



# Appeal Decision

Inquiry held on 25 - 27 May 2010

Site visit made on 27 May 2010

by **Phillip J G Ware BSc DipTP MRTPI**

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

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

☎ 0117 372 6372  
email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Decision date:**  
**17 August 2010**

## Appeal Ref: **APP/A1015/A/10/2120496**

### **Sainsbury's store, Rother Way, Brimington, Chesterfield S41 0UB**

- 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 against the decision of Chesterfield Borough Council.
- The application Ref 2/1456, dated 21 May 2008, was refused by notice dated 14 July 2009.
- The development proposed is the extension of the existing supermarket to provide additional retail floorspace and the improvement of the internal layout and circulation of the store.

### **Procedural matter**

1. Revised plans were submitted with a letter dated 12 April 2010. These dealt with minor changes to the proposal. I am content that acceptance of these revisions would not prejudice the interests of any party, and the Council did not raise any objection to them being considered. I have therefore dealt with the appeal on the basis of these plans.

### **Decision**

2. I allow the appeal, and grant planning permission for the extension of the existing supermarket to provide additional retail floorspace and the improvement of the internal layout and circulation of the store at Sainsbury's store, Rother Way, Brimington, Chesterfield S41 0UB in accordance with the terms of the application, Ref 2/1456, dated 21 May 2008, subject to the conditions set out in the Schedule to this decision.

### **Main issue**

3. There is one main issue in this case. That is whether the comparison goods element of the proposal would jeopardise the delivery of the Northern Gateway site and the Chesterfield Waterside development, and its effect on the vitality and viability of Chesterfield town centre, in the light of national and local policies.

### **Reasons**

#### ***The site and the proposal***

4. The appeal site is an existing superstore (6,675 sq.m. gross), in an out-of-centre location around one and a half miles to the north of the town centre. It is accessed from a roundabout on the A619 and is well screened by local topography and boundary vegetation. It is to the east of a much larger Tesco

superstore (12,700 sq.m. gross), which is part of a substantial development including a football stadium and business/employment uses.

5. The existing Sainsburys store includes a surface level car park and a segregated service yard. The site also includes a petrol filling station. It was developed following the grant of planning permission in 1988, and the parties agreed that it has not been substantially altered since it was built.
6. As a result of the proposed extension the net sales area within the extended store would be 2,631 sq.m. for convenience goods and 1,899 sq.m. for comparison goods<sup>1</sup>. The development would provide a larger bulk stock area, online goods facilities, an improved checkout area, an improved restaurant and toilets, and the extension of and improvements to the shop floor.

### ***Policy context***

7. When the application was determined by the Council, and at the time of the Inquiry, the East Midlands Regional Plan (2009) was part of the development plan. However the Secretary of State has since revoked Regional Strategies (6 July 2010) including the East Midlands Regional Plan. The parties were asked for their comment on this revocation. Both parties have stated that the revocation does not affect the issues in this case, in that the policy principles from the former Regional Plan are also reflected in government guidance and the Local Plan.
8. The reason for refusal referred to policy SHC6(b) of the Chesterfield Borough Local Plan (2006). This provides that, in relation to retail proposals in out-of-centre locations, permission will not be granted unless evidence has been submitted to demonstrate that certain criteria can be satisfied. The reason for refusal specifically referred to a criterion which requires that the proposal should meet the sequential test (as was set out in national policy as it existed at that time).
9. National policy is now contained in Planning Policy Statement 4 "*Planning for Sustainable Economic Growth*" (PPS4). Developments such as the appeal scheme, for a town centre proposal which would not be located in an existing centre, require a sequential assessment and an impact assessment<sup>2</sup>. There is no longer a requirement for a needs test, but the nature of any need may be relevant to the sequential test.
10. The policy in PPS4<sup>3</sup> is that developments such as the appeal scheme should be refused where compliance with the requirements of the sequential approach has not been demonstrated<sup>4</sup> or if there is clear evidence that the proposal is likely to lead to significant adverse impacts<sup>5</sup>, taking account of cumulative effects. Where no significant adverse impacts have been identified, a balancing exercise is to be undertaken of the positive and negative impacts and the likely cumulative effect of recent permissions, developments under construction and completed developments.

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<sup>1</sup> Agreed figures from appellant's letter to the Council dated 19 April 2010

<sup>2</sup> Policy EC14

<sup>3</sup> Policy EC17

<sup>4</sup> Policy EC15

<sup>5</sup> Policies EC10 and 16.1

11. Both parties followed the approach of PPS4. Along with Local Plan policy SCH6, this forms the policy context for considering the appeal.

***The assessment of need***

*Qualitative need*

12. I have considered the qualitative need argument in the light of the "*Practice Guidance on need, impact and the sequential approach*" ("The Guidance"). This makes it clear that qualitative need is a comparatively subjective concept, which comprises a number of factors. In this case consumer choice, competition and the quality of the existing provision are relevant. The latter can include the age, condition and layout of existing facilities, and whether they meet operator requirements or consumer expectations.
13. In terms of consumer choice and competition, it was agreed that superstore trading in Chesterfield is dominated by Tesco to the north of the centre and Morrisons to the south. I visited both of these during the Inquiry, and in particular I noted the range of goods available at the Tesco store.
14. The Sainsburys store, largely unimproved since it was built, does not seem likely to be able to offer serious competition for many of the product areas covered by the nearby Tesco store. The significantly greater size of Tesco, the better shopping environment, and the wider range of goods sold means that the unimproved Sainsburys does not offer significant consumer choice.
15. The appellant drew my attention to the quality of the existing provision at the Sainsbury store. During my site visit, I noted a number of deficiencies, most particularly the comparatively cramped shopping environment, the limited space and aspect of the restaurant, and the restricted rear of house circulation and storage space. In addition, the store does not currently offer online facilities, which are part of the appeal scheme. I consider these are an important element of a modern superstore.
16. The Council suggested that the proposal stemmed from the commercial objectives of the occupier, rather than arising from particular deficiencies of the existing store. That may well, in part, be the case, but I do not see why the commercial objectives of a trader should be seen as separate from increasing choice, competition and quality – indeed it would be strange if these objectives did not overlap.
17. The Council accepted that the existing store is trading well below the company average (as shown by the 2008 Retail Capacity Assessment). However the authority noted that no evidence was put forward to demonstrate that this is due to layout and size deficiencies. It was suggested by the authority that locational factors could be responsible – but equally nothing was put forward to substantiate this.
18. I appreciate that the evidence suggests that the underperformance of the store has been continuing for at least 10 years, but I do not consider that this leads to inevitably the conclusion that the current scheme fails to address a qualitative need. It may well be that part of the appellant's motivation is to respond to the new Tesco and to increase the turnover of the store, but if that has the result of increasing consumer choice, this would accord with policy.

19. The authority also asserted that it was the proposed increase in comparison shopping floorspace which was behind the proposal, rather than improvements to the store. Nothing was put forward to support that position, which does not sit easily with my view of the deficiencies of the existing provision. In any event, the Council agreed that it is entirely normal for a superstore to provide comparison shopping. Annex B to PPS4 makes it clear that a range of food and non-food goods is envisaged within a superstore.
20. The authority also agreed that there was nothing unusual about the proposed split between convenience and comparison shopping which would result from the appeal scheme. I note that the proportion of comparison floorspace would be lower than that approved by the Council at the Tesco store. In coming to my view on the proposed proportion of comparison floorspace, I have considered the appeal decision<sup>6</sup> submitted by the Council, where the comparison floorspace was proposed to be increased from 20% to 30% and where the appeal was dismissed. However this decision was taken in the context of different national policy and it appears that nearby stores did not have a significant percentage of comparison floorspace – unlike the current situation.
21. Although the Council accepted at the Inquiry that consumer choice and the promotion of competition were material considerations, the written evidence of the authority did not deal with this issue. This omission makes it difficult to see how the authority arrived at a balanced judgement on the proposal. Overall, I consider the proposal would deliver qualitative benefits and would deliver improvement in a number of areas where the existing store has clear deficiencies. The proposal would increase consumer choice and competition and improve the quality of the existing provision.

*Quantitative need*

22. There are significant differences between the conclusions of the main parties as to the existence or extent of quantitative need for the comparison goods element of the appeal scheme. The appellant's position is that analysis reveals substantial quantitative capacity for the proposed extension and all other retail commitments, including the Northern Gateway site, whereas the Council's position is that sufficient capacity does not exist and that other commitments would be jeopardised.
23. I consider that this difference between the parties could be ascribed to three main factors: the different study areas used for the analysis, differences in the calculation of market shares, and different assumptions related to the existing capacity of the town centre. I will deal with these in turn.
24. The study area used by the parties differs in extent. That adopted by the appellant is a bespoke area which derives from the analysis of the primary catchment area of the extended store, whereas the Council has used the Chesterfield and North East Derbyshire area. The main differences relate to the inclusion/exclusion of a band of postcodes to the north, and an area in the south around Claycross and Tibshelf. This difference in areas has obviously led

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<sup>6</sup> APP/U4610/A/08/2088654

- to different populations and expenditure capacity to be used in the subsequent analysis.
25. However, no retail area can be precisely and scientifically defined and, allowing for the assumptions made by the parties, I consider there is little to choose between the areas and methodologies adopted. The same data source (Experian) was used, and where the study areas overlap, the results are broadly consistent in terms of base date population and future projections. The Council agreed that the use of a different study area should not necessarily produce a different result about capacity, providing the necessary adjustments are made about market share. Both retail experts also considered the study area used by the other, and my conclusion is that the disparity between the two study areas makes little difference to the overall picture.
26. In terms of the calculation of market shares, the appellant undertook a benchmark analysis, comparing total expenditure capacity in the area with the benchmark turnover of all retail facilities in the area. The Council applied a market share approach, using the results of the Household Survey (2008)<sup>7</sup>.
27. The key difference between the parties focuses on the way in which the information in the Household Survey can be best used. The Council's assessment of market share was based on the Household Survey Question 7, which asked where the household last bought clothes and shoes. However this simply indicates where they last went, and does not give any direct indication of where the household spends most of its money. This is addressed more directly by Question 5, which deals with where most non-food shopping was bought. This seems a more useful start point for the analysis and the appellant reworked the Council's figures based on this position. I consider the appellant's approach to be more robust, and I note that the appellant's reworking of the Council's figures shows considerably more capacity than is needed.
28. I also note that the Council's approach does not allow for any increase in market share brought about by new retail development, which I consider to be an unexpected omission. The appellant allowed for such an increase in market share, reflecting improved market penetration as a result of new floorspace. Although the Council criticised the appellant's methodology, it did not provide any alternative estimates.
29. In terms of the existing capacity of Chesterfield town centre, there are two main areas of dispute between the parties. The first is the choice of the appropriate gross to net ratio. The gross floorspace in the centre is agreed, however the appropriate conversion to net floorspace, which I regard as largely a matter of judgement, is not. The Council used a figure of 70% whilst the appellant suggested a figure of 65%, and both parties referred me to Experian data (2005) in support of their approach. The Experian figures for in-town ratios are between 73% (Modern floorspace) and 58% (Old floorspace) – however 'modern' and 'old' are not defined. From my inspection of the town centre, I agree that Chesterfield is not a modern centre, and I consider the

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<sup>7</sup> Nathaniel Litchfield & Partners. Chesterfield Borough Council and North East Derbyshire District Council. Retail Capacity Study 2008.

appellant's median approach to be entirely reasonable. The Council, whilst not agreeing with the appellant's position, confirmed that it was reasonable.

30. The second area of dispute related to the existing capacity of the town centre related to benchmark turnover. The appellant's figure of £5,500 per sq.m. is, in my experience, a reasonable figure, whereas the Council's assumption of £6,000 per sq.m. could only be achieved in the best performing centres. Whilst Chesterfield town centre appears to be performing well, I am not persuaded by the evidence that it could reasonably be expected to achieve the higher benchmark turnover.
31. In conclusion on quantitative need, I am more convinced by the appellant's approach in a number of areas of disagreement. Based on the evidence, including the appellant's reworking of some of the Council's data using different assumptions, I consider there is a significant surplus of expenditure capacity to accommodate the appeal proposal, and other current or foreseeable future commitments, including the Northern Gateway site.

### ***The sequential test***

32. Given that the appeal site is agreed to be in an out-of-centre location and the site is not allocated for retail expansion in the Local Plan, PPS4 requires<sup>8</sup> that a sequential assessment be undertaken. Only if town centre or edge of centre sites are not available will this type of out-of-centre location be likely to be appropriate in policy terms.
33. The Council's reason for refusal refers to lack of sufficient evidence as to why the proposal cannot be disaggregated to a sequentially preferable site. There are obviously two potential ways in which the proposal could be located on any sequentially preferable site – if the proposed comparison floorspace were located elsewhere, leaving the existing store as it is, or if the entire extended store were located elsewhere. I will deal with each option in turn.

### ***Disaggregation of the comparison floorspace***

34. It is not the purpose of national policy to necessarily require development to be split onto separate sites. If the need for the development is to do with the quality or choice of facilities then it may be justifiable to permit an extension to a store. There is a clear distinction between need which arises because of a gap or deficiency in the range, quality or choice of existing facilities, and where the commercial objective of a specific developer is the prime motivation.
35. In this case, the Council argued that the proposed additional floorspace and associated changes are not critical to the store's primary role as a food destination. The authority stated that consideration should be given to whether part of the floorspace could be disaggregated and provided in a sequentially preferable location, not necessarily by the appellant.
36. Some sites which might be capable of accommodating the comparison floorspace were discussed, in particular the expansion of some existing stores. However there was evidence of constraints which could hinder development, and I am not persuaded that these sites are available or suitable.

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<sup>8</sup> Policies EC14 and EC15

37. In any case it is well established, and accepted by the Council, that it is entirely normal for a superstore to provide comparison shopping. The evidence is persuasive that the proposed comparison floorspace would not generally act as a destination in its own right but would be an adjunct to the main convenience floorspace. A mix of food and non-food goods in the same premises is part of the appellant's long established trading model in Chesterfield and elsewhere, and the proportion of comparison goods floorspace would be unexceptional.
38. For the reasons I have already discussed, although there are doubtless commercial objectives behind the proposal, the development is clearly based on issues to do with quality and choice. The proposal would address the problems of the existing store and this would not be achieved by disaggregating the comparison floorspace elsewhere.
39. Although there might theoretically be sequentially preferable sites capable of accommodating some or all of the proposed additional floorspace, in circumstances where there is a real need for the enhancement of an existing store, it would be unreasonable and pointless to insist that the proposed provision should be disaggregated. The Council agreed at the Inquiry that, if the existing Sainsburys store is in need of improvement, it would be wrong in principle to require any further space to be disaggregated.
40. Were the proposed floorspace to be disaggregated and located elsewhere, the existing superstore, with a number of manifest deficiencies, would remain. This would not benefit the shopping provision in the area. What would theoretically be provided would be a non-food store on another site. However Sainsburys do not operate non-food only stores, so there would be little chance in reality of the development going ahead.
41. For the above reasons, I consider that disaggregating the proposed comparison floorspace to another site would amount to an arbitrary sub division of the development. It would not accord with the policy related to the sequential approach.

*Locating the entire (extended) store on another site*

42. I will now turn to the possibility that the entire extended store could be located elsewhere on a sequentially preferable site. Before looking at the alternative sites I note that, were this to happen, the existing superstore with its inbuilt qualitative deficiencies would remain, and I fail to see how this would assist the quality of shopping provision in the area.
43. The approach to considering alternative locations was that a list of possible sites was put forward and agreed with the Council by way of the Planning & Retail Report (2008) which accompanied the application. This was subsequently updated.
44. At the Inquiry, it was clear that the Council's case was that two sequentially preferable sites had the potential to accommodate the entire extended store. These were the Northern Gateway site and the Post Office Depot and multi-storey car park in Markham Road (the 'Post Office site'), and I will deal with these in turn.

45. The Northern Gateway scheme is the Council's key priority in the Town Centre Masterplan (2009). The scheme would comprise a mix of uses, shown in the Masterplan to be anchored by either a single large foodstore or a single large department store. Given the location of the site directly adjacent to the existing town centre, it is clearly sequentially preferable to the appeal site, and the Northern Gateway would effectively become part of the town centre. There is no dispute as to its sequential status or the fact that it could accommodate the entire extended Sainsbury's store.
46. However, although the Northern Gateway scheme has apparently been under consideration for many years, I am not persuaded that it can be currently considered as being available in the light of the advice in the Guidance. Based on the evidence, I am not confident that there are no insurmountable ownership problems.
47. The Northern Gateway site is in a number of ownerships – apparently three main parties and others. Although the authority stated that this is a relatively simple land assembly exercise, no details of progress were given. I am not persuaded that the owners of the land are willing to bring forward the site for development within a reasonable timescale. It was also confirmed that, should compulsory purchase powers be necessary (which is far from unusual in a development of this nature) no resolution to promote a CPO has been made.
48. This is perhaps unsurprising, as the planning process still has some way to go. There is no development partner and consultation on a planning brief has yet to be undertaken. I do not regard the outcome of this consultation as a forgone conclusion, as I was told at the Inquiry that there is some local opposition to the scheme. No planning permission has been sought or granted.
49. In addition, I have some doubt as to the suitability of the site. It was explained that highway issues have been a problem in the past and that this has delayed the development. Although the Council stated that these have been resolved, it is possible that they may recur in the context of considering detailed layouts.
50. Overall I consider the Northern Gateway site is not available to accommodate the extended retail development.
51. The appellant accepted that the Post Office site has the physical capacity to accommodate a relocated and extended store. This was on the basis that the development would have to be multi-storey and that the site area is constrained by roads and is only just large enough.
52. The site is owned by the Royal Mail and the Town Centre Masterplan states that the Royal Mail could be willing to work with the Council. It does not say that they are willing to do so, and it was pointed out at the Inquiry that their existing operation would need to be relocated. The Council's verbal evidence at the Inquiry, unsupported by documentation, is that discussions have been under way with Royal Mail for a couple of years. Under these circumstances, I am surprised that this was not reflected in more positive wording in the Masterplan. In addition to my doubts over the landowner's willingness/ability to participate, the Masterplan also refers to the cost of demolishing the obsolete car park and no viability evidence has been put forward to suggest how this might be overcome.



53. In any event, the Masterplan notes that the priority of this site is Medium, and its short term viability is stated to be Low to Medium. Although this site is clearly sequentially preferable to the appeal site, it was made clear by the Council that it would only be favoured for retail development if the Northern Gateway site had either been developed or had been abandoned. It was not regarded as sequentially preferable to the Northern Gateway, so it is clearly second division in sequential terms.
54. For all these reasons, I am not persuaded that the Post Office site is available to accommodate the extended retail development.

*Conclusion on the sequential test*

55. Overall, I consider that consider the disaggregation of the comparison element of the scheme to another site could not be justified. Even leaving aside my concern as to the wisdom of leaving the existing superstore unimproved, I consider there are no sequentially preferable sites available or available within a reasonable timescale for the total extended superstore. I consider that compliance with the requirements of the sequential approach has been demonstrated.

***Impact assessment***

56. The reason for refusal specifically refers to the effect of the comparison goods element of the proposal, and states that this would jeopardise delivery of the Northern Gateway site and Chesterfield Waterside. These are acknowledged to be the main opportunities for major development in the Borough to 2016. In the appeal evidence the Council also expressed objection on the basis of the effect on Chesterfield town centre.
57. The appeal proposal is for a town centre use but it would not be located in a centre, nor is on a site identified in the Local Plan. Under these circumstances PPS4<sup>9</sup> provides that planning permission should be refused where there is clear evidence that the proposal is likely to have a significant adverse impact in the terms set out in PPS4 policy EC16. The relevant impact to be considered is on any allocated sites outside the town centre being developed in accordance with the development plan (both Northern Gateway and Chesterfield Waterside are identified in the Local Plan). The policy also deals with impact on public and private investment and the impact of the proposal on town centre vitality and viability.

*The impact on the Northern Gateway scheme*

58. As discussed above, the Northern Gateway scheme has some way to go before development begins, and it is accordingly difficult to assess the impact of the appeal scheme at this stage. However the Council's position focussed on two matters – the loss of a potential anchor tenant (i.e. Sainsburys themselves) if the appeal scheme went ahead, and the effect on the viability of the Northern Gateway development as a whole.
59. On the first matter, there is conflicting evidence from the Council as to the type of anchor tenant necessary at Northern Gateway. The Town Centre

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<sup>9</sup> Policy EC17

Masterplan, which is a recent Council document, suggests that the anchor could be either a food retailer or a department store. However, it was stated by the Council at the Inquiry that the reference to a department store was "aspirational", that only a foodstore would make the scheme viable and that this had been demonstrated by a viability assessment. However, despite a request to do so, this assessment was not produced. No evidence was presented to support the assertion that only a retail development could fund the scheme.

60. In any event, even if that were the case, there is nothing to suggest that Sainsburys have ever been seriously interested in the Northern Gateway site. On the contrary, a recent letter from Sainsburys<sup>10</sup> categorically states that they have no interest in the scheme. I therefore do not consider there is any merit in the argument that, if the appeal scheme went ahead, there would be a loss of a potential anchor tenant at the Northern Gateway.
61. The second limb of the Council's argument is that, if the proposed store extension went ahead, this would reduce the likely turnover of any store on the Northern Gateway site, would depress the land value and undermine the overall viability of the development. However no evidence was produced to support this assertion.
62. I can entirely understand the importance of the Northern Gateway site, and the Council's wish to see the development proceed. However the material presented of the impact of the appeal scheme falls far short of being clear evidence that the proposal is likely to have a significant adverse impact. In coming to that conclusion, I note that there has not been any objection to the appeal from any of the landowners of the Northern Gateway site, nor from any other party who may be interested in the development. Although not determinative, this does add weight to my conclusion that there would be little, if any, impact.

#### *The impact on Chesterfield Waterside*

63. Chesterfield Waterside is a major, mixed use regeneration scheme proposed on a 25 hectare site next to the A61, close to the town centre and the railway station. An outline planning application, indicating the scale of the development, has been submitted to the Council but had not been determined at the time of the Inquiry.
64. The indication is that there would be a very wide range of uses, including some small shops (2,200 sq.m. in the total). The Council accepted at the Inquiry that the retail element was a comparatively small part of the entire project, which is due to be implemented over a 10 – 15 year period.
65. The Council's position is that the appeal scheme would reduce demand for retail floorspace in Chesterfield Waterside. However no evidence to support this assertion was produced, and I note the absence of any objection from those developing or marketing Chesterfield Waterside.

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<sup>10</sup> 17/5/10 to Kensington & Edinburgh Estates

66. Chesterfield Waterside is a wholly different type and scale of development to the appeal scheme, to be implemented over a long period. The Council's concern does not amount to clear evidence that the proposal is likely to have a significant adverse impact on this development.

*The impact on Chesterfield town centre*

67. The background to this matter is that the town centre appears to be trading well, as illustrated by the appellant's uncontested health check analysis. The issue of the impact on the town centre was not raised in the officers' report or in the reason for refusal, but the Council's position at the Inquiry was that the level of cumulative trade diversion and impact would be likely to reduce demand for retail floorspace in the town centre.
68. The appellant's evidence is that the turnover impact of the proposed extension on the town centre would be modest – 0.2%, rising to 0.4% as a result of sensitivity testing. If these figures are accepted, this is clearly a very modest impact, which would not constitute a significant harmful effect.
69. The Council approached impact testing on a different basis, and included the impact of the new Tesco development as part of the cumulative impact assessment. This is an unusual approach, as the store opened in 2009 and its impact will already have happened. In addition, the Council's approach considered the potential impact of the Northern Gateway development on the town centre itself. But everything which I have seen suggests that the whole point of the Northern Gateway development is that it would become an integral part of the town centre, so dealing with it as having an impact on the town centre is somewhat artificial.
70. Even leaving those concerns aside, the Council estimates that the Tesco development, other commitments and the reoccupation of vacant premises is likely to reduce the comparison turnover in the town centre by 4.1% between 2010 and 2013. If the appeal scheme is included, this impact would increase to 5.2%. It was specifically stated in the Council's evidence that this level of additional impact would not be significant but that the cumulative impact on the Council's strategy should be considered. In my view, this does not equate to clear evidence that the proposal is likely to have a significant adverse impact on the town centre.
71. One objective of impact assessment is to gauge the consequence of a proposal on the vitality and viability of existing centres. In this case, the town centre is trading healthily, and the impact of the comparatively modest appeal scheme (taken alone or cumulatively) would not be likely to have a significant adverse impact on the centre.

**Conditions**

72. I have considered the conditions discussed at the Inquiry in the light of the advice in Circular 11/95 "*The use of conditions in planning permission*" and PPS4.
73. Some details of the development, namely landscaping and materials, need to be submitted for approval, in the interests of the appearance of the

development. However I see no reason to adopt the Council's suggestion that the condition should prevent the materials being ordered before the details are submitted for approval. Leaving aside enforceability issues, although this would be a potentially unwise course of action, there is no planning reason to prohibit it by a condition.

74. Nor is there any reason to allow the submission of landscaping details up to two months after the commencement of the development, as was suggested. Landscaping should be an integral part of the scheme, and should be submitted, as usual, at an earlier stage.
75. For the reasons set out in this decision, the amount of comparison goods floorspace should be limited. However I am not persuaded that further restriction within the comparison goods category, as was discussed at the Inquiry, is necessary.
76. For environmental and sustainability reasons respectively, a surface water interceptor should be provided for the car park, and the extension should achieve a BREEAM very good rating.
77. For the avoidance of doubt, I will restrict the development to the approved plans.

#### **Other matters and conclusion**

78. I have noted the appellant's statement regarding the grant of permission for the new Tesco store, and the suggestion that the Council acted inconsistently in the current case. However that was for a very different development, including other uses, on a contaminated site and this argument does not add to my consideration of the appeal.
79. I have also noted the appellant's comments regarding the employment which would be created by the appeal scheme. Whilst this is to be welcomed, it adds very little to my overall considerations.
80. Overall I consider that there is demonstrable qualitative and quantitative need for the proposal, that there are no sequentially preferable sites which are available and suitable, and which are capable of accommodating the entire expanded store. I do not consider disaggregation of the comparison and convenience elements to be appropriate or reasonable. There is no clear evidence that the proposal is likely to lead to significant adverse impacts on the Northern Gateway development, Chesterfield Waterside, or the town centre. The proposal does not therefore conflict with Local Plan policy SHC6(b), or national policy in PPS4.
81. For the reasons given above I conclude that the appeal should be allowed.

*P. J. G. Ware*

Inspector

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2007-194/PL01; PL02G; PL03; PL04H; PL05A; PL06D; PL07; PL08; PL09B; PL10B; PL12A.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces (including walling and roofing materials) of the extension hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development, planting plans, schedules and written specifications.
- 5) All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard landscaping, which shall include finished land levels or contours, means of enclosure, and minor artefacts and structures. Development shall be carried out in accordance with the approved details prior to the occupation of the extension.
- 7) Prior to being discharged into any watercourse, surface water or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity compatible with the site area being drained. Roof water shall not pass through the interceptor.
- 8) Upon completion of the development and prior to its first occupation, evidence that the extension has achieved a BREEAM very good rating shall be submitted to the local planning authority. The development shall not be occupied unless the minimum very good BREEAM rating has been achieved, unless otherwise agreed in writing by the local planning authority.
- 9) No more than 1,899 sq.m. net sales area of the extended store shall be devoted to comparison goods (including pet foods, health and beauty items and baby products).

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Fraser-Urquhart of Counsel	Instructed by the Acting Head of Legal Services
He called	
Mr M Hayden	Head of Regeneration, Chesterfield Borough
BSc DipTP MRTPI	Council
Mr P Wilks	Director, Nathaniel Litchfield and Partners
BSc DipTP MRTPI	
Mr P Staniforth	Group Leader Development Management,
(Conditions session)	Chesterfield Borough Council

### FOR THE APPELLANT:

Mr T Corner QC	Instructed by Messrs Addleshaw Goddard LLP
He called	
Mr T W Waring	Director, Indigo Planning Ltd
BA MRTPI	

## DOCUMENTS

- 1 Lists of persons present at the Inquiry
- 2 Council's letter of notification and list of persons notified
- 3 Letter (17/5/10) from Sainsbury's to Kensington & Edinburgh Estates re.Northern Gateway site (with associated documents)
- 4 National Experian data dealing with net to gross ratios
- 5 Store Travel Plan (3/10)
- 6 Closing submission on behalf of the Council
- 7 Closing submission on behalf of the appellant

## PLANS

- A The appeal plans (as listed in condition 2)