressed would benefit from testing in cross examination. This lends itself to inquiry sessions.

12. Section 25 of the Town and Country Planning (Scotland) Act 1997 requires the appeal to be determined in accordance with the development plan, unless there are overriding material considerations. The development plan comprises the approved Strathclyde Structure Plan and the adopted East Dunbartonshire Local Plan.

13. The reporter will therefore need to know what the structure plan and the local plan contain that is relevant to this site and to this type of development, as referred to in the reasons for refusal; and what would be the other effects of the development as far as the stated subject matter is concerned. Evidence related to the development plan will be heard as part of the relevant subject sessions.

14. The Reporter stated that he did not wish to hear repetitive evidence, and he encouraged objectors to liaise in the preparation of their cases. He will take full account of not only what he hears at the inquiry, but also the written submissions received by the council and Scottish Ministers.

### **Pre-inquiry procedures**

15. A hearing/inquiry statement is required from the appellant, the council, and We Like Milngavie. They must contain outline particulars of the case to be presented at the hearing/inquiry sessions by that party regarding the three subject areas. They should be accompanied by a list of witnesses that are likely to be called, and a list of documents

likely to be referred to. In the main these documents should be the ones before the council at the time of its decision, unless they concern material relevant to the inquiry that could not be produced at that time. The council statement should also include a list of potential conditions, and the heads of any proposed legal agreements, in the event that planning permission should be granted. Note that this is standard procedure and does not pre-empt any determination the reporter may make.

16. In order to allow for discussion to take place between the appellant and the council regarding the implications of the Kilmardinny planning appeal decision, made after the council's decision on the appeal proposal, and for possible further studies to be carried out, the delivery of statement is delayed until **Friday 10 December 2010**.

17. Documents include, not just written documents, but also such things as maps, photographs and powerpoint presentation, and should, unless unavoidable for sound reasons, be restricted to those already before the inquiry. Where **any party giving evidence** wants to refer to these in the course of their evidence, they must lodge them in advance. They should be properly ordered and clearly numbered. Core documents, e.g. development plans, Scottish planning policy, other relevant Government policy and guidance, documents relating to the proposals, such as key correspondence and committee reports and resolutions, should, in most cases, be identified and produced by the council. The council should liaise with the appellant to identify and produce the core documents. The production of core documents ensures that other parties can refer to them without each having to produce them themselves. If practicable parties should use their best endeavours to submit documents by **Friday 24 December 2010**. To make an allowance for new material, the absolute deadline is **Friday 7 January 2011**.

18. Precognitions (that is statements of the evidence witnesses intend to present to the inquiry sessions) are required from **all witnesses who propose to give evidence**. **These should not exceed 2,000 words**. Precognitions must be submitted no later than **Friday 21 January 2011**. If the 2,000 word limit is found unduly restrictive parties may wish to refer to documents, but this should not extend to unnecessary elaboration.

For the hearing session parties may submit a further statement if they wish to expand on the points made in their initial hearing statement. These will not be read, but used by the reporter to prepare for the hearing. These should also be submitted no later than **Friday 21 January 2011**.

19. **All parties** lodging statements of case, documents and precognitions must submit:

- 1 set to the appellant (at Semple Fraser).
- 2 sets to the Council (at Shepherd and Wedderburn)
- 1 set to We Like Milngavie (Mr Robin Brown)
- 1 set to the Reporter (Directorate of Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FL1 1XR)

Whilst not mandatory it would be helpful if the appellant could provide an extra set of plans for We Like Milngavie.

20. The council will place a full set of inquiry/hearing statements, documents, and precognitions on deposit, for public viewing, at **Milngavie Public Library**. Each item will be deposited there as soon as is practicable after it has been received.

21. The council will bring a full set of statements of case, documents, and precognitions to the inquiry on the opening day, and maintain them in a tidy, up to date state for the duration of the inquiry.

22. If any party wishes to make legal submissions that might have a bearing on the inquiry programme, they should put these in writing and forward them to the Reporter as early as possible. Such submissions should not be left until the opening day of the inquiry.

### **Inquiry procedures**

23. Hearing session – This will be a discussion chaired by the reporter and presents a less adversarial way of dealing with issues where detailed cross-examination is not required. The reporter will outline the broad subject matter and invite the appellant to set out particular points it wishes to bring out during the discussion. The council, We Like Milngavie, and any individuals will then have a similar opportunity. The reporter will then guide the discussion through the various subject areas. This is likely to start with the overall design and landscaping concept, moving towards specific issues relating to the conservation area and listed buildings. The reporter will ensure that all parties are satisfied they have had an opportunity to raise the points they wished to make.

24. Evidence at formal inquiry sessions will be presented generally in the following order:

- the appellant
- the council
- We Like Milngavie
- Any individuals.

25. All evidence is open to cross-examination by other parties giving evidence, where they oppose what is being said. ‘Friendly’ cross-examination by those ‘on the same side’ will not be allowed, although questions for clarification may be asked. Following cross-examination the reporter will ask any questions he may have and re-examination by the party’s own legal representative will conclude the witness’s evidence.

26. At the end of the inquiry, parties who have presented evidence are entitled to make closing submissions. The appellant will go last. Parties are requested to submit typescript versions (if time permits), and to provide copies for the other parties making closing submissions, and for the reporter. The subsequent provision of electronic copies would be helpful to the reporter. Parties will be encouraged to agree to take closing submissions as read to save inquiry time.

27. There is likely to be an accompanied inspection of the appeal site and the surrounding area at or near the close of the inquiry. Parties will be asked to suggest locations they would wish the reporter to visit, either accompanied or unaccompanied.

28. The reporter will have a table facing the room with a witness table to his left hand side. Tables for the appellant and council will face each other across the room, with We Like Milngavie facing the reporter. Public seating will be at the back of the hall. A sound system will be provided.

29. The Directorate of Planning and Environmental Appeals will be responsible for booking the accommodation for the inquiry. DPEA will ask the council to advertise the inquiry in the local press no later than two weeks before the start.

## Questions and DPEA contact

30. The point of contact in the Directorate is Scott Mackenzie, who is the case officer for the appeal. His direct dial phone number is 01324 696462, and parties can contact him with any questions for information or advice.

**NOTE:** Copies of government circulars, Scottish Planning Policy, and Planning Advice Notes can be obtained from the Scottish Government. Copies can be obtained by phoning the Planning Helpline, either direct on 0131 244 7888 or by phoning the local rate number for the Scottish Government Helpline (08457 741741) and then asking for the planning helpline; or by downloading from the Scottish Executive website at [www.scotland.gov.uk/planning](http://www.scotland.gov.uk/planning) from the sections dealing with “circulars”, “policy”, and “advice”, respectively.

TREVOR A CROFT  
Inquiry Reporter  
3 November 2010  
Reference: P/PPA/200/2008

**ANNEX**

**ATTENDANCE**