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## Appeal Decision

Inquiry held on 1-3 March and 8 April 2011

Site visit made on 7 April 2011

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

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

**Decision date: 23 May 2011**

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**Appeal Ref: APP/N1350/A/10/2138408**

**Victoria Road, Darlington, County Durham, DL1 5JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Sainsbury's Supermarkets Limited against the decision of Darlington Borough Council.
  - The application Ref 09/00775/FUL, dated 3 November 2009, was refused by notice dated 13 April 2010.
  - The development proposed is alterations and extensions to existing superstore, construction of a decked car park, erection of a petrol filling station, alterations, to access and egress arrangements and associated landscaping.
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### Decision

1. I allow the appeal, and grant planning permission for alterations and extensions to existing superstore, construction of a decked car park, erection of a petrol filling station, alterations, to access and egress arrangements and associated landscaping at Victoria Road, Darlington, County Durham, DL1 5JG in accordance with the terms of the application, Ref 09/00775/FUL, dated 3 November 2009, subject to the conditions set out in the attached Schedule.

### Preliminary matters

2. The appeal site is located to the south of Darlington town centre close to the junction of Victoria Road and Grange Road. The existing superstore on the site comprises a single-storey building with a mono-pitched flat roof with gable features. The store is currently served by a left-in/left out priority junction onto the A167 Victoria Road which forms part of the Darlington Inner Ring Road. Service vehicles share the same access point. The service yard is located towards the southeast of the site. Staff car parking spaces are located along the service road and in the service yard. There are a number of pedestrian access points to the site. The store car park to the west is partly within the West End Conservation Area.
3. The proposal involves an extension to the front and side elevation of the existing store, increasing the gross floorspace area by 5,033 sq m (excluding the petrol filling station kiosk) from its current 6,084 sq m. The existing net floorspace is currently 3,294 sq m and this would be increased by 2,323 sq m to 5,617 sq m. The proposed extension would include an improved internal layout and circulation within the store, a new glazed atrium with travellators, lifts and stairs; relocated colleague facilities and customer restaurant at first-floor level; improvements to the checkouts and a lobby area; reorganisation of the bulk store area and provision of a Groceries on Line facility to facilitate

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internet deliveries. There would be a new decked car park and alterations to the access and egress to improve circulation. The existing recycling facility would be relocated to improve accessibility to customers. There would be alterations to the landscaping and provision of a petrol filling station (PFS). Car parking would increase from 532 to 574 spaces.

4. The application was supported by various reports including a Design and Access Statement, a Planning and Retail Statement, a Ground Conditions Statement, a Phase 1 and 2 Geotechnical Report and a Contamination Investigation of the Proposed Petrol Filling Station Site. A Lighting Assessment, a Noise Impact Assessment, a Transport Assessment and an Aborigicultural Impact Assessment were also submitted. Two Statements of Common Ground (SCG) were agreed between the Appellant and the Council: the first relates to planning matters (SCG1), the second relates to retail matters (SCG2).
5. The planning history of the site is agreed and set out in SCG1. Suffice it to say that the store was originally granted outline planning permission in July 1993 for the erection of a superstore. An extension of 648 sq m (gross) and 464 sq m (net) sales area was approved in 2004 with a condition limiting the extended comparison goods sales area to 1,175 sq m (equivalent to 30% of the total net sales area as extended). This permission was not implemented and has now expired.
6. At present, about 657 sq m or 20% of the current net sales area is devoted to comparison goods. It is proposed to increase the comparison floorspace by 1,575 sq m to 2,232 sq m or 40% of the enlarged net sales area and the convenience element by 748 sq m (net). The Council does not raise any specific concerns with the scale of increase in convenience goods. The concern relates to the scale of increase in comparison goods as the store would have the largest area in absolute terms of any foodstore within the Borough for the sale of comparison goods and in particular, the area devoted to clothing<sup>1</sup> which would compete with town centre clothing retailers.
7. I note that the store benefits from an unrestricted Class A1 permission.<sup>2</sup> Sainsbury's could, therefore, lawfully trade the entirety of the store for the sale of food or non-food products, without the need to apply for an additional planning permission. There is evidence before me that Sainsbury's has internal approval for a refurbished scheme<sup>3</sup> that would materially increase the amount of comparison floorspace sold from the store to 1,429 sq m. This presents a fallback position which I shall return to later in this decision.
8. During the course of the application various amendments were made to the submitted plans. It is agreed that the final plans on which the decision should be based are listed at paragraph 4.6 of SCG1.
9. I am aware that the Council accepts the Transport Assessment (TA) findings which conclude that, with appropriate planning conditions, the proposed development would not have a significant impact on the adjacent highway network and that the operation of the junctions assessed within the TA, allowing for the proposed improvement works at the A167 Victoria Rd/Grange Road roundabout, would not be compromised.

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<sup>1</sup> SCG2 indicates that 842 sq m would be devoted to the sale of clothing

<sup>2</sup> Planning permission T/APP/L1310/A/94/243102/P6

<sup>3</sup> GW2 Appendix 2

10. I am also aware that the Council raises no highway objections to the proposal subject to conditions concerning: (i) the highways improvement works at the A167 Victoria Road/Grange Road roundabout and the site access and egress (ii) provision of a suitable car park management system (iii) provision of defined pedestrian and cycle routes within the site (iv) provision of the ramp access for cyclists at Polam Lane and provision of the required number of cycle stands; and (v) production of a Travel Plan. It follows that there are no transport issues between the main parties beyond that of accessibility to comparison goods shopping raised in the second reason for refusal.
11. Both main parties agree that the drawings submitted as part of the planning application process and listed at paragraph 4.6 of SCG1 are acceptable in terms of the design of the proposed extension and the decked car park and that there are no grounds for refusal based on design issues.
12. It is also agreed that:
  - the appeal site presents an 'edge of centre' location in terms of PPS4;
  - that the issue of impacts resulting from the development on the town centre relate to comparison goods only;
  - the Appellant has demonstrated compliance with the sequential approach pursuant to Policy EC15 of PPS4.

### **Main Issue**

13. I consider that the main issue in this appeal is whether the proposal would undermine the Council's retail strategy of sustaining and enhancing established centres, in the light of the development plan and PPS4.

### **Reasons**

#### ***The planning policy background***

14. For the purpose of this proposal, the development plan comprises the North East of England Plan, Regional Spatial Strategy to 2021 published in July 2008 (RSS) and the saved policies of the Borough of Darlington Plan adopted by the Council in 1997 (BDP).
15. It is agreed between the parties that the relevant RSS policies in respect of the issues in this case are Policy 2 - Sustainable Development; Policy 10 - Tees Valley City-Region and Policy 25 - Urban and Rural Centres<sup>4</sup>. I note that the RSS supports Darlington's role as a sub-regional centre, where it will be the focus for retail and other service provision.
16. The BDP objectives seek to ensure that the town centre continues to thrive and develop as an attractive and efficient market town and sub-regional shopping centre. It is also agreed that the most relevant BDP policies in respect of the issues in this case are Policy S1 - New Shopping Development and Policy S2 - Safeguarding the Town Centre<sup>5</sup>. The site is without notation on the Local Plan Proposals Map and there are no specific policies or proposals for it in the development plan.

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<sup>4</sup> SCG1 paragraph 5.3

<sup>5</sup> SCG1 paragraph 5.4

17. Policy S1 provides that shopping development outside the town centre "will only be permitted where it accords with Policies S2 and S9 to S23". Policy S2 provides that the LPA will "safeguard and enhance the vitality and viability of the town centre. Retail developments outside the town centre which when taken with other recent and proposed developments would undermine that vitality and viability will not be permitted".
18. I note that Policy EP11.5 of the BDP identifies the Commercial Street area as a "Central Area Development Site" where office development or other travel intensive uses for which a town centre location is appropriate... may be permitted", with the reasoned justification giving shopping as a possible use. The BDP was adopted in 1997 and therefore predates the latest national policy guidance in PPS4 in 2009.
19. The Supplementary Planning Guidance most relevant to the determination of this appeal includes the document "Adding to Quality, A Development Strategy for Darlington Town Centre" adopted by the Council in 2001<sup>6</sup>. This re-emphasises the importance of shopping to the town centre and the local economy, and highlights as problems/weaknesses the number of small premises and the partly related "limited representation of national multiple retailers, particular in fashion and 'lifestyle'... retailing". I have also taken into account the recently adopted Design of New Development Supplementary Planning Document<sup>7</sup>.
20. The existing development plan will be replaced in due course by the new Local Development Framework (LDF) for Darlington. The Core Strategy: Publication Draft (CSPD)<sup>8</sup> was published in August 2010. The purpose of the Core Strategy is to set out the long-term vision, policies objectives and strategies for Darlington for the period 2011-2026. Strategic Objective 5 seeks to safeguard the function of Darlington town centre and capitalise on its shopping, culture, leisure, tourism and employment opportunities.
21. In relation to retail, the CSPD identifies Darlington Borough as generally well provided with shopping facilities both in terms of quantity (relative to population) and quality (in terms of accessibility and the range of retailers and retail formats). It is clear that Darlington is a major sub-regional hub for almost a quarter of a million people, not just residents of the Borough but also for wide areas to the south and west Durham and north-west Yorkshire.
22. In economic terms the town centre is one of the Borough's key assets with the retailing of non food 'comparison' goods such as clothing being of particular importance. The CSPD also refers to the recent growth in out of centre retail developments, particularly on the eastern side of town at Darlington Retail Park and Morton Park and to the competition for shopping expenditure from retail warehouses, supermarkets and internet retailers.
23. The aim of emerging policies is to safeguard and enhance the vitality and viability of Darlington town centre. Policy CS7 provides that the town centre will be the locational focus for retail and other town centre uses. This includes support for the proposed mixed-use scheme at Commercial Street as a "first priority" but it is also acknowledged that there would still be retail capacity to accommodate a further 4,000 sq m gross of comparison goods retail space by

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<sup>6</sup> CDB/3

<sup>7</sup> CDB/4

<sup>8</sup> CDB/5

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2016 under Policy CS8. At the time of the Inquiry the Core Strategy was not adopted as part of the statutory development plan but it can be given considerable weight bearing in mind the stage it has reached in the process.

24. I have taken into account national planning policy advice including that contained in PPS1: Delivering Sustainable Development (2005), PPS4 Planning for Sustainable Economic Growth (2009) and the accompanying Practice Guidance, Planning for Town Centres (2009) and PPG13 Transport (2001, updated in 2011).
25. PPS4 is the pertinent national document against which to assess the proposed development. Policy EC10 is a blanket policy covering all applications for economic development. Policy EC10.1 encourages LPAs to adopt a positive and constructive approach towards planning applications for economic development. Policy EC10.2 provides 5 impact considerations against which the proposal must be assessed. However, there is no requirement for Appellant to demonstrate that there is a 'retail need' for the development. Nevertheless, while the needs test is removed, it remains an important consideration when applying the sequential approach<sup>9</sup> and is relevant to the impact test Policy EC16.1 (d). In this case, there is no issue between the parties as to the sequential approach. It is accepted by the Council, and specifically provided within SCG2,<sup>10</sup> that there are no sequentially preferable sites in the town centre that could reasonably be expected to accommodate the proposals. The Appellant has therefore complied with Policy EC15 of PPS4.
26. It is incumbent on the decision maker to be satisfied that there is compliance with Policies EC16 and EC17 of PPS4. The circumstances are essentially permissive. Policy EC16.1 sets out 6 impact considerations. Policy EC17.1 requires that planning permission should be refused where there is clear evidence that the proposal is likely to lead to significant adverse impact in terms of any one of the impacts set out in Policies EC10.2 and Policy EC16.1. Policy EC17/2 says that where no significant adverse impacts have been identified, planning applications should be determined by taking account of (a) the positive and negative impacts of the proposals and (b) the likely cumulative effect of recent permissions, developments under construction and completed developments.

### **Qualitative Need**

27. In the light of this planning policy background I shall deal first with the quality of the existing provision which is a material consideration in this case. The store was originally granted planning permission in 1993 and no substantial changes have occurred since it was opened by Safeway some 15 years ago. I appreciate that when Sainsbury's took over the store from Safeway it carried out a refurbishment but that did nothing to remedy fundamental deficiencies. In my view there are a number of deficiencies and operational constraints at the existing store as evidenced by Mr Warriner<sup>11</sup> and which I saw at my site visit.
28. There are deficiencies in the range of both convenience and comparison goods that can be sold, deficiencies in layout and in the egress from the car park and there is no petrol filling station. Moreover, there is significant public

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<sup>9</sup> PPS4 Practice Guide, paragraph 1.6 in the policy objectives section

<sup>10</sup> SCG 2 paragraph 2.1.

<sup>11</sup> GW1 Table 2 following paragraph 2.27

support for the improvements as is evident from the list of consultation responses.<sup>12</sup> The Council accepts that it is quite normal and expected now for a superstore to sell a full range of comparison goods. PPS4 recognises<sup>13</sup> that this is the case. Furthermore, the ratio of convenience to comparison goods that is proposed in this store would be about 60% convenience to 40% comparison, which is nowadays not unusual. That is clear from, for example, the Tesco Scunthorpe decision<sup>14</sup> and the Chesterfield decision<sup>15</sup> where the ratio of convenience to comparison goods was 58% to 42%<sup>16</sup>. Therefore the approach taken by Sainsbury's is not alien either to the guidance in PPS4 or to the perception of the role of superstores in planning appeal decisions.

29. The Council drew attention to how Sainsbury's describes its offer in various annual reports and publications<sup>17</sup>. However, I consider that Sainsbury's food offer is at the heart of what it does and it remains "core" to its operations and the non-food ranges and services are "complementary" albeit accelerating.
30. The Council also referred<sup>18</sup> to a statement in a Sainsbury's document that its superstores would be regarded as "a destination store" for clothing. That may well, in part be the case, but in today's circumstances, where it is accepted that comparison goods may form around 40% of the goods sold in a superstore, it would be surprising to me if some people did not regard such a store as a destination for comparison goods.
31. One of the objectives of the Government policy in relation to retailing is the promotion of enhanced consumer choice and quality of provision and competition between retailers, through the provision of innovative and efficient shopping. This objective is set out in PPS4<sup>19</sup> and expanded in the Practice Guidance<sup>20</sup>. The Council argues that these objectives apply only to town centre shopping. However, I note that it also applies to edge of centre retailing, provided that it does not adversely affect the vitality and viability of town centres. This is clear from paragraph 3.15 of the Practice Guidance<sup>21</sup> and the recent Ministerial Statement.<sup>22</sup>
32. It is clear to me that improvements to the store would bring added choice and quality of provision. They would also increase, and to the benefit of the shopping public, appropriate competition. Morrisons dominates the Darlington main food shopping market, with 55% of the trade. It trades from an out of centre store, and as the Appellant points out<sup>23</sup>, a district centre store which according to the DRS 2008,<sup>24</sup> produces few linked trips with that centre, despite its location. In my view it is entirely right that there should be competition with Morrisons as the dominant brand locally. Furthermore, as I saw on my site visit, it is important for this edge of centre store to be

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<sup>12</sup> SSL/GW/1 Appendix S5

<sup>13</sup> PPS4 Annex B as quoted by Mr Warriner at paragraph 2.24 of GW1

<sup>14</sup> GW1 Appendix 7, paragraph 20 of the decision

<sup>15</sup> GW1 Appendix 7

<sup>16</sup> GW1 Appendix 7, paragraph 6 of the decision

<sup>17</sup> Section 8 of Mr Boyle's proof and Appendices 26 & 28

<sup>18</sup> Mr Boyle's proof, paragraph 8.10, pages 32-33.

<sup>19</sup> CDA/2 paragraph 10

<sup>20</sup> Paragraphs 3.10 to 3.15, CDA/3

<sup>21</sup> The third bullet point in the Guidance recognises that there may be a case for edge of centre developments even when there is no quantitative need, but where a qualitative need exists in that store will bring additional choice and competition

<sup>22</sup> SSL/3 - Written Ministerial Statement - Right Honourable Greg Clark MP dated 23 March 2011- Planning for Growth - page 2

<sup>23</sup> GW1 paragraph 5.9, page 29

<sup>24</sup> CDB/6