

FAO: Paul Rounce  
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EDINBURGH  
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Our ref: NA/HLD/010  
18 January 2008

Dear Sir

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
PLANNING APPLICATION FOR PROPOSED FOODSTORE AT PENNYLAND FARM,  
THURSO**

1. This letter contains the Scottish Minister's decision on outline planning permission lodged on behalf of your clients Asda Stores Ltd for the above development.
2. This application was notified to the Scottish Ministers on 10 October 2006 in accordance with the Town and Country Planning (Notification of Applications) (Scotland) (Direction) 1997 (now Direction 2007). In terms of Section 46 of the Town and Country Planning (Scotland) Act 1997, the Scottish Ministers directed The Highland Council on 20 November 2006, to refer the application to them for determination.
3. The application was thereafter considered at a conjoined public local inquiry held between 7 and 22 August 2007, by Mrs Jill Moody DipTP MRTPI. A copy of Mrs Moody's report is enclosed for your information.
4. A list of those who appeared at the inquiry is given in Appendix 1 of the report. A description of the site, surroundings and the proposed development and the relevant national and development plan policies appear at Chapters 1 and 2 of the report.

**Evidence at the Public Local Inquiry**

5. The evidence led, the arguments advanced at the inquiry and a summary of the consultation responses appear at Chapter 3 of the report. The Reporter's Findings of fact are contained in Chapter 4 of the report under that heading.

## Consideration by the Reporter

6. The Reporter's conclusions and recommendations that outline planning permission be refused are given between pages 87 and 91 of the report.

## The Scottish Minister's Decision

7. The Scottish Ministers have considered carefully all the evidence presented at the conjoined public local inquiry, the Reporter's findings of fact and conclusions and adopt them for the purpose of their own decision, and accept the Reporter's recommendation that outline planning permission should be refused.

8. Accordingly, the Scottish Ministers hereby refuse to grant outline planning permission for the proposed retail foodstore at Pennyland Farm, Thurso. This letter constitutes their decision to that effect.

8. The foregoing decision of the Scottish Ministers is final, subject to the right, conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997, of any person aggrieved by this decision to apply to the Court of Session within 6 weeks of the date hereof. On any such application, the Court may quash the decision if satisfied that it is not within the powers of the Act, or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirements of the Act, or of the Tribunals and Inquiries Act 1992, or any orders, regulations or rules made under these Acts.

9. A copy of this letter and of the public local inquiry report has been sent to The Highland Council and to all other parties who appeared at the public local inquiry.

10. The productions submitted to the inquiry are currently held in this office. If any parties wish to collect their productions they should contact this office to make the necessary arrangements after the 6 week appeal period mentioned above has elapsed. If not collected, they will be disposed of after 3 months.

Yours faithfully



**J E SWANNEY**

## Report to the Scottish Ministers

### TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

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Report by Mrs Jill Moody, a Reporter appointed by the Scottish Ministers

- Case reference: NA/HLD/010
- Site Address: Pennyland Farm, Thurso KW14 7JU
- Application by Asda Stores Ltd
- Proposed development: outline planning permission for erection of 2896 m<sup>2</sup> (31,172 ft<sup>2</sup>) Class 1 retail foodstore, petrol filling station, associated car parking, landscaping, access road and roundabout, servicing, playing field provision and associated community facilities and car parking.
- Application called-in by notice dated 20 November 2006
  
- Case reference: P/PPA/270/459
- Site Address: Thurso Auction Mart, Ormlie Road, Thurso KW14 7DW
- Appeal by Miller Developments Ltd
- Proposed development: outline planning permission for demolition of existing buildings and the erection of a (Class 1) retail store, petrol filling station, (Class 9) housing, parking, landscaping, servicing, access and internal roads
- Appeal dated 3 April 2007 against the failure of the Highland Council to determine the planning application, appeal recalled by notice dated 18 April 2007
  
- Date of pre-inquiry meeting: 19 February 2007
- Date of conjoined inquiry: 7 to 22 August 2007

Date of this report and recommendations: 26 November 2007:

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## SUMMARY

### **Ministers' reasons for call-in**

Possible implications for national planning retail, transport, and open space policies in SPP 8, SPP 17, and NPPG 11, and for development plan policy.

### **Ministers' reasons for recall**

Both proposals should be determined together.

### **The sites**

Pennyland Farm is on the outskirts of Thurso town, opposite the junction between the A9 Scrabster trunk road and the A836, which leads west from Thurso towards Dounreay. The site is prominent greenfield agricultural land in an open landscape in front of and overlooked by housing, and beside the highly traditional low-key and small-scale listed category B Pennyland Farm house and steading.

The Auction Mart is a sloping, vacant, degraded brownfield site inside the established urban area of Thurso. It is close to a range of educational, health, and commercial/industrial uses, it is overlooked by housing, and it is edged by the railway line and the utilitarian, category B listed, station buildings.

### **The council's case**

A supermarket would support Thurso's role as a sub-regional centre and balance the considerable attraction of Tesco in Wick and Inverness, which accords with the development plan. The retail assessment predicts a qualitative and a quantitative deficiency in convenience shopping provision and no harm to the vitality and viability of Thurso town centre. The comprehensive sequential assessment shows no better site than Pennyland Farm to address that deficiency.

Pennyland Farm relates well to the town centre, it is highly accessible, and the proposal accords with the spirit of the adopted local plan intention of a commercial hotel development and green space. The letter of the adopted local plan is no longer relevant, and the proposal would suit and support the planned western expansion of Thurso. Like the impact on residential and visual amenity, any concerns about the impact of development on the adjacent listed buildings can be solved by planning conditions and via the reserved matters process.

Although the council has never expressed a formal view, the Auction Mart proposal must be unacceptable because the council is supporting Pennyland Farm. The Auction Mart would reuse of a brownfield site, it is accessible for the town centre, it offers benefits like solving flooding, and it would improve local amenity and the setting of the station listed building. But the links are less easy to the town centre than Pennyland Farm and development raises road safety concerns, including around Lovers Lane, because of the surrounding schools. The supermarket is also specifically contrary to the relevant adopted local plan policies for the Auction Mart.

## Asda Stores Ltd's case

The retail assessment shows a qualitative and quantitative need for better supermarket provision in Thurso, especially given the recent Tesco in Wick. Thurso town centre and the existing supermarkets are overtrading to a significant degree, so that there must be capacity for the proposed store with no harm to the vitality and viability of the town centre. The development plan does not preclude the principle of a new supermarket and, although Pennyland Farm is out-of-centre, the sequential assessment shows that no suitable town centre or edge-of-centre alternative exists.

Pennyland Farm is accessible and well placed to capture custom from pass-by traffic from the western expansion of Thurso and from Dounreay. The site maybe greenfield and technically contrary to the adopted local plan, but a change to the plan is justified, including because the adopted local plan is largely out of date, the store is needed, the site is near the western expansion, and the proposal includes a playing field, which is a specific community benefit that would be donated to the council. Other benefits include the roundabout at the A9/A836 junction and the traffic signal improvements at Sir John's Square. Asda intends a high quality development, and detailed design issues and concerns about amenity and the relationship to the listed buildings should be left aside as reserved matters.

Asda considered developing the Auction Mart site, but was put off by major access and topography constraints that reduce its commercial viability. The Auction Mart site is similarly out-of-centre and the supermarket would again conflict with the adopted local plan. The site is also less favourable than Pennyland Farm because of access difficulties and for its proximity to several schools, whereby road safety is a major concern. The Auction Mart is also not as well placed to capture passing trade.

## Miller Developments Ltd's case

Thurso needs a new supermarket and the predictions broadly support Asda's view of no harm to Thurso town centre. But the assessment shows that the Auction Mart has stronger links to the town centre than Pennyland Farm, so that it is more like edge-of-centre, and therefore it is sequentially preferable. The Auction Mart is also brownfield with policy support for reuse, and the adopted local plan policies are not prescriptive so they do not preclude a supermarket development. The road network has spare capacity and access of all kinds can be provided to the required standard. Public transport access is especially good because the site is closer to the railway station and to a wider range of bus services than Pennyland Farm.

Development of the Auction Mart site is commercially viable and the design of the store building and layout of the site can be modified to suit the topography. Development also offers a chance to solve road safety and flooding issues, to improve the pedestrian regime at Lovers Lane, to install new traffic signals at Sir John's Square, and to improve the look of the site, which would in turn improve the setting of the station listed building. That site already has an urban context where development is to be expected.

## Other parties' cases

The Co-op is one of few objectors to the principle of a supermarket because of concerns that the retail case is flawed and overstated. But if one is to be developed, the Co-op prefers the Auction Mart site because it has better town centre links, so development would be less damaging.

Otherwise, most of the numerous representations would prefer to see a new supermarket in Thurso for product range, price, and accessibility reasons. Opinions then divide over which site might be best. Those against Pennyland Farm are concerned mainly about flaws in the sequential assessment and misinformation about the Auction Mart, when the council decided to support Pennyland Farm. These objectors are also concerned about the unjustified loss of the green space, the degree of conflict with established and thoroughly tested development plan policy, and about the impact of the scale and nature of the development on residential and visual amenity, as well as on the listed buildings. Thurso Community Council's concerns about road safety reflect the majority of the objections to the Auction Mart proposal.

## Reporter's reasoning

1. Assessment against the development plan: although the development plan envisages no specific retail developments in Thurso, one supermarket would improve access to goods, services, and job opportunities in the remoter parts of Caithness, without causing significant harm to existing local services. In this way, it would also help to sustain local communities and offset the considerable draw of and imbalance caused by the strength and attractiveness of Inverness in particular.

Notwithstanding shortcomings in the Asda retail assessment, greater harm is likely to Thurso town centre from not allowing a supermarket, because that would not balance or draw any of the trade back that is undoubtedly currently also being lost to the recently constructed large Tesco superstore in Wick.

Therefore, there is a development plan policy case to support the principle of one or other of the proposed developments, but not both and, because no sequentially better site exists in Thurso than the proposed options, the decisions hinge on which site is preferable.

Subject addressing site topography, the Auction Mart site is more accessible by non-car based transport. Neither site suffers significant infrastructure problems and both sites can achieve a vehicular access to the required standard. The Auction Mart site also offers specific road safety and infrastructure benefits.

The Auction Mart site is brownfield where redevelopment is encouraged. Pennyland Farm is greenfield agricultural land, where policy presumes against development, especially as the Pennyland Farm proposal does not confirm adequately that there is no brownfield alternative available.

Both sites would affect residential and visual amenity, but given the character and context of each, i.e. rural greenfield as compared to urban brownfield and, given the

orientation and landscape prominence of the Pennyland Farm development and site, the impact of that development is likely to be worse than the Auction Mart.

The lack of design details is more significant for Pennyland Farm because of the potential for harm to the setting of the listed buildings. The significant design issue for the Auction Mart is the ability to overcome the sloping site, while still achieving a viable, attractive, and accessible development. Scope exists within that whole application site, i.e. including the housing area, to produce an acceptable overall scheme. Asda might judge it easier and cheaper to develop a greenfield site, but that does not justify a significant greenfield land release, especially where this urban brownfield alternative exists.

Most of the Pennyland Farm site is protected open space in the adopted local plan and it merges into a wider network that defines this edge of Thurso. The proposal would fragment the remainder of these open space allocations and thereby diminish their collective benefit. A different part of that network is allocated for development with playing fields and the proposed playing fields would be closer to the existing housing than is envisaged in the adopted local plan, which would worsen the degree of predicted harm to residential amenity. The rest of the Pennyland Farm site is allocated specifically for a hotel development, to be linked to the listed farm steading.

The adopted local plan policy context for the Auction Mart site is generally more encouraging of development and the housing element of the proposal is in direct accord with the relevant allocations and policies for the site. While a range of potential uses is discussed, the various policies all look at how the site might be reused once the mart use has ceased, and none firmly precludes a supermarket.

2. Assessment of impact on the listed buildings: the proposed urban, modern supermarket at Pennyland Farm would more than likely crowd, dominate, and be basically incompatible with the specific character, design, style, scale, and function, of the listed farm buildings. Conditions could not solve this fundamental mismatch. The listed building beside the Auction Mart site is of a distinctly different character, i.e. it is a more utilitarian station, contained by a strongly urban context as opposed to an open, rural farm steading. Therefore, similar relationship problems do not arise and Pennyland Farm is more likely to cause harm. The Auction Mart would also benefit the listed building by clearing and reusing an adjoining site that is fast becoming a considerable local eyesore. The consultation reply from Historic Scotland supports this view.

3. Assessment against other material considerations: Asda does not show that the adopted local plan is out of date, old, and no longer appropriate or applicable, or that the hotel aspiration is untenable. But even if this had all been shown, the national planning policy prefers the due process of a formal local plan review to change the adopted local plan.

The western expansion area is between both of the proposed sites, so it is just as accessible from each, and Pennyland Farm offers no significant locational advantage. The Auction Mart site is better located and linked to the town centre than Pennyland Farm, so that it is more likely to protect its vitality and viability, which is significant, bearing in mind the national planning policy importance attached to

support for the town centre as opposed to out of town housing. In addition, the western expansion was conceived around containment in a landscape framework, which the proposal would prejudice, and no economic case is made to justify a cross-subsidy argument.

The playing field issue is addressed above and Asda supplies no quantifiable evidence to show a real need for the roundabout on the A9/A836, either for road safety or for economic reasons to support the western expansion. Therefore, neither amounts to an overriding planning gain.

## **Conclusions**

While some aspects of the development plan are satisfied, Pennyland Farm conflicts with other general issues and requirements that are of the greatest significance, partly for legislative reasons and partly in view of national planning policy. While the provision of some open space would accord with the spirit of the adopted local plan, the proposed amount is comparatively small and the whole proposal conflicts to a substantial extent with the adopted local plan intentions for the site and its surroundings. The Pennyland Farm proposal could also prejudice the potential to realise the specific policies and development opportunities identified in the plan. The ability of conditions to make these shortcomings acceptable is extremely limited. The Auction Mart proposal on the other hand satisfies most of the relevant general development plan policies and it is in greater accord with the specifics of the adopted local plan. The material considerations do not justify an exception to the development plan in favour of the Pennyland Farm proposal.

Outline planning permission should be refused for Pennyland Farm, and should be granted for the Auction Mart, subject to conditions. If permission is granted for Pennyland Farm, it must then be refused for the Auction Mart because Thurso can only support one new supermarket of the size and nature proposed. Under those circumstances, Pennyland Farm should be granted subject to conditions and a section 75 agreement regarding the amount, nature, maintenance, and transfer of the proposed open space.