

Appeal Decision Notice

T: 01324 696 400
F: 01324 696 444
E: dpea@scotland.gsi.gov.uk



Decision by David Buylla and Karen Heywood, Reporters appointed by the Scottish Ministers

- Planning appeal reference: PPA-270-626
- Site address: former Morrison's site, Shore Road, Tain
- Appeal by Santon Retail Ltd/Tesco Stores Ltd against the decision by The Highland Council
- Application for approval of reserved matters 08/00453/REMSU dated 17 November 2008 refused by notice dated 30 April 2009
- The development proposed: erection of retail store with associated fuel filling station, car parking and access
- Application drawings: listed in schedule at the end of this notice
- Date of public local inquiry: 4, 5, 9, 10 and 11 March 2010

Date of appeal decision: 06 May 2010

Decision

We allow the appeal and approve the reserved matters subject to the 11 conditions listed at the end of the decision notice. Attention is drawn to the four advisory notes at the end of the notice.

Preliminary matter

At the close of the inquiry the appellants made a claim for expenses against the council. This claim has been dealt with in a separate decision notice.

Reasoning

1. Having regard to relevant provisions of the development plan and national policy and guidance, the main issues in this appeal are:

- the adequacy of the proposed car parking;
- the suitability of the proposed means of access to the building;
- whether the proposals would preserve or enhance the character or appearance of the Tain Conservation Area and its impact on the setting of the conservation area;



- the effect of the proposals on nearby listed buildings, their setting and any features of special architectural or historic interest which they possess;
- the proposals' impact on trees;
- whether the proposed off-site road works would have an acceptable impact on traffic flows and road safety; and
- the proposals' likely impact on bats.

Car parking

2. Structure plan policy TC9 requires compliance with the council's maximum parking standards. When assessing the proposals against this policy, therefore, the standards in the planning authority's road guidelines for new development must be considered a maximum level (not to be exceeded) rather than a minimum level (to be provided). The proposed number of parking spaces does not exceed the level set out in the road guidelines for new development and therefore complies with structure plan policy TC9.

3. The planning authority has accepted a level of on-site car parking provision at other local food stores based on the national Scottish Planning Policy (SPP) standard, rather than its own standards. The appeal proposals would slightly exceed this level of provision.

4. This is a town centre location where there is some potential for linked trips with other town centre uses and for shoppers to access the site without a car. Roads around the site have low traffic speeds and the proposals would incorporate formalised facilities for on-street parking in addition to the on-site car park.

5. In the absence of any evidence from the planning authority to justify its requirement for a higher level of on-site parking than the appellants have proposed, we consider that it would provide adequate provision for the proposed development in the particular circumstances of this case.

Access

6. The proposed means of vehicular access to the building, via a mini-roundabout on Shore Road, was not a reason for refusal but was raised as a concern by the planning authority's transport witness and considered in some detail at the inquiry. It has not been demonstrated to our satisfaction that adequate deflection could be provided on the Shore Road (north west) arm to meet the requirements of the Design Manual for Roads and Bridges (DMRB). However, we note that the DMRB would permit, as an alternative solution, the use of a give way line and that, as this is not a motorway or trunk road, compliance with the DMRB is in any event not mandatory.

7. On the evidence that is before us, we consider the proposed means of vehicular access to be acceptable in principle and see no reason why a satisfactory vehicular access could not be provided. Accordingly, we consider that the detailed design of this access can be dealt with by a planning condition.

8. Turning to the means of pedestrian access to the building, the topographical relationship between the proposed food store and the site boundaries was considered acceptable to the planning authority when it included the site as part of the town centre in the recently adopted local plan and when it granted outline planning permission. Two of the three proposed site accesses would provide a level route to the store entrance that the main parties agree would be suitable for use by less mobile groups and would comply with disability discrimination legislation. However, the pedestrian access that is proposed from Chapel Street would involve steps and would be unsuitable for wheelchair users and difficult for those pushing prams.

9. Although closest of the three proposed accesses, the Chapel Street access would be approximately 150 metres away from Tain's main concentration of town centre uses. Bearing in mind the maximum recommended walking distances without a rest that are referred to in 'Inclusive Mobility' (between 50 and 150 metres depending on the nature of the disability) and the topographical and other challenges that less mobile groups already face in Tain, we consider that, whatever solution was employed to take access to the building from Chapel Street, it is unlikely to be used by large numbers of wheelchair users and pram pushers.

10. The planning authority accepted that there would be a wide range of mobility among users of the proposed store and that it is not simply a question of those who are able or unable to use steps. It suggested no alternative location to the proposed Chapel Street access but expressed a preference for the ramped access that was shown indicatively in (but was not a requirement of) the outline planning application. A ramped access would be longer, would result in the loss of three additional mature trees and would potentially have greater visual impact than the proposed steps. The 'Disability Discrimination Act: Good Practice Guide for Roads' states that a large proportion of disabled people find well designed steps easier and safer to use than a ramp. The planning authority identified no reason why the proposed stepped access could not meet the best practice design identified in that document.

11. We conclude that, subject to a condition controlling their detailed design, the proposed means of access to the building are acceptable.

Tain Conservation Area

12. No built development would take place within the small proportion of the site that lies within Tain Conservation Area, where there is a duty imposed by section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the Listed Buildings Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. However, the remainder of the site lies adjacent or close to the conservation area's boundary and has the potential to affect the conservation area or its setting.

13. With the exception of the access from Chapel Street and some of the off-site road improvements, all of the built development would take place at a significantly lower level than the conservation area. There would be some limited views of the site from the

conservation area but these would be filtered by trees and, in the context of the conservation area, such views are likely to be no less appropriate than those of the site's existing rather neglected appearance.

14. When it granted outline planning permission the planning authority accepted that a large building with associated fuel filling station and extensive car parking would have an acceptable impact on the conservation area. We consider that the design of the proposed store and the proposed palette of external finishing materials are appropriate. We see no justification for using sandstone when the proposed building would not be viewed adjacent to any other sandstone buildings. We consider that the large roof ventilators in the building's roof would provide sufficient visual interest when viewed from above.

15. Although it has already accepted the principle of the off-site road works, we agree with the authority that care must be taken with the detailed design and choice of materials for these works. We also agree that there is insufficient detail at this stage. As the works lie within the road boundary, the council in its capacity as roads authority would have full control of this issue. However, we consider that a condition should be attached to the reserved matters approval in order that the council as planning authority ensures that proper attention is paid to the impact of these works on the conservation area.

16. Subject to appropriate conditions, we consider that the impact of the on and off site works would preserve the character, appearance and setting of the conservation area in accordance with structure plan policies G2 and G6 and local plan Tain policy 28.

Listed buildings

17. Unlike section 64, the duty imposed by section 59 of the Listed Buildings Act refers to the consideration of planning applications rather than proposals for the approval of reserved matters. However, we believe it is appropriate at this reserved matters stage to consider the impact on listed buildings of any matters of detail that were not known at the outline stage.

18. Two listed buildings were brought to our attention: Shandwick House in Chapel Street and the Bank of Scotland premises in Tower Street.

19. Considering its historical function and townscape location, we consider that the setting of Shandwick House is confined to its immediate surroundings on Chapel Street and would not include the main part of the appeal site itself, despite the fact that in recent years the two have been in the same ownership and operation. The proposals would involve no works to the listed building itself and, with the exception of the proposed stepped access from Chapel Street and the nearby off-site road works, would keep built development outside what could reasonably be construed as its setting. The proposed Chapel Street access and off-site works would not represent a significant visual departure from the existing situation which is not especially sympathetic to Shandwick House. Subject to using appropriate materials, we consider that these works would preserve the setting of the listed building.

20. In relation to the category B listed bank premises in Tower Street, once again we see no reason why, subject to the use of appropriate materials, the proposed off-site works in Tower Street and in the lane known locally as Bank Lane would have any adverse impact on this building or its setting.

21. We conclude that, in accordance with structure plan policies G2 and G6, the proposals' impact on listed buildings would be acceptable.

The proposals' impact on trees

22. The planning authority did not contest the appellants' evidence that most of the trees to be removed as part of these proposals require removal on safety grounds in any event. We agree with the authority's Forestry Officer, who confirmed that the extensive replacement planting scheme more than compensates for the tree loss and we conclude that, with regard to the impact on trees, the proposals accord with structure plan policies G2 and G6.

Traffic and road safety

23. The principle of the off site road works was agreed at the outline stage but condition 10 of the outline planning permission required the reserved matters submission to provide further details.

24. Tain is characterised by narrow roads, changes of gradient and often less than ideal pedestrian facilities. This is to be expected in a town of this age. The proposed off-site road works aim, so far as is possible, to give priority to pedestrians walking between the development site and the retail core of the town centre, so improving road safety.

25. The planning authority and a number of objectors commented that the proposals would not address all of the pedestrian access issues that are found in the roads around the site and would be likely to inconvenience drivers. We agree that there would remain areas of the town centre, including on routes likely to be taken by those walking to and from the store, that would be less easy for pedestrians to negotiate (particularly those with restricted mobility). However, the proposals would represent a significant improvement over the existing situation. We agree that some of the proposals would have the potential to slow the progress of vehicles through the town. However, that is precisely their point and we were provided with no evidence that there had been any material change in this regard from when the planning authority agreed to the principle of these works when outline planning permission was granted.

26. We consider that a condition requiring the submission of further details to ensure that the proposals are both technically competent and appropriate to their historic surroundings, is the appropriate way to deal with this issue.

The proposals' likely impact on bats

27. The site's existing tree cover is a potential bat habitat. In accordance with structure plan policy N1 and local plan policies GSP1 and GSP14, and as required by The Conservation (Natural Habitats, &c.) Regulations 1994, the appellants surveyed the site in order to assess the proposals' likely implications for bats. The planning authority provided no evidence to challenge the conclusion of these surveys that the site is not being used by bats as a breeding site or resting place and that its value for foraging bats is not significant.

28. Scottish Natural Heritage, the Scottish Ministers' advisor on the natural heritage, was eventually content with the survey and additional information provided by the appellants, subject to appropriate timing of tree felling. On this basis, we are satisfied that the proposals would have no adverse impact on bats.

Conditions and obligations

29. Most of the matters proposed as conditions by the planning authority are already dealt with in the outline planning permission, and duplication is unnecessary and potentially confusing. There are, however, a few issues where further details are required and these are the subject of the conditions we have imposed.

30. The planning authority sought a section 75 agreement to secure financial contributions towards public transport and closed-circuit television provision. The former matter is the subject of condition 10(g) of the outline planning permission. The authority also proposed a condition requiring an archaeological investigation. However, we consider that these issues cannot reasonably be required at the reserved matters stage, as it is the principle of development (which is not a matter for this appeal), rather than the details, that provides the justification for these matters. Having said that, there is nothing to prevent the appellants addressing these issues if they were so minded.

This is a true and certified copy of the decision issued on 06 May 2010.

David Buylla
Reporter

Karen Heywood
Principal Reporter

Conditions (to be read in conjunction with the conditions imposed on the earlier outline planning permission reference 08/00038/OUTRC)

1. Access arrangements shall be undertaken in accordance with the details submitted in the Transport Assessment prepared by Waterman Boreham Transport Planning Ltd dated 8 April 2008 as docquetted to the committee report to the Caithness, Sutherland and Easter Ross Planning Applications and Review Committee of 3 March 2009.

For the avoidance of doubt, prior to the opening of the store, all of the following off-site improvement works shall be undertaken at the developer's expense, or as may otherwise have been agreed in writing by the planning authority:

(i) provision of improvements to Shore Road (north of the site), involving enhanced pedestrian facilities and carriageway widening. These works shall be based on approved drawing number 207937/73/A (see also below);

(ii) provision of traffic management and environmental improvements in the vicinity of the Chapel Street / Castle Brae / Station Road / Chapel Road junctions. These works shall be based on approved drawing number 207937/51/B (see also below);

(iii) provision of a traffic management scheme for Chapel Street (south of the site) to provide improved pedestrian facilities. These works shall be based on approved drawing number 207937/52/C (see also below);

(iv) provision of improved pedestrian facilities between Quarry Lane and Chapel Street including the existing lane between Tower Street and Chapel Street. These works shall be based on approved drawing number 207937/52/C (see also below);

(v) provision of formalised parking on Station Road. These works shall be based on approved drawing number 207937/56/A (see also below).

The road improvements should be based on the drawings noted above. However, prior to their commencement, precise details, including the materials to be used and the signs to be employed, shall be submitted to and approved in writing by the planning authority and work shall not proceed subsequently except in accordance with these approved details, unless otherwise agreed in writing by the planning authority.

(Reason: in order to maximise road safety, particularly for pedestrians and to ensure that the details respect the character and appearance of Tain Conservation Area.)

2. Prior to works commencing on the proposed stepped pedestrian access from Chapel Street, details of the steps and any handrails shall be submitted to and approved in writing by the planning authority. The design of this access shall generally follow the best practice advice in the 'Disability Discrimination Act: Good Practice Guide for Roads' (2009) or any subsequent guide that supersedes this. This access shall be completed in accordance with the details so approved, prior to the store opening.

(Reason: to ensure that this pedestrian route to and from the store is accessible by as many users as possible.)

3. Prior to works commencing on the proposed vehicular access from Shore Road, details of the roundabout design, including provision for the deflection of vehicles and/or give way markings, shall be submitted to and approved in writing by the planning authority. This access shall be completed in accordance with the details so approved prior to the store opening.

(Reason: in the interests of road safety.)

4. For the avoidance of doubt, all delivery and service vehicles to the retail store shall enter and exit the site from the west along Shore Road and shall not use Station Road, Chapel Street or Castle Brae.

(Reason: in the interests of road safety and to protect the living conditions of local residents.)

5. Prior to use on any part of the development hereby approved the developer shall submit to and have approved in writing by the council, details (and, if requested, samples) of the proposed timber cladding, aluminium curtain walling, roof membrane and the external finishes of the proposed roof ventilators. Development shall not proceed subsequently except in accordance with these approved details.

(Reason: to ensure that the development has an acceptable visual impact in accordance with local plan policy GSP1.)

6. All of the approved boundary treatments (including gabion walls, stone walls, gate pillars, acoustic walls or fences and knee rail fences) shall be installed prior to first opening of the store.

(Reason: to ensure that the development has an acceptable visual impact in accordance with local plan policy GSP1.)

7. Prior to the commencement of development, the developer shall submit to, and have approved in writing by the planning authority a tree plan that accords with BS5837: 2005 (Trees in Relation to Construction). This shall include details of appropriate protection measures for all retained trees before and for the duration of the construction works. Such protection measures shall be put in place and shall not be removed or altered without the prior written permission of the planning authority for the duration of the construction works. Where any work is proposed within the root protection area of any retained tree, this shall be in accordance with details set out in the approved tree plan.

(Reason: to ensure the protection of retained trees during construction.)

8. The car park hereby approved shall be operated in a manner that permits parking for a duration of at least two hours by persons who are not shopping at the store. Unless

otherwise agreed in writing by the planning authority, any charging regime that is introduced into the car park shall be identical to that prevailing at that time in Tain's council operated town centre car parks.

(Reason: to promote dual use of the car park and the flow of pedestrians between the site and the remainder of the town centre).

9. Prior to the commencement of development, a sustainability statement detailing commitments to reducing energy consumption and a sustainable approach to waste disposal shall be submitted to and approved in writing by the planning authority. Matters to be addressed include:

- Wind power and/or solar energy and/or ground source heat exchange pumps
- The use of grey water for toilet flushing, vehicle washing and similar purposes
- The installation and use of a combined heat and power system
- Heat recycling and low energy ventilation systems
- Measures for energy efficiency
- Materials minimisation, composting and recycling

The development shall incorporate all of the agreed measures.

(Reason: to maximise development's sustainability in accordance with local plan policy GSP1).

10. Tree felling works shall not be undertaken outside the months of March, April, September and October.

(Reason: To ensure that the timing of tree felling avoids both the bird breeding season and bat hibernation period in accordance with structure plan policy N1 and local plan policies GSP1 and GSP14.)

11. Prior to first opening of the store, measures shall be installed that prevent trolleys being removed from the site. Such measures shall be in accordance with details that have previously been submitted to and approved in writing by the planning authority. Once installed, these measures shall not be removed or altered without the prior written approval of the planning authority.

(Reason: in the interests of the amenity of the locality.)

Advisory notes

1. Duration of permission

In accordance with section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended), this permission lapses on the expiration of a period of 3 years beginning with the date on which this permission is granted unless the development to which this permission relates is begun before that expiration.

2. Notice of initiation of development

Under section 27A of the Town and Country Planning (Scotland) Act 1997 (as amended) the person undertaking the development is required to give the planning authority prior written notification of the date on which it is intended to commence the development. A failure to comply with this statutory requirement would constitute a breach of planning control under section 123(1) of that Act, which may result in enforcement action being taken.

3. Notice of completion of development

As soon as practicable after the development is complete, the person who completes the development is obliged by section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended) to give the planning authority written notice of that position.

4. Display of notice while development is carried out

A notice, in the form set out in Schedule 7 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 and completed in accordance with the notes to that Schedule, must be displayed in a prominent place at, or in the vicinity of, the site of the development while it is being carried out. The notice must be readily visible to the public, printed on durable material, and retained in place until the development is completed. This is required by section 27C of the 1997 Act (as amended).

Schedule of application drawings

1540(PL)001	Existing site plan
1540(PL)002/E	Proposed site plan
1540(PL)003/C	Elevations
1540(PL)004/D	Proposed sections
1540(PL)009/A	Roof plan
1540(PL)010/A	Proposed surface finishes and boundary walls
1540(PL)011/A	Boundary fence details
1540(PL)012	Single trolley bay typical details
1540(PL)013	Service yard plant 1
1540(PL)014	Service yard plant 2
1540(PL)015	CHP unit and store
1540(PL)016/A	Proposed PFS plans and elevations
1540(PL)017	ATM details
207937/51/B	Station Road / Chapel Road proposed improvements
207937/52/C	Chapel Street / Tower Street proposed improvements
207937/56/A	Station Road proposed parking improvements
207937/73/A	Shore Road proposed improvements