



Appeal Decision

Inquiry opened on 24 July and also held on 9, 10, 11 and 12 October 2012
Accompanied site visit made on 12 October 2012

by M Middleton BA(ECON) DipTP Dip Mgmt MRTPI

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

Decision date: 13 November 2012

Appeal Ref: APP/A4710/A/12/2171556/NWF

Land at Hope Street, Halifax Road, Todmorden, West Yorkshire, OL14

- 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 Ltd, Property Alliance Group Ltd and MCR against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 10/01382/FUL, dated 1 November 2010, was refused by notice dated 2 September 2011.
 - The development proposed is the erection of a food store with ancillary car parking, associated servicing and landscaping.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was submitted on behalf of Sainsbury's Supermarkets Ltd as well as Property Alliance Group Ltd (PAG) and MCR (the Appellants). It comprised a supermarket with a gross external area of 3,529 square metres that would accommodate 1,619 square metres of net convenience goods retail sales area and 286 square metres of net comparison (non-food) goods retail sales area.
3. Following the submission of the appeal, at the end of February 2012, Sainsburys withdrew from the scheme and PAG entered into a contract with Asda Stores Ltd (Asda), who would now be the store operator. Asda have a different store trading format to Sainsburys and propose to trade from a smaller net convenience sales area of 1,335 square metres but a significantly larger net comparison sales area of 557 square metres. I have based my determination on these revised floorspace areas.
4. The Inquiry was opened on 24 July 2012 by Inspector T Cookson. Following their agreement to become the preferred developer at the Appeal site, Asda informed the Council, in June 2012, that they would no longer be pursuing the implementation of a scheme for a new supermarket, with car parking, at Burnley Road, Todmorden. As a result of this decision, the Burnley Road site, which is in a sequentially preferable location to the appeal site, became potentially available. It was therefore necessary to consider the appeal in the context of the Sequential Test.
5. As a result of this change and the proposed changes to net floorspaces discussed above, Inspector T Cookson considered it appropriate to adjourn the

Inquiry to enable the revised proposals to be advertised and the Council and third parties to prepare revised evidence that reflected the new situation. As he would be unavailable, at the time that the Inquiry was to be reconvened, I was subsequently appointed to conduct the Inquiry and to make the decision.

Main Issues

6. From all that I have read and seen I consider the main issues to be:
 - a. Whether the benefits of the proposal are sufficient to outweigh any harm to the vitality and viability of Todmorden Town Centre, its role as a market town and committed and planned public and private investment within the centre

and

 - b. Whether the proposal could be located on a sequentially more preferable site.

Reasons

Benefits

7. The appeal proposal would deliver a new supermarket that would improve choice, competition and the quality of the convenience retail offer of Todmorden, thereby clawing back some of the expenditure that is lost to other destinations. It would also attract more trade to Todmorden from the wider catchment area. Nevertheless, these benefits need to be considered in the context of the impact that the proposal could have on the vitality and viability of Todmorden Town Centre, which I discuss below.
8. Being located adjacent to one of the three main road entrances into Todmorden and with bus stops close to the site, it is in a relatively sustainable location. However, not all bus services that serve Todmorden pass the appeal site and in this context the Town Centre, which has a bus station, is a relatively more accessible and sustainable location.
9. The proposal would secure the development of a large, vacant, prominent site that for a number of years has been derelict, seriously detracting from the otherwise pleasant appearance of a major approach into the Town Centre. As long ago as 2006, an Inspector, when granting planning permission for a mixed use development at appeal, described the site as bleak and unattractive. I concur with this observation.
10. Policy GP2, of the *Replacement Calderdale Unitary Development Plan (UDP) 2006*, identifies brownfield sites that are well related to the road network, accessible by good quality public transport and close to other services/facilities, such as the appeal site, as the preferred location for development within the Borough. The proposal is to that extent clearly supported by this policy. However the footnote to the policy says that it should be read in conjunction with the sequential approach for shopping, which I discuss below.
11. Similarly UDP Policy E18 supports development proposals such as the appeal proposal that would lead to the reclamation and restoration of derelict and degraded land, provided that the overall objectives and other policies of the plan will be achieved.

12. However, I am not persuaded that with renewed marketing, it would not be possible to regenerate this site with a mixed use scheme that had little retail content, similar to that previously approved and at an early date. The recession and the bankruptcy of the developer appear to have been the main contributors to the failure to implement that scheme. Whilst I agree that the appeal development would have a positive effect on the appearance of the site, the above significantly reduces the weight that I should give to this consideration.
13. The site is defined as a Primary Employment Area under UDP Policy E1 which encourages the development of Use Classes B1, B2 and B8 on such sites. Nevertheless, the policy also says that proposals for other employment uses, which can include retail uses, will be determined having regard to the criteria in the policy and other applicable UDP Policies. It is agreed that the proposal satisfies the policy specific criteria as regards employment creating uses. The supporting text to UDP Policy E5 confirms that this policy does not apply to proposals for new retail development.
14. The proposal would be likely to create more than 150 new jobs and I accept that the full time equivalent is very likely to be around 100. A 2007 Development Brief for the site sets an employment target of 80, which the proposal would undoubtedly exceed. However, the proposal, in diverting trade away from existing retail outlets in Todmorden, would result in job reductions elsewhere so that the overall benefit would not be as great as first appearances suggest.
15. I agree that the proposal could meet the assessment criteria set out in the Halifax Road Gateway, Todmorden, Development Brief, prepared by the Council, including improved access to the canal. Along with improvements to the proposed townscape along the canal side and Stack Hills Road, this could be secured by appropriate conditions.

Impact

16. Seven retail consultancies have advised the Appellants, Council and third parties at various times during the progress of the planning application and appeal. Their assumptions and conclusions are somewhat disparate and taken together they are not an easy aid to the determination of the impact aspects of this appeal.
17. Such differences do not inspire confidence in any of the analyses, particularly as there are large differences between what Asda's and the Council's advisers were saying prior to the determination of the application and now.
18. The Council presented a revised comparison goods impact assessment to the reopened Inquiry. It concludes that there would be about a 13% impact on town centre non-food shops. Although high, I agree with the parties that in the circumstances of Todmorden Town Centre, this level of trade diversion would be unlikely to affect the centre's vitality and viability to an extent that justified refusing planning permission.
19. Estimated convenience goods impacts on Todmorden Town Centre vary between 6.6% advanced by Walsingham Planning at the Inquiry on behalf of the Appellants and supported by Asda and a likely impact "well in excess of 20%" advanced by Osborne Clarke Solicitors on the advice of Drivers Jonas Deloitte in August 2011, to accompany an objection to the Sainsbury's

proposal, also on behalf of Asda. The fact that Asda are now pursuing a retail development on the appeal site, whereas in 2011 they were pursuing a scheme at Burnley Road, on the edge of the Town Centre and opposing the appeal proposal, speaks volumes about the considerable discrepancy.

20. Prior to the Inquiry, the Council agreed to work to a set of turnover/market share figures, produced by the Appellants and extrapolated to 2015. At the Inquiry they agreed a table, prepared by the Appellants that compared their respective interpretations of these figures into likely impacts. Notwithstanding the agreed information, the Council expressed a number of reservations about the Appellants' expenditure figures.
21. I endorse its concerns about the catchment area used. With the possible exception of Zone 2 (Hebden Bridge), large parts of the outer zones are clearly parts of the catchment areas of higher order competing centres. Some of these have existing stores, including a number of Asdas that are larger than the appeal proposal would be, and sited in more accessible locations to some of their populations than the appeal site is. More than half of the expenditure generated within the catchment area, as defined by the Appellants, is from within the two zones to the west of the Pennines. Most of the population in zone 4, which has the largest population of all of the zones, live closer to the centre of Rochdale, which has a number of superstores (including an Asda), than to Todmorden. The effect of using the larger catchment area is to increase the amount of hypothetical expenditure growth, leakage and overtrading that can be claimed towards capacity in Todmorden and thereby lead to an under estimate of the impact on its retail outlets, including those in Todmorden Town Centre.
22. The Appellants based their analysis on a household shopping questionnaire, which asked where respondents did their main food and top-up shopping. Although asked for a second destination, 42% of respondents did not have a second choice of main food destination and 56% only had one top-up shopping destination. 27% claimed not to do top up shopping. Given the size of these percentages, the Appellants' decision to weight the survey by ignoring non-respondents is not robust. The consequence is that their market share analysis is likely to be skewed towards the second destination responses.
23. The Council now estimates a 21.5% impact on Todmorden Town Centre, the Appellants 6.6%. In interpreting the Appellants' turnover figures, the Council has assumed a higher trade diversion from outside of the study area than the Appellants. I doubt that these diversions are achievable because of the reasons discussed in paragraph 21. Because of Todmorden's location and the absence of a significant tourist industry, I also consider the agreed assumption that nearly 10% of the store's turnover would come from populations outside of the study area to be optimistic. If trade diversion or attraction from outside of the assumed catchment area is less, then even more trade would be diverted from shops within the catchment area, including Todmorden Town Centre, than the Council has assumed.
24. The other major differences between the parties relate to the impacts on Morrisons, which is an out of centre supermarket on Rochdale Road and a Lidl supermarket on Halifax Road. The latter is on the edge of Todmorden Town Centre and about 180 metres closer to the secondary shopping frontages than the appeal site. The Appellants forecast a 45% impact on Morrisons and a 41% impact on Lidl, the Council estimates 33% and 31% respectively.

25. On a pro rata basis, the parties agree that the proposal would have a 28.5% impact on the Town Centre, a 27.8% impact on Lidl and a 27.6% impact on Morrisons. Both parties' forecasted impacts are modified from these impacts by applying judgement to the like affects like and proximity principles.
26. In support of their greater impact on existing supermarkets, rather than Town Centre convenience outlets, the Appellants point out that there is already competition between Morrisons, Lidl and the town centre and that consequently a new competitor would be unlikely to significantly divert trade away from the Town Centre.
27. However, Lidl is a discount retailer with a limited number of product lines and a different retail offer to the appeal proposal. In consequence as its customer survey demonstrates, nearly 60% of them combine a visit to Lidl with visits to other shops in the town centre, where they presumably buy goods that are not available at Lidl. The appeal proposal, with its likely wide range of fresh produce and much larger comparison offer than Morrisons, let alone Lidl, would effectively be a one stop shopping destination. Despite the easy walk to the town centre, it is still 330 metres to the edge of the defined secondary shopping frontage and about 450 metres to the market. I am not persuaded that large numbers of shoppers would combine a visit to such a store with a visit to the town centre. Trade diverted from Lidl would be accompanied by a diversion from the complementary shops in the Town Centre. Consequently I do not accept the Appellants' analogy with Lidl.
28. Although the Appellants' survey of town centre shoppers suggests that about 60% of those surveyed have combined a visit to the town centre with a visit to Morrisons, there is no indication of frequency. Only one respondent actually did their main food shopping at Morrisons and the survey did not represent the Morrisons customers who did not visit the Town Centre.
29. My site observations suggested that very few people were making linked trips between Morrisons and the Town Centre, whereas at the same times numerous people were clearly walking from Lidl to the town centre. Although not a straight road, the walk along Rochdale Road from Morrisons to the Town Centre is no less commodious than the walk along Halifax Road from Lidl. The distance from the Morrisons store to the secondary shopping area is a little less than it would be from the appeal store. The walk from the pedestrian access to Rochdale Road from Morrisons' car park is noticeably less.
30. The evidence suggests to me that linked trips between Morrisons and the Town Centre are not significant and that it would be unrealistic to expect a larger store that is further from the town centre and offering a wider retail offer, to generate more linked trips than occur from Morrisons. Indeed I suspect that there would be noticeably fewer.
31. Overall it seems to me that whilst the impact on Morrisons could be closer to the Appellant's estimate than the Councils, because of its different trading format, the impact on Lidl would be the reverse. After taking account of my scepticism about the assumed trade diversion from stores outside of the study area and the level of potential expenditure from populations outside of the study area I consequently conclude that the impact of the proposal on the Town Centre is likely to be closer to the 20%+ now advanced by the Council and previously by Asda, rather than the 6.6% advanced by the Appellants and now supported by Asda.

32. It was agreed at the Inquiry that the retail evidence presented to the Council at the time it was considering the application was flawed. The average turnover per square foot figures used were considered to be too low, resulting in less available capacity and overtrading than was previously thought. Additionally and in accordance with the advice in Planning for Town Centres: *Practice guidance on need, impact and the sequential approach* (PG) the parties agreed that it was difficult to devise a meaningful benchmark turnover for Todmorden Town Centre as a whole and particularly its market, for which there was no accurate floorspace statistics. These changes cast doubt on the previous advice to the Council that because of significant overtrading, the Town Centre could withstand a 17% trade diversion and that despite such an impact, shops would still trade at a level substantially in excess of expectations.
33. At the present time Todmorden Town centre is a vital and viable Town Centre. However its vacancy rate at around 10% is similar to the national average and the amount of retail floorspace and the number of shops has been declining in recent years. On my site visit I also observed that although vacancy rates in the indoor market are about the same as elsewhere in the Town Centre, apart from when a flea market was held, the outdoor market had significantly higher levels of stall vacancies. If there was significant overtrading, one would not expect significant levels of market stall vacancies on a peak shopping day when the weather was fine. The parties agree that the market is trading better than the shops. Consequently, the above tends to support the findings of the Council's survey of Town Centre businesses and its conclusion that there is little evidence of retailers overtrading.
34. Paragraph 23 of the National Planning Policy Framework (Framework) advises Local Planning Authorities to ensure that markets remain attractive and competitive. Todmorden Market currently has a good food offer with a number of specialist traders. Although some offer specialist products, their turnover and viability are based on the sale of basic fresh food. The appeal store would be very likely to offer a similar range of fresh food. Given the critical mass of the proposal and the car parking advantages, it would be unusual if it did not divert significant amounts of fresh food expenditure from the Market and the other specialist food shops in the Town Centre. This would be harmful to the Market's and the Town Centre's vitality and viability and contrary to this aspect of the Framework.
35. Lidl, in objecting to the proposal, claim that the Appellants' retail analysis is flawed and that it over-estimates their turnover by a considerable margin. Specific turnover figures were quoted by their consultant at the Inquiry. I accept that if correct, the impact on Lidl could lead to its closure. However, no specific empirical evidence was submitted to the Inquiry to support the quoted figures so these claims can only attract limited weight.
36. The Appellants accepted that there is insufficient notional expenditure capacity, by a considerable margin, to support the appeal proposal. Whilst need is no longer a part of the assessment of retail proposals recommended in Government guidance, an understanding of capacity can nevertheless inform the consideration of impact.
37. At Asda company average turnover, the proposal would have an estimated turnover in 2015 of £19.17 million. In its Calderdale Retail Needs Assessment 2009, White Young Green estimated that there would only be about £7.00 million of surplus expenditure in 2015. The proposed floorspace is well in

excess of twice the originally identified shortfall in capacity. Whilst it is not disputed that the proposal would lead to Todmorden attracting a higher proportion of the five zone's expenditure than currently occurs, the likelihood is that there would be significant excess capacity if the appeal proposal were to trade. Consequently, there would be noticeable reductions in turnover across all convenience shops in Todmorden.

38. The Appellant rightly points out that in such circumstances the appeal proposal would be unlikely to trade at Asda company average turnover and suggested an initial level of 70% for convenience sales. Were this to happen then the impacts would be reduced. However, 70% of over 20% is still a significant impact on the Town Centre and there is no evidence of new supermarkets opening in such circumstances and continuing to trade at such a low level.
39. The fact that there is likely to be significant excess capacity suggests that both Morrisons and Lidl would be noticeably affected initially. They would react by cutting prices, a strategy that can be supported by retailers with shops around the country but not easily by independent traders such as are found in the Town Centre. In consequence they could be impacted upon further.
40. Consequently, I find that the proposal could lead to a significant adverse impact on in-centre trade/turnover and the vitality and viability of Todmorden Town Centre. The proposal would therefore be in conflict with Policies S2 B iii) and GS1 of the Replacement Calderdale Unitary Development Plan 2006 and paragraphs 26 and 27 of the Framework.

Committed and planned investment

41. There is a long standing regeneration proposal to redevelop the Branche Square area in the heart of Todmorden Town Centre, with a mixed use scheme that would include some retail floorspace. UDP Policy E 19 identifies it as a Regeneration Priority area, along with 4 other sites in the Upper Calder Valley and supports its redevelopment. Over a period of years, a Regeneration Board has acquired land and demolished property with the financial support of Yorkshire Forward and others.
42. A recent marketing exercise to find a development partner failed to attract sufficient tenders from potential partners. I have some sympathy with the claims that the uncertainty surrounding the future of Todmorden Town centre, in the context of this appeal, contributed to this result. A situation where there could be significant excess retail capacity in Todmorden and consequent lower turnovers and returns on investment is bound to have an adverse impact on such processes. The appeal proposal is therefore likely to thwart the delivery of a UDP Policy E 19 proposal.
43. Asda own a site at Burnley Road that is adjacent to the primary shopping area and has planning permission for a 1430 sq metre supermarket. The development of this site would provide an opportunity for linked trips with shops in the rest of the Town Centre and particularly the market, which is close by. Asda would clearly not wish to develop this site should planning permission be granted at Halifax Road. More fundamentally, given the capacity position, it is very unlikely that any other retailer would in these circumstances.
44. I therefore find that the proposal would have an adverse impact on committed and planned public and private investment within Todmorden Town centre and is contrary to that aspect of paragraph 26 of the Framework.

Sequential Test

45. The PG in section 6 advises that adopting a sequential approach to site selection means, wherever possible, seeking to focus new development within or failing that on well located sites on the edge of existing defined centres. Well connected edge of centre sites are likely to be the most readily accessible locations by alternative means of transport and will be centrally placed to serve the catchment, thereby reducing the need to travel. Being located opposite the town's bus station, the Burnley Road site is ideally located to fulfil this policy requirement.
46. The PG also advises that a second objective of policy is to accommodate main town centre uses in locations where customers are able to undertake linked trips, in order to provide for improved consumer choice and competition, thereby serving to reinforce the vitality and viability of centres.
47. I have discussed the potential for linked trips between the appeal site and the Town Centre in paragraphs 27-30 and found that they would be unlikely to be significant. The Burnley Road site, being adjacent to the primary shopping area and opposite Todmorden Bus Station is far better placed to secure linked trips with town centre shops.
48. At paragraph 24, the Framework says that applications for main town centre uses should be located on edge of centre sites when suitable town centre sites are not available. Only when a suitable edge of centre site is not available should out of centre sites be considered. It also advises that applicants should demonstrate flexibility on issues such as format and scale but that sites should be suitable, viable and available.
49. I was referred to the Supreme Court judgement in the case of *Tesco Stores v Dundee City Council*¹. This confirms that the meaning of suitable in the context of the Sequential Test is to be considered in the context of the development proposed and not some other development that could be substituted for it. However, the judgement does not remove the Framework requirement for applicants to demonstrate flexibility on format and scale. Fundamentally the Appellants' objective is to build a supermarket that is of a sufficient scale to compete with Morrisons and I have applied the Sequential Test in that context.
50. Burnley Road is an accessible site that is well connected to the Town Centre. It is agreed that it is sequentially preferable to the appeal site. It is also agreed that the appeal proposal, in its current form and including its car parking, could not be accommodated on this site.
51. The PG, when giving advice on the application of the Sequential Test, says in the context of large foodstores selling a wide range of goods, that such proposals will need to demonstrate flexibility in terms of scale and format of the development, car parking provision and the scope for disaggregation.
52. The Burnley Road site is now owned by Asda and has two planning permissions for retail development. With regard to one of these a number of planning conditions have already been discharged. The site is clearly available now.
53. The applications were made by Netto but following the agreement in principle for Asda to acquire the group. Netto presumably would not have made them

¹ *Tesco Stores v Dundee city Council (Respondents)* (Scotland), Supreme Court, 21 March 2012 UKSC 13.

unless, in the circumstances without the appeal proposal, they considered the proposed floorspaces and associated car parking would result in viable developments. Similarly Asda, whose average sales densities were higher than Netto's, would not have sought to discharge the conditions of the larger of the two consents, in August 2011, unless at that time it considered the development to be viable. There are a number of examples of trading Asda stores with a similar or lower floorspace than the larger Netto store. There is no evidence to suggest that without the appeal proposal, a retail store at Burnley Road would not be viable.

54. I agree that any new supermarket in Todmorden needs to be of a sufficient scale to compete with Morrisons. The Appellants contend that any store at Burnley Road would be unable to compete with Morrisons and that consequently the site is not suitable. However, in objecting to the Sainsbury proposal, Asda, pointed out that "the consented foodstore on the Netto site will strengthen the Town Centre's ability to perform a main food shopping destination role and allow it to compete for main food shoppers with the out of centre Morrison's store". I have no reason to doubt that at that time and subsequently, when they discharged the planning conditions, Asda considered Burnley Road to be a suitable site.
55. The appeal proposal has a gross floorspace about 60% larger than Morrisons and a net convenience floorspace that is about 20% larger. The Appellants, including Asda now maintain that such a critical mass and a similar sized car park is necessary to effectively compete with Morrisons.
56. There is no evidence to justify the need for an offer significantly larger than Morrisons in order to compete effectively. A store at Burnley Road would have the critical mass of the rest of the Town Centre to add to its attraction. Consequently, it could be argued that the offer does not need to be as large; as Asda's evidence in its letter of 27 May 2011, when objecting to the Sainsbury proposal at the appeal site, suggests.
57. The Appellants claim that if the appeal store were to be superimposed onto the Burnley Road site, the land available for car parking would be insufficient. The appeal proposal would provide about 160 spaces compared to a similar number at Morrisons and about 70 at Burnley Road if the larger Netto proposal were to be implemented and about 60 if the appeal store were to be built there. However, in my view both Burnley Road schemes do not maximise site utilisation and there would be scope for additional parking on the site were either to be implemented.
58. Furthermore, there are other car parks close to this site, which some customers of its store would undoubtedly use when making multi-purpose trips to the Town Centre. There are also opportunities to increase the levels of car parking in the north western part of the Town Centre and close to the Burnley Road site, which the Appellants do not appear to have explored.
59. The PG suggests a need for format flexibility. The proposed comparison floorspace is more than twice that at Morrisons. There is no justification as to why this would be necessary, in the context of the large comparison offer in the adjacent Town Centre, in order to compete effectively with Morrisons. Although I understand the Appellants' reluctance, there is no compelling evidence justifying why, if such a comparison offer is required, it could not be

provided on a mezzanine floor or in a separate unit in close proximity, such as in a redeveloped Branche Square.

60. I conclude that a store of sufficient scale to effectively compete with Morrisons, in the context of an edge of Town Centre location, could be built at Burnley Road. In consequence I find that if the store operator was flexible about the scale, format and design of the development and the provision of car parking, there would be a reasonable prospect of the proposed development being accommodated on an edge of centre site. As Burnley Road is a sequentially preferable site to the appeal site, the proposal is contrary to criterion B ii. of UDP Policy S2. It is also contrary to paragraph 24 of the Framework.

Other considerations

61. The Appellants referred me to two Unilateral Undertakings pursuant to Section 106 of the Town and Country Planning Act 1990. One relates to the appeal site and the other to the site at Burnley Road. In the former they agree to make financial contributions to the Council, prior to the commencement of development, to assist in the implementation of environmental improvements to the Canal Tow Path between the site and the Town Centre and the Halifax Road elevations of properties on the other side of that road from the appeal site.
62. I have considered the need for these contributions as outlined in the Planning Agreement. Accompanying guidance in Part 11 of The Community Infrastructure Levy Regulations 2010 requires all such contributions to be
- a) necessary to make the development acceptable in planning terms,
 - b) directly related to the development and
 - c) fairly and reasonably related in scale and kind to the development.

The tests in Circular 05/2005: *Planning Obligations* also require obligations to be relevant to planning and reasonable.

63. Notwithstanding my comments above on the extent of linked trips, the appeal development, which would abut the canal tow path, would be likely to encourage its greater use in connection with linked trips to the Town Centre and the Lidl store, if only because it traverses a quieter and more attractive environment than the pavements along Halifax Road. It is currently an unmade track, parts of which are muddy in inclement weather. Increased use would cause the condition of the tow path to deteriorate further if improvements are not implemented.
64. The parade of shops on the other side of Halifax Road is environmentally poor and does not make a positive contribution to this entrance into Todmorden. It is located directly opposite the vehicular entrance to the appeal site, the ambience of which would be significantly enhanced if the physical condition of the properties was improved. This would have clear benefits for the attractiveness of the appeal site.
65. I therefore conclude that the contributions to infrastructure discussed in paragraphs 63 and 64 are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

66. However, in view of my assessment of linked trips and the absence of head on views of the shops, without the appeal development, I only attach limited weight to these considerations in favour of the appeal proposal.
67. There is no evidence to suggest that the vast majority of workers at the store would not be already living in Todmorden. As such they would be using public open space within the town to varying degrees and contributing to its maintenance and improvement through their Council Taxes. In such circumstances the Council's request that the development should make a financial contribution towards the improvement of public open space and sports provision in Todmorden is not necessary to make the development acceptable in planning terms and does not meet the tests.
68. The other Unilateral Undertaking commits Asda to not implementing the Burnley Road Scheme once planning permission has been granted for the appeal scheme. Whilst the agreement meets the tests, given the capacity position once the appeal scheme was trading, it would be unlikely that another developer would want to develop the Burnley Road site with a similar proposal. If they did, then given its location, it would conform in principle to UDP Policy and the Council would have difficulty refusing planning permission. I therefore attach minimal weight to this agreement.
69. I am satisfied that were the appeal to be allowed, alternative development opportunities for the Burnley Road site would be implemented in a reasonable period of time. I do not consider the abandonment of the site by Asda in favour of the Halifax Road site to weigh against the appeal proposal.

Conclusion

70. I conclude that the proposal would have a significant adverse impact on the vitality and viability of Todmorden Town Centre, its role as a market town and committed and planned public and private investment within the centre. The benefits of the scheme discussed above do not in my view outweigh this harm. I also conclude that the proposal could be located on a sequentially more preferable site. Paragraph 27 of the Framework says that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, then it should be refused. 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:

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He called
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Calderdale Metropolitan Borough Council, Northgate House, Halifax, HX1 1UN.

INTERESTED PERSONS:

Jonathan Wallace
on behalf of Lidl UK
Anne James
on behalf of Todmorden
Town Council
David Storer
On behalf of Todmorden
Town Centre Renaissance
Board
Cllr Frank McManas
Ivor Dibble
Dr Lindsay Smales
John Rebecchi

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Objection letter to Todmorden News, 27 August 2012, from Jeffrey Thomson of 9 Bristol Street, Burnley.
- 2 Extract from Todmorden News article of 30 May 2012 concerning the withdrawal of Sainsburys, supplied by the Appellants.
- 3 Table comparing the Appellants' and Councils' trade diversions and impact differences, submitted by the Appellants.
- 4 E-shock 2020, How the Digital Technology Revolution is Changing Business and All Our Lives, by Michael de Kare-Silver, submitted by the Appellants.
- 5 Sizes and opening dates of recent Asda supermarkets with a floorspace of less than 30,000 sq ft gross, submitted by Lidl.
- 6 Sizes of and numbers of car parking spaces at Asda supermarkets within 50 miles of the appeal site, submitted by the Appellants.
- 7 Copy of Emails between Martin Tonks and Clare Tierney of Costar about representation requirements in Todmorden, submitted by the Council.
- 8 Copy of Emails between John Hudson of Asda Stores Ltd and John Clarke of Property Alliance Group concerning the proposed purchase of a part of the Burnley Road site by Property Alliance Group, submitted by the Appellants.
- 9 Unemployment in Calderdale in July 2012, submitted by the Council.
- 10 Planning Inspectorate Good Practice Advice Note 09, Accepting amendments to schemes at appeal, submitted by the Council.
- 11 Supreme court Judgement, Tesco Stores Ltd v Dundee City Council, 21 March 2012, (UKSC 13), submitted by the Appellants.
- 12 Suggested Planning Conditions, submitted by the Council.
- 13 Revised Suggested Planning Conditions, submitted by the Council.
- 14 Control of Goods Planning Condition, preferred by the Appellants.
- 15 Developer contributions towards meeting open space, sport and recreation facilities SPD, submitted by the Council.
- 16 Planning Obligation by Unilateral Undertaking relating to the Burnley Road site, submitted by the Appellants.
- 17 Deed of Unilateral Undertaking relating to the appeal site, submitted by the Appellants.

PLANS

- A LP50 rev B – Revised Site Location Plan.
- B P51 rev G – Proposed Site Plan.
- C P52 rev D – Store Plan.
- D P53 rev E – First Floor Plan and Roof Plan.
- E P54 rev C – Proposed Sections.
- F P55 rev F – Proposed Elevations.
- G P56 rev B – Proposed Site Sections.
- H P57 rev C – Proposed Site Sections.
- I P58 rev B – Typical Boundary Treatments.
- J P59 rev B – Biomass Flue Plan.
- K E01 rev F – Elevations.
- L E02 rev F – Elevations.
- M 810-01 – Tree Survey.
- N 810-02 – Tree Retention and Removal Plan.
- O 810-03 rev C – Outline Landscape Proposals.
- P 810-04 – Tree Pit.
- Q S1028 EX1 rev 3 – External Lighting Layout.
- R N01825/07 rev A – Access Arrangement and Visibility Splay.
- S N01825/08 – Pedestrian Improvements.