



Appeal Decision

Inquiry held on 5, 6, 7, 8 July 2011

Site visits made on 4, 8, 12 and 20 July 2011

by M Middleton BA(Econ) DipTP Dip Mgmt MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 September 2011

Appeal Ref: APP/P3040/A/11/2148617/NWF

**Former Wrights Garage and Nos. 24-30 Selby Lane, Keyworth,
Nottinghamshire, NG12 5AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Tesco Stores Limited against the decision of Rushcliffe Borough Council.
 - The application Ref 10/01333/OUT, dated 21 July 2010, was refused by notice dated 8 November 2010.
 - The development proposed is the erection of a new Tesco Store (Use Class A1).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form says that the proposal is in outline but with only appearance and landscaping reserved for subsequent approval. In accordance with the amendments to the Town and Country Planning (Applications) Regulations made in 2006 and brought about by the implementation of the Planning and Compulsory Purchase Act 2004, the proposal is accompanied by a Design and Access Statement, a site layout plan, a retail store plan, proposed elevations, proposed sections and a boundary treatment plan. The latter includes the principle of walls, to the Selby Lane frontage, as a part of the proposed boundary treatment. Together, these provide information about the building and boundary walls' scale, in terms of footprint and height. I have determined the appeal on the basis of this information.
3. Accompanying the Appellant's evidence to the appeal is a drawing comparing the appeal scheme elevations with those of an extant planning permission for residential development on most of the site. There is also a preliminary perspective view along Selby Lane. This illustrates an alternative way, to that submitted with the outline application, in which the store's elevation to Selby Lane could be designed. I have taken this additional information into account when reaching my decision.
4. Following the Council's decision to refuse the application, the Appellant submitted an amended site layout plan that increased on-site parking provision from 80 to 90 car parking spaces and demonstrated that an adequate travel plan could be secured. The Council agrees that these changes remove the second part of reason for refusal ii).

5. The Appellant submitted a signed Agreement under Section 106 of the Town and Country Planning Act 1990 to the Inquiry. In the Agreement, it and others, with a legal interest in the appeal site, agree to carry out improvements to the junction of Main Street with Selby Lane to the satisfaction of Nottinghamshire County Council, to pay an Integrated Transport Contribution to the Council and to implement and comply with a Travel Plan. I am satisfied that these measures, as set out in the Agreement, comply with the provisions of Circular 05/2005: *Planning Obligations* and meet the *Community Infrastructure Levy Regulations* (2010).

Application for costs

6. At the Inquiry an application for costs was made by Rushcliffe Borough Council against Tesco Stores Limited. This application is the subject of a separate Decision.

Main Issues

7. From all that I have heard, read and seen I consider the main issues to be:
- Whether the benefits of a convenience supermarket are sufficient to outweigh any harm to
- a) existing day-to-day shopping facilities;
 - b) highway and pedestrian safety on Selby Lane to the west of the site;
 - c) the character and appearance of this part of Selby Lane and including the Keyworth Conservation Area;
 - d) the living conditions at nearby dwellings.

Reasons

8. The appeal proposal would build a new retail store with a gross floorspace of about 1260 square metres and a net convenience floorspace of about 860 square metres. Accompanying the store would be a surface car park and delivery area, jointly accessed from Selby Lane. The Appellant anticipates that the proposal will be sufficiently large to enable its primary function to be the main food shopping destination of the Keyworth catchment area's residents. It is also envisaged that there would be an element of top-up shopping undertaken at the store as well.

Policy

9. It is agreed that the Regional Spatial Strategy for the East Midlands (2009) and the adopted Rushcliffe Borough Council Local Plan 1996 are of little relevance to this appeal. It is also agreed that no real weight can be given to the emerging Greater Nottingham Aligned Core Strategies, which has not yet reached the publication draft stage.
10. Two policies from the Rushcliffe Borough Council Non-Statutory Local Plan 2006 (RBCNSLP) are quoted in the Council's decision letter. Although this is not a part of the Development Plan, it was subject to full public consultation, including a Public Inquiry. Providing its policies have not been overtaken by revisions to government policy and the policy in question is relevant to the development control aspects of the proposal under consideration, then I can see no reason why weight should not be given to them.

11. Policy GP2, which considers design and amenity criteria, broadly reflects national guidance and should be given significant weight. Policy SHOP 1 refers to Large New Stores. It is a negative policy preventing the development of large retail outlets outside of West Bridgford Town Centre and it is arguable as to whether a supermarket, of the size proposed, should be considered as a large retail outlet in the context of this policy. The need criterion (a) has been superseded by the guidance in Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4), whilst criteria b) and c) refer to the Town Centre, which it is agreed would not be affected by the appeal proposal. Criterion d) concerns sustainable means of transport and is still relevant. Other than in the context of sustainable transport, I therefore afford this policy limited weight and consider it far more appropriate to consider this proposal in the context of the relevant policies in PPS4.
12. The Rushcliffe Borough Council Local Plan 1996 (LP) defines the centre at Main Street Keyworth as a Local Centre. That at Wolds Drive was not so defined. Neither is it defined in the Greater Nottingham Aligned Core Strategies. However, that document is far from being finalised. Since the adoption of the LP, a new supermarket operated by Budgens has been built on land on the western side of Wolds Drive, across from a parade of twelve units. The immediate area also contains a public house, a library, a community school, a leisure centre and a youth centre. In my opinion this is a Local Centre as defined in Annex B to PPS4 and should be treated as such when considering the retail aspects of this appeal. A parade of twelve shops is not small scale as advanced by the Appellant, who accepted in cross examination that the catchment of the centre's supermarket extends to most of Keyworth so that the centre is not purely of neighbourhood significance.
13. The Council argued that Policy EC13.1: *Determining Planning Applications Affecting Shops and Services in Local Centres and Villages* of PPS4 is relevant to this appeal. To suggest, as the Appellant does that this directly descends from paragraph 7 of PPS7, is stretching the point somewhat. PPS7 in this paragraph is simply referring to the adoption of a positive approach to the improvement of existing services and facilities in rural areas and the introduction of policies in Local Development Documents to support their retention. Policy EC13.1, which specifically refers to planning applications affecting facilities in local centres and villages, sets out four criteria that should be considered when assessing them and is clearly different. In any event, the part of PPS7 referred to by the Appellant has been withdrawn.
14. Criterion b. of Policy EC13.1 says that planning applications which fail to protect existing facilities that provide for people's day to day needs should be refused. Keyworth is a village that has day to day shopping facilities that could be affected by this proposal. However, preventing competition between retailers is not a purpose of PPS4 so that providing the affected customers are not seriously disadvantaged, the policy should not carry significant weight. In the context of Keyworth, it is agreed that consumers from all parts of the catchment area use all of the convenience stores in the village and could similarly use the appeal proposal without serious disadvantage. Consequently, this policy is of little relevance to the determination of this appeal.

Benefits of a convenience supermarket

15. A Household Shopping Survey, commissioned by the Appellant, suggests that a large proportion of the convenience retail expenditure generated within the

Keyworth catchment area is probably spent outside of the area, largely within the Greater Nottingham conurbation and particularly at two large superstores at West Bridgford and Gamston. A supermarket of a size similar to that proposed by the Appellant has the potential to claw back some of this leaking expenditure.

16. Such a change in shopping habits would undoubtedly reduce car mileage and would contribute to a reduction in the overall carbon footprint. It would also have a positive effect on local traffic levels and congestion, particularly on the primary routes between Keyworth and West Bridgford/Gamston, which include a trunk road. In this respect, the proposal is supported by Policy EC10.2 b. of PPS4. Together these attract significant weight in favour of the proposal. The proposal is also accessible by a choice of means of transport, including walking, cycling, and public transport which passes the site. It would not lead to unacceptable congestion and is supported by criterion d) of Policy SHOP 1 of RBCNSLP. However, as the appeal site is far from unique in these respects, they do not weigh significantly in its favour.
17. The Appellant has offered to design the development to meet the BREEAM 'very good' standard, which although less than the 'Excellent' standard advocated by the Council, would nevertheless reduce potential carbon dioxide emissions and provide some resilience to climate change as required by Policy EC10.2 a. of PPS4. Nevertheless, the achievement of "very good" would not be "outstanding" and does not weigh significantly in favour of the proposal.
18. Although there was vociferous opposition to the proposal from some Keyworth residents, there is clearly support for the supermarket from other parts of the community, particularly working families, whose busy time schedules would benefit from the ability to undertake a main food shop within the village and from a store with a wider range of goods than currently exists. Whilst this would assist social inclusion objectives as required by Policy EC10.2 d. of PPS4, Keyworth is far from being a deprived area or a settlement in need of physical regeneration. The site would benefit from development but there is a fall back housing scheme that could be implemented and which would contribute to identified local housing needs.
19. The Appellant estimates that a net increase of 49 jobs would be provided by the store within the catchment area. Whether its estimate of compensatory job losses is accurate or not would largely depend upon the survival of other stores following the opening of the Tesco. This is discussed below. A majority of the jobs would be part-time. Nevertheless, the proposal would have a positive impact on local employment and is supported by Policy EC10.2 e. of PPS4. It would also contribute to the Government's "Plan for Growth" in a modest way and in this respect as well as in the context of its sustainability credentials, the proposal is also supported by the draft National Planning Policy Framework (July 2011). However, as the latter is only in draft and subject to possible change, little weight can be afforded to it.

Harm to day to day shopping facilities

20. Policy EC17.1 of PPS 4 says that applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan should be refused planning permission, where the applicant has not demonstrated compliance with the requirements of the sequential approach or there is clear evidence that the proposal is likely to lead to

- significant adverse impacts. It is agreed that the location is edge of centre as defined in Annex B to PPS4 and that there are no sequentially preferable sites.
21. Less than 10% of the floorspace would be used for the sale of comparison goods and this could be assured by a condition. Its trade draw would be a small proportion of the estimated growth in comparison retail expenditure in the Keyworth area over the next five years. In such circumstances, I agree that the comparison element of the proposal would not be significant or harmful and have not considered it further.
 22. Policy EC14.5 of PPS4 requires planning applications for retail developments below 2,500 square metres, which are not in an existing centre and not in accordance with an up to date development plan, to be accompanied by an assessment of the impacts in Policy EC16.1 of PPS4. To assist this, the Appellant has prepared a retail impact assessment, initially based upon the results of its Household Shopping Survey. Following the late discovery of major errors in its assessment of catchment population and convenience retail expenditure changes during recent years, this is now the subject of profound changes, some of which are purely subjective.
 23. The Appellant's claim that its assessment began with empirical evidence derived from the household survey and was only modified in the context of other objective information that subsequently came to light, does not stand up to detailed scrutiny, for example, when one examines the assumed distribution of current convenience expenditure. As there is no information on the levels of expenditure households spend on different shopping trips, this analysis began with an assumption that it was split 80/20 in favour of main shopping trips but by the time of the analysis submitted to the Inquiry, in a rebuttal proof, this had changed to 60/40. The process of this change is far from transparent.
 24. When the actual turnovers of the Budgen and Coop stores became known and were found to be less than the model predicted, their assumed turnovers were corrected and the surplus turnover redistributed. The majority was given to Sainsburys, a free standing small store within Keyworth. According to the Household Shopping Survey, more than twice as many households do their main food shopping at Budgens than at Sainsburys (11.9% against 4.4%) and significantly more (38.25% against 25.5%) do their top up shopping there. Although having a smaller net convenience floorspace than Budgens (329sm against 357sm), the Appellant's Rebuttal Proof of Evidence estimates that Sainsburys had a significantly higher convenience turnover than Budgens in 2010 (3.9m compared to 2.6m).
 25. Whilst I accept that turnover per customer between the different retail groups is different and I note the Appellant's point that much of Sainsbury's focus is on top-up shopping at the beginning and end of the working day, the above differences do not correspond with my site observations and the other information to an extent that justifies Sainsbury's predicted annual turnover. According to the Household Shopping Survey, Sainsbury's has a materially lower proportion of both top-up and main-food shopping than Budgens and fewer customers but it supposedly has a much higher turnover.
 26. On each of my six site visits to the three main stores in Keyworth, undertaken on different days and at different times, there were noticeably more customers shopping at Budgens than at Sainsburys and more checkouts open. Even the Coop, which has a smaller floorspace than Sainsburys and had a predicted

turnover in 2010 that was less than half of that assumed to be spent at Sainsburys, usually had more customers in the store at the time of my visits and either the same or more checkouts open. Additionally, whilst the Keyworth Shopping Survey only provides information on expenditure on main food shopping trips, even this does not support the differentials in store expenditure within Keyworth assumed by the Appellant.

27. The overall evidence suggests that the assumed split between expenditure on main and top-up shopping is incorrect. In cross examination the Appellant's retail witness admitted that he could only recall two occasions previously when the 60/40 split had been used. The Council considers the split should be nearer to 80/20, which is the split used by the Appellant in its Planning and Retail Statement of July 2010.
28. There was disagreement between the parties on the level of expenditure deduction to be made to account for Special Forms of Trading. The Appellant has made a deduction of 1.3% but the Council considers a figure of 4.8% to be more appropriate. Although the Appellant's statistic is derived from a publication by Pitney Bowes, that company acknowledges in a preamble to its table that the statistics have some limitations. Whilst I accept the Appellant's point that many internet sales of convenience goods are taken from the shelves of stores and should be included in the expenditure per head figure, internet sales on main food shopping at Keyworth are high (6.7%) and special forms of trading include other non-store activity such as markets and milk rounds, both of which are a factor at Keyworth. In consequence I consider the Appellant underestimates the extent of Special Forms of Trading.
29. The parties also disagree about the expected turnover of the proposed store, which on the Appellant's part changed four times between July 2010 and the Inquiry. I consider the Council's higher figure (£10.26m), which is based on Tesco average store turnover, to be more robust. Whilst I note the Appellant's point that Tesco consider the store turnover would be in the region of £8.5m, this was not supported by written evidence and there is no indication that this was other than the minimum Tesco would expect from a new store of this size. Additionally, Appendix D to Planning for Town Centres, *Practice Guidance on Need, Impact and the Sequential Approach* (PTC) advises that "assumptions that new development will only achieve a potential retailers' respective company average should be treated with caution. Experience suggests that operators will seek to improve their turnover over time by the development of new, more efficient stores".
30. The Appellant has assumed that 70% of the turnover of the new store will be derived from expenditure currently spent outside of the catchment area, the Council considers that it could be 60% or even as low as 50%. Notwithstanding the ramifications of the discrepancies above, if the Appellant's assumption is wrong and a higher proportion is drawn from within the catchment area, then the Appellant's conclusions on impact at the local centres are likely to be compounded.
31. The Appellant bases its assumption on reported experience at a similar sized Tesco store in the District Centre at Syston. Tesco took this store over from Somerfield in 2010. It points out that a customer survey undertaken at the store suggests that about 60% of respondents used the store for main food shopping. It also indicates that about 30% of these formerly used other stores for their main food shopping and that nearly 70% of these were captured from

two superstores located to the south of Syston and on the edge of the Leicester conurbation.

32. However, whilst this information confirms that a supermarket of the size proposed could expect to be used principally as a main food shopping destination and could capture expenditure from larger superstores, it does not demonstrate that 70% of a Keyworth store's turnover could be derived from expenditure currently made outside of the catchment area. Syston is a much larger centre than Keyworth with Coop and Aldi supermarkets and its catchment population is substantially larger. Whilst the competing superstores are closer to much of the catchment area than at Keyworth, the time differential suggested by the Appellant could only be achieved in off peak periods, as the route from Syston to the superstores, which is subject to urban speed restrictions, is congested for much of the day. The study throws no light on the proportion of turnover from Syston that is still spent at the superstores, despite the existence of Tesco and is therefore of limited value to an appraisal of the Keyworth situation.
33. The Syston study also suggests that a sizeable proportion of its main food shop customers also shop at the superstores from time to time. Additionally, in confirming that a store of this size would have a significant flow of expenditure from top-up customers, it suggests that a significant proportion of the appeal store's turnover could be derived from the top-up expenditure spent at existing shops in Keyworth.
34. The Appellant has assumed that only 30% of the store's turnover would be diverted from stores within the Keyworth catchment area. Only 3.45% of this would be derived from Main Street Local Centre (mainly from the Coop), whilst 10% would be derived from Budgens (the analysis excludes the other two convenience retailers within the Wolds Drive Local Centre) and 16% from Sainsburys. The study suggests that although the Coop is currently trading below company average convenience turnover, Budgens and Sainsburys are trading noticeably above theirs.
35. The Appellant's health check on Main Street Local Centre suggests that it is healthy when measured against diversity, range of uses, vacancies, capacity for growth, retailer representation and accessibility. The evidence I saw on my site visit does not lead me to depart from the Appellant's conclusion that Keyworth Main Street Local Centre is a vital and viable centre.
36. There is no corresponding appraisal of Wolds Drive Local Centre. However, my site visit observations confirmed that this centre has a diverse range of uses and no vacancies. It has good retailer representation, with comparison shops as well as convenience ones. In addition to being accessible, it has good on and off-street car parking provision, which appeared to be well used at peak shopping times and healthy pedestrian flows. There are also a number of leisure and community uses which I discuss above. I therefore conclude that Wolds Drive Local Centre is a vital and viable centre.
37. The analysis suggests that Budgens, the Coop and Sainsburys would all be trading below company average turnover in 2015 if the Tesco Store were trading. My concerns expressed above cast serious doubt on the extent of this under-trading, as estimated by the Appellant. At face value, the Appellant's impact of 17% on shops in Main Street Local Centre would not, in my view, be sufficient to cause shop closures, neither would the impact of 35% at Wolds

Drive (applying the known existing company average and estimated future Budgen turnovers and impact to the centre as a whole).

38. However, as I have discussed above, the accuracy of the Appellant's model has significant weaknesses and the results are clearly open to question and doubt. The Council considers that both centres could be impacted upon to a significantly greater extent than the Appellant's analysis suggests. Additionally, PTC says at paragraph D30 that like affects like and that it is relevant to consider distance, based on the assumption that generally customers will seek to use the closest comparable facility.
39. Main Street Local Centre is significantly closer to the proposal than either Wolds Drive Local Centre or the Sainsburys store and yet it is expected to lose substantially less turnover. I note the Appellant's point that the Coop is in a potentially different market, but if a new Tesco store were to function like the one at Syston, a significant proportion of the store's turnover would be derived from top-up shopping, which is overwhelmingly the function of the Coop and other shops in Main Street Local Centre.
40. There is undoubtedly some customer loyalty to the Coop, because of the nature of the organisation and its fair trade policy. However, I am not persuaded that this accounts for the significant cushion against impact assumed by the Appellant. As it also points out, there is dissatisfaction among Keyworth residents about the way the Coop store is currently operated, suggesting that some of its customers are volatile. Additionally, the Household Shopping Survey suggests that Sainsburys has significantly more customer loyalty than either the Coop or Budgens.
41. On the basis of the Syston experience, the store would have a good range of dairy, meat, toilet, household and news products, all of which would be in direct competition with independent retailers in both local centres. The appeal proposal's better car parking arrangements would give it an advantage over Main Street, where car parking is in short supply. Whilst I agree that the store could facilitate linked trips with other shops at Main Street, the potential extent and value of this is diminished by the inadequate pedestrian link between the appeal site and Main Street, which I discuss below. In such circumstances, I doubt that the benefits a Tesco store brought to Beverley centre could be repeated at Keyworth.
42. Whilst the non-retail uses within the Main Street area undoubtedly act as an attraction, I am not persuaded by the Appellant's assertion that the Coop no longer performs an anchor role in the centre. Even if this role has diminished recently that does not mean that it no longer performs this role at all or that the store is incapable of successfully performing this function under a different management regime.
43. My findings above lead me to conclude that the Appellant's retail impact assessment is not a sound basis for assessing the proposal against the impacts on centres set out in Policy EC16.1 b. and d. On the basis of the information before me I must find that the proposal could lead to a significant adverse impact on in-centre trade/turnover and the vitality and viability of the Keyworth Main Street and Wolds Drive Local Centres and could therefore be in conflict with Policy EC17.1 b.

44. There is no existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. There are no allocated sites being developed in accordance with the development plan that the proposal would have an adverse impact on. The catchment areas of the Keyworth centres and the centre at Cotgrave appeared to me to be almost mutually exclusive. The nature of the highway links between Keyworth and Cotgrave and Keyworth and the West Bridgford/Gamston superstores suggest that the travel time differential in favour of Cotgrave would not be large. Consequently, even if this proposal went ahead, there would be few customers in the Keyworth catchment area to the south-west of the A 606 who would have otherwise visited the Cotgrave proposal should it be implemented. The store would be of an appropriate scale in relation to the size of Keyworth Main Street centre and its potential role in the hierarchy. No locally important impacts on centres which should be tested have been defined in strategic documents. The proposal is therefore in accordance with criteria a, c, e and f of Policy EC16.1 but these do not weigh significantly in its favour in the light of my conclusion in paragraph 43 above.

Highway and pedestrian safety on Selby Lane

45. The footways between the appeal site and Main Street have sections that are noticeably below the recommended minimum standards in Manual for Streets¹ (MfS). It suggests that the minimum unobstructed width for pedestrians should generally be 2 metres. The Appellant's assessment suggests that the minimum width is about 1 metre but with a stretch of about 40 metres where it is never greater than 1.5 metres. Consequently, pedestrians carrying shopping would have difficulty passing without one stepping into the road and pushchairs and disabled vehicles could not pass one another or pedestrians without one of them using the road. This stretch of road is also narrow.
46. Whilst I accept that the predicted traffic and pedestrian movements are not unusually high, the movements occurring after the appeal development would noticeably increase the risk of an accident occurring. Additionally, as MfS says, pedestrians can be intimidated by traffic and unfortunately not everyone is safety conscious all of the time. The Appellant made light of the point about the behaviour of teenagers but it is a fact that children are not always as diligent in substandard highway safety conditions as common sense would dictate.
47. This is a new development and one where highway safety should not unnecessarily be compromised. MfS suggests that a 5.5 metre carriageway can accommodate passing heavy goods vehicles and buses. It also suggests that a pedestrian could pass another with a pushchair within the confines of a footway with a width of 1.5 metres. Inclusive Mobility² points out that where a 2 metre footway cannot be provided, because of physical constraints, then 1.5 metres could be regarded as the minimum acceptable under most circumstances, giving space for a wheelchair user and a walker to pass one another. The width of the highway between the appeal site and Main Street is such that there is always room for a 1.5 metre pavement on the south side, which is the side most pedestrians on linked trips between the store and the Main Street Local Centre would use, and a 5.5 metre carriageway. Despite this

¹ Manual for Streets, Department of Transport 2007

² Inclusive Mobility, Best Practice on Access to Pedestrian and Transport Infrastructure, Department of Transport

there are no proposals before me to improve this footway to at least meet the recommended minimum standards.

48. In the absence of appropriate traffic management measures, the accessibility of this proposal for people walking is substandard and weighs significantly against the proposal. In this context there is clear evidence that the proposal is likely to lead to a significant adverse impact in terms of an impact set out in Policy EC10.2 b. to PPS4. It is therefore contrary to Policy EC17.1 b., which suggests that in such circumstances planning permission should be refused.

Character and appearance

49. The site, which has now been cleared, formerly had a commercial vehicle garage located on it, flanked by residential properties. To the east are dwellings of varying age and design that create a pleasant residential area, without having an overall character or appearance of any particular merit. To the west and opposite are older buildings of mixed uses, the residential composition of which decreases as one moves closer to the centre of the historic village. This area now forms a part of the extended Keyworth Conservation Area and is characterised by subtle changes in building heights and highway fronting gables that create a varied streetscape.
50. The appeal development, which is not residential, should clearly take this latter area as its design cue. Indeed, given its location at the entrance to the centre of the village and the westerly views down Selby Lane and across the car park, there is the opportunity to create a landmark building of high quality architecture.
51. To the south of the site is open countryside. However, the proposed building would not be visible from the public footpaths and bridleways that cross this area.
52. The Council considers that the plot size and building coverage is not congruous with that of other development within the area. Whilst that may be the case, planning permission exists for a complex of sheltered apartments on much of the site with a greater building coverage than the appeal proposal. The mass of that complex has been broken down into three blocks and the design of these has been articulated to give the appearance of individual terraces of dwellings. In principle I can see no reason why the mass of the appeal building could not be similarly broken down at the detailed design stage. The open impact of the car park could be mitigated by appropriate landscaping and screening
53. The Council is also concerned about the extensive lengths of boundary walls fronting Selby Lane. However, their positions could be staggered, their height varied and their appearance softened by planting so that their impact need not be adverse.
54. Despite the implications of this proposal, for the setting of the Keyworth Conservation Area, the application and appeal are unfortunately not accompanied by a detailed design. Appearance is a reserved matter. Notwithstanding that, the proposal is accompanied by a Design and Access Statement. Unfortunately its content does not suggest that the resultant development would be of a high quality design or particularly sympathetic to the character and appearance of the adjacent conservation area. The accompanying proposed elevations drawing shows a warehouse type building

of uniform height and with a shallow pitched roof and extensive areas of brick panels. In my opinion this would appear totally alien in the context of the character and appearance of the Conservation Area and the residential area to the east.

55. The Inquiry documents are accompanied by a perspective sketch that suggests that a different treatment with token gables could be provided for the elevation to Selby Lane. It is unclear what would happen on the car park elevation, which would be prominent in the views along Selby Lane. Although appearance is a reserved matter, scale and mass are not. The scale of the building is different to that of others in the area so that to be acceptable its bulk needs to be broken down. The drawings before me, including the artist's impression suggest that this building would be of a uniform height. This would not reflect the character and appearance of the neighbouring buildings within the Conservation Area.
56. PPS1 says at paragraph 34 that design which is inappropriate in its context or which fails to take the opportunities available for improving the character and quality of an area should not be accepted. On the basis of the information before me, I am not persuaded that the proposed scale and mass of the building would improve the character and quality of the area. I conclude that the proposed uniform height of the building would be harmful to the character and appearance of the area and the setting of the Keyworth Conservation Area. I also find that the proposal is contrary to criterion d) of RBCNSLP Policy GP2 and the advice in PPS1.

Living conditions

57. The proposed car park would abut Telm, a residential property fronting Selby Lane. The boundary is currently composed of low fences with some shrubs close to it in Telm's garden and a number of trees in the neighbouring garden that would be incorporated into the development site. At the present time the rear garden of Telm, which abuts the open countryside, is a quiet area. The Appellant's noise assessment suggests that with appropriate boundary fencing, the noise levels outside Telm would, even at their highest during peak usage of the store, be at acceptable limits and noticeably below the level beyond which significant community annoyance can occur. If appropriate acoustic fencing were to be provided, accompanied by the retention of the trees close to Telm's boundaries and supplementary planting, then I am satisfied that the appeal proposal would not be injurious to the living conditions at Telm, including the use of its rear garden. The necessary protections could be achieved through appropriate conditions.
58. The acoustic assessment, which the Council does not technically challenge, also suggests that despite the increase in traffic using Selby Lane and including the turning movements of delivery vehicles, the development would not give rise to perceptible changes in traffic noise along Selby Lane.
59. Reference was made, by the Council, to noise character and the use of reversing warning beepers on delivery vehicles. Certain types of noise can be more annoying than others on recipients and allowance should be made for this when assessing the overall acceptable noise level. However, the predicted noise levels along Selby Lane are expected to be somewhat below the maximum desirable noise levels within residential areas, as suggested by *Guidelines for Community Noise* (50dB $L_{Aeq, 16hours}$), published by the World

Health Organisation. The Appellant has also suggested that a condition restricting the rating level of the noise emitted from the site to 35 dBA at all times and measured at the nearest noise sensitive properties could be imposed. Given the difference between these noise levels, a more detailed consideration of annoying noise is not necessary, particularly as the likely chief culprits, reversing delivery vehicles, would be some distance from Selby Lane and for much of their operation screened by the store building.

60. Because of the proposed location of the vehicular access to the site, there would be annoyance to the occupants of Nos. 11 and 13 Selby Lane from headlights on cars exiting the site at dusk. I note the Appellant's point that they could draw their curtains but they may not wish to do this until all daylight has gone. During the winter months this annoyance would coincide with the peak usage of the store. The periodic bright lights would be annoying and have an impact on the living conditions of the occupiers of these dwellings. This weighs against the proposal and is contrary to criterion 2) of RBCNSLP Policy GP2.

Conclusion

61. The proposal clearly has benefits in terms of its contribution to carbon reduction, through reducing the distance residents of Keyworth would have to travel to undertake a main shop. It would also assist traffic congestion, function in an environmentally friendly way, create additional jobs in Keyworth and assist working families.
62. The proposal, through the retention of substandard pedestrian links with Main Street would increase highway safety dangers and on the evidence before me the design would not preserve the character and appearance of the local area or the setting of the Keyworth Conservation Area. Additionally because of the location chosen for the site access, there would be harm to the living conditions of the occupiers of 11 and 13 Selby Lane.
63. I have found that the Appellant's retail impact assessment is flawed and that its conclusions on impact and consequently the future viability of the two local centres within the area are unreliable. I am therefore unable to conclude in favour of the proposal in the context of the test in Policy EC17.1 b of PPS4.
64. On balance I find that the positive impacts of the proposal in terms of Policies EC10.2 and EC16.1 of PPS4 are outweighed by the negative impacts. The proposal is consequently contrary to Policy EC17.2 of PPS4. I conclude that the benefits of a convenience supermarket are not sufficient to outweigh the harm to highway and pedestrian safety on Selby Lane to the west of the site, the character and appearance of this part of Selby Lane and including the Keyworth Conservation Area, the living conditions at nearby dwellings and the possible harm to existing day-to-day shopping facilities within Keyworth. I therefore find for the reasons discussed above and having taken account of all of the other matters raised, including the views of local residents and other interested parties, that the appeal should be dismissed.

M Middleton

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Mitchell of Counsel	Appointed by the Solicitor to Rushcliffe Borough Council
He called	
Paul Ghattaora B.Eng, MIHE	Nottinghamshire County Council, Environment and Resource Department
Suzanne Dempsey, B.Arch, MA	Rushcliffe Borough Council
Matthew Marshall BA, MRTPI	Rushcliffe Borough Council
Peter Weatherhead BA, MRTPI, FRICS	DTZ

FOR THE APPELLANT:

Rupert Warren of Counsel	Appointed by Development Planning Partnership
He called	
Bob Robinson BA, MRTPI	Development Planning Partnership
John Hopkins MSc, CMILT	Transport Planning Associates
MIHT	
Kieran J Gayler BSc CEnv, AIMA, MIEEnvSc, MIOA	Sharps Redmore Partnership

INTERESTED PERSONS:

Nicholas Seller	Keyworth Parish Church and Keyworth Playing Fields Association
Michael Hewitt	Commented on traffic impact assessment
Cty Cllr John Cottee	Divisional Councillor who commented on highway concerns in the Keyworth area
Philip Walmsley	Wolds Drive shopkeeper
Cllr Sam Boote	Keyworth Methodist Church
Olga Allen	Selby Lane residents
Tony Gatter	Neighbour
Cllr Linda Abbey	Keyworth Parish Council
Colin Breffitt	Premiere Travel
Christian Allen-Clay	Trent-Barton Bus company
Cllr Debbie Boote	Ward Councillor who commented on the safety aspects of the proposal
Jayne Bostock	Commented on the need for accommodation for elderly persons
Richard Allen	Commented on the retail aspects of the proposal, design and amenity
Alan Morrison	Commented on the retail aspects of the proposal and pollution
Stephan Green	Commented on the environmental impacts of the proposal
Mary Butler	Parents of pupils attending South Wolds Secondary School
Catherine Cox	Keyworth residents supporting the proposal

ADDITIONAL DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Council's notices of the Appeal and Public Inquiry
- 2 Statement from Cllr Linda Abbey on behalf of Keyworth Parish Council
- 3 Statement from Mrs Olga Allen on behalf of local residents
- 4 Statement from Mr Richard Allen
- 5 Statement from Cllr Debbie Boote
- 6 Statement from Cllr Sam Boote on behalf of Keyworth Methodist Church
- 7 Statement from Mrs Jayne Bostock
- 8 Statement from Mrs Mary Butler on behalf of the parents of pupils attending South Wolds Secondary School
- 9 Statement from Cllr John Cottee
- 10 Statement from Mrs Catherine Cox on behalf of Keyworth residents supporting the proposal
- 11 Statement from Stephan Green
- 12 Statement from Michael Hewitt
- 13 Statement from Alan Morrison
- 14 Note from Petals and Pearls, Wolds Drive re the impact of the Syston Tesco Store
- 15 Retail Note submitted by the Appellant and agreed with the Council
- 16 DTZ Impact Sensitivity Test submitted by the Council
- 17 Using retail spending estimates, Pitney Bowes advice note on special forms of trading, submitted by the Appellant
- 18 Map of Syston catchment area and location of Tesco and Asda stores, submitted by the Appellant
- 19 Email of 4 July 2011 from Paul Ghattaora to John Hopkins about outstanding highway differences, submitted by the Council
- 20 Plan of proposed junction improvement, Main Street/Selby Lane, submitted by the Appellant
- 21 Plan of proposed car parking layout and notional boundary treatment adjacent to Telm, submitted by the Appellant
- 22 Plan of Selby Lane before demolition of buildings on the appeal site, submitted by Tony Gatter
- 23 Annotated plan of the proposed store and car park, submitted by Tony Gatter
- 24 Plan of public views of the appeal site from the south, submitted by Cllr Linda Abbey
- 25 Untitled extract from a design advice document, submitted by Stephan Green
- 26 Copy of Appeal decision ref: APP/P3040/A/08/2064239, Ivy Cottage, Main Street, Widmerpool, Nottinghamshire, submitted by Stephan Green
- 27 Copy of Appeal decision ref: APP/P3040/A/08/2069344, 42 Kirk Lane, Ruddington, Nottinghamshire, submitted by Stephan Green
- 28 Extract from Appeal ref: APP/P3040/A/08/2083092, land east and west of Melton Road, Edwalton, Nottinghamshire, submitted by the Council
- 29 Copy of Appeal decision ref: APP/T3535/A/10/2120005, Land south of Angel Link and west of Saxons Way, Halesworth, Suffolk, submitted by the Council
- 30 Proposed conditions discussed at the Inquiry, submitted by the Council
- 31 Additional proposed highway condition, submitted by Nottinghamshire County Council
- 32 Additional proposed servicing condition, submitted by Stephan Green
- 33 Revised conditions discussed and agreed at the Inquiry
- 34 Signed Section 106 Agreement, submitted by the Appellant

- 35 Letter of 2 August 2011 from the Council commenting on the publication of the consultation draft of a new National Planning Policy Framework
- 36 Letter of 15 August 2011 from the Appellant commenting on the publication of the consultation draft of a new National Planning Policy Framework
- 37 Email from the Appellant commenting on the Council's letter of 2 August 2011

PLANS

- A Dwg. No. 6537/P001 1/1250 Site Location Plan
- B Dwg. No. 6537/P101E, 1/500 Site Layout
- C Dwg. No. 6537/P102C, 1/200 Proposed Sections (illustrative)
- D Dwg. No. 6537/P103C, 1/200 Proposed Elevations (illustrative)
- E Dwg. No. 6537/P104, 1/500 ATM Details
- F Dwg. No. 6537/P105A, 1/50 and 1/1000 Boundary Treatment
- G Dwg. No. 6537/P106, 1/500 Boundary Wall Detailing (illustrative)
- H Dwg. No. 6537/P107D, 1/200 Retail Plan
- I Dwg. No. 6537/P108, 1/500 3D Indicative visual (illustrative)

PHOTOGRAPHS

- 1 Eight photographs of pedestrians and traffic on Selby Lane near the appeal site, submitted by Olga Allen
- 2 Photograph of traffic on Selby Lane outside Keyworth Methodist Church, submitted by Richard Allen
- 3 Three photographs of traffic on Selby Lane outside Keyworth Parish Church, submitted by Sam Boote