

**REPORT TO: DEVELOPMENT QUALITY COMMITTEE – 25 OCTOBER 2004**

**REPORT ON: PLANNING APPLICATION 04/00321/FUL – PROPOSED FOOD SUPERSTORE AND PETROL FILLING STATION AT SOUTH ROAD RETAIL AREA, SOUTH ROAD, DUNDEE**

**REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION**

**REPORT NO: 664-2004**

## **1 PURPOSE OF REPORT**

1.1 An appeal against the non-determination of Planning Application 04/00321/FUL has been submitted to the Scottish Executive Inquiry Reporters. The views of the Committee are sought in order to establish its position on the application in advance of a Public Local Inquiry.

## **2 RECOMMENDATION**

2.1 It is recommended that the Council participates in the forthcoming Public Local Inquiry into the non-determination of planning application 04/00321/FUL.

2.2 It is recommended that had the Council determined the application on the basis of the information submitted by the applicant, it would have refused it for the following reasons:

- i The applicant has failed to demonstrate that the proposal is in accordance with Town Centres and Retailing Policy 4 of the Dundee & Angus Structure Plan 2001-2016.
- ii The applicant has failed to demonstrate that the proposal is in accordance with Retailing Policies S14, S15 and S20 of the Dundee Local Plan 1998.
- iii The applicant has failed to demonstrate that the proposal is in accordance with Policies 1, 45, 48 and 49 of the Finalised Dundee Local Plan Review.
- iv The applicant has failed to demonstrate that the proposal is in accordance with the guidance set out in National Planning Policy Guideline 8 (Revised 1998) Town Centres and Retailing.
- v The applicant has failed to demonstrate that the proposal can be accommodated within the existing road network.
- vi The applicant has failed to demonstrate that the proposal can be accommodated on the site without any detrimental affect in terms of noise, air quality, drainage and contaminated land.

2.3 It is recommended that the Council reserves the right to amend its position on this appeal in light of the Reporters Findings on the Finalised Dundee Local Plan Review and on the submission of additional supporting information by the applicant.

## **3 FINANCIAL IMPLICATION**

3.1 No financial implications arise for the Council as a direct result of this report.

#### **4 LOCAL AGENDA 21 IMPLICATIONS**

- 4.1 Key Theme 7 of the Council's Local Agenda 21 is relevant to the proposal. This key theme seeks to ensure access to facilities, services, goods and people is not achieved at the expense of the environment. On the basis of the information submitted the applicants have failed to demonstrate that the aims of Key Theme 7 can be achieved.

#### **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 Equal Opportunities Policies cannot be taken into account in the determination of a planning application.

#### **6 BACKGROUND**

- 6.1 Planning Application 04/00321/FUL for the erection of a food superstore, petrol filling station, formation of roundabout and access, car parking and ancillary works at South Road Retail Area, South Road, Dundee was received on the 31 March 2004.

- 6.2 The gross site area extends to some 4.34 ha and the proposal indicates a development, among other things, of a foodstore of 8,301 sq m gross floor area.

- 6.3 The applicants carried out Neighbour Notification and the proposal was advertised as a potential departure to the Dundee & Angus Structure Plan 2001-2016 and the Dundee Local Plan 1998. The proposal attracted two letters of objection, one from a local resident and the other from a business operating within the surrounding area. The main grounds of objection were that the proposal would increase the traffic on South Road resulting in issues of traffic and pedestrian safety, would result in disturbance to residents from noise from the service area and mechanical and electrical plant and would put pressure on parking within the surrounding residential area. The local business objected on the grounds that Dundee is already adequately served by supermarkets and that any additional development would only increase the market dominance of the four major multiples at the expense of smaller and independent retailers. They conclude by stating that this would ultimately result in less choice for the consumer. In addition to the above, a letter was received from GVA Grimley advising that they wished to reserve the right to submit representations to the application following the submission of supporting information.

- 6.4 The applicants were requested to submit additional supporting information to allow for the examination of their proposals. A Retail Assessment and Transport Assessment were requested. In addition, further information with regards to drainage and contaminated land were also requested. The Council were also in the process of requesting additional supporting information relating to noise and air quality. The applicants did not submit any of the information requested by the Council prior to exercising their right to appeal against the non-determination of the application. The applicants appealed against non-determination on the 12 August 2004. No subsequent supporting information has been submitted by the applicant.

- 6.5 As Members will be aware several planning applications have been submitted to the Council for the development of, amongst other things, food superstores at various sites throughout the City. These applications are:

- i Asda Stores Ltd at South Road/Myrekirk Road.

- ii Wm Morrisons Supermarkets plc at the former Linlathen High School site, Forfar Road
- iii Basell UK Limited at Land to West of Camperdown Leisure Park, Dayton Drive
- iv Keillor Estates Ltd, Dunsinane Industrial Estates

The applications at South Road/Myrekirk Road and Forfar Road were both recommended for approval by the Council but were subsequently called in by Scottish Ministers. Basell UK Ltd have appealed against the non-determination of their application and this has also been called-in by Scottish Ministers. The application at Dunsinane Industrial Estate is currently under consideration by the Council but the applicants have indicated their intention to appeal against non-determination. These proposals along with this proposal by Tesco are to be considered at Public Inquiries commencing on the 1 March 2005

## 7 PLANNING POLICY FRAMEWORK

- 7.1 All applications for planning permission are to be determined in accordance with the Town & Country Planning (Scotland) Act 1997 (Section 25) which states:
- 7.2 "When making any determination under the planning Acts, regard is to be had to the Development Plan, the Determination shall be in accordance with the Plan unless material considerations indicate otherwise."

### Development Plan

- 7.3 The following policies and proposals are of relevance to the consideration of this planning application.

#### Dundee & Angus Structure Plan 2001-2016

- i Town Centres & Retailing Policy 4: Out of Centre Retailing

#### Dundee Local Plan 1998

- i Retailing Policy S14: Retail Parks – Food Retailing
- ii Retailing Policy S15: Retail Parks – Restriction on goods sold.
- iii Retailing Policy S20: Out of Centre Shopping.

### Relevant Material Considerations

The following material considerations are also relevant:

#### Finalised Dundee Local Plan Review

- i Policy 1: Vibrant and Sustainable Communities
- ii Policy 45: Location of New Retail Developments
- iii Policy 48: Accessibility of Out of Centre Retail Developments
- iv Policy 49: New out of Centre Foodstores

#### Scottish Planning Policies, Planning Advice Notes and Circulars

- i NPPG8 (Revised 1998) Town Centres and Retailing
- ii NPPG17: Transport and Planning

### Non Statutory Statements of Council Policy

The following policy statements are of relevance:

Report 18/1998 – The Location and Distribution of Food (Convenience Goods) Superstores in Dundee

### Scottish Ministers Decision

Scottish Ministers decision on the change of use to supermarket at the former B&Q Unit at South Road, Dundee

### Reporter's Findings and the Council's Response to the Finalised Dundee Local Plan Review Inquiry

The Reporters findings and the Council's response will be material considerations in the determination of this proposal.

### Assessment of Proposal

- 7.4 The application site is located within the existing South Road Retail Area as identified in the Dundee Local Plan 1998. Retailing Policies S14 and S15 are relevant and seek to restrict it to a retail area for non food retail.
- 7.5 The applicants have applied for the formation of a food superstore over the entire South Road Retail Area. This proposal raises issues in terms of Retailing Policy S14 which specifically excludes a food use in the South Road Retail Area. The proposal also includes the sale of ancillary non food goods. The range of non food goods which superstores normally sell can include fashion, leisure, personal and luxury goods. These would not fall within those permitted in Policy S15 for the South Road Retail Area. The proposal would, therefore, be contrary to the relevant Retail Policies of the Dundee Local Plan 1998 for the South Road Retail Area. The applicants have provided no justification to set aside the provisions of these policies.
- 7.6 The proposal also raises issues for consideration in terms of Town Centres and Retailing Policy 4 of the Dundee and Angus Structure Plan 2001-2016 and Retailing Policy S20 of the Dundee Local Plan 1998. Both these policies set out a range of criteria that should be met where proposals for foodstores are in out of centre locations. The supporting planning policy and retail assessment information requested by the Council has not been received to allow for a full assessment of the proposal against Policy 4 of the Structure Plan and Policy S20 of the Local Plan.
- 7.7 The applicants have therefore failed to demonstrate that the proposal is in accordance with the relevant retailing policies of the Dundee and Angus Structure Plan 2001-2016 and the Dundee Local Plan 1998.

### **Other Material Considerations**

#### Finalised Dundee Local Plan Review

- 7.8 The application site is not designated for any specific use within the Dundee Local Plan Finalised Review. Policy 1: Vibrant and Sustainable Communities, applies to these areas and seeks to ensure that developments have minimal affect on the

environmental quality enjoyed by local residents by virtue of design, layout, parking and traffic movement issues, noise or smell. The additional information as requested by the Council covering transportation issues, noise, air quality, drainage and contaminated land has not been submitted from the applicant. As such a proper assessment of the potential impact of the proposal in terms of these issues has not been able to be undertaken. It is considered that the applicants have failed to demonstrate whether the proposed development could be accommodated within the site without any detrimental affect on the environmental quality of local residents in terms of Policy 1.

- 7.9 Policy 45: Location of New Retail Developments sets out the criteria for the consideration of new retail developments. The criteria contained in this policy reflects that of Town Centres and Retailing Policy 4 and Retailing Policy S20. As stated in reference to TCRP4 and RP20 the proposal cannot be fully considered in terms of the criteria set out in Policy 45 due to the lack of supporting policy and retail information.
- 7.10 Policy 48: Accessibility of Out of Centre Retail Developments is also relevant to the consideration of this appeal. The applicants have provided no supporting transportation information in relation to the proposed development. As such the proposal cannot be fully assessed against the criteria of Policy 48.
- 7.11 Finally, Policy 49: New Out of Centre Foodstores seeks to support new foodstore provision at South Road as a means of improving the accessibility of foodstore provision in the west of the City. The site identified by the Finalised Plan at South Road was allocated to fulfil requirements for improved distribution and accessibility to foodstore provision identified by Report 18/1998. A planning application (00/24809/D) by Asda Stores Ltd was recommended for approval by the Development Quality Committee at its meeting on the 26 January 2004 for a foodstore on this site to meet the identified need of this policy. This application has now been called in and is subject to determination by Scottish Ministers.
- 7.12 A further planning application (03/00966/OUT) at Land to West of Camperdown Leisure Park, Dayton Drive has been appealed and called in by Scottish Ministers. This proposal also seeks to meet the need for a new foodstore in the west of Dundee as set out in Policy 49. In addition, a planning application (03/00708/OUT) at Dunsinane Industrial Estate has been submitted to the Council and includes a proposed foodstore to meet the need identified in Policy 49. The applicants have indicated their intention to appeal this proposal.
- 7.13 At the recent Public Local Inquiry into the Finalised Dundee Local Plan Review, the Council stated that in terms of planning policy and the fulfilment of requirements of Policy 49 of the Finalised Local Plan the planning application by Tesco Stores Ltd would also have the potential to satisfy this policy. In addition, it was considered that the proposed foodstore was of a size commensurate with serving a wide catchment area as deemed appropriate by the City Council at this location. In the Position Statement to the Local Plan Inquiry reference was made to the covering letter accompanying the Tesco application and that its content raised doubts as to the commitment by Tesco Stores Ltd to the construction of this proposal. It was also highlighted that the Council had demonstrated the ability to deliver the Asda site and the operators the commitment to proceed with the development.

- 7.14 The Council concluded that in the circumstances the Local Plan site should be retained. However, it was stated that should the Reporter decide that an alternative option be acceptable a time constraint be imposed on the commencement of construction of the proposal. This was requested to ensure that the development proceeds to implement the Local Plan requirement and that if it did not happen the original Local Plan site be reverted to.
- 7.15 It is considered that whilst the proposal by Tesco has the potential to satisfy the need in the west part of the City the site identified by Policy 49 at South Road/Myrekirk Road is the preferred option. In addition, the Tesco proposal as submitted does not provided any supporting information to allow for a full assessment in terms of Policy 49 criteria.
- 7.16 It is considered that the Council's position as set out at the Local Plan Inquiry in terms of Policy 49 should be maintained.
- 7.17 The Reporters Findings of the Local Plan Inquiry and the Council's response with regards to Policy 49 will be a material consideration in the determination of this proposal. The Council would, therefore, wish to reserve the right to amend its position with regards to this proposal in light of the Reporters Findings.

#### Transportation Issues

- 7.18 The applicants were requested to submit a Transport Assessment in support of their proposed development. At the time of their appeal for the non determination of their planning application no Transport Assessment had been formally submitted to the Council. Discussions are, however, proceeding between the applicants and the City Council to establish whether the proposed development can be accommodated within the surrounding road network. In particular, the City Council is concerned to ensure that adequate capacity is available at the Myrekirk roundabout on the Kingsway.
- 7.19 The Scottish Executive Enterprise, Transport & Lifelong Learning Department – Trunk Roads – Network Management Division have advised that they have no objection to the proposed development subject to the imposition of the condition requiring the submission of a Travel Plan.

#### National Planning Policy Guideline 8 (Revised 1998) Town Centres & Retailing

- 7.20 The guidance within NPPG8 advises that where proposals are not consistent with the development plan the developer must demonstrate why an exception to the policy should be made and the proposal should be rigorously assessed by the planning authority against the criteria set out in NPPG8 and refused if all the criteria are not met. Paragraph 45 of NPPG8 sets out the criteria for assessing this type of development. The proposed site was not identified by the adopted Dundee Local Plan 1998 as the location for food retail development. Paragraph 45 generally reflects the criteria set out in the Dundee & Angus Structure Plan Policy Town Centres and Retailing 4 and Policy S20 of the Dundee Local Plan 1998. For the reasons set out above it is considered that there is insufficient information to properly assess the proposal against the guidance set out in Paragraph 45 of NPPG8.

Report 18/1998: Location and Distribution of Food (Convenience Goods) Superstore in Dundee

- 7.21 In 1998 the Council undertook a review of the location and distribution of large foodstores within Dundee. Report 18/98 was approved by the Planning and Transportation Committee on the 13 April 1998. The report assessed the pressures for large foodstores and set out proposals to guide future development. The report acknowledged that areas to the north and west of the city were not as well served by modern foodstore provision as other areas within the City. However, given the limited growth and available expenditure the report set out that any new stores to be developed should be seen as part of a rationalisation of existing foodstore provision within the City. The sites identified through this report have been incorporated within the Finalised Dundee Local Plan Review. At the meeting of the Development Quality Committee on the 24 February 2003 an Agenda Note relating to the Finalised Dundee Local Plan was approved. The Agenda Note advised that Report 18/98 was superseded by the relevant policies of the Finalised Dundee Local Plan Review.

Scottish Ministers' Decision on the B&Q Appeal at South Road, Dundee

- 7.22 Scottish Ministers granted an appeal for a change of use to supermarket at the former B&Q unit on the 3 March 2003. The planning application by B&Q PLC was for a foodstore with a gross floor area of some 4500 sq metres including an extension to the existing building. The Scottish Ministers, whilst noting the application was not in accordance with these policies, accepted there were sufficient material considerations to approve a foodstore at the former B&Q unit. Tesco Stores Limited have taken up this permission and opened the store for trading on the 20 August 2004. The Scottish Ministers decision on the change of use to supermarket at the former B&Q unit is a material consideration.

## **8 CONCLUSION**

- 8.1 The purpose of this report is to update the Committee with the circumstances of Planning Application 04/00321/FUL, to place it in its policy context, examine material considerations and to make recommendations as a basis for the Council's case at the forthcoming Public Inquiry.
- 8.2 It is considered that the applicants have failed to demonstrate whether the proposed development is in accordance with the Retailing Policies of the Dundee & Angus Structure Plan 2001-2016, the Retailing Policies of the Dundee Local Plan 1998 and the guidance within NPPG8. In addition, they have also failed to demonstrate that the proposal is in accordance with the relevant policies of the Finalised Dundee Local Plan Review.
- 8.3 The applicants have failed to provide additional supporting information in the form of a Transport Assessment, Noise Assessment, Air Quality Assessment or an assessment of drainage and contamination within the site. As such it has not been possible to carry out a proper assessment of the potential impacts that the proposal could have on the site and surrounding area.
- 8.4 The Council would, however, wish to reserve the right to amend its position in light of any additional supporting information that may be submitted by the applicant, prior to the Inquiry.

8.5 Finally, the Findings of the Local Plan Reporter in terms of Policy 49 of the Finalised Local Plan Review will be a significant material consideration in the determination of this application. Whilst the Council continues to support the application at South Road/Myrekirk Road at this time it reserves the right to amend its position in light of the Reporters findings.

8.6 It is considered that on the basis of the information before it the Council would have refused the proposed development.

## **9 CONSULTATIONS**

9.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance) and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

## **10 BACKGROUND PAPERS**

None

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