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Our Ref: APP/Z4718/V/11/2155777
Your Ref: T715.01179

7 February 2012

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY TESCO STORES LTD
AT LAND AT SOUTHGATE, HUDDERSFIELD, HD1 1TW
APPLICATION REF: 2009/93675**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, R P E Mellor, BSc DipTRP DipDesBEnv DMS MRICS MRTPI, who held a public local inquiry on 1-4 and 8 November 2011 into your client's application for a replacement retail (Class A1) store with petrol filling station, car parking, landscaping and associated works in accordance with application reference 2009/93675 dated 3 February 2010.
2. On 27 June 2011, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the application be referred to him instead of being dealt with by the relevant planning authority, Kirklees Council (the Council).

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The Secretary of State notes that at the Inquiry the Applicant proposed further modest changes to the proposed elevations to increase the amount of glazing to the Southgate elevation and to realign the tree-planting there (IR41). He also notes that these changes are agreed by the Council, and he shares the Inspector's view that these changes would not prejudice any other person (IR41).

5. At the Inquiry applications for costs were submitted by your client and by the Council against Asda Stores Ltd. These applications are the subject of separate decision letters.

Matters arising after the close of the inquiry

6. The Secretary of State is in receipt of your letter of 19 December 2011 to the Planning Inspectorate enclosing a certified copy of the completed and signed S106 obligation agreement dated 15 December 2011. He is satisfied that the provisions of this version of the agreement are identical to the final unsigned version (DOC4 of the list in Annex C of the Inspector's report) which was before the Inquiry and taken into consideration by the Inspector in reaching his conclusions. The Secretary of State therefore considers that it is not necessary to circulate to parties the signed version of the agreement before proceeding to his final decision.
7. Since the close of the Inquiry the Secretary of State is also in receipt of a representation from Manjinder Uppal dated 19 December 2011. The Secretary of State is satisfied that this does not raise matters which would require him to refer back to parties prior to proceeding to his final decision. Copies of this representation may be obtained by written request to the address at the foot of the first page of this letter.

Policy considerations

8. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the Yorkshire and the Humber Regional Strategy (the RS) and the saved policies of the 1999 Kirklees Unitary Development Plan (the UDP). The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR13 to 21. Like the Inspector (IR22) the Secretary of State considers that the Kirklees Core Strategy, which is at an early consultation stage, merits little weight.
10. Other material considerations which the Secretary of State has taken into account include the national policy and guidance identified at IR26-29, Circular 11/95: *The Use of Conditions in Planning Permission*, Circular 05/05: *Planning Obligations* and the Community Infrastructure Levy (CIL) Regulations 2010 and 2011. He has also taken into account the Shopping Policy S4: Large New Stores Supplementary Planning Guidance (SPG) and the Huddersfield Town Centre Replacement Parking Strategy (IR456). For the reasons given by the Inspector (IR25) the Secretary of State attaches limited weight to the Stadium Axis Guidelines 2006.
11. The draft National Planning Policy Framework which was published for consultation on 25 July 2011 is a material consideration. However, as this is a

consultation document and is subject to change, the Secretary of State has given it little weight.

12. The Secretary of State considers that the revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the Yorkshire and the Humber Regional Strategy is formally revoked by order, he has attributed limited weight to the proposed revocation in determining this appeal.
13. The Secretary of State notes that the development of the application site could affect the settings of listed buildings on the opposite side of Southgate (IR11). In deciding the application he has had special regard to the desirability of preserving these listed structures or their settings or any features of special architectural or historic interest which they may possess in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
14. In deciding the application, given that the application site adjoins the Town Centre Conservation Area (IR12) the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

15. The Secretary of State considers that the main considerations in this case are those identified at IR361.

The extent to which the proposed development is in accordance with the development plan

16. For the reasons given by the Inspector, the Secretary of State considers that the proposal accords with RS Policies YH4 and YH7 (IR365). He further agrees with the Inspector's conclusions in respect of UDP Policies S4, S4 (ii), NE9 and H4, and also that, excepting these policies, the proposal is generally compliant with the development plan (IR367). The Secretary of State also agrees with the Inspector (IR368) that, as a more up-to-date policy, PPS4 merits greater weight where it is inconsistent with UDP policies such as the S4(ii) provision for a quantitative needs test.

PPS 4: Planning for Sustainable Economic Growth

Definition of primary shopping area

17. Having had regard to the Inspector's comments at IR369-371 the Secretary of State, like the Inspector (IR372), regards the defined Main Shopping Area boundary in the SPG as being the primary shopping area (PSA) for the purposes of PPS4 and UDP assessments.

Whether the site is edge-of-centre or out-of-centre

18. The Secretary of State notes that the application site lies outside the PSA (IR373). He has carefully considered the Inspector's reasoning at IR373-377,

and shares his conclusion (IR378) that the application site qualifies as edge-of-centre in the terms of the Annex B definition in PPS4 and is suitably well-connected and within easy walking distance of the PSA.

Sequential assessment and flexibility

19. Having carefully considered the Inspector's comments regarding the sequential assessment at IR379-409, the Secretary of State agrees with his overall conclusion on the issue at IR429, that the applicant has only partially satisfied the sequential assessment required by PPS4 Policy EC15 and UDP Policy S4 in that, whereas there is no sequentially preferable site for this scale and format of development, flexibility has not been demonstrated in respect of alternative scales and formats of development for which there may be sequentially preferable sites within the PSA.

Impact assessment

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact assessment at IR410-423 and IR429. He shares the Inspector's view that Huddersfield Town Centre is in generally good health, notwithstanding the vacancy rate (IR423) and that, after discounting the effect of the closure of the existing Castlegate Tesco, the residual impact in the PSA would be a loss of only 1.9% of town centre trade to the new store (convenience and comparison combined) (IR417). However, he notes that impacts of more than 1.9% are anticipated for other named large foodstore operators within the town centre and more especially for those outside the town centre, but that these are likely to be resilient to the competition as they are said to be overtrading at present (IR423).
21. The Secretary of State agrees with the Inspector's overall conclusion (IR429) that if the development proceeds there is unlikely to be a significant adverse impact on the overall vitality and viability of the town centre (including the prospects for developing planned new comparison goods floorspace) in the terms of PPS4 Policy EC16 or UDP Policy S4(i). He also agrees that there may be adverse short term impacts in the northern part of the PSA arising from the closure of the existing Castlegate store and its car park and the associated effects on pedestrian flows, but these would not be significant and they would be mitigated when that site is fully redeveloped for other purposes (IR429).

Other economic development issues

22. Having had regard to the Inspector's comments on other economic development issues at IR424-428, the Secretary of State agrees with his conclusion at IR429 that, in relation to PPS4 Policy EC10 and the Planning for Growth Ministerial Statement of 23 March 2011, there would be substantial economic and social benefits and some potential environmental benefits arising both directly from the development and indirectly from the development of the linked sites at Castlegate and Spring Grove. He also agrees that these benefits are less likely to be achieved in full by smaller retail developments on any alternative sites in the PSA even though they were fully compliant with the requirements of the sequential assessment and did not draw trade away from the PSA but instead reinforced its offer (IR429). In reaching this conclusion, the Secretary of State has taken into account the direct provision of 260 additional (full-time or part-time) jobs (IR425).

Design issues

23. The Secretary of State has carefully considered the design matters set out by the Inspector at IR430-449. The Secretary of State shares the Inspector's view that the application site is currently occupied by a disjointed mix of unattractive buildings that lack individual architectural quality or local distinctiveness many of which are vacant or are not fully occupied because of their poor condition (IR431).
24. Like the Inspector (IR442) the Secretary of State considers that the reduced height of the western Southgate elevation compared to other elevations, the more extensive use of stone facing on this façade, and the continuous built-up active frontage would enhance the setting of the facing listed buildings and the conservation area.
25. The Secretary of State agrees with the Inspector's overall conclusions (IR449) that the form and scale of the development and the active frontages would enhance the present appearance of and functioning of the site and its surroundings, including the setting of the heritage assets. Furthermore, he agrees that, subject to control by conditions including reconsideration of the facing of the tower, the materials would be acceptable (IR449).
26. With regards landscaping, trees and biodiversity like the Inspector (IR445) the Secretary of State considers that the loss of all 80 trees on the site would literally contravene the objective of UDP Policy NE9. However, having also had regard to the Inspector's other comments at IR445-448, he agrees with the Inspector's conclusion (IR449) that the overall design benefits and the potential for improved quality of landscaping and enhanced bio-diversity benefits outweigh the net loss in the number of trees and the loss of soft landscaping.
27. Taking all of the above matters into account the Secretary of State agrees with the Inspector that the proposals would not be fully compliant with UDP Policy NE9, but would generally comply with relevant provisions of UDP Policies D2 and BE2 and relevant national policy in PPS1 and PPS5.

PPG13: Transport

28. For the reasons set out at IR450-462, the Secretary of State agrees with the Inspector's overall conclusions at IR462 that the proposal would generally comply with relevant UDP Transport policies and with the sustainable travel objectives of PPG13 and PPS4.

Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation

29. Like the Inspector (IR463), the Secretary of State considers that the existing sports centre on the site is not surplus but will become so as and when a replacement sports centre is provided. He notes that there is planning permission for such a replacement at Spring Grove (IR463), and shares the Inspector's conclusion (IR465) that the policy requirements of PPG17 will be met.

Energy conservation

30. The Secretary of State agrees with the Inspector's reasoning and conclusions on energy and conservation (IR466-468). Like the Inspector (IR468), he concludes that given the construction constraints and the lack of other specific local policy support for higher energy standards, the design generally accords with the objectives of UDP Policy D2 (iii) and PPS4 Policy EC10.2 to conserve energy and limit carbon dioxide emissions.

Other matters

31. The Secretary of State sees no reason to disagree with the Inspector's reasoning and conclusions in respect of those matters set out at IR469-475.

Conditions

32. The Secretary of State has considered the schedule of conditions, national policy as set out in Circular 11/95 and the Inspector's comments at IR356 and IR476-487. He is satisfied that the conditions reproduced at Annex A to this letter are reasonable and necessary and meet the tests of the Circular.

Planning Obligation

33. The Secretary of State has considered the planning obligation dated 15 December 2011, national policy as set out in Circular 05/2005, the CIL Regulations 2010 and the Inspector's remarks at IR 357-358 and IR488-492. He agrees with the Inspector's conclusion that the provisions of the planning obligation meet the tests set out in Circular 5/2005 and Regulation 122 of the CIL Regulations 2010 and he considers that they carry material weight.

Overall Conclusions

34. The Secretary of State agrees with the Inspector's overall conclusions at IR493-496. He shares the Inspector's conclusion (IR495) that there are significant positive economic, social and environmental benefits of the development in the terms of PPS4 Policy EC10.2 and the Planning for Growth Ministerial Statement. In reaching his overall decision, he attributes less weight than the Inspector to the indirect benefits associated with the redevelopment of the existing Tesco site at Castlegate, as the proposals have yet to be finalised. The Secretary of State agrees that these benefits (even with reduced weight attached to the indirect benefits), the lack of significant adverse impact on the town centre which will remain vital and viable, and the otherwise general compliance with the development plan together outweigh the lack of flexibility in respect of the sequential approach in respect of PPS4 and UDP Policy S4, and the minor conflict with UDP Policy NE2 (IR495). He considers that the affordable housing provisions in the planning obligation, would outweigh the loss of housing that is in conflict with UDP Policy H4.
35. In conclusion, the Secretary of State is satisfied that the development plan policies in favour of the proposal outweigh those policies with which the scheme conflicts. As such, he concludes that the application proposal is in general

accordance with the development plan and national policy. He has not found any material considerations of sufficient weight to indicate that he should determine the application other than in accordance with the development plan.

Formal Decision

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for a replacement retail (Class A1) store with petrol filling station, car parking, landscaping and associated works in accordance with application reference 2009/93675, dated 3 February 2010, subject to the conditions set out at Annex A.
37. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
40. A copy of this letter has been sent to Kirklees Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Pamela Roberts

Authorised by Secretary of State to sign in that behalf

Schedule of conditions

Procedural

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) The development hereby permitted shall be carried out in complete accordance with the following approved plans and specifications except as may be required by other conditions:
 - 51H General Arrangement External Areas
 - 52J General Arrangement Gross Internal Areas
 - 53H General Arrangement Gross External Areas
 - A916 Existing Northern Elevation
 - A917 Existing Western Elevation
 - A918 Existing Southern Elevation
 - A919 Existing Eastern Elevation
 - A101 AA Sales Floor Level
 - A102 Z Level B1 Car Park Mezzanine Deck
 - A103 AA Level B2 General Car Park
 - A104 M Roof Level
 - A105 W Sales Floor Level
 - A106 M Level B1 Car Park Mezzanine Deck
 - A107 M Level B2 General Car Park
 - 201 P Proposed Elevations 1 of 2
 - 202 P Proposed Elevations 2 of 2 (as amended by 5221.P21 in respect of Fig 3 South West Elevation)
 - A261 Service Yard Access Ramp Proposed Elevations
 - A250 Rev A Proposed Petrol Station Elevations
 - A301 Rev G Proposed Sections
 - A950 Existing Block Plan
 - LS17830 Lighting Plan
 - ASP3 Rev N Landscape Masterplan
 - ASP4 Public Realm
 - ASP6 (a)&(b) Rev I Planting Plans
 - 675905/16 Site Location Plan
 - PSK002 Public Combined Sewer Diversion Plan
 - PSK002 Existing Public Combined Sewer Easements
 - PSK003 Water Mains Plan
 - PSK003 Water Mains Easement Plan

Design

- 3) All areas of the proposed development indicated to be constructed of stone, including the building, boundary / retaining walls and petrol filling station, shall be constructed of natural stone.
- 4) Before development (excluding demolition) commences details of all facing, roofing, hard landscaping materials and sample panels showing (i) the coursing, colour, type, finish and pointing of the stone facing; and (ii) the staining/painting of the timber boarding; and (iii) all facing materials for the tower feature, shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and finishes which shall thereafter be retained as such.

Landscaping and biodiversity

- 5) Notwithstanding the submitted details, no development (excluding demolition) shall take place until a revised species mix for the landscaping shown on plan ASP3 Rev N to include a programme for implementation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include structurally diverse predominantly native plant species including a proportion of heavy standard / semi-mature trees. The approved scheme shall be carried out in accordance with the approved programme for implementation, and shall be maintained in accordance with the approved Vegetation Management Plan referred to in Condition 6.
- 6) No development (excluding demolition) shall take place until a Vegetation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The principal aims of the Plan shall be to optimise biodiversity interests and shall include a timescale for implementation. The measures contained in the Vegetation Management Plan shall be implemented in accordance with the approved timescale and the vegetation shall be maintained in accordance with the principles of the Plan for a period of 5 years from the date set in the programme for implementation. All plants which die or are removed within that period shall be replaced on a like for like basis in the next planting season.
- 7) No development shall take place until a scheme for the provision of a minimum ten bat boxes / bricks and ten bird boxes (including a timetable for installation and agreeing suitable locations) has been submitted to and approved in writing by the Local Planning Authority. The bat bricks/boxes and bird boxes shall be installed in accordance with the approved timetable before the first opening of the store and shall thereafter be maintained throughout the lifetime of the development.
- 8) No development (excluding demolition) shall take place until details of a scheme including a proposed timetable for the eradication of Japanese Knotweed and Himalayan Balsam have been submitted to and agreed in writing by the Local Planning Authority. All works to eradicate the two species shall be completed in accordance with the approved timetable, unless otherwise agreed in writing by the Local Planning Authority.
- 9) No development shall take place until details of a Bat Watching Brief for Building B5 (south of Pine Street at the corner of Old Leeds Road and Pine Street, as identified on drawing no. 1733/EC03 in the submitted Ecological Assessment) has been submitted to and approved in writing by the Local Planning Authority. The demolition of Building B5 shall thereafter be implemented in full accordance with the approved Bat Watching Brief. In the event that bats are identified or encountered during demolition, demolition works on Building B5 shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence on Building B5 until a Bat Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The demolition of Building B5 shall thereafter proceed in accordance with the approved Bat Mitigation Strategy.

Contaminated land remediation

- 10) Development (excluding demolition) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.
- 11) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 10, development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.
- 12) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to Condition 11. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered (in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report) is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
- 13) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

Crime prevention

- 14) The superstore shall not be opened for trade until a scheme detailing crime prevention measures to protect staff, customers and their property has been submitted to and approved in writing by the Local Planning Authority. The development shall be operated in accordance with the approved scheme upon the store first being operated and retained as such for the life of the development thereafter unless otherwise agreed in writing by the Local Planning Authority.

Noise and odour control

- 15) No development (excluding demolition) shall commence until details of the installation and/or erection of any extract ventilation systems, including details of the methods of treatments of emissions, and filters to remove odours and control noise emissions, have been submitted to and approved in writing by the Local Planning Authority. The extract ventilation systems shall thereafter be installed and operated in accordance with the approved scheme, and maintained in accordance with the manufacturer's instructions unless otherwise agreed in writing by the Local Planning Authority.
- 16) The rating level of plant noise emitted from the site shall not exceed 35dBA between 2300hrs and 0700hrs or 40dBA at any other time. The noise levels shall be determined by measurements or calculation at the boundary of the nearest noise sensitive property. The measurements and assessments shall be made according to BS 4142:1997. No fixed plant and/or machinery serving the development hereby permitted shall come into operation until details of the fixed plant and machinery, and any mitigation measures to achieve the above rating, have been submitted to and approved in writing by Kirklees Council.

Water and drainage

- 17) Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of the water main, which crosses the site.
- 18) No development (excluding demolition) shall take place until details of the separate proposed means of disposal of foul and surface water drainage, to include details of a 30% reduction on surface water run-off rates, and any balancing and off-site works, have been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
- 19) Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.
- 20) Any liquid storage tanks (other than for water) should be located within a bund with a capacity of not less than 110% of the largest tank or largest combined volume of connected tanks.

Waste management

- 21) No development shall take place until a Site Waste Management Plan (SWMP) has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include measures, objectives and targets for the reduction, recycling and re-use of waste generated from the operation of the store.

Light pollution

- 22) No development shall take place until a scheme which indicates the measures to be taken for the control of any glare or stray light arising from the operation of any proposed artificial lighting has been submitted to and approved in writing by the Local Planning Authority. These measures shall be implemented before any of the lighting is brought into use and thereafter the artificial lighting shall be operated in accordance with the approved scheme and maintained as such. The scheme shall include the following information: -
 - i) The proposed design level of maintained average horizontal illuminance for the site.
 - ii) The predicted vertical illuminance that will be caused by lighting when measured at windows of any properties in the vicinity.
 - iii) The proposals to minimise or eliminate glare from the use of the lighting installation.
 - iv) The proposed hours of operation of the lighting.

Retail floorspace

- 23) The net sales area of the store hereby permitted shall not exceed 6,860sqm. The net sales area is defined as the sales area within the building (i.e. all internal areas accessible to the consumer) but excluding lobbies, restaurants/cafes, customer toilets and walkways behind the checkouts. Within the net sales area hereby permitted, no more than 2,275sqm shall be used for the sale of comparison goods and no more than 4,585sqm shall be used for the sale of convenience goods.

- 24) The store hereby permitted will not include a post office, an optician, a dry cleaner, photo processing, or any other in-store concessions apart from a catalogue sales counter and the National Lottery.

Energy

- 25) No development (excluding demolition) shall take place until a scheme has been submitted to and approved in writing by the local planning authority setting out the measures that will minimise carbon dioxide emissions over the lifetime of the development and achieve at least 10% of the expected energy needs of the development from on-site renewable sources of energy, unless that is demonstrated to be impractical in which event the scheme shall make provision for the same proportion of the expected energy needs to be achieved from a mixture of on-site and off-site renewable sources of energy. The scheme shall be implemented as approved.

Parking Management Plan, Travel Plan and Highways Works

- 26) No development shall take place until a scheme detailing the proposed design, construction and stability of all retaining walls adjacent to the public highway, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved scheme and implementation timetable, and the retaining walls shall thereafter be retained during the life of the development.
- 27) No part of the development shall become operational until a Parking Management Plan detailing arrangements for the management and operation of the supermarket car park have been submitted to and approved in writing by the Local Planning Authority. This should include details of monitoring and enforcement of the length of stay. The Parking Management Plan shall be implemented before the development is first brought into use and thereafter retained subject to such amendment as may be agreed in writing by the local planning authority.
- 28) In advance of the completion/implementation of the Full Travel Plan for the development, the development shall be operated in accordance with the details set out in the submitted Interim Travel Plan dated January 2011.
- 29) Within 3 months of the development becoming operational, a Full Travel Plan shall be submitted for the approval in writing of the Local Planning Authority. The Full Travel Plan shall be consistent with the criteria/content of the Interim Travel Plan and the approved Travel Plan shall be operated from the time of approval for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority.
- 30) No development (excluding demolition) shall take place until details and phasing all highway works substantially in accordance with the proposals set out in submitted plans, Transport Assessment November 2010, Transport Assessment Addendum January 2011, and to include supporting Safety Audits, have been submitted to and approved in writing by the Local Planning Authority. These highway works shall include the following:
- i) changes to the Southgate / Leeds Road / Northumberland Street junction;
 - ii) changes to the Leeds Road / Old Leeds Road junction;
 - iii) changes to Old Leeds Road / Development site access junction;
 - iv) formation of the servicing access junction off Old Leeds Road;
 - v) changes to the staging and phasing at the Gas Works Street / Leeds Road gyratory;

- vi) changes to the Castlegate / Northgate / Lower Fitzwilliam Street junction; and
- vii) formation of a signalised pedestrian crossing on Leeds Road.

The superstore shall not open for trade until the highway works have been implemented in accordance with the approved details and phasing.

- 31) No development shall take place until details of the scope and programme of a traffic monitoring study at Quay Street, the Turnbridge and Turnbridge Road have been submitted to and approved in writing by the Local Planning Authority. The study shall be delivered within the approved programme and within three months of occupation, unless otherwise agreed in writing with the Local Planning Authority. Any Traffic Regulation Order(s) or works required to facilitate changes to restrict vehicular use of Turnbridge Road, Quay Street or Turnbridge shall be progressed within a timetable to be agreed with the Local Planning Authority.

Demolition and Construction Method Statement

- 32) No development (including demolition) shall take place until a Demolition and Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction. The Statement shall provide for:

- (i) the parking of vehicles of site operatives and visitors;
- (ii) access routing for demolition and construction traffic and methods of loading and unloading of plant and materials;
- (iii) storage of plant and materials used in constructing the development;
- (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (v) wheel washing facilities and measures to control the emission of dust and dirt during construction;
- (vi) a site waste management plan for recycling/disposing of waste resulting from demolition and construction works; and
- (vii) measures for run-off water quality management to prevent adverse impacts on the Sir John Ramsden Canal.

Report to the Secretary of State for Communities and Local Government

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Date: 19 December 2011

Town and Country Planning Act 1990

Kirklees Council

Application by

Tesco Stores Ltd

Inquiry held on 1-4 and 8 November 2011. Accompanied site visit on 7 November 2011.

Land at Southgate, Huddersfield HD1 1TW

File Ref: APP/Z4718/V/11/2155777

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Land at Southgate, Huddersfield HD1 1TW

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 27 June 2011.
- The application is made by Tesco Stores Ltd to Kirklees Council.
- The application Ref 2009/93675 is dated 3 February 2010.
- The development proposed is a replacement retail (Class A1) store with petrol filling station, car parking, landscaping and associated works.
- The reason given for making the direction was because the Secretary of State considers that the proposals may conflict with national policies on important matters.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
 - (a) The extent to which the proposed development is in accordance with the development plan for the area including any saved policies. The weight that should be attached to the development plan, and any emerging plans, having regard to s38(6) of the *Planning & Compulsory Purchase Act 2004* and other material considerations.
 - (b) The extent to which the proposed development is consistent with Government policies in *Planning Policy Statement 1 Delivering Sustainable Development* (in particular paragraphs 33-37), and related design guidance set out in '*Planning for Town Centres: Guidance on Design and Implementation [Tools]*'.
 - (c) The extent to which the proposed development is consistent with Government policies in *Planning Policy Statement 4 'Planning for Sustainable Economic Growth.'*
 - (d) The extent to which the proposed development is consistent with Government policies in *Planning Policy Guidance 13 Transport.*
 - (e) Any other issues which the Inspector considers appropriate.

Summary of Recommendation: That planning permission be granted subject to conditions, unless a signed S106 Planning Obligation has not been received in which event planning permission should be refused.

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Abbreviations used in this Report

AQMA	Air Quality Management Area
BREEAM	Building Research Establishment Environmental Assessment Method
CABE	Commission for Architecture and the Built Environment
CD	Core Document
DL	Decision Letter
EiC	Evidence in Chief
ha	hectare
IR	Inspector's Report
KC	Kirklees Council
LGV	Light Goods Vehicle
LHA	Local Highway Authority
LPA	Local Planning Authority
NPPF	Draft National Planning Policy Framework
OS	Ordnance Survey
PCA	Primary Catchment Area
PGMS	Planning for Growth Ministerial Statement (23 March 2011)
PPG	Planning Policy Guidance issued by the Government
PPS	Planning Policy Statements issued by the Government
PSA	Primary Shopping Area
PTC	Planning for Town Centres: Guidance on Design and Implementation Tools
RCS	Retail Capacity Study
RS	Regional Strategy
S106	Section 106 of the Town and Country Planning Act 1990 (as amended)
SoS	The Secretary of State for Communities and Local Government
SoCG	Statement of Common Ground
SPG	Supplementary Planning Guidance
sqm	Square Metres
TA	Transport Assessment
TP	Travel Plan
TRANSYT	Traffic Study Network Tool published by Transport Research Laboratory
TRO	Traffic Regulation Order
TSoCG	Transportation Statement of Common Ground
UDP	Kirklees Unitary Development Plan (1999)
XX	Cross examination

Procedural Matters

1. At the Inquiry applications for costs were made by both Tesco Stores Ltd and Kirklees Council against Asda Stores Ltd. These applications are the subject of a separate Report.

The Site and Surroundings

2. Huddersfield town centre was developed mainly in the 19th century on a site which slopes gently down to the east and south. The centre is notable for its many very fine listed stone buildings including the remarkable neo-classical Grade I railway station. Following clearances in the 1960s and 1970s, the centre is now encircled by a dual carriageway ring road. Most of the frequent junctions and pedestrian crossings on the ring road are at grade. These include a junction to the east with the dual carriageway Leeds Road. The application site lies adjacent to that junction to the south of Leeds Road and to the east of the ring road (Southgate). The site is bounded to the east by Old Leeds Road and is bisected by Pine Street, which would be closed and built across. The site and its surroundings are illustrated in photographs in Mr Brown's Appendices (Document T3PA). That document also contains a bird's eye photograph of the site.
3. The site was cleared of its small-grained Victorian buildings in the 1960s and is now occupied by: two typical contemporary 11 storey tower blocks of Council-owned flats (Lonsborough and Ibbotson) that contain a mixture of studio and one bedroom flats which are only partially occupied; a two-level long-stay Council-owned car park with 144 spaces; a large and almost featureless rectangular building which accommodates the Council-owned Huddersfield Sports Centre; the adjacent 70 space car park for the sports centre; and a series of mainly vacant modest 1-2 storey utilitarian industrial, storage and office buildings now owned by Tesco. Most existing buildings on the site are constructed or faced in brick. All are proposed for demolition if planning permission is granted for the proposed Tesco development. The Sports Centre has a number of structural defects and parts of the building such as a diving pool cannot be used for their intended purposes. There are some modest trees on the fringes of the site, mainly along the Leeds Road frontage or adjacent to the tower blocks.
4. Adjacent to the site on Southgate is a tall and mainly vacant 1970s office block known as Crown House. On the opposite west side of Southgate is the boundary of the Town Centre Conservation Area. Some of the buildings within the Conservation Area fronting Southgate are listed. There is a plan of the Conservation Area boundary and the area's many listed buildings at Mr Hunston's Appendix NH1 (Document LPA1.1). The listing descriptions and the Conservation Area Appraisal are at Appendix NH10 of that document. Beyond Crown House to the south is the large and recently extended Sainsbury's Shorehead superstore (5,761sqm net) with a filling station and 500 surface car parking spaces. That mainly stone-clad building is set back from the ring road at a lower level. The main trading floor is on one level but with a first floor café and with some ancillary accommodation on a lower level adjacent to the canal at the rear. It is outside the main shopping area as defined in local policy. The prime Kingsgate Shopping Centre with its indoor mall stands on the opposite side of the ring road from Sainsbury's and within the main shopping area. Its main trading floor is at a higher level than Southgate.

5. Northumberland Street leads from the Southgate/Leeds Road junction into the Town Centre Conservation Area in a straight line to George Square and the Grade 1 listed railway station. It is used by large groups of pedestrians to walk from the railway station and past the application site to reach the Galpharm Stadium (formerly MacAlpine Stadium) which hosts both the Huddersfield Giants Rugby League team and Huddersfield Town Football Club. The stadium is just visible in the distance from the east end of Northumberland Street opposite the application site. One of the existing tower blocks terminates views down Northumberland Street from George Square. Apart from another 11 storey block of flats (Richmond) the area to the north of Leeds Road and east of the application site is mainly occupied by utilitarian industrial or storage buildings including some small scale retail warehousing.
6. All vehicular access to the proposed development would be taken from Old Leeds Road via an improved traffic-light controlled junction with Leeds Road. Old Leeds Road is fronted to the east/southeast by mainly Victorian mills, other industrial buildings, an active church, and a chapel converted to office use. The other buildings are in mixed commercial uses. The road is already cut off at its former junction with Southgate. However an alternative connection to Old Leeds Road from the east is available via Quay Street which connects to the Turnbridge, a narrow movable bridge across the canal and which is a scheduled ancient monument.
7. Within the town centre, the 'Main Shopping Area' defined in local policy (see below) extends the full length of the centre from north to south. Although no primary shopping frontage is defined in current policy, it was not disputed at the Inquiry that the most frequented shopping frontages are in the southern half of the town centre. They include the modern Kingsgate Centre indoor mall and adjacent streets with a high proportion of national retailers. At the south west corner of the town centre is the busy bus station and the adjacent Sainsbury's Market Street store (3,227sqm net). The existing Castlegate Tesco store (2,778sqm net) to be replaced is at the opposite north end of the defined main shopping area. It is close to an attractive open-sided market building, which operates on some days of the week only, selling mainly low cost non-food items. There is an intervening open area owned by the Council and used for car parking and for some open market stalls.
8. The Castlegate Tesco store was acquired from a previous operator in 1979. It is an unattractive building of a utilitarian industrial character clad in metal sheeting which detracts from its conservation area surroundings and with no active frontages at street level apart from a filling station. The Conservation Area Appraisal at Appendix NH10 of LPA1.1 identifies the building as a negative area. The trading floor is at first floor level with some parking at the same level. There is a further parking deck below the store at ground level. The south east corner of the existing Tesco car park is about 200m from the corner of the application site but the two sites are separated by the ring road. The streets within the main shopping area between the Castlegate store and the busier southern end of the town centre are fronted by a mix of offices, restaurants, bars and a few secondary shopping. There is a low pedestrian footfall.
9. Other food stores within the town centre include Iceland and Farm Foods frozen food stores, a Marks and Spencer's food section (836sqm net) and a large recently listed mid 20th century indoor market hall which sells food and non food

items. The location of the town centre convenience stores is shown at Mr Nutter's Appendix KN8. Elsewhere within Huddersfield but outside the town centre there is a large Asda (Bradford Road) superstore selling food and comparison goods (4,460sqm net), one large Morrison's superstore (Waterloo) selling mainly food (4,562sqm net), two smaller Lidl food stores (one of which is edge-of-centre), an Aldi, a Marks and Spencer's Simply Food, and numerous small local convenience foodstores. There is also a Morrison's at Meltham which is referred to in some evidence. However it is not clear whether this qualifies as an out-of-centre store as the Retail Impact Assessment describes this both as a medium sized store in Meltham town centre but also as a store not within an allocated centre. The large Great Northern Retail Park selling comparison goods is about 0.5km north east of the application site. There are several further out-of-centre retail parks selling comparison goods. Beyond the town and outside Kirklees there are several major rival centres for mainly comparison goods at Birstall Retail Park (M62 Junction 27), Leeds City Centre (where the Trinity Leeds shopping centre is under construction), the out-of-centre White Rose Centre in south west Leeds, Sheffield City Centre, the large Meadowhall Centre in Sheffield, and Wakefield City Centre (which includes the recently-completed Trinity Walk shopping centre).

Planning Policy

Statutory Tests

10. Section 38(6) Planning & Compulsory Purchase Act 2004 requires that the application is determined in accordance with the Development Plan, unless material considerations indicate otherwise.
11. Section 66 Planning (Listed Buildings & Conservation Areas Act) 1990 provides that, in considering whether to grant planning permission for development which affects a listed building or its setting, the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The site's development could affect the setting of listed buildings on the opposite side of Southgate.
12. Section 72 of that Act provides that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The application site is not in a conservation area but it adjoins a conservation area and its development could affect the setting of that area.

The Development Plan - Regional Policy

13. In the Yorkshire and the Humber Regional Strategy (RS) Huddersfield is identified as a Sub Regional centre. RS Policy YH4 establishes that such centres should be the prime focus for housing, employment, shopping, leisure and education. RS Policy YH7 gives previously-developed sites priority for development followed by other sustainable locations close to transport links and on the edge of urban centres.
14. RS Policy ENV5 amongst other things seeks to maximise the use of combined heat and power systems and requires at least 10% of the energy to be used in sizeable new development to come from on-site renewable energy sources.

The Development Plan – Local Policy

15. A wide variety of saved policies of the Kirklees Unitary Development Plan (1999)(UDP) (CD2.2) are of some relevance. The main ones include Policy D2 which provides that planning permission will be granted for new development subject to development management criteria including those relating to the conservation of energy, highway safety, visual amenity and the character of the surroundings.
16. UDP Policy B2 identifies a small portion of the eastern part of the application site as being suitable for industry or warehouse use. However this is a permissive policy and not a specific allocation. It would thus not literally be contravened by the site's development for other purposes. UDP Policy B4 allows for the redevelopment of sites last in business or industrial use subject to various criteria including compatibility with surrounding uses and the number of jobs likely to be created or maintained.
17. UDP Policy BE1 requires good quality design which, amongst other things, creates or retains a sense of local identity, is visually attractive, promotes a healthy environment, including space and landscaping about buildings and avoidance of exposure to excess noise or pollution, and is energy efficient in terms of building design and modes of travel. Policy BE2 sets further design criteria including for development to be in keeping with surrounding development, and that it takes account of topography, achieves satisfactory access and incorporates existing and proposed landscape features. UDP Policy BE11 seeks that natural stone should be used for development in areas where it has been the predominant material and within town centres and conservation areas. Outside such areas materials should reflect the predominant materials adjacent to and surrounding the site provided that they are not detrimental to visual amenity.
18. Policy NE9 provides that development proposals should normally retain any mature trees within the site and Policy EP11 seeks integral landscaping to protect or enhance the ecology of the site.
19. UDP Policy S1 provides that town centres and local centres will remain the focus of shopping activity. Huddersfield is identified as the only Principal Town Centre in the hierarchy set out at paragraph 13.6 of the UDP. Policy S4 sets criteria for the development of large stores including, in summary: the effect on the viability and vitality of the existing town centre; benefits to quality and range of shopping provision or of meeting an identified quantitative deficiency; accessibility without private transport; highway safety and local amenity; the sequential test; any prejudice to other plan proposals and the effect of out-of-centre developments on travel patterns and car use.
20. The UDP transport policies include: T1 modal shift from the car; T10 trip generation; T16 safe and attractive pedestrian routes; T17 provisions for cyclists; and T19 off-street parking to serve the town centre as a whole.
21. There are 84 flats on the application site in the Lonsborough and Ibbotson tower blocks. UDP Policy H4 provides that proposals to change the use of residential properties to other uses will not normally be permitted unless the area has changed to such an extent that the property is no longer suitable for residential use or the property is required for a community use.

22. The Kirklees Core Strategy is not yet part of the development plan. It is at an early consultation stage and accordingly merits little weight.

Supplementary Local Guidance

23. The UDP does not directly define a 'Primary Shopping Area' for Huddersfield. However Supplementary Planning Guidance 'Shopping Policy S4: Large New Stores' (the SPG) does include a plan of the 'Main Shopping Area' in support of UDP Policy S4. This is the same as the Main Shopping Area previously defined by UDP Policy TC2 which has not been saved. As this is the only available defined plan in any current policy document, and because it also relates to saved Policy S4, the Council and the Applicant agree that this is the appropriate boundary of the Primary Shopping Area for the purposes of national policy in PPS4. The Inspector who dealt with the Kingsgate 2 appeal in 2008 reached a similar conclusion (see paragraph 183 below). Whereas the former UDP policies S11 and TC5 also defined the primary and secondary shopping frontages, those policies were not saved and no current policy document defines such frontages.
24. The SPG applies to all stores over 2,000sqm and it amplifies the criteria of UDP Policy S4 whilst also including guidance on the use of restrictive planning conditions. In edge-of-centre locations these usually seek to exclude the sale of food and non bulky goods. Edge-of-centre locations are defined as those within 200-300m of the Main Shopping Area and that have pedestrian links to the centre that provide a high standard of convenience and safety. The application site is less than 200m from the edge of the Main Shopping Area.
25. The 'Stadium Axis Guidelines' (2006) are Interim Planning Guidance. In their preparation there was only consultation with selected organisations and they have not been formally adopted. Only limited weight can be attached to them. They generally seek to improve the experience of people travelling between the town centre and the Galpharm Stadium including consideration of available views towards the stadium as well as the attractiveness of the route itself.

National Policy and Guidance

26. Relevant national policy includes: Planning Policy Statement 1 'Delivering Sustainable Development' (PPS1), especially paragraphs 33-39 on design; PPS4 'Planning for Sustainable Economic Growth'; PPS5 'Planning for the Historic Environment'; Planning Policy Guidance 13 'Transport' (PPG13); and PPG17 'Planning for Open Space, Sport and Recreation' (in respect of the sports centre to be demolished).
27. The Planning for Growth Ministerial Statement (PGMS) of March 2011 is material and it requires full consideration of the importance of national policies aimed at fostering economic growth and employment, given the need to return to robust growth after the recession. It also requires consideration of the range of likely economic, environmental and social benefits of proposals, including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may where relevant, include matters such as job creation and business productivity).
28. Other relevant national guidance includes: 'Planning for Town Centres: Guidance on Design and Implementation Tools'; and 'Planning for Town Centres – Practice guidance on need, impact and the sequential approach'.

29. The draft National Planning Policy Framework (NPPF) is expected to replace some or all of the above national policy documents. It has been subject to public consultation and the responses are being considered at the time of writing. It may consequently be subject to change prior to its adoption and can therefore be accorded little weight at the time of writing.

Planning history and other relevant current planning applications

30. There is no relevant planning history on the application site.
31. Elsewhere in the town centre outline planning permission was granted on appeal in December 2008 for a 11,154sqm net expansion of the shopping centre (known as Kingsgate 2)¹. That proposal comprised: one multi level large retail unit and 7 smaller shop units with first floor accommodation: an additional shop unit fronting Kirkgate; and an additional 190 car parking spaces. The multi-level retail floorspace was intended mainly for comparison goods. At the time Marks & Spencer was cited as a possible occupier. Marks and Spencer currently have two other stores in the town centre and one small out-of-centre foodstore. That Kingsgate 2 permission is referred to in the PPS4 Practice Guidance because there was an issue concerning the expansion of the centre beyond the boundary of the Primary Shopping Area as defined in local policy as the Main Shopping Area (See paragraph 183 below).
32. The Kingsgate 2 permission remains unimplemented and would expire in December 2011 but an extension to the period for implementation has been sought. The owners are also in negotiation with Kirklees Council about a possible larger alternative to Kingsgate 2 known as Kingsgate 3.
33. A second planning application by Kirklees Council was submitted in April 2008 to develop an area in multiple ownership at the southern end of the town centre for what is described as the Queensgate Centre². That application remains undetermined. The Statement of Common Ground (Document 2) indicates that this is because of viability concerns. Like Kingsgate 2, the Queensgate scheme needs to secure a large multi-level anchor store. There are floorplans at Appendix 1 to the Call-in stage written representations on behalf of Zurich Assurance.
34. Also undetermined is an application submitted by Asda Stores Ltd in 2009 to develop a large superstore of 4,552sqm (net) on land outside the main shopping area south of the ring road and which is currently occupied by partially disused industrial buildings owned by Broadbents (who also operate in adjacent premises) and by several small retail warehouse premises. Asda gave evidence at the Tesco Inquiry. That site is on the opposite side of the ring road from the site of the proposed Queensgate Centre. There are drawings of the Asda scheme at Appendix PSF5 of Document LPA4.
35. Should the current Tesco application be permitted, the Council would need to replace the existing sports centre before its site could be released for the development. Planning permission has been granted for such a centre on land south east of the town centre outside the ring road that is currently used as the

¹ (PINS Ref APP/Z4718/A/08/2063319) (CD11.5)

² (CD11.6, CD11.12 and CD11.13)

Spring Grove long stay car park³. There are associated proposals to refurbish an underused short-stay multi-storey car park nearby above the town's bus station as long-stay parking in order to encourage its use in place of Spring Grove and also to replace the Pine Street long-stay car park on the Tesco application site. The Council would be likely to use funds from the sale of the current application site in order to recoup a proportion of the costs of those developments which are included in the current capital programme at £35.3m for the Sports Centre and £1.2m for the car park refurbishment.

36. Conservation Area Consent has been granted to demolish the existing town centre Tesco store at Viaduct Street/Castlegate. Tesco has submitted an outline planning application for a mixed development on that site to include dwellings, a hotel and some retail units. The Council and consultees currently consider the proposed development to be too large for that site but amendments are likely to be negotiated.
37. The 84 flats currently on site comprise a mixture of one bedroom and studio flats. It appears that the flats are difficult to let. Some are empty, others are occupied by tenants without secure tenancies and subject to a high turnover, and only a minority are occupied by those with secure Council tenancies. They would need to be vacated before their sites would be available for demolition and redevelopment. There are no specific proposals for their replacement. However the S106 Obligation agreement provides that either Tesco would contribute £5m for their replacement (on unidentified land already owned by the Council) or Tesco would offer a long lease of 60 units in their proposed redevelopment of the existing Castlegate store site. Although fewer in number, these units would be of better quality than the existing accommodation. Some of the £5m payment could be used to reimburse the Council for the costs of refurbishing nearby flats at Richmond House to accommodate displaced tenants, which costs would necessarily be incurred before the existing flats on the application site are vacated.

The Proposals

Design and Layout

38. The proposal would demolish all existing buildings on the application site, remove all existing trees and landscaping, and erect a building of approximately rectangular floorplan with a single trading floor above two levels of car parking. Advantage would be taken of the existing slope across the site such that the trading floor would be at street level on Southgate with the vehicular access and filling station at a lower street level on Old Leeds Road. There would be a mainly glazed elevation to a foyer on all levels on Leeds Road to accommodate the travellers and lifts which would link the trading floor to the car parks and to a lower street level entrance on Leeds Road, adjacent to the bus stops. There are perspective views of the store elevation on Leeds Road and Southgate in Mr Brown's appendices (Document T3PA).
39. Most of the servicing would be on the southern side of the store adjacent to Old Leeds Road. There would be soft landscaping and tree planting on the Old Leeds Road frontage to screen that development and to replace the 80 trees and

³ (Council ref 2101/48/90544/W1) (CD11.8)

landscaping lost elsewhere on the application site. The building would be clad mainly in a mixture of glass, natural stone and timber larch panels. There would be a modest tower feature by the main pedestrian entrance close to the junction of Leeds Road and Southgate. This would be faced in a mix of natural stone and photovoltaic cells. The building would be set at an angle to Southgate fronted by a triangular area of hard landscaping and formal trees. There would be glazed canopies to parts of the Leeds Road and Southgate elevations. A filling station and car wash would be sited on the lowest part of the site adjacent to the main vehicular entrance from Old Leeds Road.

40. All four elevations of the proposed Tesco store would be seen from public places and each would present a different image. To the south and east it would appear as a relatively tall utilitarian building on 3 storeys with a double height top floor but a low pitched roof with ventilation scoops. The access and servicing arrangements would be dominant and the main facing material would be timber which is not a characteristic local material. However this would be relieved in part on the eastern elevation by areas of stone, glass and metal. To the north, the elevation adjoining Leeds Road would be mainly glazed and especially prominent when lit up at night (24 hour opening is likely). Such extensive glazing is also unusual locally. However there is a recently-built fully glazed media building to the north-west and there are series of modern car showrooms further east along Leeds Road with largely glazed main elevations. From the west and facing the conservation area the building would appear lower because it would be set into the slope. Only the top storey would be visible on the Southgate frontage to the ring road. This elevation would be faced in a mixture of glass, stone and with timber behind Crown House.
41. After the proposal was considered by the Planning Sub-Committee in February 2011, the elevations and landscaping were modified in negotiations with the Council's officers. The changes include additional stone facing to Southgate and some additional landscaping. At the Inquiry, the Applicant proposed further modest changes to the elevations to increase the amount of glazing to the Southgate elevation and to realign the tree-planting there. These changes are agreed by the Council and would not prejudice any other person. The appeal has therefore been considered on the basis that it includes these amendments.
42. The proposed building would be one of the largest in, or adjacent to, the town centre. Other large buildings include: the Kingsgate Centre, (which presents a tall flat stone elevation to the ring road); Victorian multi-floor mill and storage buildings in stone or brick (such as St George's Warehouse); and the Sainsbury's Shorehead superstore. The latter store employs a self-effacing design approach with a relatively low mainly single storey building below the level of the ring road. Consequently the surface car parking and filling station there are more prominent than the Sainsbury's store itself. It has mainly stone-faced elevations resembling older industrial or warehouse buildings.

Floorspace

43. The gross floor area of 11,187sqm would include a top floor with a 6,860sqm net sales area comprising 4,585sqm of convenience goods sales floorspace and 2,275sqm of comparison goods sales floorspace. There would also be a 394sqm café.

44. For comparison purposes the net sales floorspace of the existing town centre Castlegate store is 2,778sqm of which 2,406sqm is convenience space and only 372sqm is comparison goods floorspace. Accordingly there would be a 65% increase in convenience floorspace and a 612% increase in comparison goods floorspace.
45. The nearby Sainsbury's Shorehead edge of centre store has a net sales floor area of 5,761sqm. The out of centre Morrison's store at Waterloo has 4,562sqm and the out of centre Asda on Bradford Road has 4,460sqm.

Car Parking

46. The development would provide 763 car parking spaces together with cycle and motor bike spaces and parking for 13 internet shopping delivery vans. The S106 planning obligation provides for 3hrs of free parking in order to allow sufficient time for the customers to make linked trips to the town centre. The existing Castlegate store allows for only 2hrs of free parking. A proposal to restrict the free parking at the proposed store to only 2hrs on up to 8 weeks a year (selected at Tesco's discretion) was withdrawn during the Inquiry as that would have reduced the opportunities for linked trips on foot to the town centre.
47. The proposed parking spaces within the development are intended to provide for the needs of the store itself (including linked trips and the replacement of parking associated with the existing Castlegate store) as well as a modest contribution to wider parking requirements following the loss of parking spaces in the on-site car parks and the loss of some on-street spaces in Old Leeds Road.

Employment

48. 260 employees would transfer from the existing Castlegate store and there would be 300 additional full or part time jobs in the store. There is no estimate of the effect of any reduction in employment in other rival stores. The S106 obligation provides for the operation of a 'Regeneration Partnership' scheme to help long term unemployed people back into work.

Energy Efficiency

49. There would be a combined heat and power plant on site and the Applicant's aim is to achieve a 29% reduction in carbon against 2006 Building Regulation standards. There would be photo-voltaic panels on the proposed tower with roof glazing to admit natural light and roof-mounted ventilation scoops.

Highway Works

50. A number of highways alterations are proposed to be funded by Tesco to include: traffic signals and carriageway alterations at the Leeds Road/Old Leeds Road junction and alterations to the Southgate/Leeds Road junction. The latter would include new left-turn lanes from Leeds Road that would require an additional traffic island and create a fourth leg on the signal-controlled pedestrian crossing to and from the town centre. Right turn movements from Northumberland Street to Southgate are proposed to be banned. Further junction alterations are proposed elsewhere. The S106 obligation also provides that Tesco would provide funding to monitor the use of the Turnbridge in Quay Street after the store opens and would contribute to any proposed Traffic Regulation Order found to be needed to control increased use of that bridge. There are various potential

options including do-nothing, priority signing, one-way working and potential closure to types of traffic. There is already a weight limit. Any TRO would need to be subject to the statutory requirements for consultation and objection.

Public Transport

51. The S106 obligation provides for the funding of an additional vehicle for the existing free bus service that currently operates a circular route around the town centre, together with capped contributions towards its operation for up to 5 years. It is proposed that the route of the bus would be extended to serve the store. The Obligation also offers a contribution to the upgrading of two adjacent bus stops used by a number of service buses which pass the site. There are further existing bus stops for numerous services in nearby Lord Street. The site is 378m from Huddersfield Railway Station and thus within walking distance.

Other Agreed Facts

52. There is a signed **Statement of Common Ground** (SoCG) between Kirklees Council and Tesco Stores Ltd (Document 2). It covers:

- i) Introduction and background to the proposals
- ii) Site description and existing shopping provision
- iii) Description of the proposed development
- iv) The development plan
- v) PPS1
- vi) PPS4
- vii) PPG13
- viii) List of plans [subsequently amended]

There are a series of Appendices which include: a primary catchment area plan; retail impact assessment tables; a walking distances plan; and a plan of alternative sites for the sequential assessment together with useful birds eye aerial photographs of each of those sites and of the Application Site (Document 2 - SoCG Appendix 4).

53. The agreed walking distances to the edge of the main (primary) shopping area are 157m (to a point on Brook Street where there would however be no shops) or 175m to the Outdoor Market. That would literally accord with the definition of acceptable distances for edge-of-centre development in the SPG and PPS4 subject to whether the site is otherwise considered to be well-connected (which is disputed by scheme opponents). The distance to what were previously defined in the UDP as the primary shopping frontages on Kirkgate would be 367-438m. The Council agrees that linked trips are likely to occur.
54. Kirklees Council and the Applicant agree in the SoCG that Huddersfield is a busy sub regional centre, and that it is an attractive centre and a healthy, vital and viable retail destination. Convenience shopping provision in the town centre is agreed to be lacking apart from the existing Tesco, the medium-sized Sainsbury's in Market Street and smaller Marks and Spencer, Iceland and Farmfoods shops

and independent retailers. Most foodstore provision is edge-of-centre or out-of-centre.

55. Tesco and Kirklees Council agree that design issues raised at the February 2011 Planning Sub-Committee have been resolved by subsequent amendments to the elevation and the landscaping and that the design accords with the UDP and with the Stadium Axis Interim Planning Guidelines.
56. There is also a signed **Statement of Common Ground on Transportation Matters** (TSoCG) between Kirklees Council and Tesco Stores Ltd (Document 3). It covers:
- i) Introduction
 - ii) Development site location, existing site and layout
 - iii) Description of proposed development including car parking (763 spaces)
 - iv) Planning policy
 - v) Accessibility by non-car modes
 - vi) Traffic impact
 - vii) Road safety
 - viii) Confirmation of agreement

Appendices A-E

57. In relation to linked trips on foot, paragraph 5.3 refers to Institution of Highways and Transportation Guidelines which indicate that, when parking stays of up to 3hrs are permitted, shoppers will walk a distance of up to 600m. Figure A9 indicates that the proposed 3hrs free parking at Tesco would allow shoppers to walk from there to the prime Kingsgate Shopping Centre and to streets in the central and northern part of the defined Main Shopping Area. However other southern parts of the town centre would be beyond 600m. Figure A10 indicates likely walking routes between the proposed development and the Main Shopping Area. These include the use of one of 3 alternative signal-controlled pedestrian crossings of the ring road.
58. The TSoCG includes detailed public transport information, a suggested route for the free bus (Figure A16) and details of existing cycling facilities (Figure A12). The Interim Travel Plan is summarised at pages 11-12.
59. There is a description of the highway works proposed to mitigate the traffic impact and which are acceptable to the Council as Local Highway Authority.

The Case for Tesco Stores Ltd

INTRODUCTION

60. The Secretary of State has before him a proposal that delivers, at a stroke through the consent he is asked to give, the opportunity to bring forward three key developments for Huddersfield at Southgate, Castlegate and Spring Grove. All are beneficial to the town. All are needed. All have the support of the responsible planning authority Kirklees Council. Their approach is definitive

- localism. The developments are the definitive development energy that the Secretary of State is keen to secure.
61. Tesco have traded in Huddersfield for many years and their store at the northern end of the town centre, though trading well, has come to the end of its useful life. It needs replacing not least for shopper comfort and the demand for better offer which shoppers can find elsewhere out of the town.
 62. Huddersfield is a sub-regional centre having a major role in providing for the shopping needs of the area in all retail and service sectors. The convenience sector is not adequately served since the town centre offer is not good enough to keep shoppers from travelling away to competition elsewhere. None has suggested that is not happening and none suggests at the Inquiry that there is not scope for improvement.
 63. Tesco bring before Kirklees Council a proposal on a larger site that is some 200m away from the existing shop, that is edge-of-centre at 157m from the Primary Shopping Area and closer to parts of the prime shopping frontages than their present shop. The site has a number of moribund commercial properties which Tesco has acquired, two decrepit blocks of ugly 1960s flats, and a structurally failing sports centre.
 64. The Tesco proposal will act as the catalyst to unlock the opportunity to do something about the failing buildings by putting Kirklees Council (KC) in the position to move the Sports Centre to an already consented site and to rationalize and upgrade the affordable housing portfolio. Tesco in turn will have the opportunity to redevelop their site at Castlegate in the Conservation Area and create a new beneficial contribution to the northern end of the town centre.
 65. The expansion allows Tesco to employ 300 more people as well as giving further opportunities to 260 employees of the existing store. No figures are given for the proportion of full-time and part-time employees. However there is particular emphasis on bringing the long-term unemployed back into employment through the Regeneration Partnership which Tesco has committed to in the S106 (and for which Tesco is well known nationally). The targeting of the long term unemployed is doubly critical in this area of multiple deprivation – Dalton Ward.
 66. It is a new convenience superstore on the edge of a large town centre which would expect to be granted planning permission once the planning authority had addressed the planning issues. Here KC have required all the necessary matters to be properly addressed and they find themselves in a position to grant planning permission. Tesco, KC, and the public, including objectors would have expected that to be the end of it. Localism would dictate KC decide this, as it is not an issue of national importance. But it has been called in. The planning analysis has to ask why, given it is archetypically a local issue?
 67. We were given the answer by Mr Barry Sheerman MP on day 4 of the inquiry. He told with some pride that it was he who persuaded the call-in. On examination the basis of his case for the call-in was simply bizarre:
 - a) First he says Kirklees Council was put under intense and unfair pressure to offer the site to Tesco. That is superficial and populist, and is unsubstantiated by any evidence. It is unworthy. It raises no planning issue for adjudication before this inquiry.

- b) Next he raises two planning issues but recognizes they are for local resolution and says there are legal and political sensitivities which make the case "unique" and presumably, his basis for asking for call-in. They are allegations as to the process which he does not back up with evidence and perhaps wisely told the Inquiry he was not suggesting anything illegal or corrupt. Nothing to do with planning.
 - c) Even the planning issues he did raise are partially ill-founded. He thought the new store was 3 times bigger as opposed to 2.3 times. He thought it had 60% comparison goods as opposed to 33%. He thought it would take 50,000 to 60,000 shoppers away from the town centre. No other person has seriously suggested anything of that nature. He conceded that the issues as to historic architecture were planning issues capable of local resolution and did not amount to a national matter.
68. At the Inquiry Mr Sheerman had difficulty moving away from a surprisingly poorly briefed rant about Tesco and descending to actual planning issues. It appears he does not want Tesco but would have Waitrose. That concession kills any planning argument he would make.
69. Mr Sheerman gives no significant insight into any planning matter which was not before the LPA and which they were well able to assimilate and adjudicate upon. There is no insight that KC were wrong to have intended to grant permission.
70. Asda bring no substantial objection suggesting that planning permission should be not granted. That has been their position from the start. Asda want to build their edge-of-centre shop and they said they will proceed with the new store plans even if Tesco is granted planning permission. They have attended the Inquiry arguing for an adjudication that there is room for the two stores: Tesco and Asda. They will not get that as their application is not before the Inquiry. They assert there is a time concern about delivery of the Tesco/KC several developments. That is not agreed but it is not relevant given their position. If Tesco delays, they run out of time at 5 years and have to start again. It makes no difference for Asda who are convinced as to the two scheme position and can seek permission now. They have of course been dilatory because they have insurmountable highway issues.
71. No other planning objection was made at the Inquiry (leaving aside a dissenting councillor who is neutralized by the corporate decision). The SoS receives the planning evidence in the main unchallenged. The proper basis of KC support has been made even more clear. Mr Ball's temperate submission was on a personal basis and all matters to which he referred have been addressed in evidence. It is to be noted that his organization saw fit to wind up when it saw the force of the Council's decision.

72. Turning to the call-in matters the Secretary of State asked to be covered:-

THE DEVELOPMENT PLAN AND S38(6)

The extent to which the proposed development is in accordance with the development plan for the area including any 'saved policies'. The weight that should be attached to the development plan, and any emerging plans, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and other material considerations."

73. Huddersfield is a sub regional centre in the RSS. Policy YH4 establishes that such centres should be the prime focus for housing, employment, shopping leisure and education. YH7 gives previously developed sites priority for development followed by other sustainable locations close to transport links and on the edge of urban centres.
74. It is not necessary for the decision to be sensitive to the statutory position as to the efficacy of the RSS. Abolished or not, the sub-regional description and point of focus are self-evidently accurate and obvious. That status is fundamentally material and greatly to be weighed whatever the formal position of the Regional Strategy at the date of the SoS decision.
75. UDP Policy B2 identifies a small portion of the eastern part of the site as being suitable for industry or warehouse use, although this is not a specific allocation. There is no conflict with UDP policy arising from retail development here. The rest of the site has no allocation. Policy D2 establishes planning permission will be granted subject to the usual self-evident development management matters. Again no substantial issue under those heads save perhaps Mr Greenwood's concern about highways and Mr Sheerman's about the character of the surroundings.
76. The application scheme satisfies the UDP transport policies.
77. In relation to UDP Shopping Policies S1 and S4, and the accompanying Supplementary Planning Guidance on Large Stores, it is an agreed position with the Council that the Kirklees Revised Retail Capacity Forecast 2009 suggests that there may be an opportunity for existing store expansion in certain situations subject to the relevant retail planning tests. Both parties agree that these tests have been met and agree that the proposal to relocate and expand the existing Tesco offer accords with the Kirklees Retail Study 2008 and 2009.
78. Albeit that the Stadium Axis Interim Planning Guidelines 2006 are no more than informal policy as they have not had full consultation or statutory basis, the proposal complies in creating an identifiable fixed point for people moving from the station to the stadium.
79. All other appropriate policies are agreed to be complied with. The proposal is thus in accordance with the Development Plan for the area.

DESIGN

The extent to which the proposed development is consistent with Government Policies in Planning Policy Statement 1 Delivering Sustainable Development (in particular paragraphs 33-37), and related design guidance set out in Planning for Town Centres: Guidance on Design and Implementation [Tools].

80. Additional to the agreement in the SoCG, Mr Brown gave a full exposition of the characteristics and quality of the proposal. The following identified by evidence and site inspection advise as to the approach in the future:
- a) Many of the uses on site are partially occupied, vacant or redundant and the condition of the buildings is poor.

- b) The poor quality design of the buildings on the site and immediately adjacent, together with the fragmented layout result in an area of low townscape value.
 - c) The tower blocks are out of scale with the Town Centre Conservation Area opposite.
 - d) There is currently limited glazing and 'active frontage' creating a deadening effect with poor presentation.
 - e) The site sits at a prominent junction. Therefore views to the site along Southgate, Leeds Road and Northumberland Street, in particular, provide opportunities for a distinctive building.
 - f) Redevelopment of the site provides significant opportunities for enhancement.
 - g) The current buildings are a detraction from the quality of the town and a development that improves that should be grasped. None has seriously suggested different.
81. The quality of the design of the proposed development addresses those shortcomings with a homogeneous treatment of the whole site which will achieve the required townscape improvements. This is not a scheme that has been imposed on an unwilling planning authority. There has been full dialogue prior to the application and useful input from those discussions. After the officers reported to committee, they were instructed to negotiate improvements prior to a delegated grant of permission, and they did so.
82. The product is a high quality careful and justified scheme which will very substantially improve the townscape and visitor experience:
- a) Layout: The layout defines the main street frontages around the site on Southgate, Leeds Road and Old Leeds Road. The atrium accommodates the levels of the site, bridging the slope and allowing a main entrance for pedestrians at grade facing the town centre and an entrance for car borne shoppers at the lower eastern part of the site. There is also an active frontage between the two main entrances and the parking is located under the store ensuring it does not dominate.
 - b) Scale: The scale is sufficient to provide enclosure and definition to the roads in front but at the same time the lower height in comparison to the existing tower blocks provides a better scale relationship to the adjacent town centre conservation area.
 - c) Appearance: The appearance of the store is obviously contemporary with the glazed areas giving it an attractive and light modern appearance. At the same time the use of stone relates it to local character. There is flexibility about the style of the stone which will be resolved by condition. A recent suggested minor amendment includes additional glazing to the Southgate elevation, further emphasising the active frontage on this important street and picking up the view down St Peter's Street.

- d) Landscaping: The landscaping scheme provides an attractive space in front and softens the street to the rear where the environment is currently harsh. A recent minor amendment includes a slightly revised landscaping scheme on the Southgate frontage which relates to the new area of glazing and ties in with the alignment of Southgate and Crown House adjacent.
83. Overall there will be a high level of townscape enhancement. It fits well with Design Policy Guidance as Mr Brown told in his evidence :
- a) He assesses the design of the proposals in relation to the Development Plan, PPS1 and other relevant national and local policy fully. He demonstrates that it is clear the design is in accordance with all relevant national and local policies.
 - b) The proposal will also help to deliver key policy aims, including those that are site specific as set out within the informal Stadium Axis Guidelines relating to the objective of improving the route to the Stadium.
84. The design evolution was the product of dialogue with the Council. The Council is minded to approve the scheme and Officers acknowledge the positive design attributes of the proposals. The Council did have reservations about the proposals with regard to:
- a) The amount of stone used;
 - b) The building alignment and level of active frontage on Southgate;
 - c) The design of the tower element;
 - d) The orientation of the store.
85. Most of these issues were subsequently addressed with amendments and the Council are now fully satisfied with the proposals and find them to be policy compliant as agreed in the Statement of Common Ground.
86. Similarly CABI were also consulted and they made a number of comments in relation to the scheme before it was amended (Letter of 31 March 2010 is included with file of documents first submitted by KC). Overall the scheme has been amended following the input from CABI.

DESIGN IMPLICATIONS OF ALTERNATIVE SITES.

87. This issue necessitates a combination of the retail and design approach. The store for which the site is needed must be of sufficient size to do the job of keeping shoppers shopping locally and not further away. Similarly it must have a design that will be attractive – a number of floors of shopping with multi-storey parking will not compete with free standing shops with surface level car parks.
88. Mr Brown compared each site by superimposing the Southgate scheme on it. Having examined all the other suggested alternatives it is clear that the proposal site is of a suitable size, shape and location, which offers considerable townscape improvements and the least amount of design compromises and constraints such as listed buildings. No other site can meet the design requirement without severe compromise.

89. Third party objections on design issues have been submitted by Threadneedle Property Investments (Zurich Assurance).
90. The points made are similar to the initial concerns of the Council:
- a) The limited use of local materials and limited contribution to the character of the area;
 - b) The lack of an active frontage to the ring road;
 - c) A failure of design features to impress along key vistas; and
 - d) The inflexibility of the internal format, with the key aspect of the building being a 'largely blank façade'.
91. As above, all these criticisms relate to the design considered at the time the Committee Report was drawn up. The scheme was subsequently revised following the Report and the Council are now fully satisfied with the proposals :
- a) The amount of stone proposed was increased and agreed by Officers.
 - b) The amount of glazing was increased on the ring road frontage and a cafe introduced to add activity and life.
92. In terms of key vistas, this relates principally to the tower feature. The tower provides a balance between addressing the corner and ensuring it does not dominate. In this respect the design also has to be mindful of the Stadium Axis Guidelines. If the tower was made much more prominent, there is a danger that it could start to obscure views on this key axis that the Council are keen to open up with the removal of the Ibbotson Flats.
93. The final point relates to the issue of active frontage/'blank façade' which has been addressed above. Both the Council and Mr. Brown as an independent design witness are satisfied with the amount of active frontage. The Council is now fully satisfied with the design of the proposals.
94. In conclusion on design the proposed scheme is a high quality design response and in summary:
- a) The quality of the existing townscape is poor on and around the site and the proposal will enhance the image of the site to a significant degree as well as enhancing the setting of the Town Centre Conservation Area and the listed buildings.
 - b) The parallel redevelopment of the Castlegate site is a significant enhancement opportunity in the Conservation Area.
 - c) The scheme will help to deliver key policy aims including those that are site specific as set out within the Stadium Axis Guidelines to improve the route to the Stadium.
 - d) The proposal is also in compliance with local and national policy in relation to design.
 - e) There will be significant improvements to the general environment of the area and clear urban design benefits including enhanced active frontage,

a more distinctive design, better relationship to local character, improved continuity and enclosure and potentially safer streets.

- f) The site offers clear advantages in design terms in comparison to the other alternative sites that have been considered.
- g) The Council are fully satisfied with the quality of the design.
- h) The proposal will deliver the environmentally sustainable objective with a 29% reduction in emissions which is way above the 10% required by RS policy. For the avoidance of doubt, the BREEAM Excellent ambition of the Council is not policy based nor is it practicable with a store of this construction, not least because of the cut and fill element. The last is unavoidable if the architecturally sensible approach of using the slope is adopted.

95. In terms of policy, a key test is set out in paragraph 34 of PPS1 and in particular the following:

“Design which is inappropriate in its context, or which fails to take the opportunities available for improving the character and quality of an area and the way it functions, should not be accepted.”

96. The design is wholly appropriate. Furthermore, the proposed design promises to deliver a significant improvement in the character and quality of the area compared to the design that currently exists on the site and delivers other benefits such as the improvement of the key route to the Stadium. There is therefore no reason why planning permission should not be granted in terms of the design of the proposed development.

NATIONAL RETAIL POLICY

The extent to which the proposed development is consistent with Government Policies in Planning Policy Statement 4 Planning for Sustainable Economic Growth:

97. It is an agreed position between KC and Tesco that the Main Shopping Area defined by SPG for the ‘saved’ UDP Policy S4 is the basis of defining the Primary Shopping Area of PPS4. As a simple check to the approach, the Castlegate Tesco and the adjoining outdoor market are significant components of the town centre retail experience howsoever called. The only challenge to that is Asda who for their own purposes seek to define a different area. Ms Bath and Mr Nutter for KC disagree.
98. With the store entrance at 157m from the putative Primary Shopping Area it is edge-of-centre.
99. Thereafter all the usual components of an economic assessment are agreed as are the resulting conclusions as to impact.
100. In relation to **Retail Impact**, Tesco Stores Ltd rely on the Kirklees Retail Study 2008 survey. In terms of main food shopping trips this suggested that for the Primary Catchment Area (PCA - T1.PA Appendix 4), 21% of such trips are to Huddersfield Town Centre (Castlegate Tesco 11.2%; Sainsbury’s Market Street 9.8%). The edge-of-centre Sainsbury’s (Shorehead) accounts for 17.2% with the out-of-centre Morrison’s (Waterloo) 10%, Asda (Bradford Road) 9.7%, and Morrison’s (Meltham) 8.3%. 10% of survey respondents do their main shop at

other smaller stores (eg Lidl) and 23% do their main food shop outside the PCA. For comparison goods, Huddersfield town centre is strong for clothing sales at 54% of trade in the PCA but there is also strong competition from the large retail parks in the PCA for other goods such as furniture, electrical goods and DIY. There is also competition with retail centres outside the PCA. The 2009 update to the 2008 study considered only quantitative need following the downturn in the economy. It concluded that there remained capacity in South Kirklees for extensions to large foodstores, provision for additional small/medium format foodstores and capacity of additional comparison goods floorspace. In this case the existing Castlegate store is a large format foodstore that would be replaced by a large format store with extended floorspace for convenience and comparison goods. In respect of vacancies, Ms Bath concludes in Appendix 3 to her proof (T1.P) that the vacancy rate in 2011 stands at 16.94% which is stated to be 3.74% higher than the UK national average and to have increased by 3 units between 2010 and 2011 due to the current economic climate. However this survey includes non-retail A Class units. There is a comprehensive GOAD September 2011 Land Use Plan at T1.PA Appendix 3 which includes retail and non-retail vacancies. Ms Bath concludes that the vibrancy of the centre has not been compromised and that Huddersfield remains a healthy town centre.

101. The Tesco evidence on impact is that there would be an overall impact on the town centre of **-12.1%**. However this mainly involves trade diverted from the existing store. After excluding that the effect would be only **-1.9%** of turnover.
102. In respect of convenience goods the forecast **£1.6m** diversion of trade from the town centre (excluding from the existing Tesco) would include £0.86m from the existing Sainsbury's Market Street (which is claimed to be overtrading by £4.3m against company averages) with £0.3m from Marks and Spencer and £0.43m from other smaller stores.
103. In respect of comparison goods it is estimated by Tesco that the store will divert **£5.52m** (31% of Tesco sales) from the town centre (excluding the existing Tesco which in any case has only a small comparison goods offer). Tesco assert that this trade will mainly be drawn from the national multiples.
104. There would be no adverse impact on other centres. Much of the competition for convenience sales would be with the edge-of-centre Sainsbury's Shorehead (-12%) and the out-of-centre Asda, Bradford Road (-10%) and Morrison's stores (-10% and -7%). Competition for comparison goods would draw trade from the town centre, the edge-of-centre Sainsbury's, the out-of-centre Asda and the out-of-centre retail parks. Morrison's were acknowledged by Ms Bath to have only a small comparison goods offer as they use a different business model. In a letter of 21 September 2010 which is bound in with the CD3.21 Retail Impact Assessment, Tesco did consider cumulative impact if the Tesco and Asda proposals both went ahead. This concluded that each of the two stores would lose 25% of business to the other but that the diversion of trade from the town centre would remain low at -3.2%. However as the Asda store is not a commitment there is no need to take cumulative impact into account.
105. The following conclusions as to impact are invited:
 - a) There is full compliance with PPS4 EC 10.2 as to accessibility by a range of modes of transport; the site is well connected to the town centre and will promote linked trips not least because of an existing culture of

movement from both the application site and Castlegate Tesco; there will be an enhancement of the townscape character, not least the listed buildings and Conservation Area; there will be contribution to economic regeneration, not least with the new employment opportunities; there will be physical regeneration including the housing stock which KC have satisfied themselves is an advantage for the community as Mr Willock explained; and the scheme will provide retail facilities for the residents of Huddersfield and the area.

- b) The retail impacts are minimal. Ms Bath's estimates exclude the notion of moving the existing Tesco 200 yards as anything more than a theoretical impact since it marginally crosses the boundary. The scale is proportionate to the capacity and the role of Huddersfield in the retail hierarchy.
- c) In that circumstance the impact estimate is 1.9% on the town centre as a whole. None can seriously suggest that this has implications for a sub regional shopping centre. More so given the possibility of enhancing the shopper attraction to the centre if they are drawn back to shop there as opposed to further away.
- d) There is no further existing, committed or planned public or private investment in any centre within the identified Primary Catchment Area that is in any way compromised.

106. There is no sequential site that is suitable, available or viable:

- a) Castlegate (existing Tesco site). Given the scale required to meet the failure of the existing offer, the site is too small a site to give the scale, or quality of offer. Superstores are not able to compete in multi-level formats if the competitor is surface level. The site currently is not big enough to do the job. In Appendix 7 to Ms Bath's evidence Document T1.PA there is a diagrammatic representation of how a store of similar scale might be accommodated on the existing Castlegate site. That indicates 2 floors of retail space above 4 levels of parking in a 6-storey building with the trading floor 5 floors above street level. Added to that is the undesirability of having to overdevelop in the Conservation Area hard by a number of listed buildings, not least the railway viaduct. The site is unsuitable as a sequential site.
- b) Kingsgate 2 extension is suitable for the development of a large department store and that is the specific purpose of the permission as is clear from the plans submitted with it. It was promoted as such to the Inspector who allowed it on appeal. It is smaller than Castlegate and would not be suitable or viable to provide multi-level trading. Added to that is a number of site specific issues which make it unworkable for a superstore. Overall the site is unsuitable as a sequential site.
- c) Queensgate has too many inherent problems – land ownership, listed buildings, scale, car parking and access etc., to make it a suitable or viable proposition. It is in any event directed to core high street comparison uses rather than a food superstore which Mr Brown advises could not be accommodated. There are serious concerns about the viability as a whole. Events may have overtaken the over-ambitious

initial project given that the market hall was listed after the project was started and is not available as part of a comprehensive reconstruction. The site is not suitable, available or viable.

- d) Spring Grove if it were available is not suitable as Mr Brown advised. There are issues as to neighbours, size, roads, and infrastructure.
- e) The Asda Chapel Hill site is not suitable. At best it is sequentially equal as another edge-of-centre site. But it does nothing to advantage the townscape that Tesco can achieve with their removal of Castlegate, the flats and sports centre from the application site and the upgrading of Spring Grove.
- f) St George's Warehouse is too valuable as a listed building to be contemplated for a superstore. The shape and number of floors make it impossible to create a form that will preserve the building and address the competition. The car park would have to be multi storey which is out of the question in this sensitive location.

107. For the avoidance of doubt, the appropriate scale for relocation is that which can do the job of competing with shops that have the full convenience and comparison range expected in a superstore. Ms Bath acknowledged at paragraph 6.27 of her proof that the comparison goods to be sold could be accommodated in the town centre but considered comparison goods sales to be a secondary function in foodstores which is now expected by customers and will influence their choice of shopping destination but is rarely the prime reason for visiting. Food stores rarely attract dedicated comparison shopping trips. Nevertheless any notion of splitting off the convenience element will kill its scale of offer and would be no better than staying where it is at Castlegate.
108. The comparison offer would be moderate at 33% of net sales floorspace and is a usual opportunist purchase as far as supermarket shoppers are concerned. It is not a hidden department store. Splitting it off from the convenience sales is not a serious option and has not been required in other appeal decisions locally. In particular, in a 2006 appeal decision permitting an Asda store of 3,716sqm (net) at Keighley which included 1,486sqm (40%) of comparison goods the Inspector acknowledged that Asda operated separate 'Asda Living' and 'George' comparison goods stores elsewhere. But he accepted that these were larger than the comparison goods floorspace then proposed at Keighley and concluded on the local circumstances that the operator had demonstrated adequate flexibility⁴.
109. The Retail Impact Assessment also refers to an Isle of Wight Tesco appeal determined in 2007 in which the Inspector considered the separation of convenience and comparison sales floorspace but accepted the representations of Tesco that this did not fit their business model and would be to the detriment of the shopping public⁵.
110. The above appeals were determined in the context of the earlier PPS6 national policy which preceded the current PPS4 and the Practice Guidance.

⁴ CD11.10 (Appeal Ref APP/W4705/A/05/1172346)

⁵ CD3.21 page 26 (Appeal Ref APP/P2114/V/06/1198564)

111. Tesco has opened a number of free-standing Homeplus stores in recent years which sell only comparison goods and are similar to the Asda 'Living' stores. However this had not proved to be a successful format for the company. Although none of the stores had been closed, no more such stores are planned. The company also operates multi-level department stores and stand-alone clothing stores in other countries such as the Czech Republic but these are not suitable for the UK market for reasons which include different perceptions of Tesco and its brands.

TRANSPORT AND ACCESSIBILITY

The extent to which the proposed development is consistent with Government policies in PPG13: Transport.

112. The first and fundamental submission on this aspect is that the Highway Authority responsible has required full exposition of the transportation issues through the TA in the normal way and is satisfied. They declare their support through the evidence of Mr Firth.
113. Mr Greenwood, on behalf of his clients John L Brierley Ltd, does not object to the scheme overall but is concerned about two aspects, the implications of increased traffic use of the Leeds Road/Old Leeds Road junction and of the Turnbridge over the canal.
114. It is expected that Turnbridge will be used intermittently by store traffic. It is not proposed by Mr Bennett that it be shut which appears to be the concern of Mr Greenwood and his clients. It is proposed that there be monitoring of the bridge after development with a view to understanding how the bridge is being used, whether there is a safety problem, and how to address it. There is a range of methods for achieving this and avoiding closure such as priority crossing, further weight restriction, shuttle signals, key activated bollards, or even one way working. The monitoring is no more than prudence to make sure a system is in place to manage all situations if it is needed.
115. The traffic engineering approach is that the bridge is a highway to be used - within reason- given the capacity is some 800/1000 vehicles per hour. The roads either side are well able to carry any traffic that crosses the very short single lane bridge. There is no good reason why it should be shut. There is a bridge for pedestrians which is usable by most people, and that qualification is acceptable in context given the 1865 bridge is a Scheduled Ancient Monument.
116. The Leeds Road/Old Leeds Road junction on the paper analysis is shown theoretically to operate over capacity (105%) with the Tesco store, but the Highway Authority has scrutinised the Transport Assessment (TA) and signs off the analysis nevertheless. There is good reason:
- a) There is a dramatic change in the predicted performance of junctions at the higher end of capacity if levels of traffic are comparatively lightly reduced .
 - b) The TA has taken all the counted existing traffic on Old Leeds Road and added it to the Tesco generated traffic. That is a substantially worse case since the traffic to and from the site using such as the sports centre and the car park will not be there when the Tesco is developed.

- c) Similarly it has been assumed that all the traffic uses that junction and none uses Turnbridge.
- d) No allowance has been made for competition with Sainsbury's Shorehead which will in reality reduce the visitation to Sainsbury's and vice versa as Mr Greenwood advised.
- e) The overestimated and therefore robust flows are proven too high by the actual analysis of the broadly similar Sainsbury's store nearby. The Tesco figures for the relevant peak hour are 29 % higher inbound and 21% higher outbound. Tesco flows would be nearer to the Sainsbury's flows and are thus greatly overstated.
- f) The improvements to the Leeds Road/Southgate junction (two left turn lanes and right turn bans from Northumberland Street) will achieve a nil detriment result.
- g) The change from a priority junction at Leeds Road/Old Leeds Road to a signalled junction will contain the traffic generated. If it did go over capacity, it would be for a short period in the Friday peak hour and means cars would not clear in the first cycle for a short period. That would be no more than a fact of life for a sub regional centre to which shoppers are to be attracted. Attraction means busy roads. Shoppers quickly learn not to visit in the Friday peak hour, unless they are the pass by home to work shoppers who are there anyway.

117. It is acknowledged that 80-85% of customers to similar Tesco stores arrive by car. The overriding objective of discouraging use of the private car is achieved first by having a shop which is close to the attraction of the town centre and which is easily walked to. Pedestrians are assumed to walk at a conservative 1.2m per second. People walk to the Sports Centre, the Stadium and Sainsbury's across the Ring Road at Southgate with 4,457 pedestrians observed to cross the road in this vicinity between 09:00 and 18:00 on 16 September 2011. It is not a barrier of substance. Once crossed there is the 'secondary bus station' in Lord Street and the railway station as public transport opportunities. The existing free buses are supplemented by another one through the S106 with the result that public transport is enhanced for the site and all shoppers throughout the town.

118. In all aspects the proposal is compliant with public transport objectives.

ASDA

119. The question has to be asked as to why Asda are attending the inquiry. They are a commercial objector and must have known about the Tesco proposals for some time. Yet they come forward at the very last minute with an inappropriately late proof which is confined to two areas of their apparent concern.

120. The first is to raise an argument that Tesco and Asda can co-exist in terms of capacity and impact. That is not a matter for this Inquiry or for the SoS to adjudicate upon. Asda can bring forward their scheme and take their risk like any applicant. It is not open to them to try to lever an indication from the SoS that there is room for 2 new stores.

121. The second Asda approach is to say that given there was a suggestion of a 9 year condition there will be a delay in bringing forward the Tesco scheme. The point is of no substance. Tesco and Kirklees Council have agreed on an exceptional 5 year time condition because of the requirement to relocate the sports centre and maintain the continuity of it.
122. Tesco is very keen to press the development forward because of the poor quality and size of their Castlegate shop. The impetus is obvious, so it is a reasonable assumption that they will do their utmost to press on with their ambition for the site.
123. Similarly, KC is committed to the relocation of the sports centre. It has passed its useful life and is disproportionately expensive to maintain. They have planning permission for Spring Grove. They will have the money in place. They have been delayed by the call-in, but it appears that as soon as planning permission is granted they will push forward to development as Mr Willock told the Inquiry.
124. The time-estimate for the sports centre construction through to vacation of the application site is some 2 years. In parallel with that Tesco can undertake preliminary works towards the end of that timescale, having already discharged conditions. As soon as they have a vacated site they can build over some 14 months. That timescale for commencement is well within the 5 years but the 5 year figure is an appropriate safety net.
125. Of course Asda are concerned to put any obstacle in the way of the Tesco proposal because they are commercial objectors having their own aspirations for the Chapel Hill site, but it is not preferable in sequential terms and indeed has a number of problems – highways; no entrance at street level to the shop floor; steeper hill to climb from Asda to the town centre as compared to Tesco; a perception of the ring road at this point as carrying higher speed traffic and amounting to an unpleasant part of the ring road to cross. Fewer people cross the ring road here compared to at Southgate.
126. The highway authority is adamant that the regime Asda propose is inadequate. Indeed it has been tried out in practice by KC who ran the associated programme through the traffic signals and the result was traffic gridlock. The pedestrian footway is reduced unacceptably if the appropriate number of lanes is provided. Buses manoeuvring will conflict with Chapel Hill flows. It is unsurprising that Mr Firth told that there was no safe or workable highway solution and there was no competing professional judgement before the inquiry to claim a contrary view.
127. The Asda (Broadbent) site at Chapel Hill is not sequentially equal, let alone preferable. Its promotion has been dilatory in recognition of that reality and attendance of Asda at the Inquiry can be no more than a spoiling exercise or a Walter Mitty attempt to persuade the SoS to say it can be brought forward alongside the application proposal. The SoS cannot reach such a conclusion not least because he does not have the material, but more importantly, because Asda is not the application before the inquiry.

CONCLUSIONS

128. The SoS must have called this in with some diffidence. After the Inquiry analysis it is clear there is no issue beyond the local which could have been

decided locally. KC as the LPA has been assiduous to examine and be satisfied on all matters before they found themselves able to support the proposal.

129. The resulting scheme is the trigger for the redevelopment of three major sites in Huddersfield and the attendant jobs produced. It should not be delayed any more. This sort of scheme is wholly consistent with the underlying scheme of emerging NPPF and preceding PGMS in creating growth by the energy of redevelopment of appropriate sites.

130. The Inspector is asked to recommend grant of planning permission.

The Case for Kirklees Council

INTRODUCTION

131. This Inquiry concerns a planning application submitted by Tesco Stores Limited to the LPA on 3rd February 2010 proposing replacement retail (Class A1) store with petrol filling station, car parking, landscaping and associated works.

132. The proposed development comprises the clearance of the site (including the demolition of all existing buildings), the closure of Pine Street and the construction of a replacement foodstore. The foodstore will have a net sales area of 6,860sqm (defined as actual sales area and the checkout unit/structure only).

Floor space	Existing store (sqm)	Proposed store (sqm)	Difference (sqm)
Convenience goods	2,406	4,585	2,179
Comparison goods	372	2,275	1,903
Sales floor space	2,778	6,860	4,082

133. The application is not simply the construction of a foodstore. The LPA consider it to be the core component in a multi-faceted regeneration project for Huddersfield, which will meet key aspirations of the Council to deliver an economic recovery and healthy living.

134. The grant of planning permission will (in part) facilitate:

- a) The redevelopment of the underused and dilapidated short stay car park above the bus station.
- b) The redevelopment of the Spring Grove car park with a modern purpose built sports centre.
- c) The redevelopment of the existing Tesco store at Castlegate with a modern mixed use development.
- d) The demolition of the existing sports centre, which is in need of massive investment and is at the end of its useful life.

- e) The demolition of the unsightly Lonsborough and Ibbotson flats on the application site, which are in need of significant investment and, in which no-one wants to live.
- f) The provision of 60 (20 x 2-bed and 40 x 1-bed) affordable units or £5million for the provision of new affordable housing.
- g) The refurbishment of the adjacent Richmond flats.
- h) The delivery of a modern purpose-built retail store, for which there is an identified need and which will engender linked trips to support the vitality and viability of the adjacent town centre.

STATEMENT OF COMMON GROUND

135. On 24th February 2011, the Planning Sub Committee (Huddersfield area) of the LPA resolved to grant additional full approval, subject to the resolution of landscape and design issues, referral of the application to the Secretary of State and the agreement of a Section 106 obligation and planning conditions. Both parties agree that discussions have taken place since the Planning Sub Committee to address all matters contained in the resolution. Accordingly, the LPA fully supports the grant of planning permission.

136. This Closing Submission should, therefore, be read in conjunction with the Statement of Common Ground (SoCG).

MAIN ISSUES

ISSUE 1 - DESIGN

The Process of the Application

137. Objectors to the development have alleged (without foundation) that the LPA has not looked critically at this application. This is strongly disputed by the LPA.

138. Both 'By Design: Urban Design in the Planning System' and PPS1 (paragraph 12) stress the importance of pre-application discussions. The LPA met with Tesco three times prior to the submission of the planning application in accordance with Best Practice. Thereafter, the design of the store was critically assessed by competent designers at the LPA.

139. The application was submitted on 3 February 2010. In a consultation response (dated 8 March 2010) NH (Conservation And Design Group Leader) recommended refusal of the application for the following reasons:

- a) The tower was too mean in proportion (too narrow and lacking presence) and it was not grounded to the elevation below;
- b) The materials were not acceptable as natural stone was not the prevalent material;
- c) The alignment of Crown House meant that the building line and active frontage to the ring road were both lost;
- d) Whilst the position of the entrance being brought forward onto Southgate was welcomed, it should be more impressive;

- e) Landscaping of the site needed improvement;

140. Tesco therefore proposed a number of design amendments. On the whole, the application design was considered to be acceptable for the reasons contained in the consultation response (12 September 2010) :

- a) The tower was bulkier and grounded and the entrance was brought further forward. However, it was still felt that the tower could be stronger and the entrance more fully accentuated. This would provide a stronger presence in the streetscene by creating height at the store entrance, rather than looking like a late addition to the façade;
- b) Additional stone panels were introduced, allowing a contemporary feel for the development whilst providing a context to the town centre;
- c) The realignment of the Southgate frontage proved difficult to overcome for the main building. However, the introduction of an extended canopy provided the presence of a building line;
- d) Landscaping was acceptable.

141. On this basis, the application was recommended for approval in the Sub Committee Report. The design of the proposal was (again) appraised independently by the members of the Planning Sub Committee. Whilst the Planning Sub Committee supported the proposal, the resolution required Officers to undertake further negotiations on the submitted scheme (regarding an increase in the number of trees, an increasing in the area of landscaping and improvement on the design of the elevation). To that end, a meeting was held with the Applicants and their agents on 16 March 2011, when the following changes were agreed:

- a) One of the sections of timber on the Southgate elevation was replaced with stone;
- b) The glazing and canopy was extended along the Southgate elevation;
- c) The green planting scheme was added on the outer edge of the service yard ramp;
- d) The block of 8 parking spaces adjacent to the pedestrian ramp from Old Leeds Road was replaced with parallel parking and landscaping in this area was increased;
- e) Woodland species for the boundaries were agreed. Bracken species were removed.

142. In the light of such amendments, the Planning Sub Committee's concerns were resolved. Notwithstanding this agreement, a further meeting took place on 22 September 2011 with an independent design consultant (Mr K Brown) who further considered the design. The further suggested changes were agreed by the LPA and can form part of the conditions:

- a) Elevational treatment to Southgate - to achieve a further amount of active frontage and to remove a section of blank walling, a section of additional glazing was suggested on the Southgate elevation, aligning with the end of St Peter's Street. This further emphasises the double

fronted nature of this scheme, addressing the key frontages of Southgate and Leeds Road;

- b) Major changes to landscaping - the proposed trees are realigned on Southgate to pick up the view from St Peter's Street focusing on the additional glazing and also tying the proposal more into the alignment of Crown House and Southgate. This has addressed the Council's concerns over the building line.

143. In the light of this process, it is submitted that the SoS should conclude:

- a) The design of the building has been the product of an iterative process between both the Applicant and the LPA, who have both engaged appropriately qualified designers.
- b) The LPA officers have, at all times, critically assessed the merits of the design.
- c) The Planning Committee did not simply accept the recommendation of the Officers but also independently assessed the quality of the design.
- d) Tesco have had the design independently audited by an urban designer who was not involved in the application process.
- e) Such a process is entirely in accordance with best practice and national guidance.
- f) Significant weight must be attached to the agreed product of such a design process.

The Existing Context of the Application Site

144. The LPA has fully considered the development of the application site over time. Reliance has been placed on historical OS maps from 1850, 1955 and 1965, which show how the application site has developed over time (Document LPA1.2). In particular, the map of 1965 explains why the current Ibbotson and Lonsborough flats relate so poorly to the Ring Road. They were constructed to front a roundabout, which has since been replaced by a signalised junction.

145. The application site does not lie in the Huddersfield Town Centre Conservation Area. Further, it does not directly affect any Listed Buildings (identified on Mr Hunston's Appendix NH1). The LPA does, however, consider that the application site lies in the setting of a number of Listed Buildings on the other side of Southgate. Furthermore, it is visible in views out of the Conservation Area. That said, the experience of the Listed Buildings and Conservation Area from the application site is significantly impaired by the intervening ring road which forms a physical and visual separation between the site and the heritage assets.

146. It is not contested (by any party to the Inquiry) that the application site currently makes a negative contribution to the setting of the Listed Buildings and detracts from the character and appearance of the area. The range of buildings on the site includes a mix of residential, commercial, leisure and civic uses that do not have a coherent character. The collection of buildings creates a stark, bland appearance with a lack of interest or detailing. The buildings do not have strong frontages and are situated at various distances from the highway surrounding the site. The harsh building line of the existing blocks of

development brings about a hostile appearance, which acts to exaggerate the site's separation from the Conservation Area. This layout differs substantially from the street layout in the Conservation Area where there is a presence of rows of terraced properties, characterised by the historic grid street pattern with angular blocks of development (demonstrated in the historic OS plans).

147. In such circumstances the proposed development will be an improvement on the character and appearance of the application site because:

- a) It will remove the existing sports centre, which is an unsightly piece of modern architecture which is in obvious need of significant investment.
- b) It will remove the two blocks of flats, which are unsightly, in need of significant investment and in which occupants simply do not wish to live.
- c) It will remove the existing poor quality landscaping.
- d) It will provide a modern purpose built foodstore which will address the two main frontages of this important corner plot on the stadium axis.
- e) The proposed building will provide continuity, enclosure, activity and both passive and active surveillance to Southgate and Leeds Road.
- f) It will provide a building of an appropriate scale, height and mass given its proportions, which relate well to both the human scale and the width of the roads which it encloses.
- g) It makes use of high quality materials such as stone and glazing, which serve to articulate the substantial primary mass of the building.
- h) It delivers a high quality hard and soft landscaping scheme.

148. In all the circumstances, therefore, it is submitted that:

- a) The design contributes positively to making the area better for people (PPS1 paragraph 34).
- b) The design is appropriate in its context (PPS1 paragraph 34).
- c) The design takes the opportunity available to improve the character and quality of the area and the way in which it functions (PPS1 paragraph 34).
- d) The proposal secures a high quality and inclusive design (PPS4 Policy EC10.2).
- e) The design complies with policies BE1, BE2 and BE11 of the UDP which are consistent with national guidance.
- f) The Applicant has provided a description of the significance of the heritage assets affected and the contribution of their settings to that significance (in accordance with Policy HE6 PPS5).
- g) The Applicant and the LPA have sought to identify and assess the particular significance of the historic environment affected by the proposal (in accordance with Policy HE7.1).

- h) The effect of the development on the significance of the Listed Buildings and their settings is beneficial (in accordance with Policy HE8, HE9 and HE10).
- i) The design will enhance the setting of the Listed Buildings and will enhance views into and out of the Conservation Area, especially down Northumberland Street.

149. Indeed, neither Asda nor WD Kingsgate suggest any criticism of the proposed design. Of the professional representations, only Indigo Planning (on behalf of Zurich Assurance Limited) has raised the issue of design. However, the design objection is premised on the contents of the Sub Committee Report. As explained, the design has been the subject of two further design iterations since the date of the Committee Report. Accordingly, the objection is written on an entirely erroneous premise. It cannot, therefore, be given any weight in the determination.

150. In all the circumstances, therefore, the LPA submits that there is no objection to the design of the proposed development. On the contrary, it will be in accordance with both the legal and planning policy tests, which require all development to deliver a high quality inclusive design.

ISSUE 2 - ACCESSIBILITY

151. There can be no dispute (whether on the basis of the written evidence or the evidence presented to the Inquiry) that:

- a) the application site is accessible to pedestrians (see TSoCG figure A10 and A11);
- b) the application site is accessible by cycle (see TSoCG figure A12 and A13);
- c) the application site is accessible to means of transport other than the private car, especially train and bus (see TSoCG figure A14-16 and Appendix E). The nearest bus stops are on Leeds Road and Lord Street, which are considerably closer than the Bus Station; and
- d) an appropriate level of car parking has been provided which complies with PPG13 (see LPA4 at paragraph 3.4).

152. The LPA have robustly tested the accessibility of the site by car. A study area to test the impact of the proposed development on the road network was identified, based on where the traffic development is assigned to the network. This included all the main junctions on the ring road, with the network along Leeds Road and Wakefield Road. A TRANSYT model developed by Kirklees Council was utilised by the Applicant to determine the queues and delay that resulted from adding development traffic to base 2013 flows. Based on these results, a number of junctions were identified for more detailed testing.

153. Testing of these junctions using the TRANSYT model has been undertaken by the Applicant for the following three scenarios:

- a) 2013 base network - no development and no mitigation;
- b) 2013 base plus development - no mitigation;

c) 2013 base plus development with mitigation.

154. Accordingly, a robust iterative process of highway improvement and testing has taken place to identify required link and junction improvements, which result in a level of impact within or close to recommended thresholds and which would result in operating conditions close to scenario 1.

155. There is no objection on highway grounds, supported by technical highway evidence. John L Brierley Limited supports the principle of development and is not asking the SoS to refuse planning consent. Rather, they raise two "concerns" on which they would welcome reassurance:

a) The capacity of the Leeds Road/Old Leeds Road junction;

b) The impact of the development on the turn bridge.

(a) Leeds Road/Old Leeds Road Junction

156. The level of efficiency of a junction is measured by its degree of saturation in combination with its corresponding queue length. On the Old Leeds Road the degree of saturation is 105% with a queue of 31 vehicles. Where an approach achieves a degree of saturation of 100% or more, the demand for movement through the junction is higher than the junction can accommodate and a level of congestion will result. In this case, the Transport Assessment (TA) demonstrates that (at its worst in the pm peak hour) queuing traffic would have to wait for a full cycle of the traffic lights but would pass through the lights on the second cycle. This is not unusual in periods of peak demand and it is generally accepted that it is unrealistic to design for the worst case. It is the responsibility of the Highway Authority to manage the network and come to a balanced decision about the acceptability of this impact (with mitigation) associated with new development in accordance with national and local guidance. In this case, the LHA are entirely satisfied with that level of impact.

157. However, both Tesco and the LPA consider that such a level of impact is "robust" and that the level of impact is over stated because:

a) The model is based on 2006 baseline counts with annual growth added to 2013 (year of opening). However, evidence shows a drop of approximately 10% on some parts of the Huddersfield network in the period 2006 to 2010.

b) The generation estimates used in the analysis are regarded as robust, not least because existing traffic generated by the application site has not been discounted.

c) The modelling takes no account of a robust travel plan, to be delivered through the S106 obligation.

d) The junction modelling undertaken to date is a design tool to provide a broad picture of network operation. Detailed design and fine tuning will deliver better results on installation.

e) No account has been taken of customer behaviour. People will change their shopping habits (whether by going to another store or at another time) rather than sit in queues.

158. Accordingly the LPA consider that the impact of the development will not be as significant as suggested in the TA (which is considered, in any event, to be acceptable).

159. The practical experience of Sainsbury's at Shorehead (a nearby development of a very comparable scale) is useful. A recent survey demonstrates:

579 vehicles in (as compared to the TA assessment of 745 vehicles in at the proposed Tesco site);

621 vehicles out (as compared to the TA assessment of 752 vehicles out at the proposed Tesco site).

160. Accordingly, the Tesco TA has derived results which are 29% higher (in) and 21% higher (out) than have actually been observed in practice. The LPA submit that, for all the above reasons, the SoS (and Brierleys) can be satisfied that the impact of the development on the highway network will be acceptable.

(ii) Impact on the Turnbridge

161. The evidence for Brierleys has been written on an erroneous premise. It assumes that the Turnbridge will be closed, if planning permission is granted. It is not (and nor has it ever been) the intention of either the Applicant or the LPA to close the Turnbridge, in the event that planning permission is granted.

162. Mr Greenwood has surveyed the Turnbridge. In the pm peak (Monday 5 - 6pm) there are 99 two way movements (93 cars and 6 LGVs). He agrees that, if planning permission is granted, there could be a maximum of 180 additional movements (inbound only) with a potential for 279 two-way movements per hour in the pm peak. He does not provide any evidence to suggest that such traffic flows would exceed the capacity of the single-track carriageway Turnbridge. Mr Firth's evidence is that a conservative capacity of the Turnbridge would be between 800 to 1,000 movements per hour. Accordingly, the modelled additional 3 vehicles per minute during the peak hour would have no adverse impact upon the operation of the Turnbridge.

163. The 180 vehicle movements are, in any event, an unrealistically high estimate to be used in the TA. It assumes that all the traffic accessing the site from the south east (along Wakefield Road) would use this potential rat-run. This is wholly unrealistic, especially given that the Turnbridge regularly opens, thereby preventing road access when the canal is being used.

164. The primary position of both Tesco and the LPA is that no works are proposed for the Turnbridge (whether by a TRO or otherwise). The conditions do, however, propose monitoring of traffic flows across the Turnbridge. In the event that, in practice (and contrary to the assessment) there is a practical problem, then a mechanism is in place to resolve any issues via a TRO (to be funded by the Applicant). Naturally, Brierleys want certainty as to any solution. However, they also accept (XX of Mr Greenwood) that any solution must be underpinned by an assessment and understanding of the particular problem. A solution cannot be realised at this stage because it is not anticipated that there will be a problem.

165. The SoS should conclude that the proposed impact will be acceptable. If, contrary to that assessment, works are required, there is a robust mechanism to

address any such problem, which can (and will) include consultation with Brierleys as an affected landowner.

166. On this basis, it is submitted that:

- a) The proposal complies with policy tests contained in PPG13.
- b) The proposal complies with policy EC10.2(b).
- c) There will be no unacceptable adverse impact on the operation of any junction or link on the adjacent highway network.
- d) There will be no material adverse impact on the operation of the Turnbridge.

ISSUE 3 - RETAIL ASSESSMENT

Retail Policy

167. The RSS was adopted in May 2008. The UDP was adopted on 1st March 1999. The LPA submits that PPS4 is a material consideration to which greater weight should attach in the determination of this application, where it is inconsistent with the retail policies of the Development Plan. The interpretation of policies in PPS4 has not been contested by any party.

168. Policy EC10.1 requires the SoS to adopt a positive and constructive approach towards planning applications for economic development (such as this). Planning applications that secure sustainable economic growth should be treated favourably.

169. Greater weight has been placed on the imperative to deliver sustainable economic growth in the Rt Hon Greg Clark's Planning for Growth Ministerial Statement (23 March 2011) (PGMS). This states amongst other things (CD 8.4):

"The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs. The Government's clear expectation is that the answer to development and growth should where ever possible be "yes", except where this would compromise the key sustainable development principles set out in national planning policy."

170. Policy EC17.1 requires that planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to-date development plan should be refused planning permission where:

- a) The applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or
- b) There is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of the impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of these permissions, developments under construction and completed developments.

171. Where no significant adverse impacts have been identified under policies EC10.2 and 16.1, planning applications should be determined in particular taking account of:

- a) The positive and negative impacts of the proposal in terms of policies EC10.2 and 16.1 and any other material considerations; and
- b) The likely cumulative effect of recent permissions, developments under construction and completed developments (see Policy EC17.2).
172. It is quite clear (and expressly agreed by Asda in XX of Mr Serra) that any cumulative impact with the Asda proposal is not material to the application of policy in PPS4.
173. The uncontested evidence of Mr Nutter is that the two tests in EC17.1 should not be applied as a "gateway" test. If (which the LPA does not accept in this case) there is any conflict with either EC17.1(a) or (b), such a conflict must be weighed in the planning balance, in accordance with section 38(6).

Quantitative Need

174. PPS4 has removed the test of need for all planning permissions. However, this does not mean that "need" should be disregarded completely. It is an important starting position, in relation to current and future convenience goods floor space within Huddersfield.
175. The quantitative need for further retail floorspace has been considered by Signet Planning in their Retail Capacity Studies (2008 - CD8.2) (updated in 2009 - CD8.3).
176. The RCS considers that the scale of headroom is not sufficient to support a new large format convenience food store development. Nevertheless, the level of under provision across the district does provide opportunities to secure small to medium sized food store development to address local quantitative and qualitative deficiencies. Furthermore, there may be an opportunity for existing store expansion.

Convenience Goods 2008 - 2013		
	large format foodstore	small/medium format store
South Kirklees	+ 1,791sqm net	+ 3,816sqm net
Convenience Goods 2008 - 2015		
	large format foodstore	small/medium format store
South Kirklees	+ 2,037sqm net	+ 4,344sqm net

Comparison Goods		
	2008 - 2013	2008 - 2015
South Kirklees	+ 9,760sqm net	+ 16,900sqm net

177. Despite the downturn in the economy, the RCS concludes that there remains the opportunity for an expansion of comparison goods retail floorspace in South Kirklees, although the scale of growth is notably reduced as a result of the proposed Kingsgate Shopping Centre extension which is identified as commitment in the RCS Update. Nevertheless, the "retail headroom" defined (particularly for 2015) does allow for additional comparison goods development to come forward.

178. There have been no material changes since the RCS in provision, save the extension to Sainsbury's (Shorehead) to 5,761m² net. However, this was already a commitment at the time of the RCS.

Qualitative Need

179. The Shopper Survey underpinning the RCS demonstrates that there are four main stores in Huddersfield town centre: Sainsbury's (Market Street), the existing Tesco (Castlegate) and the edge-of-centre Sainsbury's (Shorehead), and Lidl stores.

180. Mr Nutter's Appendix 2 demonstrates that (even pre-extension) the Sainsbury's (Shorehead) store was clearly the most popular and is over-trading against company averages. Accordingly, the LPA submits that the quality of retail offer in Huddersfield town centre (and immediately adjacent to the ring road) is sub-optimal. Indeed, it is common ground that there are a number of problems with the quality of the existing Castlegate Tesco, not least:

- a) At 3,778sqm it is not of an adequate scale to compete with Sainsbury's Shorehead (5,761sqm) or the out-of-centre Asda and Morrison's.
- b) It is an outdated format with a compromised internal layout: there is a lack of space around the checkout area, the quality of accommodation is poor, the entrance is cramped, there is a reduced range of goods that can be stocked, and the in-store bakery and deli are compromised. It does not meet modern customer expectations.
- c) This is corroborated by customer responses (even after recent improvements to the store).
- d) There are significant operator constraints including for example the need to move fresh goods the entire length of the trading floor from the delivery area and the lack of space on-site for an internet delivery service. Local deliveries are instead made from the Oldham store (18 miles away).

Sequential Approach

181. It is common ground between all parties who gave evidence at the Inquiry that the application site is an edge-of-centre site.

182. The SPG (CD2.4) adopted in March 1999 defines the Main Shopping Area (equivalent to the Primary Shopping Area in PPS4). The only material change since its promulgation is the grant of planning permission for Kingsgate 2 (which has not been implemented). The Kingsgate Centre was developed in the Main Shopping Area and its proposed extension is not a material change to the boundary. Accordingly, the LPA consider that this is a robust starting point for

the application of the sequential test. In the light of the XX of Mr Serra, it is entirely unclear what the approach of Asda is to the definition of the PSA.

183. The LPA's approach is supported by the Decision Letter of Inspector Cookson in the Kingsgate 2 appeal (CD11.5) which states:

"24 ... The use of saved policies in a period of transition from the 1999 UDP to the nascent LDF is bound to produce what appear to be anomalies. The matter of the main shopping area boundary is arguably one such. The inset map showing the main shopping area is not saved because policy TC2 is not saved. It was deemed to be out of date as sites identified in it had been developed. However, I consider that the SPG with its plan of Huddersfield town centre main shopping area still applies as the S4 policy to which it relates is saved. It seems to me that in the circumstances of this case and in the absence of anything else, it is both reasonable and realistic to regard the main shopping area boundary as that shown in the SPG."

184. On this basis the application site is well within the PPS4 easy walking distance of up to 300m (see LPA3 Appendix 4 and Document 3 TSoCG Fig A 10). In the Council's highways evidence (LPA4) Mr Firth analyses the changes to the pedestrian crossing adjacent to the proposed store on Southgate. At present pedestrians cross 7 lanes of traffic on 3 legs. Currently, average crossing times are: towards the town centre - 93 seconds; and away from the town centre - 67 seconds. Following proposed changes to the junction to increase traffic capacity there would be four legs to cross. The expected average crossing times towards the town centre would drop marginally to 87 seconds. The average crossing times away from the town centre would rise to 143 seconds. However the revised crossing is considered by the LHA to be safer as some right turn movements would be banned.

185. Even Asda concede that the application site is "well-connected" to the town centre. This is the only rational conclusion given:

- a) The store entrance is 157m away from the PSA (at the end of Brook Street);
- b) The ring road does not operate as a barrier in planning policy terms; Policy TC32 of the UDP provides for major developments outside the ring road that incorporate pedestrian links with the town centre pedestrian network;
- c) The ring road is not seen as a barrier in physical terms to residents of Huddersfield. This is evident from:
 - (i) pedestrian footfall across the ring road from the Technical College, University, Sainsbury's (Shorehead), the Stadium and the existing Leisure Centre on the site;
 - (ii) the pedestrian surveys produced by the Applicant;
- d) the route (if walking to Kingsgate) is attractive along either Northumberland Street or the Beast Market, given that it is: overlooked, relatively flat, to the main draw of Huddersfield town centre, with strong complementary attractions;

- e) a distance of 482m from the application site to the prime shopping frontage compares favourably with the distance from the existing Tesco to that frontage (512m).

186. The LPA's position is that both the application site and the proposed Asda site are sequentially similar. Asda have misrepresented the LPA position in asserting that: "Council officers concede the sequential preference of the Asda site".

187. PPS4 Policy EC5.2(b) provides guidance on the sequential approach. After centres, LPAs should prefer "edge of centre locations, with preference given to sites that are or will be well connected to the centre".

188. In all the circumstances, therefore, it is submitted that:

- a) The Tesco site is edge of centre.
- b) The Asda site is edge of centre.
- c) The Tesco site is within an easy walking distance of the town centre (within 300m).
- d) The application site is "well connected" to the primary shopping area.
- e) The Asda and Tesco stores are sequentially equal.
- f) On that basis, there is simply no reason for the SoS to consider the Asda site further as it is not "sequentially preferable".

189. There are 6 sequential sites which have been considered.

1. St Georges Warehouse

190. No one has objected on the basis that this is a serious contender. The LPA submits that it does not merit further consideration. It is a Grade II listed warehouse on several floors with multiple internal iron columns that would prohibit the layout of a supermarket sales area (See Document LPA3 Fig 5.1). Planning permission was granted in 2004 for mixed use for office, leisure and residential use (Council Ref. 2004/62/93661/W1) (CD11.9). The building is partially occupied as offices. It is outside the main shopping area and the intervening railway constrains access on foot. The site is not suitable.

2. Spring Grove Car Park

191. Whether objectors like it or not, this site is not available:

- a) The Council own the site.
- b) They have planning permission for a land use which is considered to be significantly in the public interest (a sports centre).
- c) The resolved position of the Council is to develop the site for the sports centre.
- d) There is no resolution to even consider the sale of the land to Tesco and/or any other retailer.
- e) The Tesco development will facilitate the redevelopment of the sports centre which is planned for the site.

192. Further or alternatively, a retail superstore (on stilts) is simply not suitable on this site given the proximity of adjacent residential properties on two sides.
193. It is no answer to suggest that, if planning permission is refused, the sports centre may not be required. This is because the existing sports centre is in need of massive investment and the Council have a policy aspiration to develop the leisure centre and have identified/allocated funding.

3. Queensgate

194. This planning application was made by the Council in May 2008. It has not yet been determined, which (in itself) suggests there are issues concerning its deliverability. The site is in multiple ownership and includes listed buildings.
195. The retail purpose of the Queensgate scheme was to provide a step change in the comparison goods offer of Huddersfield and to address the deficiency of comparison goods floor space, so that Huddersfield can perform its role in the retail hierarchy. It is evident, therefore, that the same purpose can simply not be achieved by the Tesco development.
196. Furthermore, the preparation of the Queensgate application involved a turgid design process (in which CABE were very critical). It is the agreed position of both Mr Brown and Mr Nutter that the design constraints of the Queensgate application site could simply not be overcome by a large format convenience retailer.
197. The Queensgate site requires land assembly of sites currently in beneficial and active uses. No progress has been made on the land assembly and the LPA submits that there is no prospect of this occurring "in a reasonable timescale" (in PPS4 terms). Furthermore, given the economic downturn, there is no evidence to suggest that it is viable for the Queensgate scheme to proceed.
198. In all the circumstances, therefore, it is submitted that the Queensgate site is not suitable, viable, or available, on the basis of the evidence currently available.

4. Kingsgate 2

199. The Kingsgate 2 scheme was an outline application with all matters reserved save layout, external appearance and landscaping. The appeal Inspector considered it to be a straightforward and limited extension to the Kingsgate Centre of 11,154sqm comparison floor space, comprising one large retail unit on 2 floors, 7 smaller shops and one unit fronting Kirkgate. It is quite plain from the evidence submitted by WD Kingsgate that there was never any intention for there to be a food retailer in Kingsgate 2 because:
- a) The location at the end of a keyhole mall is not an appropriate location for your weekly shop.
 - b) The intended anchor was Marks & Spencer (mainly clothing).
 - c) None of the proposed list of interested retailers comprised convenience foodstores.
 - d) No progress has been made in delivering Kingsgate 2.
 - e) No application has been made for reserved matters consent.

- f) WD Kingsgate are progressing a Kingsgate 3 scheme, which still seeks to deliver comparison goods but on a larger site.

200. Furthermore, Tesco have explained the practical store constraints arising principally from the multi level sales floors and the restricted space for parking, circulation and deliveries which do not make this site suitable for their operation (of a large store). This site is not suitable.

5. Broadbents/Asda Site, Chapel Hill

201. Asda have made an application to the LPA for a 9,480sqm (gross) Asda superstore on this site. They asserted (without producing any evidence to support such assertions) that this site is suitable, viable and available for the proposed development.

202. The LPA consider that if (which the LPA do not accept) the site is sequentially preferable, then it cannot be considered to be suitable, on the grounds of an insuperable highways constraint. Asda has provided no technical highways evidence to contradict the evidence of the LPA.

203. The Asda application was submitted on 12 June 2009. On 2 March 2010, the LPA wrote to Asda (LPA5) identifying a number of highway concerns, which had been raised at a meeting on 13 November 2009. Such concerns included the reallocation of road space on Chapel Hill, likely to cause serious congestion for inbound traffic in the morning peak hour, and the problems with the modelling submitted (identified through live testing) which created serious congestion issues.

204. On 20 January 2011, in a bid to finally deter the application (given the abject lack of progress being made by Asda), the LHA submitted a consultation response which recommended refusal of the application on the following grounds:

- a) The ability of the network to accommodate the access solution proposed.
- b) The unacceptable reduction in footway widths.
- c) The failure to deliver a designated right turn lane into Milford Street of 60m to accommodate the maximum queue length.
- d) Unacceptable conflict with bus stop locations.
- e) The absence of any progress in the modelling since November 2009.

205. The Asda highway consultant's response on 21 January 2011 (see LPA7):

- a) Failed to demonstrate an access layout which provided adequate footway widths, given the anticipated heavy pedestrian footfall in the area from Huddersfield Technical College.
- b) Failed to append a plan which demonstrated a 60m (or even 50m) right hand turn lane into Milford Street.
- c) Failed to make any bus stop provision.
- d) Stated that the applicant refused to progress with the traffic modelling, given the absence of any agreement on an acceptable proposed layout at Milford Street/Chapel Hill.

206. The LPA's latest position in a letter dated 23 August 2011 demonstrates that the progress that has been made on the Asda application is glacial. It identifies a number of fundamental highway issues, including exactly the same highway concerns that have now been extant since November 2009 (2 years!). Whilst Asda assert that the site is "capable of accommodating a full line store" (Closing para 17): there is no highway plan which supports that proposition.
207. Mr Serra (with the optimism of the recently appointed) asserts that the meeting on 7 September 2011 demonstrates a new commitment to progressing the Asda application (no explanation is provided for the lack of commitment in the previous 2.5 years). However, since that meeting (and notwithstanding the assurances contained in LPA 9) there has been no further contact with the LPA. RS conceded this meant that the highway concerns were of such significance that they could not be overcome with 2 months of serious commitment.
208. The best Asda could do in XX of Mr Firth was to assert (somewhat hopefully and contrary to the progression of the application) that there could be "further discussion" between Asda and the LHA. That of course may be true. However:
- a) There has been discussion between the LHA and Asda for more than 2 years and it has failed to deliver an acceptable highway solution.
 - b) There has been scope for further discussion since at least January 2011. In the last 9 months, Asda's highway consultants have produced nothing to the LHA.
 - c) Asda are not applying the correct test - there may be further discussion but this does not demonstrate that there is a suitable highways solution to their site (the relevant PPS4 test).
209. In XX, Mr Firth unequivocally stated that he was not averse to further discussion. However, he was concerned that Asda "cannot physically fit in the required infrastructure". Furthermore, the practical experience of the LHA in "live testing" Asda's application was gridlock on the ring road, with motorists resorting to illegal and highly dangerous U-turns in a desperate bid to extricate themselves from the fiasco caused by Asda's modelling. Asda fail to make any mention of the absence of a workable traffic model in their Closing Submission.
210. There is simply no evidence to contradict the evidence of Mr Firth. The Asda site is not sequentially preferable and is not, in any event, suitable.

6. The Existing Site

211. The LPA accept that the existing site is simply not big enough to accommodate a store of the required scale. Mr Nutter agrees with Ms Bath that any development needs to be of a sufficient scale to:
- a) Address the significant over trading of Sainsbury's (Shorehead) and the out-of-centre Morrison's and Asda;
 - b) [Reduce] the leakage of expenditure to the out-of-centre stores.
212. The PPS4 Practice Guide accepts that "like affects like". Accordingly, the proposed development will not materially impact on existing shopping patterns unless a comparable offer can be provided. This is why a store of the proposed scale is required.

213. It has not been contested by any party to this Inquiry that a store of the required scale cannot be delivered on the existing site. A multi-level store would be required, which would have the convenience floor space over more than one floor. Mr Nutter considers that such a proposal is simply not deliverable. Furthermore, Tesco have identified numerous technical inadequacies (from an operator's perspective) with such a development.
214. EC15.1(d) requires developers and operators to demonstrate flexibility. However, in considering whether flexibility has been demonstrated, LPAs should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model (EC15.2). Further guidance is contained in the Practice Guide (see especially paragraphs 6.30 - 6.34). In every case it will be necessary to strike an appropriate balance between the requirements of the commercial sector and the requirements of national policy based upon local circumstances. While there is no policy requirement to demonstrate need, an operator claiming that it is unable to be flexible about its chosen business model would be expected to demonstrate why a smaller store or stores could not meet a similar need (6.33).
215. In this case, the LPA consider that the Applicant has demonstrated flexibility. Further, it agrees that a smaller store or stores could not meet the identified need. Accordingly, the "appropriate balance" is struck decisively in favour of the grant of planning permission.
216. Furthermore, the LPA does not consider that the existing site has any practical advantage over the proposed site, in terms of its proximity to other town centre facilities. As demonstrated by KN4, the proposed site is closer (482m) to the Kingsgate Centre than the existing Tesco (512m). It would be ridiculous (and the application of planning policy in a vacuum) for planning permission to be refused simply because a store moves from one side of the road to another without any meaningful change in impact.
217. Accordingly, it is submitted that the existing site is not suitable. Furthermore, the LPA consider that the redevelopment of the existing site for mixed use development will actually be a further aspect of the development which weighs heavily in its favour. As part of the development agreement, Tesco have been required to submit a planning application, which they have done. The LPA submit that it is reasonable to determine this application on the basis that the existing site will be redeveloped as soon as possible because:
- a) Tesco are a developer who will only make a return on their investment once the site has been either redeveloped or sold to a developer (who again will want to make a return on his investment);
 - b) If developed, the existing site will increase the footfall in a location adjacent to the new Tesco;
 - c) If undeveloped, the existing site will become a burden (both in terms of rates and maintenance and potential antisocial behaviour).
218. This issue was considered by the Inspector in the Kingsgate appeal. He stated:

“It is inevitable and usual, in my view, for retailers to want to re locate within centres for a variety of reasons. It is a feature of retailing and part of the dynamic of a centre.”

219. The LPA submit that the development will therefore provide an opportunity to demolish the existing Tesco building and to provide a development opportunity in the centre, which can contribute to the vitality and viability of Huddersfield as a whole. In such circumstances, there is no possible conflict with the sequential test.

Impact

220. Policy EC 17.1 requires there to be “clear evidence that the proposal is likely to lead to significant adverse impacts”. The SoS must note that no positive evidence has been provided from any other party in respect of the relevant impact tests.

221. In particular, it is uncontested that (see EC 10.2):

- a) The proposal has been planned over the lifetime of the development to limit carbon dioxide emissions and minimise vulnerability and provide resilience to climate change (see Mr Willock).
- b) The site is accessible by a choice of means of transport (see Mr Firth).
- c) The proposal secures a high quality and exclusive design which takes the opportunities available for improving the character and quality of the area and the way it functions (see Mr Hunston).
- d) The proposal will have a positive impact on the economic and physical regeneration in the area, including an impact on deprived areas and social inclusion objectives (see Mr Nutter).

222. In particular, the proposal will:

- a) Safeguard the employment of staff currently employed in the existing Tesco store.
- b) Provide employment at the proposed store.
- c) Specifically target employment at the long term unemployed in the local area.
- d) Deliver apprenticeships in construction.
- e) Provide three major construction projects in the town (the existing site, the application site and the sports centre site).

223. Such economic and employment benefits should be considered in the context of the application site's relationship to the Dalton Ward (see KN10) which exhibits indices of multiple deprivation. It is submitted that (applying EC10.1 and Planning for Growth) the SoS should attach significant weight to such benefits.

224. Furthermore, there is no conflict with any impact criteria contained in EC16.1. This is expressly conceded by Asda. Whilst Asda assert that the loss of existing town centre retailing is a harmful consequence, Mr Serra considered the impact to be acceptable.

225. In particular:

- a) There will be no material impact on the Queensgate scheme.
- b) There will be no material impact on the Kingsgate extension.
- c) The Asda scheme is not existing, committed or planned public or private investment.
- d) Indeed, the proposal will lead to significant private investment in a location immediately adjacent to the town centre.
- e) There is, therefore, no conceivable conflict with EC16.1(a).

226. It is common ground that the town centre of Huddersfield is vital and viable. The impact assessment of the Appellant (expressly agreed by the LPA) has not been contested by any objector to the scheme. It demonstrates (Table 7 Appendix 5 NB) that the impact of the development on the town centre as a whole will be -12.1%. However, this impact is attributable to 100% of the existing Tesco expenditure transferring to the application site. The impact on the centre (excluding the impact from the existing Tesco) is only -1.9%. The impact of the proposal on the in-centre trade/turnover and on trade in the wider area (taking account of current and future consumer expenditure capacity in the catchment area) is acceptable (EC16.1(d)).

227. The Sub Committee report of February 2011 stated that the 2010 occupancy survey found a vacancy rate of 83 units in the town centre (11.8%) which was down from 91 units (13%) in 2009 and compares well with the national average in 2010 of 13%. Huddersfield had the lowest vacancy rate of West Yorkshire towns and cities. The location of the vacancies is illustrated at Mr Nutter's appendix KN9. However that includes some non-retail premises inside the PSA and some retail premises outside the PSA as defined by the Main Shopping Area shown at KN1. The Council's vacancy figures are however lower than the 2011 figures at Appendix 3 to Ms Bath's proof which include a 16.74% vacancy rate.

228. Given that the application site lies in the sub regional centre, the LPA considers that it is an appropriate scale (in terms of gross floor space in accordance with EC16.1(e)).

229. Accordingly, it is submitted that the impact of the proposal is acceptable in retail planning policy terms. This proposition is expressly conceded by Asda, the most fervent opponent of the development.

Compliance with PPS4

230. The proposal complies with PPS4. Indeed:

- a) The Applicant has demonstrated compliance with the sequential approach.
- b) There is no significant adverse impact.
- c) There is compliance with EC17.1 (a) and (b).

231. Further or alternatively, there is no retail impact which has anything beyond a local impact. Accordingly, applying the Coalition Government's localism agenda, significant weight should be attached to the planning judgments of the LPA.

There is certainly no credible assessment before the Inquiry which can be set against the assessment of the LPA.

ISSUE 4 - COMPLIANCE WITH THE DEVELOPMENT PLAN

232. For the reasons stated above, it is submitted that the application complies with development plan policies which deal with design, highways and retail impact.
233. The application site constitutes previously developed land, comprising under-used and dilapidated buildings, in a highly accessible area, on the edge of the sub-regional centre. Its redevelopment would be the catalyst for the redevelopment of one town centre site and 2 edge-of-centre sites, which would contribute strongly to the imperative to regenerate Huddersfield. There are no infrastructure constraints and no environmental constraints which would preclude delivery. Accordingly, the redevelopment of the application site is strongly supported by myriad development plan policies.
234. Furthermore, for the reasons contained in the Committee Report and the brief evidence of Mr Willock (from Section 6 onwards), it is submitted that the development complies with Development Plan policies which address the following issues:
- a) Air quality;
 - b) Noise/odour/lighting;
 - c) Contaminated land;
 - d) Ecology and landscaping;
 - e) Flood risk/drainage/water pollution/infrastructure;
 - f) Waste management;
 - g) Crime prevention.
235. Finally, the development would result in the loss of 85 affordable homes (out of a total supply of 24,000 units - excluding Housing Association units). The Lonsborough and Ibbotson flats comprise 85 units which are at the margins of acceptability (of which 19 are empty as the Council do not wish to use them) and in need of substantial investment. The applicant will provide either 60 new flats on the existing site (20 x 1 bed and 40 x 2 bed) or £5m (derived from calculating the cost of delivering 20 x 1 bed and 40 x 2 bed units). It is unanswerable that the replacement of 66 occupied old units with 60 new units is a significant benefit of the development. The Council are quite clear that occupants simply do not wish to live on the application site. Asda do not allege any conflict with any Development Plan Affordable Housing policy.
236. In all the circumstances, therefore, it is submitted that the application complies with the Development Plan. Furthermore, there are no material considerations which justify a conclusion other than in accordance with the Development Plan.

Issue 5 - OTHER MATTERS

237. The Asda objection on the grounds of "uncertainty" must be looked at in the following context. The Asda case:

- a) Does not address highways impact.
- b) Does not address design.
- c) Concedes there is no conflict with EC10.2(a) to (e).
- d) Does not assert any conflict with any impact criteria in EC16.1.

238. Accordingly, Mr Serra conceded that he alleged a single breach of planning policy, which concerned the failure to pass the sequential test (EC17.1(a)).

239. The LPA strongly submits that Asda have sought to use this Inquiry to further their own application on the Asda site. This is irrelevant to the determination of this application and has wasted a lot of valuable Inquiry time. Asda allege that there is uncertainty about:

- a) whether the cumulative impact of Asda will be acceptable, arising out of the LPA's non-determination of the Asda planning application;
- b) the timescale of delivery of the Tesco store; and
- c) the LPA's Position on the Asda Application

240. On Day 2, Asda's advocate stated that he was "not asking the SoS to reach a view on whether there was room for two [superstores] or not room for two". In XX, Mr Serra conceded that this was an accurate reflection of the case of Asda and further conceded that:

- a) Asda is not existing, committed or planned investment in a centre.
- b) The cumulative impact of Asda is not relevant in terms of the application of EC16.1(a).
- c) Asda is not a recent permission, under construction or a commitment.
- d) The cumulative impact of Asda is not therefore relevant to EC17.2(b).
- e) The cumulative impact of Asda is not relevant to any aspect of development plan or national retail policy.

241. Accordingly, in XX, Mr Serra expressly conceded:

- a) There is no policy requirement for Tesco to assess cumulative impact with Asda.
- b) There is no policy requirement on the LPA to express a view on the cumulative impact with Asda.
- c) Asda are not asking the Secretary of State to make any determination.
- d) The cumulative impact of Asda is not relevant to his determination against planning policy.
- e) The SoS should not predetermine the Asda application which should be left for the LPA.
- f) If Tesco are granted planning permission, the scheme will become a commitment.

- g) Cumulative impact will then become relevant.
 - h) Accordingly, cumulative impact is not a material consideration now but could be material in the future in the determination of the Asda application.
 - i) The LPA's conclusion in LPA8 that if pushed to a determination the Asda application could only be refused (not least on highway grounds) was not ambiguous.
242. Asda do not allege (elsewhere) that Tesco will prejudice Asda. But if it does, so what? The Asda proposal does not enjoy any policy protection. Asda should have progressed their application.
243. Mr Serra was left with the unattractive argument that cumulative impact was nonetheless a "material consideration" for the purposes of Section 38(6). However, he could provide no explanation as to why it should be a material consideration, when up to date national guidance took the contrary view. He could articulate no reason why this proposal was any different from any other retail development. Further, he could not explain why (even if it was a material consideration), the SoS should attach greater weight to it than to his own recent national guidance in PPS4.
244. Accordingly, it is submitted that the SoS should conclude that the cumulative impact of the Asda proposal is not relevant to this determination. He should strongly resist the temptation to give Asda a gratuitous leg up on the back of this determination. To do so would unhelpfully predetermine the Asda application and fetter the decision of the LPA.

(ii) Uncertainty of Delivery

245. For the reasons given in the EiC of Mr Willock, it is submitted that the usual 3 years for implementation would be unreasonable. 5 years is a reasonable time-limit given the following indicative timetable:
- a) Planning Permission has already been granted for the Sports Centre.
 - b) Grant of Tesco planning permission ~ March 2012.
 - c) 3 months for preliminaries (including build contracts) for Leisure Centre ~ June 2012.
 - d) 18m to refurbish Richmond flats (6 months preliminaries and 12 months construction ~ Sept 2013.
 - e) 2 year construction ~ June 2014.
 - f) Tesco obtain vacant possession of the site ~ June 2014.
 - g) 2 years to discharge conditions and build ~ June 2016.
246. Such a timetable does not allow for slippage and/or legal challenges, which is why 5 years is appropriate. All the SoS must consider is whether this is a reasonable timescale. If so, the SoS simply does not need to investigate whether the 9 year period originally contemplated by the LPA was reasonable. In any event, the timetable has been clarified since February 2011 because (EiC of Mr Willock):

- a) Tesco have withdrawn their request for a period of 3 years to implement the planning permission (9 years immediately reduces to 6 years).
- b) There is greater certainty over the Council's budget - the Sports Centre was reconsidered in February 2011 and the latest Capital plan was approved in June 2011.
- c) The LPA has reconsidered its judgment in the light of these factors and now concludes that the balance between flexibility and certainty of deliverability is best struck at 5 years.

247. Further, all sums required by the Council are now allocated in its 5 year Capital Investment Plan June 2011 (a document which Mr Serra had not read or thought to ask for):

- a) redevelopment of the Bus Station car park - £1.226m;
- b) Sports Centre - £35.3m (costed by a Quantity Surveyor on the basis of the latest approved plans);
- c) Home loss payments to secured tenants of the flats - £0.5m;

248. There are no budgetary impediments to delivery of the LPA's commitments. Asda have sought to cast doubt on the position (without providing any positive evidence of their own). Importantly, there is not a single positive step suggested by Asda which the LPA have not taken. The LPA has done everything that it reasonably can do (at this stage of the process) to deliver certainty. Neither does any uncertainty result in any conflict with planning policy.

249. Asda assert that a 5-year planning permission would result in considerable uncertainty in Huddersfield amongst existing businesses and prospective occupiers and investors (including Asda) with a risk that Huddersfield may consequently lose investment to nearby centres. Such an objection is hopeless. The LPA submit:

- a) The Asda Retail Impact Assessment (CD11.14) seeks to demonstrate that the Asda proposal would be both acceptable in impact terms and viable, if planning permission is granted for Tesco (see paragraphs 26 - 30).
- b) Mr Serra confirmed that if planning permission was granted, Asda would continue to pursue their application.
- c) Accordingly, he conceded that any uncertainty would not materially harm the Asda application
- d) Mr Serra could not identify a single occupier (other than Asda) who would be prejudiced as a result of the grant of planning permission.
- e) Mr Serra provides no evidence for his proposition that Huddersfield may be at risk from losing investment to nearby centres.
- f) Asda's concern is that the delay to the delivery of Tesco would lead to the loss of investment. Accordingly, in XX, Mr Serra conceded that he considered that Tesco should be delivered sooner rather than later. This is not (properly understood) an objection to the grant of planning

permission. Asda's case appears to be that the Tesco should be delivered as soon as possible.

- g) There is no harm to the LPA if nearby centres benefit from investment.
- h) PPS4 does not consider investment in nearby centres to be harmful. On the contrary, it supports it.
- i) If there is an insuperable highway constraint to the Asda scheme, there can be no conceivable harm to it in any event.
- j) Two years ago (when planning permissions were normally granted with a 5 year period of implementation) there was no suggestion by Asda (or any other retail giant) that they were beset by uncertainty. That situation has not materially changed.

250. It cannot be concluded that any uncertainty over the delivery of the Tesco store causes any harm. Indeed, Mr Serra expressly conceded that if planning permission were granted there would be no unacceptable retail impact. Rather, he continued to assert (conflating two separate issues) that Asda were prejudiced as a result of uncertainty engendered by the contents of a cabinet report on property matters. However, in XX, he expressly agreed:

- a) The cabinet report cannot bind the LPA. The Cabinet is exercising a different function from the LPA. The Council's scheme of delegation requires that the Planning Committee discharges the planning functions of the Council. This is a separate body with a separate purpose to the cabinet.
- b) Even if it could, the appended cabinet report does not express a view on the acceptability of the Asda proposal.
- c) The approach of the cabinet report (that the risk should be addressed by the LPA applying national, regional and local planning policies) was not remotely controversial.
- d) To the extent that a risk is identified, the risk is one to be dealt with by the LPA in accordance with national, regional and local policies.
- e) The cabinet were not asked to make any decision about Asda and did not do so.
- f) The report pre-dates PPS4.

251. Accordingly, he conceded:

- a) The cabinet's position (that the Asda application was to be determined by the LPA) is not unclear.
- b) The LPA has not made a decision on the Asda proposal.
- c) The LPA's position (not contested by Asda on the evidence) is that the only decision that could be taken is a refusal to the application on highways grounds (at least).
- d) The LPA's resolved position is not "unclear" because they have not made a decision.

e) The LPA do not need to make a decision for the purposes of this Inquiry.

252. Accordingly, the LPA firmly submit that there is no "uncertainty" whether as alleged by Asda or at all. Even if there is uncertainty (which the LPA deny) there is no land use planning harm or breach of planning policy attributable to any such uncertainty.

253. Two additional issues arose late in the Inquiry:

(i) The S106 restriction on retail re-use of the existing Tesco site at Castlegate :

254. The retail restriction in the s.106 only seeks to prevent Tesco from retailing in the existing store once the new store opens (for obvious reasons). The issue is in the control of the LPA. Self-evidently, if a "perfectly acceptable town centre retailing" proposal comes forward for the existing site, the LPA would permit it.

(ii) Energy conservation planning condition and the Council's preference for BREEAM

255. Policy ENV 5 RSS (p.101) requires the development to "secure at least 10% of their energy from decentralised and renewable or low carbon sources" unless it is not feasible or viable. However, the purpose of the policy is to promote and secure the greater use of decentralised and renewable or low carbon energy in new development.

256. The LPA's concern with the energy condition drafted by the Applicant is that "at least a 10% reduction in the expected energy needs of the development from renewable energy sources" is sought. Inevitably, 10% will be the floor and will be acceptable. This is inconsistent with Tesco's Environmental Sustainability Statement (CD3.9 October 2009 from Scott Wilson) which seeks to demonstrate that it can do considerably better (see the executive summary and para 2.3 on page 14). Tesco have developed single storey stores elsewhere with greater energy efficiency and had previously stated that all future stores would follow this pattern.

CONCLUSION

257. No conceivable land use planning purpose is served by a refusal of planning permission on the grounds of the Asda objection. The comprehensive redevelopment of 4 sites (including the bus station) in Huddersfield would be frustrated. The Asda proposal would not make any comparable contribution to the regeneration aspirations of the Council.

258. In all the circumstances, therefore, the LPA submit that the application complies with the Development Plan. Further, material considerations add significant weight in favour of the grant of planning permission. Accordingly, the LPA submits that planning permission should be granted, subject to the conditions and the Section 106 obligation.

Representations from Other Interested Persons Appearing at the Inquiry to Oppose the Development

Asda Stores Ltd

259. The basis of Asda's interest and its concern is set out in its letter 14 October 2011 (Asda 7) and the Proof of Evidence of Mr Richard Serra (Asda8). That included reference to their submitted cumulative impact assessment which

concluded that in Asda's view there would be room for both the Asda and Tesco stores as they would mainly trade against each other. Asda have confirmed in a letter of 23 February 2011 and not subsequently retracted that they will proceed with their development even if the Tesco scheme is granted planning permission (Asda6).

260. There is no dispute regarding the need for improved convenience retailing in Huddersfield. However, what is disputed is that the Tesco site is sequentially preferable to the Asda site to meet that need. Furthermore, there is significant uncertainty surrounding the delivery of the Tesco scheme. There is also total uncertainty as to whether Kirklees Council (KC) will accept that there is room for both stores.
261. In these circumstances it is submitted that to grant Tesco planning permission, with an extended commencement period, would be prejudicial to the determination of Asda's application.

Sequential Test

262. It is contended that there is a clearly preferable edge of centre site (the Asda site) which would benefit Huddersfield by meeting the acknowledged retail need in a way which would better support the vitality and viability of the town centre. It would satisfy the policy objectives (PPS4 Practice Guide 6.2)
263. Asda maintains that the sequential test carried out in relation to the Tesco application was seriously flawed in that it failed to identify the Asda site as a sequentially preferable site for a new large food store.
264. The Report to Committee in February 2011 (CD 6.2) concluded that Tesco "had demonstrated an absence of suitable, available and viable sequentially preferable site for the scale of development proposed".
265. The assessment of the Asda site (Report p 29) concluded that it is not materially different to the Tesco site in relation to the two key "sequential test" objectives because
- a) they are in similar proximity to the town centre
 - b) although the Asda site is approximately 100m away from the nearest part of the main shopping area, the marginally shorter distance is tempered by the fact that the trading floor would not be level with Queensgate and
 - c) while Asda is nearer the bus station (560m v 800m for the Tesco site) it is further from the railway station (850m v 350m).
266. Asda contends that when all the circumstances "on the ground" are taken into account the conclusion drawn in the report was not justified. It is agreed that local circumstances should be taken into account (CD1.6 Practice Guide para 6.6). Proximity is important but is not the only factor.
267. It is also important to consider whether the Primary Shopping Area (PSA) boundary is up to date. Tesco and KC rely on the former UDP Main Shopping Area boundary. However, this is out of date to the extent that it is agreed that the focus of main shopping has shifted particularly with the development of the Kingsgate Centre.

268. The Asda site is significantly closer to the PSA (100m v 157m for Tesco); in reality it effectively adjoins it and is visually better related to it than the Tesco site. Moreover, the connections from Asda go more directly to the main shopping frontages and the core of the town centre. Tesco's 157m is measured to the far end of town away from the core around Kingsgate etc. If this is taken into account the comparative proximity cannot properly be described as "marginal".
269. From the Tesco site pedestrians going to the main town centre must negotiate the ring road (9 lanes at the main crossing point) and then walk uphill and through very secondary and not very attractive streets. By contrast, access to and from Asda would be directly into main shopping streets.
270. In these circumstances Asda questions Mr Nutter's opinion (para 5.24) that Tesco "would clearly be perceived to be part of Huddersfield Town Centre's retail offer". However Tesco is perceived, an Asda would be superior in its relationship with the centre.
271. As the report acknowledged, the Asda site is also much nearer the bus station than Tesco which is likely to be more beneficial than the proximity of Tesco to the Rail Station, splendid as it is.
272. The attractiveness of the draw to the town centre is likely to be greater in respect of the Asda site as it gives greater scope for linked trips and spin off.
273. The Report and the Tesco/KC evidence refer to the trading floor of Asda being lower than Queensgate. This is correct (by about 2 metres) but the store entrance would be level with Queensgate itself and the PSA on the other side of Queensgate. However, this is a design matter relating to an individual scheme and does not affect the overall quality of the site for the purpose of the sequential test. Once inside the store entrance shoppers will be able to reach the trading floor easily either by steps or lifts which would not be a disincentive to them.
274. The "viability" and "availability" of the site has not been questioned in the Report.
275. The Report does not question whether the Asda site is "suitable" for development as a large convenience store. It is capable of accommodating a full line store. There is no room for a petrol filling station but this is not essential for the proper functioning of the development or to meet an identified need.
276. Mr Serra acknowledges in his evidence that there are planning and development control issues to be resolved as could be expected with any town centre redevelopment. However, it is important to note that notwithstanding the matters set out in Documents LPA 5–8 (which shows that by February 2011 KC had raised the highway issues now relied upon) none of these issues were raised in the Report as ruling out the Asda site for the purposes of the sequential test.
277. With regard to the outstanding matters referred to in Mr Willock's letter 23 August 2011 (LPA 8) are concerned, Counsel for KC has confirmed that in the context of this Inquiry, KC relies only on the "highways" issues. Firth paragraph 4.3.2 summarises the current position.
278. It is clear that there have been discussions to resolve each of the matters referred to by Mr Firth (see Documents LPA 5–9). (For completeness Savill's

letter of 4 April 2011 has been submitted (Asda5). Document LPA7 shows that Asda's Traffic Consultants (Cottee) are well aware of the issues. They have produced a revised drawing 0534/68 Dec 2010 to show that the Chapel Hill/Milford Street junction arrangements can be satisfactorily resolved taking into account Firth's consultation responses.

279. LPA7 indicates that there are reasons to conclude that these matters can be satisfactorily resolved: Item 1 - minimum standards for footpaths are exceeded over the short sections concerned; Item 2- a right turn waiting lane into Milford Street of 50m can be achieved (Mr Firth stated in evidence that 40–50m would be acceptable); and Item 3 – there are potential solutions for the bus stop locations.
280. Asda is satisfied that reasonable requirements can be met through discussion and negotiation and are committed to working to reach satisfactory outcomes. The outstanding matters are primarily matters of judgement. As Mr Bennett recognised there may well be circumstances where it is not necessary to achieve full standards or where "worst case" assumptions may prove too cautious. Cottee have referred in Document LPA 7 to examples nearby where different standards appear to have been applied.
281. The other planning matters in Document LPA 8 (not relied on by KC) can be dealt with by conditions or by submission of further information or revised proposals.
282. A site should not be eliminated from the sequential test simply because full agreement has not yet been reached as to every design and development issue. The assessment applies to the site and not a specific scheme. If that were not the correct approach it would be almost impossible to satisfy PPS4. In any event these matters were not raised in the Committee Report. At this stage Asda contends that there is a realistic prospect of satisfying the outstanding planning and highway issues.
283. Accordingly, it is submitted that the Asda site should be regarded as clearly sequentially preferable to Tesco. KC has already accepted that there are no sites apart from Tesco and Asda which are "in the running".
284. It is submitted that KC and Tesco have failed to carry out a proper sequential test exercise as required by PPS4 by wrongly eliminating the Asda site. This is sufficient to justify refusal of planning permission.

Planning Harm

285. Mr Serra has expressed concern that the Tesco proposal would cause planning harm. This arises in two ways.
286. First, it proposes a relocation of substantial existing convenience floorspace located in the PSA. A proposed condition would restrict any replacement floorspace on the existing Tesco site so as to exclude "groceries". This is commercially understandable but prevents perfectly acceptable town centre retailing from taking place.
287. It is agreed that there is a need for more modern convenience floorspace in Huddersfield Town Centre and that a suitable edge of centre site is in principle an appropriate means of meeting the need. However, the Tesco proposal cannot

sensibly be considered as merely an expansion of the existing store. It is a relocation out of centre. The SoS should regard the loss of existing town centre convenience retailing as a harmful consequence of the Tesco proposal.

288. Second, it would involve the loss of affordable housing. There are 84 units on site which Asda does not dispute are substandard. However, Mr Willock accepted (XX) that they would be capable of refurbishment. The nearby Richmond Flats are also substandard and are proposed to be refurbished (Mr Nutter paragraph 6.24) in time to re-house some of the occupants from the site.

289. Obviously retention and refurbishment on site is incompatible with the Tesco scheme but the fact that existing occupiers agree to be re-housed at Richmond or receive financial settlements does not mean that there is not a real loss of affordable housing.

290. The fact is that only 60 additional units are to be provided either on the existing Tesco site or by way of the payment of £5m in lieu (at a time and place unspecified).

291. On any view this represents a likely net loss of 25 affordable housing units. This is accepted by Mr Willock who argues that this is balanced by the provision of better standard homes elsewhere. In a situation where it is acknowledged that there is a shortfall of 1540 affordable units a year (February 2011 Report p40) this loss constitutes a harmful consequence of the Tesco proposal and should be weighed against it.

292. The important conclusion is that a retail development on the Asda site would not give rise to either of the above harmful consequences and in general planning terms the site is to be preferred. The development of the Asda site would also give rise to wider benefits in terms of the relocation of Broadbents (see their representation 3 November – Asda2).

293. A further aspect of harm arises from the prolonged period of uncertainty (see below).

294. These factors support the importance of ensuring that the consideration of a sequentially preferable site is not prejudiced by a grant of permission to Tesco.

Cumulative Impact

295. Asda does not suggest that it is necessary for the SoS to reach a conclusion in the context of this Inquiry with regard to cumulative impacts for Tesco or Asda.

296. As a result of discussion at the Inquiry it is agreed that:

- a) both Tesco and Asda's retail consultants have provided to KC cumulative impact assessments, not because of any requirement under PPS4 to do so but because KC asked for them. They reach the same opinion ie that there is capacity for two stores without unacceptable impact on Huddersfield Town Centre.
- b) KC however has not reached any view in respect of these cumulative assessments or expressed its own view.

297. Mr Nutter has not been asked to advise KC on the retail impact of the Asda development notwithstanding the statement in LPA 8 that "the Council is

currently in the process of appointing external consultants to assist in the assessment of these matters". In the Committee Report 2011 the issue was "fudged", it being considered unnecessary to consider Tesco's cumulative impact assessment (pages 36/37).

298. Asda's concern arises because there is uncertainty over whether the Council will seek to resist the grant of planning permission for the Asda proposal on cumulative impact grounds. This arises because KC is on record (Cabinet report July 2009 Serra App 1) as considering that a grant of permission to Asda poses a high risk to its own deal with Tesco (the realisation of its aspiration for a replacement sports centre).
299. Cabinet was advised that the risk arises because "there is only sufficient capacity for one medium sized food store" (Cabinet Report App 4 p 41). Willock was unable to explain the basis on which Officer's were able to so advise Cabinet. The evidence at this Inquiry from KC is silent as to whether this remains their view notwithstanding the findings of its own retail study and the retail information submitted by Tesco and Asda relating to cumulative impact. Willock was understandably unable to take the matter any further.
300. In these circumstances there is uncertainty whether, if permission is granted to Tesco, KC would be prepared to grant permission for the Asda site notwithstanding that it is sequentially preferable.
301. If KC's position is that there is only room for one proposal a grant of permission to Tesco causes prejudice to Asda; not a commercial prejudice, but prejudice based on the fact that Asda has a clearly sequentially preferable site. That is plainly a material consideration under Sec 38(6). As KC cannot or will not make clear its position on cumulative impact of the two stores Asda submits that the SoS cannot at this stage carry out the proper weighing of the planning advantages and harm arising from the Tesco proposal.
302. It is no answer to say that the SoS should grant permission to Tesco and leave it to the LPA to determine the Asda application on its merits. Nor is it right to argue that Cabinet is exercising separate functions from KC's planning "hat". Within the Council a view has been taken as to the lack of capacity of Huddersfield to accept the Asda proposal. The land deal and the replacement sports centre are inextricably linked to KC's decision to support the planning application for Tesco.
303. Asda submits that if permission is granted to Tesco there remains a risk that KC may seek to refuse permission for Asda on impact grounds.
304. The grant of permission to Tesco would be likely to prejudice the proper consideration of proposals on a sequentially preferable site. This is a serious matter and adds weight to Asda's argument that in the all circumstances planning permission for Tesco should be refused.
305. A further concern arose when it emerged that an extended time limit for commencement had been requested by Tesco and agreed to by KC. This was 9 years at the time of the Committee Report (Feb 2011) but is now reduced to 5 years.
306. Asda contends that the prolonged implementation period calls into serious question the availability of the Tesco site and the deliverability of the new store.

307. The reasons for requesting a long commencement period of 9 years were clearly based on perceived problems regarding the availability of the Tesco site as outlined in the Feb 2011 Report page 62. Mr Willock indicated (XX) that the Council agreed to it not simply because it was the longest period apparently allowed in the Development Agreement (10 years from the date of the Agreement) but only after a full assessment was made. As recently as February 2011 therefore the conclusion was (page 62 of the Committee Report) "as late as 2017 or 2018 before the site will become available for development".
308. On this basis even assuming Tesco were ready to commence development immediately (ie ignoring Ms Bath's 3 years for Tesco to choose whether to commence – proof para 2.7) a 5 year time limit would clearly not be long enough. A further 18 months or so would be required for construction. This gives an opening date of around 2019/20.
309. The reasons for the reduction to 5 years are not made clear in the written evidence from Tesco or KC but are nevertheless still based on similar problems relating to site availability. The key is the likely completion date of the new sports centre. The Inquiry has not been presented with any documented construction programme for the new centre. The start date is not clearly established or the construction period. The tendering process has not begun. We know the designs are being altered to reflect budgetary restraints (Press release 18 Feb 2011- ASDA 1). There is no identified contractor or contractually agreed cost.
310. In these circumstances the only thing that seems to have occurred since February 2011 is, we are told, that a Capital Programme was agreed by Cabinet in June 2011 which incorporates the necessary funding (£36m allowing for the Tesco receipts).
311. Given the "slippage" which has already occurred in previous estimates for the completion of the sports centre and therefore the availability of the site (November 2012 in the Cabinet Report to 2017/18 in the Feb 2011 Report) and the steps still required, Asda submits that the current estimate of 2014 for the availability of the site is very much open to question.
312. The time for commencement in Condition 1 is for the SoS to consider on the evidence available. Asda's concern (which it expressed immediately it was aware of it from the February 11 Committee Report) was that site availability was a significant difficulty for Tesco with consequent uncertainty regarding the completion dates for their scheme.
313. Asda's concerns about a long implementation period are not overcome by reducing the period to 5 years. The uncertainty and prolonged time scales for delivery requiring a 5-year permission still calls into question the availability and delivery of the Tesco site which Mr Serra considers could have potentially harmful consequences for Huddersfield.
314. Uncertainty over such a long period of time will cause potential harm to the remainder of the town centre because prospective retail tenants seeking locations with high volumes of footfall would have difficulty choosing which part of Huddersfield to commit to.

CONCLUSION

315. Asda submits that all these considerations are material to the Secretary of State's consideration of the Tesco proposal. The Tesco site fails the "sequential" test. It is not sequentially preferable. This is compounded by the uncertainty surrounding its delivery. It would also cause planning harm.
316. A permission for Tesco in the circumstances would prejudice the processing of a sequentially preferable site able to meet the retailing needs of the local population as well as supporting Huddersfield and which would bring important benefits including the support for the future of a significant local employer.
317. For these reasons the Secretary of State is requested to refuse planning permission.

Mr Barry Sheerman MP

318. Mr Sheerman had asked the Government to call the application in and was delighted they had done so. That only two retail developments had been called in since the Government was elected showed the importance of this scheme.
319. Huddersfield is one of the finest towns in the industrial North of England with the 4th largest number of listed buildings in England and with what John Betjeman described as the finest railway station apart from St Pancras. Only 10.5% of the population now work in manufacturing and the University is the largest employer. Huddersfield is a diverse, distinctive and cultural town with a buzz that attracts shoppers and visitors from surrounding towns.
320. The proposed Tesco store is an example of bad planning that would damage the town's offer as an attractive destination and would harm traffic flow and the environment. There would be traffic chaos and choking air quality. Leeds Road already has the worst air quality in Kirklees.
321. The centre of the town would be badly affected, as had the centre of Brighouse when Tesco developed a similar store of appalling design, resulting in a loss of quality shops and an increase in charity shops. The proposed store would sell everything. Mr Sheerman had been told by a manager that there would be 60% non-food items. Other shops would be driven out and Tesco would assume a monopoly position. 50,000-60,000 shoppers would be taken out of the town centre each week. Independent electrical stores and small traders in the two markets would be priced out of business. There are already many vacant shops and a nervousness about investing. Mr Sheerman had been trying to help the Kingsgate Shopping Centre to find an anchor tenant for their proposed extension. However they were worried about investing in the development if the Tesco scheme goes ahead.
322. Huddersfield needs high quality shops and Mr Sheerman had been trying to persuade Waitrose/John Lewis to invest in the town centre but had been told by their Chief Executive that Waitrose would not come here if the Tesco development went ahead. Mr Sheerman is a supporter of such co-operatively owned high quality businesses and of businesses that are locally owned and which support local charities. He does not favour large multi-national retailers with majority foreign ownership such as Tesco. Also the employment benefits of the scheme are over-estimated.

323. Mr Sheerman has an interest in design as the Chair of the Parliamentary Design Group. He considers design to be a question of taste but that design professionals have a poor opinion of Tesco design. He had worked with local Councillors to improve the design of the nearby Sainsbury's superstore.
324. The Council is not under majority political control and it had a vested interest in the development as part landowner. Mr Sheerman considers that the Council would not have supported the Tesco application if they did not own part of the site and if the land deal agreed prior to consideration of the planning application were not providing the means to replace the worn out leisure centre. Whilst he did not now allege that the Council's actions were illegal or corrupt, there was something 'not quite right' about the decision process. The site had not been offered to other firms although Mr Sheerman acknowledged that Tesco had 'cleverly' acquired part of the site themselves over a period of time.
325. Mr Sheerman also objects to what he considers to be the outdated design of the proposed replacement Sports Centre on the site of the Spring Grove Car Park and to its location close to housing occupied by the elderly. A more appropriate site would be adjacent to the Galpharm Rugby and Football Stadium. Many of the Councillors who had voted on the Tesco scheme did not represent Huddersfield.
326. Mr Sheerman could not say if the development contravened local or national planning policies. If it did not then the policies should be reviewed, particularly where there is a tension between the decision-making authority and its role as a land owner.

Councillor Andrew Cooper

327. Cllr Cooper is a member of the Green Party and represents a ward covering the town centre adjacent to the application site.
328. At the Committee meeting Councillors had described the development as 'looking like a shed with Christmas decorations'. They had said that it was not a leading edge design and did not employ the latest carbon reduction technology. Also there would be a 25% reduction in the number of trees now on site. Tesco had been described as difficult to deal with. Nevertheless in spite of these and other critical remarks, Councillors had voted in favour of the scheme. It appeared that the decision to support the development had already been made. In other circumstances Councillors would have voted against the scheme.
329. There was no commitment to the provision of social housing and no agreement on the local apprenticeship scheme. The Highways Authority was 'unenthusiastic' and there would be a 7-fold increase in traffic in the Leeds Road corridor which includes an Air Quality Management Area⁶.
330. The Council's decision was not sound. The Secretary of State was right to call it in and planning permission should be refused.

⁶ The AQMA is not at the site but is 3 miles east on Leeds Road (Document T7)

John L Brierley Ltd

331. The firm occupies land on both sides of Quay Street to the south east of the application site and also has another site in St Andrew's Road on the far side of the canal. The firm uses the existing Turnbridge across the canal to access its various sites. The Turnbridge is a single lane mid 19th century lifting bridge which is a scheduled ancient monument. The bridge is raised up to several times an hour to permit the passage of canal boats. 2-way use of the roadbridge is uncontrolled at present apart from a 7.5 tonne weight limit. There is an adjacent footbridge but this has steps at each end which means that many pedestrians opt to walk across the bridge on the narrow carriageway. Pedestrian use of the bridge is likely to increase as the result of the development of a new engineering college to the east. This will be the main pedestrian route between the college and the town centre.
332. The firm does not oppose the Tesco development but is concerned at the potential implications for access to their own premises. On the one hand, the traffic forecasts predict congestion at the junction of Old Leeds Road and Leeds Road as the result of the development. For that and other reasons, use of the Turnbridge is likely to increase as a result of the development. The Travel Plan and Section 106 agreement provide for the monitoring of use of the Turnbridge after the store opens and for a contribution by Tesco towards traffic regulation measures to address any issues arising out of such increased use such as increased pedestrian/vehicle conflict. Brierleys are concerned that such measures could prejudice access to their premises and that it would then be too late to implement alternative measures such as the further widening of the Leeds Road/Old Leeds Road junction to ease congestion there. The land needed for such improvements would no longer be available as it would have been developed in accordance with the planning permission.

Mr C Ball

333. Mr Ball is the former secretary of an organisation known as Town First which was established because of concerns about the Tesco development and about the welfare of independent local traders. Its members had included local business owners and residents. It had carried out surveys of the number of empty properties which was running at 12% of the town centre stock. The organisation did not submit written representations at the Tesco planning application stage although they did formally object to the Asda planning application. The organisation was wound up in Spring 2011 following the Council's in-principle decision to support the Tesco development. However former members including Mr Ball remain concerned about the impact of the development. The organisation had been opposed to the land sale to Tesco. The main points of Mr Ball's objection are:
- a) There is no need for the development. The retail analysis was based on past assumptions about growth and did not reflect the impact of higher energy prices, public and private debt, Government cuts and the growth of internet shopping.
 - b) The growth in comparison goods floorspace and the recent expansion of comparison goods at Sainsbury's nearby would be at the expense of existing town centre retailers leading to more vacancies and the risk of a ghost town.

- c) New development should be within the town centre and within the ring road. The existing Tesco store could be rebuilt including the adjacent Council market car park to retain a lively town centre. The proposed free parking at the application site would be unfair competition leading to a downturn in confidence in the town centre. Huddersfield would be robbed of its character. A long period to implement the decision would cause blight. Matters would be worse if a proposed Tesco at Holmfirth (5 miles away) is also permitted.
- d) The increase in traffic of up to 5 times current levels at the peak hour would prevent improvements in the Air Quality Management Area on Leeds Road in the same corridor (3 miles North East) with increased NOX and PM10 emissions.
- e) The claimed employment benefits take no account of the loss of jobs in existing businesses. The Association of Convenience Stores claimed in March 2011 that the proportion of full-time retail jobs falls as floorspace increases. Many of the new jobs would be low skilled and part-time on the minimum wage.

Written representations following the call-in decision which oppose the development

334. **WD Kingsgate Ltd** own and operate the modern Kingsgate Shopping Centre in Huddersfield Town Centre. This is the primary shopping centre in the town and a major draw with representation from a number of national chains mainly retailing comparison goods. WD Kingsgate Ltd initially sought and were granted Rule 6 status for the current Inquiry and they submitted a Rule 6 statement. However they subsequently withdrew that request and did not attend the Inquiry. Written representations dated 4 October 2011 were accepted instead. The main grounds of the Kingsgate objection are:

- a) The application site is an out-of-centre, not edge-of-centre site, by reason of the physical barriers that separate it from the town centre and its resulting poor connectivity. There is no evidence to support any realistic possibility of linkage between the site and the town centre. The perceived need to contribute to a hopper bus service only serves to demonstrate the total lack of linkage.
- b) The scale of the retail offer including a very large comparison element will make it function as a standalone destination with no spin-off benefits to the town centre.
- c) The sequential assessment is inadequate as it is entirely format driven without consideration of reduced scale, innovative formatting, reconfiguration or the scope for disaggregation. The analysis of possible alternative sites is inadequate because the application site has been treated as edge-of-centre and not out-of-centre. There has been no analysis of viability or possible alternative layouts on other sequentially preferable sites as would be needed to satisfy PPS4 Policy EC14.3.
- d) The Applicants are moving from what they describe as a 'key anchor convenience store within the town centre'. The retail analysis does not

demonstrate that there is either a quantitative or qualitative deficiency in the retail offer within Huddersfield which requires the quantum of floorspace being proposed or the type of superstore being promoted.

- e) Redevelopment of the existing store on a multi-level basis has not been given adequate consideration and the Kingsgate 2 site has been dismissed without discussion. No flexibility has been demonstrated by the Applicants. The 2,275sqm of non-food retailing could be accommodated in a separate 'Homeplus' store such as those which the Applicant operates elsewhere and which could be accommodated within the town centre. The inflexible format driven approach is not justified and is designed to exclude other sites.
- f) The Spring Grove car park site has been dismissed for specious reasons. The Queensgate site is clearly capable of accommodating a large scale development but has been dismissed after a very broad brush analysis. The Applicants have not demonstrated flexibility or that there are no town centre sites that are available, suitable and viable. The need for this scale and type of development is unproven. The proposal contravenes PPS4 Policy EC17.1 and should be refused.
- g) The impact of the development on the town centre will be significant and will be exacerbated by the standalone nature of the isolated development and the poor linkages. The consequences of the development for the implementation of the proposed Kingsgate 2 (or Kingsgate 3) and Queensgate town centre investments have been given inadequate consideration. These arise particularly from the scale of the comparison goods offer and from the closure of the existing town centre Tesco. There will be reduced footfall and loss of turnover in the town centre. The assessed 10.5% loss of turnover in the town centre is very significant. In present market conditions there can be no certainty that the Kingsgate and Queensgate developments will be implemented. If they are not the level of impact on the town centre will be greater. At the Kingsgate Inquiry in 2008 the Council had claimed that the Kingsgate development would impact adversely on its own Queensgate proposal and is now being inconsistent in its approach. The proposed development out of centre would have an even greater impact.
- h) Up to 9 years has been sought to implement the consent. This would result in considerable uncertainty for investment by retailers. Unbranded fashion retailers within the Kingsgate Centre who would be in competition with Tesco are currently seeking short lease renewals that would allow them to exit before Tesco opens.
- i) The development should have been brought forward as an option in the preparation of the Local Development Framework. The Core Strategy is currently being consulted upon. Without sound evidence in the form of up to date plans based on analysis and evidence, it is premature to consider such a large development proposal which could affect Huddersfield town centre.

335. **Zurich Assurance Ltd** is one of the main landowners in the town centre and owns the 14,600sqm Piazza Shopping Centre with 40 units (including Marks and Spencer and Boots and other major national retailers) as well as owning other

retail property at 69-118 New Street. **Threadneedle Property Investments** manage other town centre retail assets on behalf of investor clients. Threadneedle submitted a Rule 6 Statement of Case but subsequently withdrew from Rule 6 status and did not appear at the Inquiry. Joint written representations for Zurich and Threadneedle were submitted by Indigo Planning in September 2011. Indigo had previously sought the call-in of the application.

336. In relation to the sequential assessment, Indigo refers to three recent appeal or call-in decisions which included comments on Tesco proposals. For a replacement store at Ilkley⁷, the Inspector had placed significant weight on paragraph 5.7 of the PPS4 Practice Guidance in relation to whether a sequentially preferable opportunity is capable of meeting the same requirements as the application is intended to meet.⁸ In the recent Dawlish⁹ decision (issued on 22 June 2011) there was criticism of the Council's and Tesco's approaches to the sequential assessment. In particular, the Council was criticised for only investigating alternative sites of 2ha or more that could host the entire floorspace and car parking on a single level. Tesco was criticised for a superficial and subjective sequential assessment. (The full decision was not supplied in evidence).
337. For a new store at Eccles¹⁰, the Inspector concluded that it was an out-of-centre site as it was over 300m from the Primary Shopping Area because there was an intervening dual carriageway. That road is to be bridged with a hopper bus also provided. The proposed Huddersfield store would similarly be beyond the ring road which is a barrier and no bridge is to be provided. It would be 330m from the Primary Shopping Area as defined at paragraph 2.1 of the Retail Impact Assessment (CD3.21) and is therefore an out-of-centre location.
338. The proposed store would function as a one-stop shopping destination. The need for a hopper bus service would reinforce its out-of-centre status and the lack of natural linkage. According to the Council's Committee Report the site would not be available until 2017 or 2018. That is beyond the reasonable period of time of 3-5 years defined in the PPS4 Practice Guidance and thus the site cannot be deemed to be sequentially preferable. It is not a major town centre scheme for which a longer implementation period may be appropriate. The site's viability is also questionable as it is unable to deliver the quality of design to which the Council aspires in this gateway location. The viability of the alternative sites of the existing store or the Spring Grove car park also seems to depend on delivering the large scale of store proposed.
339. Tesco's justification for the proposed store is taken to be the qualitative deficiencies of the present Castlegate store in the town centre.
340. Of the alternative sites in the sequential assessment, Threadneedle's view is that:

⁷CD11.7 (Ref APP/W4705/A/10/2121621)

⁸ That Inspector concluded with regard to paragraph 5.7 that the existing store could not be redeveloped to an inadequate size or to fully address current operational problems and without depriving the town of its main trader for a substantial period with associated harm to the shopping public.

⁹ APP/P1133/A/09/2101147

¹⁰ CD11.11 (Ref APP/U4230/V/2131671)

- a) The dismissal by Tesco of redeveloping the existing Castlegate store site contravenes PPS4 Practice guidance in that there is no justification of why a smaller store would not meet the identified need to improve the offer and physical quality of the existing store. The site is suitable, viable and available and occupies a sequentially preferable site within the Ring Road. It is already a multi-level development. Opportunities for temporary trading from another town centre site during redevelopment have not been explored.
 - b) In relation to the Spring Grove car park site, its ownership by the Council and occupation by a car park also apply to the application site and do not make it unsuitable or unavailable. The Council has already accepted the loss of the car park in its own redevelopment proposals for the new Sports Centre.
 - c) Tesco has failed to demonstrate why the Kingsgate 2 extension could not accommodate a modern foodstore that met its requirements or why the comparison goods element could not be disaggregated and accommodated within the town centre. The costs of developing the application site at Southgate, including substantial off-site works show that the development can justify significant investment and do not show that a smaller store at Kingsgate would be unviable.
 - d) At the Queensgate site there is a current outline planning application to include a 9,387sqm department store, a 7,647sqm anchor store, 11 smaller retail units and a market hall. The application has stalled due to well-known viability concerns relating to the competing Kingsgate 2 proposals. There is no reason why the scheme could not include a modern foodstore as part of a viable scheme. Although the site is in multiple ownerships the site is available within a reasonable timescale and could also secure a capital contribution to the Council for investment elsewhere such as in a replacement leisure centre.
341. Tesco has not submitted sufficient evidence to address the tests of PPS4. There are in principle several sequentially preferable in-centre or edge-of-centre locations that have not been adequately assessed and the requirements of PPS4 Policy EC15 are not met.
342. The local planning authority has similarly failed to ensure that the policy EC15.1 requirements are met. In particular:
- a) In defining the Primary Shopping Area it has accorded greater weight to the Main Shopping Area defined in the SPG supporting UDP Policy S4 approved in 1999 than to the more up-to-date PPS4 which sets out a different definition of the Primary Shopping Area.
 - b) Even if the Council's approach is correct, Officers expressed a number of concerns about the physical relationship of the application site to the town centre.
 - c) The Council's assessment of redeveloping the existing Castlegate Tesco site lacks any objective critique and did not consider disaggregation and smaller store formats as required by PPS4. The example of Sainsbury's

in Huddersfield indicates that operators can viably duplicate their representation with more than one store.

- d) The Council considered the Spring Grove Car Park site sequentially preferable in terms of location. As the noise impact of the permitted sports centre development there is to be controlled by a noise condition that would also suit retail activities, the Council was wrong to conclude that the site is unsuitable by reason of the noise impact on local residents.
- e) The fact that the Kingsgate 2 site is in separate ownerships and is not currently being actively marketed does not demonstrate that it is unavailable or unviable.
- f) Multiple ownership and availability issues on the Queensgate site preventing delivery within a reasonable time are not sufficient reasons to dismiss that site when the application site is also in multiple ownership [Tesco/Kirklees Council] and occupation and is not yet available.

343. In conclusion, Zurich/Threadneedle consider the application site to be an out-of-centre-site which is not available, suitable and viable and sequential assessments by Tesco and the Council to have been inadequate. As the development fails the EC15.1 tests planning permission should be refused under Policy EC17.1 without reference to other material considerations. Having failed the sequential test any wider benefits such as delivery of the new sports centre are not relevant to the decision-making process.

344. **Deacon Gill Atkinson-Heck** of the Huddersfield Methodist Mission considers that the Council supported the scheme because it would facilitate the replacement of the Sports Centre. Most Councillors at the Committee criticised the scheme but voted for it. It would harm the town centre. The store should be replaced on its existing site and adjacent Council land in the town centre.

345. Following the call-in a letter of objection was submitted by four **Green Party Councillors** on 2 September 2011. These included Cllr Cooper who also appeared at the Inquiry. Reference is made to previous letters but the only letter identified on file in relation to the application is that from Cllr Julie Stewart-Turner dated 17 February 2011. The letter welcomes the call-in. It is noted that several conditions are recommended including an unusually long period for implementation. The Councillors believe that there is very little legal power to enforce conditions and the plans have many unacceptable elements. The September letter has particular concerns about traffic congestion on Leeds Road and the Ring Road, the impact on air quality in Leeds Road and the impact of the proposed store on the town centre. The sequential assessment is regarded as questionable.

Written representations following the call-in decision which support the development

346. Three emails were received supporting the development and responding to objections by the MP that had been published in the press. At least one of the writers works at the existing Tesco store and comments on its perceived inadequacies and considers the flats on the application site to be an eyesore and

that the sports centre is on its last legs. The others generally support the need to replace the sports centre on a new site.

Written representations at the application stage objecting to the development

347. The **Town Centre Partnership** is not in favour of either the Tesco or Asda proposed developments but object in particular to the Tesco application because:

- a) There would be an adverse impact on trade in the town centre. Indigo's calculations are preferred to those of Tesco.
- b) The eaves height should be reduced to prevent the future installation of additional floorspace as a mezzanine floor.
- c) There should be no restriction on what goods may be sold from the existing Tesco site in the future. Planning should not restrict trade or protect individual businesses.
- d) Loss of car parking at Spring Grove if the sports centre is relocated there from the Tesco application site (the Asda scheme is preferred in this regard).
- e) The site is not in the town centre and the Ring Road impedes pedestrian movements. Whilst that also applies to Asda there would be an opportunity to link the Asda and Waterfront sites to the town centre if a section of the ring road were to be closed or placed underground (not currently proposed by Asda).
- f) There would be increased congestion at Southgate/Leeds Road that would deter visitors from coming to the town centre from the east.
- g) Whilst 3hrs free parking on the site would be acceptable there remains doubt that many people would walk to the town centre facilities.
- h) The concentration of development and parking east of the town centre would harm trade on the western uphill side and limit trade there to those who arrive by bus.
- i) The proposal would contravene a statement in PPS4 which requires local planning authorities to proactively plan for consumer choice and to promote competitive town centre environments, recognising the contribution of smaller shops.
- j) There is opposition to the extension of the free hopper bus service to Tesco as it would extend travelling time for existing users and would take more customers away from the town centre.

348. The application should be refused or the development should be dramatically downscaled with a restriction placed on the area of non-food merchandise.

349. The **Huddersfield Civic Society** had concerns as to the adverse impact on the town centre, magnified by the poor pedestrian access. The design modifications were welcomed including the use of local stone and the substitution of timber for the metal rain screen originally proposed. A piece of contemporary relief sculpture might relieve the potentially monotonous extent of the timber.

There were concerns about signage (not part of the planning application) and about the consequences of rat-running traffic over the historic Turnbridge.

350. **City Electrical Factors**, a neighbouring business, expressed in-principle support for the development but had concerns that the access arrangements could disrupt traffic flow and access to other premises.
351. **Cllr Stewart Turner** objected in particular to the scale and design of the building, the alteration to the free bus route and the lack of feedback reported from the Applicant's Community Consultation process.
352. Messrs **Hummerstone** expressed general opposition to Tesco and doubted the claimed employment benefits as other businesses would lose employees.
353. Other letters were also received at the application stage from others who subsequently appeared at the Inquiry or who made written representations after the call-in, including **Asda, Threadneedle, Brierley and WD Kingsgate**.

Written representations at the application stage supporting the development

354. One individual letter of support at the application stage favoured the redevelopment of the area and the replacement of the flats and the sports centre.
355. 514 copies of a pre-printed letter of support are said to have been signed by shoppers at the existing Tesco store but the individual signed letters have not been submitted in evidence.

Planning Conditions and Planning Obligations

Conditions

356. There is substantial agreement between the Council and the Applicant as to the planning conditions to be applied. A draft was first supplied by the Council. Document LPA12 sets out the final conditions submitted for discussion by the Applicant together with the Council's comments on the Applicant's suggested changes. There was further discussion at the Inquiry. A particular area of disagreement remained a condition referring to energy conservation measures.

S106 Planning Obligation

357. There is a Section 106 Planning Obligation Agreement between Kirklees Council and Tesco Stores Ltd. The version at Document 4 is complete but unsigned. The parties undertook to submit a signed version after the Inquiry for consideration by the Secretary of State. The main provisions of the agreement in summary in respect of the obligation by Tesco or its successors are:
- a) £100,000 for the purchase of an additional shuttle bus vehicle.
 - b) £70,000 per annum (up to £350,000 total) towards the running costs of the free shuttle bus for up to 5 years.
 - c) £22,000 towards new bus shelters.
 - d) Free parking for shoppers for 3 hours in the car park.

- e) £3,000 per annum for monitoring the travel plan (up to £15,000 total).
- f) £25,000 towards the costs associated with the preparation and implementation of a Traffic Regulation Order in respect of the Turnbridge.
- g) Provision for a Regeneration Partnership with a list of aims for the local recruitment of staff for the store and endeavours to encourage building contractors to also implement the aims.
- h) On opening the proposed store to cease the groceries trade at the existing Castlegate store and not to carry on or permit such use of that store or the land for such trade without the agreement of the Council.
- i) Either to make an index linked £5m contribution to the Council for the provision of affordable housing or, within 13 months of the store's opening to grant the Council a leasehold interest for 150 years in 60 residential units on the site of the existing store.

358. There are reciprocal obligations by the Council to establish the shuttle bus service, to liaise over the bus shelter design and location, to deal with requests for agreement or approval promptly and to use the contributions for their stated purposes.

Environmental Impact

359. This is an urban development project of 2.75ha that exceeds 0.5ha and is consequently a Schedule 2 project for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The local planning authority issued a requested screening opinion on 24 June 2008. The site comprises previously developed land and the lpa concluded that the development would not have a significant urbanising effect or would otherwise give rise to a significant environmental impact. An Environmental Impact Assessment was thus not required.

INSPECTOR'S CONCLUSIONS

Figures in square brackets [] refer to other paragraphs in the report.

The Main Considerations

360. The application was called in because the Secretary of State (SoS) considers that the proposals may conflict with national policies on important matters. The SoS is required to determine the application in accordance with the development plan unless material considerations indicate otherwise. National policy is a material consideration in this case.
361. In these conclusions the issues set out by the SoS in the call-in letter of 27 June 2011 are addressed in the following revised order together with the addition of further issues arising out of evidence to the Inquiry:
- a) The extent to which the proposed development is in accordance with the development plan for the area including any 'saved policies'. The weight that should be attached to the development plan, and any emerging plans, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and other material considerations.
 - b) The extent to which the proposed development is consistent with Government Policies in Planning Policy Statement 4 'Planning for Sustainable Economic Growth' (PPS4).
 - c) The extent to which the proposed development is consistent with Government Policies in Planning Policy Statement 1 'Delivering Sustainable Development' (PPS1) (in particular paragraphs 33-37), and related design guidance set out in Planning for Town Centres: Guidance on Design and Implementation [Tools] (PTC).
 - d) The extent to which the proposed development is consistent with Government policies in Planning Policy Guidance 13: 'Transport' (PPG13).
 - e) The extent to which the proposed demolition and replacement of the Sports Centre is consistent with Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation (PPG17).
 - f) Whether the development would incorporate appropriate energy conservation measures.
 - g) Other matters raised by interested persons and taken into account include: the appropriate implementation period; cumulative retail impact; air quality; loss of business premises; and loss of residential buildings.
362. Any implications of the proposed edge-of-centre Asda development at Chapel Hill with particular regard to the sequential assessment are addressed in association with Issue (b).
363. The safety of highway users and the convenience of nearby businesses in respect of any increased vehicular use of the Turnbridge which is addressed as part of Issue (d).

Issue (a) The Development Plan

364. The main development plan policies are set out above at paragraphs [13-22].
365. The Yorkshire and the Humber Regional Strategy (RS) is part of the development plan for the purposes of S38(6) at the date of writing. The development would be on previously-developed land on the edge of an urban centre which is identified as a sub-regional centre and a prime focus for development. It is not disputed that the proposal thereby accords with the relevant policies YH4 and YH7. The Localism Act 2011 makes provision for the revocation of the RS but that currently merits only limited weight as the RS remains part of the development plan at the date of writing and its revocation is subject to the satisfactory conclusion of the Strategic Environmental Assessment that is in progress. If and when the RS is revoked Huddersfield would remain the largest centre in Kirklees and the obvious focus for shopping and other services in order to comply with UDP and national PPS4 and PPG13 objectives to focus development in sustainable locations with good transport links. The RS energy policy ENV5 is addressed under Issue (f) below. No other RSS policies have been drawn to my attention that are significantly at variance with the relevant UDP and national policies.
366. The other relevant development plan policies are contained in those policies of the Kirklees Unitary Development Plan UDP (1999) (the UDP) that were saved in 2007. They are not in every respect in full accord with current or emerging national policies, some of which have changed since 2007, but they remain broadly compliant. Individual UDP policies are addressed below under other issue headings. No emerging plans are sufficiently advanced to be accorded weight in the decision.
367. The overall conclusion on the development plan is that the proposal is generally compliant except that:
- a) the sequential assessment required by UDP Policy S4 is not fully complied with when the current national PPS4 policies and associated Practice Guidance are applied to that assessment;
 - b) the proposal does not address the UDP Policy S4(ii) quantitative needs test, but such a test is no longer required by more up-to-date national policy;
 - c) the loss of 80 existing trees on the site does not comply with the objectives of UDP Policy NE9 to retain trees, although that is mitigated by the replacement planting including 60 new trees; and
 - d) the loss of 84 residential units currently on the site would literally contravene UDP Policy H4 but would be mitigated by proposed arrangements to provide new and refurbished housing elsewhere.

Issue (b) PPS4 (including national policies for sustainable economic growth and for retail development)

368. PPS4 was adopted in 2009. In part it replaced PPS6 'Planning for Town Centres' (2005). Whilst some policy objectives were carried forward from PPS6 and from earlier guidance that was in place when the UDP was first adopted in

1999, there were notable changes including the deletion of the former 'needs test' for retail development. I agree with the LPA [167] that, as a more up-to-date policy, PPS4 merits greater weight where it is inconsistent with UDP policies such as the Policy S4(ii) provision for a quantitative needs test. However retail capacity figures remain of some relevance to the assessment of impact which is required by PPS4. PPS4 and the accompanying Practice Guidance are also relevant to the assessment of other criteria set out in UDP Policy S4.

DEFINITION OF THE PRIMARY SHOPPING AREA

369. PPS4 Policy EC14 is of particular relevance to retail developments such as this that qualify as main town centre uses. EC14.3 and EC14.4 require a sequential assessment and an impact assessment where the site is not in an existing centre, as this site is not. Policies EC15 and EC16 add detailed requirements for such assessments. For these purposes, Annex B seeks the definition on the development plan proposals map of the 'Primary Shopping Area' (PSA). This should generally comprise the primary shopping frontage and contiguous, closely-related secondary frontages.
370. No PSA is yet defined in the Development Plan. In the meantime the Applicant and the Council both rely on the 'Main Shopping Area' as defined in Supplementary Planning Guidance for Large Stores that supports UDP Policy S4 and which applies to developments of this scale [97] [182]. This is the same as the Main Shopping Area previously defined on the Proposals Map for a town centre policy that was not saved. The boundary broadly corresponds to the PSA definition in PPS4 Annex B in that it covers both primary and secondary frontages. The existing Castlegate Tesco store is within the boundary. The same boundary was also relied on by the Inspector for the Kingsgate 2 appeal [32].
371. Asda suggest that the boundary is out-of-date because of a southward shift in the primary shopping frontages since the opening of the Kingsgate Centre [267]. However Asda has not proposed any alternative PSA boundary. Zurich Assurance/Threadneedle prefer the description of the primary shopping area described in the CD3.21 Retail Impact Assessment (Health Check Section) at paragraph 2.1 [337]. However that does not include a mapped boundary and the listed streets only include the core primary frontages. That does not comply with the PPS4 definition which also includes contiguous and well-connected secondary frontages. Moreover the subsequent health check is not limited to the core area but also makes a wider assessment of the town centre which includes the existing Tesco site.
372. In conclusion there is no evidence to support a specific change in the PSA boundary or in particular to support the inclusion of Asda's own site in the PSA, which in any event they have not proposed. All conclusions are therefore based on regarding the defined Main Shopping Area boundary in the SPG as being the Primary Shopping Area for the purposes of PPS4 and UDP assessments.

WHETHER SITE IS EDGE-OF-CENTRE OR OUT-OF-CENTRE

373. The site lies outside the PSA. The Applicant and the LPA agree it to be edge-of-centre [53] according to the definition at Annex B of PPS4. That requires such locations to be 'well connected to and within easy walking distance (i.e. up to 300 metres) of the PSA'. The definition also requires account to be taken of local circumstances which may include local topography, the attractiveness and

perceived safety of the route, barriers such as crossing major roads, the size and strength of attraction of the town centre, and whether there is physical separation such as a major road with no existing or proposed pedestrian route to provide safe and convenient access to the centre. On this basis WD Kingsgate Ltd and Zurich/Threadneedle dispute that the site qualifies as edge-of-centre and consider that it should be treated as out-of-centre [334, 337].

374. The store entrance would be only 157-175m from the PSA at its nearest points [53, 185]. That those points relate to locations where there are respectively no shops (east end of Brook Street) or only secondary retail frontages (as defined on the former UDP Proposals Map) does not of itself disqualify the site as edge-of-centre. The primary shopping frontages including the Kingsgate Centre are more than 300m from the proposed store [53] but, as prime shopping at the heart of a sub regional centre, they nevertheless represent a strong attraction for shoppers. The existing Tesco store is within the PSA but is no closer to those primary frontages [63, 185(e)]. The several available walking routes from the application site to the PSA are along reasonably attractive streets with only modest gradients and which include points of interest such as listed buildings and some isolated shops. The routes do not feel unsafe.
375. The main point of contention concerns the need for pedestrians to cross the wide dual-carriageway A62 ring road to reach the PSA [269, 334, 337, 347]. However the road is not a strong physical barrier as there are several signal-controlled pedestrian crossings. Some crossings already experience significant pedestrian flows between the Sports Centre/Sainsbury's store and the PSA [117]. The frequency of these crossings on this section of the ring road also moderates traffic speeds, reducing associated noise and perceived danger.
376. The need to cross the ring road does delay pedestrians and lengthen walking times. Some delays will increase as the result of junction changes adjacent to the store entrance at Southgate/Northumberland Street/Leeds Road. The average crossing time in one direction would be up to 2 minutes and 23 seconds (143 seconds) to cross all four separate legs [184]. In that time a pedestrian could have walked up to 119m at a rate of 1.2m/second [117]. Thus whereas the existing Castlegate Tesco store is a marginally greater distance from the prime shopping frontages compared to the proposed store, the journey time on foot is likely to be greater because the Castlegate store is within the ring road. However, even if that extra 119m is added to the measured distances of 157m and 175m, the application site would remain just within 300m of the PSA at its closest point. The delay to cross the ring road would be less at other crossing points further south that have only 2 legs and which are on the most direct route from the site to the primary shopping frontages, albeit one which exceeds 300m.
377. Whereas the raised ground levels at Eccles favoured the use of a footbridge to cross a main road separating the town centre from a superstore site [337], in this case such a bridge would not be attractive to users owing to the need for long ramps or steps. Such a bridge would also be more likely to harm the setting of the adjacent listed buildings and conservation area as it would stand immediately in front of them.
378. Taking all these matters into account I conclude overall that the application site qualifies as edge-of-centre in the terms of the Annex B definition in PPS4 and is suitably well-connected and within easy walking distance of the PSA.

SEQUENTIAL ASSESSMENT

379. A sequential assessment is required by UDP Policy S4 but the UDP does not contain detailed guidance. However more detailed and up-to-date policy in this regard is set out in PPS4 Policy EC15 which is also supported by Practice Guidance. EC15 requires sites to be assessed for their availability, suitability and viability. Both policies require that preference is given to any in-centre sites which here refers to sites within the PSA. Three candidate sites in or abutting the PSA (a, b and c) are:

- a) the existing Castlegate Tesco store [8];
- b) the site of the permitted Kingsgate 2 Shopping Centre extension [31]; and
- c) the site of the proposed Queensgate Shopping Centre which is the subject of a planning application [33].

380. There are plans and birds-eye photographs in Mr Brown's Document T3PA. All 3 sites are within the Ring Road and they are all within or immediately adjacent to the PSA. It is therefore reasonable to conclude that they would each be locationally preferable to the application site subject to their availability, suitability and viability. However each of these 3 sites is significantly smaller than the application site. Therefore none could accommodate a single trading floor of equivalent floorspace to that proposed, or the parking and servicing provision needed to support it. This is crudely illustrated by Tesco in Mr Brown's drawing that superimposes the proposed scheme on the other sites (Document T3PA).

a) Castlegate site (Existing Tesco Store)

381. Only the Castlegate site is entirely within the PSA. There are diagrams to illustrate that a store of equivalent floorspace and parking provision could only be accommodated there in an impractical multi-level 6-storey building that would be higher than surrounding 3-storey development and in consequence probably harmful to the character and appearance of the Town Centre Conservation Area [106(a)]. Some persons suggest that the site be extended onto the adjacent Council land to the south east [333(c)]. However that land is in use as a small surface car park and for outdoor market stalls so may not be available. In any event its addition to the site would not increase the site's capacity sufficiently for the redevelopment to accommodate a store as large as that proposed.

382. Redevelopment of the existing Castlegate site could address some of the operational issues with the existing store but is unlikely to facilitate more than a modest increase in floorspace. The site is already fully built out with 2 levels of parking. There would thus probably still be overtrading at other existing stores unless additional capacity is also provided elsewhere. Redeveloping on the same site would have the disadvantage for Tesco of lost revenue during the redevelopment. However Tesco have replaced stores on the same site elsewhere. Whether the enhanced store would make up for the lost revenue is a matter for the operator. Its customers would lose the use of the facility during the closure. Whether that could be partially mitigated by some temporary provision (such as a small temporary store on the adjacent Council car park) may be possible but has not been investigated for this site [340(a)].

b) Kingsgate 2

383. The Kingsgate 2 site is mainly outside the PSA boundary but it directly abuts primary shopping frontage within the PSA. The Inspector for the 2008 appeal therefore reasonably treated it as if it were an in-centre site [183]. That the Kingsgate 2 development has not been implemented suggests difficulty in securing the department store tenant originally planned by the owners [106] and supported by Barry Sheerman MP [321]. The site could not accommodate a store of similar scale and a smaller but still large store could only be accommodated on multiple levels. The site would be impractical for a large foodstore where food would need to be sold on different levels with increased requirements for circulation, parking and servicing space [106(b)]. However Tesco has not considered different formats such as a significantly smaller food store on one level (such as might also be included were Marks and Spencer to occupy the space) or a comparison goods only store like Tesco Homeplus, as suggested by WD Kingsgate and Zurich/Theadneedle [334, 340(c)].

c) Queensgate

384. The Queensgate site is mainly within the PSA but includes land adjacent to the PSA boundary. The planning application for its development appears to have stalled owing to viability concerns associated with general funding difficulties, the lack of an anchor store or stores, and the multiple ownerships involved [33, 194]. The assembly there of a large single trading floor suitable as a foodstore is made difficult or probably impossible by the presence of several listed buildings including the recently listed indoor market hall. As at Kingsgate, attempting to accommodate a large scale foodstore within a multi-level space intended for a department store would create similar practical and operational difficulties such that the site is not suitable for a development of the large scale proposed although a smaller single-level foodstore might be accommodated.

385. Three edge-of-centre sites have been considered next in the sequential assessment (d, e and f):

d) St George's Warehouse (west of the railway station)

e) the Spring Grove car park (the site of the proposed replacement sports centre)

f) Chapel Hill (the proposed Asda site);

In each case they are, like the application site, separated from the PSA by the dual carriageway ring road or, in the case of St George's, by the railway.

d) St George's Warehouse

386. The multi-floor Grade II listed St George's Warehouse would not readily convert to a large foodstore, even if that use were limited to the ground floor. The existing building would need to be retained for its architectural and/or historic interest. The numerous closely-spaced internal iron columns are a significant structural and operational constraint [190]. A detached multi-storey car park would be needed to the likely detriment of the listed building's setting [106(f)]. Even if the building could be adapted by removing or otherwise dealing with the columns, there would be a risk of a significant adverse effect on the building's character. Also as I saw that the ground floor level is much lower than

the road level of the railway overbridge to the south, it would be difficult to create convenient pedestrian access to and from the southern half of the PSA to comply with relevant PTC design objectives for level access. Access from the north under the railway and across the surface car park would be level but long and circuitous. The upper floors are partially occupied as offices and planning permission has previously been given for mixed non-retail uses. I conclude that the site is not suitable or sequentially preferable.

e) The Spring Grove Car Park

387. Like the application site, the Spring Grove car park site would be separated from the PSA by the ring road but is close to the main bus station (as are Sainsbury's Market Street, Lidl and other smaller foodstores). It is a smaller site than the application site. Including a second car park to the north would be of little assistance as the two sites are divided by a main road and the northern car park site is an inconvenient thin triangular shape. There is a railway tunnel beneath. Development of the southern car park for a large store would likely require a multi-level trading format to include parking, even if the floorspace were reduced overall compared to the application proposal. As the ground level is higher than the PSA and rises to the west, the principal retail trading floor would either need to be placed below the parking and largely underground, or placed at a high level above parking which would be more difficult to access on foot from the PSA.

388. In either case the likely result would be a bulky building close to local housing with a likely adverse impact on residents' outlook and with a risk of noise and disturbance from the adjacent service areas [106(d)]. In that regard the likely 24hr operation of the superstore, the high trip generation by vehicles of all types, and the need for frequent deliveries by heavy goods vehicles would all risk more noise and disturbance for neighbouring residents than the permitted Sports Centre on this site which would have none of these characteristics [342(d)].

389. The Council-owned Spring Grove Car Park is also the subject of a planning permission for the replacement for Huddersfield Sports Centre which has structural problems. The Sports Centre cannot be replaced on its existing site unless it remains closed for a lengthy period. The Spring Grove site was selected after a sequential assessment. Whereas Mr Sheerman suggests that a sports centre could be developed adjacent to the Galpharm Stadium [325], no evidence has been provided of a suitable site there. Neither has the necessary sequential assessment been provided to show that such a site would be preferable to Spring Grove. As Spring Grove is an edge-of-centre site close to the PSA and to the bus and rail stations, it is likely to be sequentially preferable to any site at the out-of-centre Stadium.

390. I conclude that the Spring Grove site is not suitable by reason of its topography and context and that it is also not available as it is needed for the new Sports Centre.

f) Chapel Hill (Asda site)

391. The Chapel Hill site is confirmed by its owners Broadbents to be available (Document Asda 2). The owners have an agreement with Asda who are currently seeking permission for a similar superstore but 33% smaller and with no filling station [34]. It is immaterial for this purpose that the site is not available to

Tesco. The site is considered suitable and viable by Asda for development as a large retail store selling both convenience and comparison goods. Like the Tesco application site it is separated from the PSA by the ring road. It is marginally closer to the PSA than is the application site. However that advantage is offset in that lifts or steps would be needed to reach the trading floor, contrary to a design principle of the Planning for Town Centres design guidance that level access is preferred [125, 273]. In any event, PPS4 seeks that all edge-of-centre sites are well-connected to the PSA. That one site is marginally closer does not of itself demonstrate that it is well-connected and that the other site is not. Both may be well-connected and within easy walking distance. Whereas Asda suggest that the PSA boundary is out of date, no different boundary has been suggested. National policy to define edge-of-centre sites as those within 300m of the PSA does not distinguish between 'core' and other parts of the PSA as Asda suggest [267]. Neither is a core area for the PSA defined in current policy. There would not be access from Asda 'directly into a main shopping street' as Asda claim [269]. The nearest shopping street is about 100m from the Chapel Hill site on the opposite side of the dual carriageway ring road. That street was formerly defined as secondary frontage in the UDP [23]. That the Chapel Hill site is closer to the main bus station [271] presents no significant advantage given that Tesco's Southgate site also benefits from a good selection of bus services and is proposed to have a free bus link to the bus station [117].

392. The Asda planning application has made very slow progress since it was submitted in 2009, as the correspondence between the Council and its agents confirms [203-209]. As things stand currently, the Local Highway Authority retains a strong objection to the development on highway grounds [126, 202]. That this was not cited as a ground to reject the Chapel Hill site in the February 2011 Sub Committee Report does not negate this. The LHA objections had been set out for negotiation in a letter of January 2011 but remain unresolved. The nub of the issue is that the LHA has not accepted that there is sufficient space within the public highway limits to accommodate the traffic associated with the development in addition to existing traffic including pedestrian traffic and bus stops [203-206]. The LHA had also live-tested the traffic model supplied by Asda's consultants and it did not work on the network [203]. No revised traffic model has been submitted [204(e)]. That would suggest that the site is not suitable for the particular development proposed and with the proposed access.
393. Asda maintain that the technical highway issues are capable of negotiation and solution [279-280]. However that claim is undermined by the lack of progress that has been made on the issue [206-209]. This may be compared to the application site where the LHA has no highway objection [56(viii)].
394. I conclude that whereas there is no material difference in locational terms between the Chapel Hill site and the Tesco application site at Southgate, at Chapel Hill there is a substantive highway issue that has yet to be resolved and which may prove incapable of solution. That suggests that the site is not preferable to the application site. In any event there must be significant doubts about the suitability of the Chapel Hill Asda site for this scale of development given the unresolved highway issues. Even if those issues are set aside the location is not clearly sequentially preferable to the Southgate application site. Both are edge-of-centre sites with similar connections to the PSA.

Flexibility (Scale, Format and Disaggregation)

395. Whilst the other sites are not suitable for a store of the proposed scale and format, EC15.1 requires in summary that in considering alternative sites, developers and operators should demonstrate flexibility in terms of scale, format, car parking provision, and the scope for disaggregating specific parts of a retail development.
396. In terms of **scale**, the Applicant has been unwilling to consider any materially different scale in terms of floorspace [106]. The Applicant's argument is that: 'the appropriate scale for relocation is that which can do the job of competing with shops that have the full convenience and comparison range expected in a superstore' [107]. The Council has accepted this argument [180] and that the development needs to be of sufficient scale to address over-trading at edge-of-centre and out-of-centre stores and to reduce the leakage of expenditure to out-of-centre stores. However there has been no quantitative assessment of what scale would address over-trading.
397. If the need exists across the primary catchment area there is no particular justification for meeting it in one large store, particularly if that cannot be accommodated within an existing centre. Indeed the Retail Capacity Study [175-176] concluded that there was unlikely to be capacity for an additional large format foodstore but that there would be capacity for smaller stores or for extensions to stores. Nevertheless, and following the demise of the PPS6 quantitative needs test, the Council supports the proposal because it is regarded not as a large store but as equivalent to the extension of the existing store and because they consider it would mainly compete with other large out-of-centre or edge-of-centre stores.
398. As the large out-of-centre Morrison's stores concentrate on convenience sales, the only competing out-of-centre store with a similar mix of comparison and convenience goods is Asda, Bradford Road. The proposed Tesco store net floorspace would be 53% larger than that store, 50% larger than Asda's similar proposed edge-of-centre site at Chapel Hill, and 19% larger than the nearby edge-of-centre Sainsbury's (Shorehead) which also offers such a mix. Thus there is no strong justification on competition grounds for a single store of significantly larger scale than any other foodstore in the catchment.
399. Paragraph 6.33 of the PPS4 Practice Guidance provides that an operator claiming that it is unable to be flexible about its business model would be expected to demonstrate why a smaller store or stores would not meet a similar need. Sainsbury's operates a second smaller foodstore at Market Street within the PSA. That is also said to be overtrading [102] and hence it must be attractive to shoppers notwithstanding the smaller offer compared to the out-of-centre Asda and edge-of-centre Sainsbury's Shorehead. Whilst the Council claims that the existing Castlegate Tesco is not of adequate scale to compete with the out-of-centre stores [180], that is also said to be trading strongly in spite of its smaller scale and acknowledged qualitative deficiencies.
400. It would therefore appear that an additional smaller food store or stores within the PSA, and a retained existing Tesco store (or its replacement on that site), would attract shoppers and also address the claimed overtrading by all the main foodstores, whether they were operated by Tesco or another operator. Such a second store would supply some of the quantitative capacity demonstrated to be

available by the RCS and could more readily be accommodated within the Kingsgate or Queensgate developments.

401. On the other hand the large scale of the proposed Tesco development at Southgate would be a likely deterrent to other operators (or even Tesco themselves) seeking to develop smaller foodstores in the PSA, as Mr Sheerman suggested in respect of Waitrose who typically operate smaller stores than a Tesco Extra [322]. A smaller scale edge-of-centre foodstore than that proposed may have a reduced impact in that regard.
402. In relation to **format**, the PPS4 Practice Guidance commends a case study of a two-level Asda store at Halesowen as an example of flexibility. Whilst the convenience of a single trading floor to the operator and to customers is understood, particularly in respect of food sales, Tesco also operates two level stores at many UK locations with convenience goods on one floor and comparison goods on a second or mezzanine level. Nevertheless, even two-level stores of the same proposed scale in terms of floorspace and their associated parking and servicing are unlikely to be capable of being accommodated within any of the above alternative in-centre or edge of centre site. A possible exception is the Chapel Hill site. However that site is currently proposed by Asda for a smaller single level store (with decked parking), it has unresolved highways issues and it is not sequentially preferable. Nevertheless, were the scale of a second foodstore (with a retained/redeveloped Castlegate Tesco) to be much reduced such that it could be accommodated on only one floor in the Queensgate of Kingsgate developments or elsewhere in the PSA, a comparison goods offer could also be more readily included on a separate floor or floors.
403. PPS4 Practice Guidance at paragraph 6.30 includes the advice that for a single retailer it is not the purpose of national policy to require development to be split into separate sites where flexibility in their business model and the scope for **disaggregation** have been demonstrated. However such flexibility has not been demonstrated here as alternative scales with different formats have not been considered. Paragraph 6.32 of the Guidance does not rule out disaggregation in respect of large foodstores and the sale of comparison goods, having regard to other policy objectives for town centres. Whilst disaggregation was not pursued in the other quoted appeals, the PPS4 Practice Guidance post-dates the Keighley [108], Ilkley and Isle of Wight appeal decisions [336]. Operators' business models have also continued to evolve in recent years. Tesco currently operate a wide range of foodstore formats at all scales and also operate some free-standing Homeplus comparison goods stores [111] [334(e)]. Whilst Tesco suggested at Inquiry that they do not presently intend to open more Homeplus stores, neither is it suggested that such stores have been closed.
404. In this case consideration has only been given by Tesco to how to accommodate elsewhere a single store of similar size. Little or no consideration has been given to whether two or more smaller stores could be accommodated using different Tesco business models which do not necessarily require that convenience and comparison goods are retailed in the same store. They have resisted any suggestion that they should similarly split their offer between two or more smaller stores of which at least one store might be within the PSA, whether on the existing Tesco site or another site.

405. I accept that it would be arbitrary to seek to split the foodstore offer such that, for example, fresh food is sold in one store and frozen food in another. Neither does Tesco operate such business models in the UK. There are also some non-food items that are sold in most convenience stores. However the proposed comparison goods offer would be substantial and 6 times larger than that at the existing store. That such goods could be sold from a separate store is indicated by the Homeplus formats offered elsewhere by Tesco and the similar Asda Living stores. Nevertheless, at the Inquiry, Tesco responded in the negative to any suggestion that the much expanded comparison goods offer could be disaggregated from the convenience floorspace. This was notwithstanding Ms Bath's concession that such a comparison goods store might be more readily accommodated in a multi-level format within the PSA [107].
406. Tesco claim that a large comparison goods offer needs to be included here alongside food to reduce leakage from the town centre to out-of-centre stores such as Asda, Bradford Road [104, 107]. But that claim is undermined in that the PSA as a whole has a much stronger comparison goods offer than any out-of-centre superstore and Tesco rely on the scope for linked trips from the store into the PSA to justify the edge-of-centre location for the foodstore. Neither do the out-of-centre Morrison's stores rely on such extensive comparison goods sales.
407. The risk of including a much expanded comparison goods offer in the proposed Tesco store (including also the collection of catalogue goods from the store) would be to offer a one-stop shop that would reduce the need for customers to visit other stores in the PSA [334(b), 338]. The store's more extensive offer than its main rivals would encourage some people to make one-stop trips from home by car even when there is a foodstore closer to home. If they do not then make a linked trip into the town centre that would not contribute to underlying PPG13 goals to reduce the need to travel, especially by car. Whilst an edge-of-town-centre site may be more accessible to those without a car, they already have a choice of foodstores in the town centre and edge-of-centre.
408. Neither does a claimed need for extensive comparison goods provision justify an edge-of-centre site over an in-centre site given that smaller foodstores within the PSA could still draw people because of the wide choice of nearby comparison goods stores at other stores in the PSA.
409. I conclude overall on the sequential assessment and Policies S4 and EC15.1 that:
- a) There is no sequentially preferable site within the PSA that could accommodate a single store of this scale and format.
 - b) The Chapel Hill Asda site is not sequentially preferable in terms of distance from, or connections to, the PSA and has not been demonstrated to be suitable given the unresolved highways issues with that site.
 - c) The Applicant has not demonstrated the flexibility required by EC15.1d in respect of whether 2 or more smaller scale stores of different format, including other formats used by the same operator, could be accommodated in the PSA, as appears likely.

IMPACT ASSESSMENT

410. PPS4 Policy EC16.1 sets out the impact assessment that should be made in cases such as this.

EC16.1a Impact on Investment

411. Two major retail investments have been proposed within or immediately abutting the PSA. However both appear to have been planned before the national and international financial downturn. The permitted 11,154sqm Kingsgate 2 development and the proposed Queensgate retail developments have apparently stalled [106, 194] in common with similar town centre development proposals elsewhere, as has been widely reported. Of the two schemes the Kingsgate 2 scheme is the more advanced and currently the more likely to proceed in some form although that remains uncertain whether or not the Tesco proposal goes ahead. Both town centre developments are intended to accommodate mainly comparison goods floorspace. Their individual or combined comparison goods floorspace would dwarf the 2,275sqm net comparison goods floorspace proposed in the application but would be divided between multiple levels unlike the single level store proposed in the application.

412. I have concluded above that neither the Kingsgate 2 nor the Queensgate schemes would accommodate a foodstore of similar scale to the proposed Tesco. However each might accommodate a smaller foodstore, whether as a food section within a new department store or as an additional independent foodstore, whether operated by Tesco using one of their different business models or by another operator. It would be less likely that such a smaller additional foodstore would come forward if the current application proposal for a large edge-of-centre store is implemented as the capacity identified in the RCS may have been used up.

413. Neither development is dependent on attracting a foodstore. The key need in each case is rather for an anchor comparison goods store [106(b), 195], without which it is unlikely that either scheme will proceed at an early date. The only significant adverse impact of the proposed Tesco development that could affect these schemes would be if, by diverting trade from existing nearby foodstores (especially the two Sainsbury's), it were to significantly reduce the number of trips from those stores to the core southern part of the PSA. That could be offset, at least in part, if there were to be an overall increase in shopping trips attracted by the large Tesco store with associated overall growth in linked trips into the PSA from the north east. However there is a lack of data on current or estimated linked trips to support any conclusions in this regard.

EC16.1b Impact on Vitality and Viability

414. Kirklees Council and the Applicant agree in the SoCG that Huddersfield is a busy sub regional centre, displaying many signs of vitality and viability [54]. Mr Sheerman agrees that the town centre has a 'buzz' which attracts people from surrounding towns [319]. Mr Ball's estimate that 12% of the town centre stock of properties is vacant [333] tallies with the Council's 11.8% figure for 2010 and is said to be below the national average and below the figures for other West Yorkshire towns [227]. However there is an unexplained discrepancy between these figures and the higher vacancy figures at Appendix 3 of Ms Bath's proof which are also stated to be above the national average [100]. This may be

because Ms Bath's figures include more non-retail premises. Nevertheless I saw that many of the vacant premises are small and that they are scattered throughout the town centre with a higher proportion in secondary locations [227]. They do not obviously harm the sense of vitality.

EC16.1c Impact on allocated sites outside town centres

415. There is no evidence of any adverse impact on any allocated site elsewhere.

EC16.1d Trade Impact

416. The SoCG includes retail trade impact assessments with and without the additional Kingsgate 2 development [52]. In respect of food shopping, the 2008 Kirklees Retail Study (CD8.2) found that 21% of main food shopping trips in the Primary Catchment Area (PCA) are to Huddersfield town centre of which 11.2% are to the existing Tesco, Castlegate and 9.8% to Sainsbury's, Market Street. A further 17.2% of trips are to the edge-of-centre Sainsbury's, Shorehead. Some of the 10% of trips to small stores would include those to an edge-of-centre Lidl [100]. It follows that around 40% of main food shopping trips are already to the town centre and edge-of-town-centre stores combined. Of the rest, nearly 30% of trips are divided approximately evenly between 2 large out-of-centre suburban stores (Asda and Morrison's Waterloo) and the Meltham Morrison's. Apart from the remainder of the 10% of trips to small and local stores (excluding the edge of centre Lidl), the residual 23% of main trips are to locations outside the PCA. That is probably accounted for partly by residents who live at the edges of the PCA and also by those who combine their food shopping with trips outside the PCA for work or for other reasons (which may include non-food shopping trips).

417. The impact figures agreed between Tesco and the Council in the SoCG suggest that trade within the PSA would decline by 12.1% in 2016 as a result of the development [101]. However that would be mainly accounted for by the closure of the existing Castlegate Tesco and the assumed transfer of 100% of its business to the new site at Southgate [101]. After discounting that effect, the residual impact in the PSA would be a loss of only 1.9% of town centre trade to the new store (convenience and comparison combined) [101]. The greatest forecast impact on an individual named foodstore would be -3.9%. Elsewhere the greatest impact on individual stores is estimated to be on the nearby edge-of-centre Sainsbury's Shorehead (-12%) and on 2 of the out-of-centre Asda and Morrison's stores (-10% and -7%) [104]. These stores and Sainsbury's Market Street are estimated to be currently over-trading and are unlikely to be at risk of closure. However the impacts at some stores could result in reduced employment that would at least partially offset the additional jobs to be provided at Tesco. Moreover Asda have stated that they would go ahead with their proposed development (subject to planning permission), even if the Tesco development proceeds [259]. This suggests that the operators consider retail need to be robust notwithstanding the more limited capacity identified in the Retail Capacity Study.

418. The closure of the Castlegate Tesco (and its free car park) would reduce the already low footfall in the northern part of the PSA where there are however relatively few other shops. There is no data to measure the extent of that effect. It is likely that many existing Tesco customers park at the store and do not make linked trips into the town, as is also likely to occur at the proposed store. Some of the lost footfall would be restored in the northern part of the PSA if and when

the Castlegate site is redeveloped for other purposes. South of Northumberland Street there would be less impact as some of the increased number of customers of the proposed Tesco store would still walk into the PSA along these streets.

419. The S106 Obligation provides that, after the new Southgate store opens, the existing Castlegate site may not be used for the sale of 'Groceries' without the agreement of the Council. The Town Centre Partnership objects to that provision as a restriction of trade [347(c)]. The provision would come into effect automatically if planning permission is granted. However if it were not in place then it is possible that the existing Tesco store would continue to operate after the new store opens. Alternatively it could be sold to another operator without any need for planning permission or an impact assessment. Whilst the continued operation of a large store and car park might be of benefit to non-competing business in the northern part of the PSA, because of the retained footfall, the combined impact of those developments on the town centre as a whole might be adverse. The clause allows that the Council could agree to continued convenience sales on that site if it was satisfied that the impact would be acceptable [254]. For example small convenience shops on that site within the PSA could be included in the mixed redevelopment and would almost certainly be acceptable to the Council in respect of impact.
420. The comparison goods floorspace to be provided at the proposed Tesco Southgate store would remain modest in relation to the overall extent of provision in the PSA. It would account for only 33% of the net sales floorspace in the store and not 60% as Mr Sheerman mistakenly believed [321]. No evidence is provided by Mr Sheerman for his estimate that 50,000-60,000 fewer shoppers would visit the town centre [321]. Whereas the Town Centre Partnership is concerned about future expansion of the floorspace [347(b)], the overall floorspace and the proportions of convenience/comparison goods floorspace can be limited by condition. Planning permission would then be required to add any extra sales floorspace (for example by adding a mezzanine floor). If of significant scale, such an application would need to be supported by further sequential and impact assessments as well as consideration of the travel and parking impacts. Existing electrical and other small retailers with which Mr Sheerman is concerned [321] already face competition from larger retailers within the PSA (including the present Tesco and Sainsbury's stores) and at edge-of-centre (Sainsbury's Shorehead) and out-of-centre stores and retail parks as well as from the internet. Any additional impact of Tesco would be at the margins. It is not possible to assess the additional impact of the Tesco development on every individual store and neither is this required by PPS4. Individual business failures may have a number of causes and cannot be ruled out whether or not the development goes ahead. However the overall impact on the vitality and viability of the PSA is unlikely to be significantly adverse given the forecast 1.9% loss of trade from non-Tesco businesses as at 2016.

EC16.1e Appropriate Scale for Size of Town Centre

421. Huddersfield town centre is a sub-regional centre [13] with a high place in the retail hierarchy. The town centre is the most suitable location in the Primary Catchment Area for what would be the largest individual superstore. Whilst the sequentially preferable location for such a store would be within the Huddersfield PSA, there are no sites there that would accommodate a store of this scale and format. I have concluded above that the demand for additional convenience and

comparison goods floorspace could be met in the alternative by two or more smaller stores within the PSA. However if development is to take the form of one large store then this edge-of-centre site adjacent to a sub-regional shopping centre is to be preferred to an out-of-centre site or to a location adjoining a much smaller centre that would disturb the retail hierarchy by drawing more trade from the town centre.

422. The impact of the proposed development arises mainly because the proposed store would be significantly larger than the Castlegate store that it would replace, with an associated increase in predicted turnover. An additional motivation for the development proposal concerns the identified qualitative deficiencies of the existing store [180]. The store continues to overtrade and it is an exaggeration for the Applicant to say that it has come to the end of its useful life [61] or to claim that a store of this size cannot compete with other larger stores [106(a)]. However the poor shopping experience for customers and the servicing difficulties for the operator are accepted by the Council and were evident on the site inspection [180]. They make the store inferior to modern competing stores both within and outside the town centre. These issues would all be addressed in the proposed development. They do not on their own justify relocating the store from the PSA to an edge-of-centre site. The quality of the offer could also be improved by redeveloping the existing store within the PSA and/or by developing additional small or medium size convenience or comparison goods stores within the PSA. Sainsbury's Market Street is a medium size store only slightly larger than the Castlegate Tesco. It is overtrading even though it is unlikely to sell anything that is not also available with greater choice at the larger edge-of-centre Sainsbury's Shorehead. It also sells few comparison goods.

423. I conclude overall on the impact assessment and PPS4 Policy EC16.1 that

- a) Huddersfield town centre is in generally good health, notwithstanding the vacancy rate.
- b) Whereas the development is forecast to draw 12.1% of trade away from the primary shopping area by 2016, 10.2% of that is forecast to be accounted for by the closure of the existing Castlegate Tesco. As only 1.9% of trade would be drawn from other town centre traders the development would be unlikely to harm the vitality or viability of the town centre as a whole. There could be some local impacts in the north of the PSA where already low footfall would be reduced, at least unless and until it is at least partially restored by the redevelopment of the Castlegate site for other purposes.
- c) Impacts of more than 1.9% are anticipated for other named large foodstore operators within the town centre and more especially for those outside the town centre where they do not have policy protection. These are nevertheless likely to be resilient to the competition as they are said to be overtrading at present.
- d) The proposed comparison goods floorspace would be modest relative to the forecast need for such space and to the size of the proposed Kingsgate and Queensgate developments. The Tesco development is unlikely to deter investment in those schemes.

OTHER ECONOMIC DEVELOPMENT ISSUES

424. The proposal is a form of economic development for which PPS4 Policy EC10.1 requires a positive and constructive approach. Policy EC10.2 sets a number of criteria for economic development proposals, some of which are addressed under other issues above. Policy EC17 brings together a number of other policy considerations. The PGMS also requires consideration of the economic, environmental and social benefits of proposals [27, 129].
425. In this case the development would enhance competition and consumer choice and there would be direct provision of 260 additional (full-time or part-time) jobs. The application site is on the edge of Dalton ward which has multiple indications of deprivation and the S106 Obligation seeks to favour bringing the long term unemployed back into employment as part of a Regeneration Partnership Scheme [65, 223]. That would have social and economic benefits.
426. The gain in employment would be likely offset in part by some unquantified reduction in employment at competing stores in the town centre and elsewhere where trade would be lost. However the forecast impact assessment would suggest that the overall impact on existing trade would be relatively small and concentrated on directly competing large stores. There is also the potential for the development to attract more people to this sub regional centre. There could be associated spin-off benefits for some town centre businesses resulting from linked trips by those who would otherwise shop at out-of-centre foodstores without visiting the town centre.
427. Unusually it is a material consideration that the development would directly facilitate the redevelopment of two other major sites within or adjoining the town centre [60, 134]. These are directly linked to the subject development. The development would firstly replace the existing Castlegate Tesco store which provides a poor retail offer in a building that detracts from its surroundings in the conservation area [8, 180]. That would create the opportunity for a new development that, subject to its design, has the potential to enhance the character and appearance whilst providing new homes and other facilities including a hotel [37, 94(b)]. Secondly the development would facilitate the relocation of Huddersfield Sports Centre from the site to a new £35m building at Spring Grove [64, 247]. The associated £1.2m refurbishment of the multi-storey car park at the bus station would be an additional related benefit. Each of these developments would involve substantial investment and construction jobs together with subsequent economic activity [65]. The Castlegate development would have potential social and environmental benefits. The Spring Grove Sports Centre would also create social and health benefits for its users.
428. Asda has not suggested that they would withdraw their Chapel Hill planning application should the Tesco application succeed. Moreover their submitted cumulative impact assessment concluded that there would be room for both stores as they would mainly trade against each other [259]. That suggests that the economic benefits sought by Broadbents as the owner of the Chapel Hill site and seeking to relocate their business need not be lost [292], subject to Asda proposing an acceptable scheme including consideration of the retail impact. However the scale of economic benefits associated with the Asda scheme are likely to be less than would arise from the Tesco scheme with its linked developments.

CONCLUSIONS ON RETAIL POLICY AND ECONOMIC DEVELOPMENT

429. My overall conclusion on retail policy and economic development considerations is that:

- a) The Applicant has only partially satisfied the sequential assessment required by PPS4 Policy EC15 and UDP Policy S4 in that, whereas there is no sequentially preferable site for this scale and format of development, flexibility has not been demonstrated in respect of alternative scales and formats of development for which there may be sequentially preferable sites within the PSA.
- b) Nevertheless, if the development proceeds there is unlikely to be a significant adverse impact on the overall vitality and viability of the town centre (including the prospects for developing planned new comparison goods floorspace) in the terms of PPS4 Policy EC16 or UDP Policy S4(i)
- c) There may be adverse short term impacts in the northern part of the PSA arising from the closure of the existing Castlegate store and its car park and the associated effects on pedestrian flows, but these would not be significant and they would be mitigated when that site is fully redeveloped for other purposes.
- d) In relation to PPS4 Policy EC10 and the PGMS there would be substantial economic and social benefits and some potential environmental benefits arising both directly from the development and indirectly from the development of the linked sites at Castlegate and Spring Grove. These benefits are less likely to be achieved in full by smaller retail developments on any alternative sites in the PSA even though they were fully compliant with the requirements of the sequential assessment and did not draw trade away from the PSA but instead reinforced its offer.

Issue (c) PPS1 - Design Issues (the design, character and appearance of the development including the effect on the setting of listed buildings and the setting of the adjacent Town Centre Conservation Area).

Design Policies

430. The UDP design policies include objectives that new development is visually attractive, creates or retains a sense of local identity, takes account of local topography, is in keeping with surrounding development, has integral landscaping, and uses materials that reflect the predominant surrounding materials with particular regard to the use of natural stone in appropriate locations [15-18]. PPS1 paragraphs 34 and 35 and PPS4 Policy EC10 include objectives to take opportunities available for improving the character and quality of an area and the way it functions and for developments to be integrated into the existing urban form and the natural and built environments. 'Planning for Town Centres: Guidance on Design and Implementation tools' (PTC) sets out design principles.

General Design Issues

431. The application site is at one of the main entry points into the town centre and is highly prominent from the ring road and from Leeds Road. It is currently occupied by a disjointed mix of unattractive buildings that lack individual

architectural quality or local distinctiveness and many of which are vacant or are not fully occupied because of their poor condition [3, 63, 80, 134, 146-147]. Their contrasting individual scale, height, forms and layouts clash with one another and with the modest proportions and more harmonious styles, scale and materials of nearby listed buildings and the adjacent Town Centre Conservation Area. The existing Castlegate Tesco store to be replaced is similarly out of keeping with its Conservation Area location and with adjacent listed buildings [8]. Its design and layout is at variance with PTC design principles that encourage active street frontages and level access.

432. The proposed development presents a rare opportunity to redesign almost all of a large urban block, excepting only the retained Crown House office building.
433. The design criticisms set out in earlier consultation responses and in the February 2011 Sub Committee Report, and which were picked up in some representations [328, 338, 344], have been addressed in subsequent scheme modifications [139-143]. Mr Sheerman expressed reported criticism by others of Tesco design elsewhere but had no specific design criticisms of the submitted scheme in spite of his personal interest in design and his professed previous involvement in the design modification of the Sainsbury's scheme [323]. The Huddersfield Civic Society did suggest some sculpture to relieve the extensive timber panelling [349]. However that is not necessary as the timber panelling on the Southgate frontage would be partially hidden by Crown House and that on the Old Leeds Road frontages is likely to be obscured by planting.
434. The Tesco building would be one of the largest in or adjacent to the town centre and, by reason of its greater height and bulk and the two long road frontages, would be notably more prominent than the nearby Sainsbury's building [42]. However here the filling station would be more discreetly located than at Sainsbury's and the parking would be hidden under the store in accordance with recommendations in the PTC design guidance that seeks to avoid large areas of surface parking such as are seen at the Sainsbury's store.

Materials

435. The proposed stone facing for parts of the elevations would echo the widespread use of stone as a principal construction material in the town centre conservation area and along Old Leeds Road. Whereas some illustrations indicate the use of random rubble stone facing, that would not be appropriate in an area characterised by formal coursed stone construction. But this can be addressed by a condition to which the Applicant agrees.
436. The use of stone would be less extensive than in older buildings in the area or in the recent mainly single storey Sainsbury's and Lidl edge-of-centre stores. Its only partial application to some elevations on the proposed larger Tesco store also risks making it appear as applied decoration rather than as integral to the construction, as is the case with older buildings. The very extensive areas of glazing and timber panelling would also be uncharacteristic of traditional local architecture. However other recent large buildings in the area also typically combine stone with glazing or with other modern materials such as painted steel, with varying degrees of success. To here replace all of the timber elevations (including the service yard screening) in stone and to reduce the glazed area would also be out of character with the area in that it would risk a very heavy looking and oppressive building having regard to its height and bulk. Such stone

elevations might be relieved by the 'window in wall' style that characterise local multi-level mill buildings. However such features would be difficult to incorporate in the majority of the elevations here that screen the parking, storage and service areas. Also extensive ventilation would still be needed for the car park areas and the application design includes steel ventilation louvres that could not be fashioned in stone. The proposed mix of materials is therefore appropriate. The application does not include the advertising shown in the drawings which would be subject to the separate Advertisement Regulations

437. Having regard to the extent of the timber facing, the finish and appearance of the timber is of particular importance as agreed by the Council and the Applicant at the Inquiry. The Inspector pointed out at the Inquiry that Tesco had applied a white painted finish to similarly extensive unpainted timber when it acquired the Tesco Extra store at Gabalfa, Cardiff from the COOP. Such a finish here would exaggerate the building's already substantial visual impact and prominence. A suitable stained or untreated finish would be more compatible with the natural stone. The choice of finish can be addressed by a planning condition as the main parties agreed.

Tower feature

438. The modest tower feature would add suitable emphasis to the main pedestrian entrance in views along Southgate. Its design was revised to suitably ground the stone construction. However the upper part of the tower is proposed to be clad in solar panels. Whether they would harmonise well with the natural stone would depend on detailed design and the choice and finish of the stone and the panels. They may risk appearing as only a token contribution to renewable energy. As there could be alternative means of providing renewable energy as discussed below, there is the opportunity to reconsider the facing materials for the tower through the use of conditions.

Other PTC Design Principles

439. Whilst the superstore would be set at an angle to Southgate, it would still help to enclose the street. It would incorporate a convenient street level entrance and cafe as well as providing increased streetfront activity on both Southgate and Leeds Road. This would accord with the PTC design principles to orient development to the street, maximise active street frontage, provide level access from the public realm, and respect building lines.

Stadium Axis

440. The proposed design is compatible with the Stadium Axis Design Guidelines [25] in that the more sheltered footway and a long timber canopy would improve the experience of pedestrians walking past the store to the stadium, whilst not obstructing views of the stadium along that axis.

Listed buildings and conservation area

441. PPS5 Policy HE10 sets out principles to guide the consideration of applications for development affecting the setting of a designated heritage asset. Those assets here include the Town Centre Conservation Area and nearby Grade II listed buildings on Southgate, the significance of which is confirmed by their designations.

442. The conservation area is characterised by a built-up grid of streets that are fronted by low or medium height 19th century stone buildings, some of which are listed for their architectural or historic interest. The building frontages are generally harmonious in their height, scale, materials and their close continuous relationship to the streets which they enclose. The existing tower blocks and Sports Centre on the application site are alien to the character and setting of the conservation area and listed buildings in their greater height, contrasting materials and their set back from the road with wide gaps between the buildings. By making good use of the topography the western Southgate elevation of the proposed store would have a reduced height compared to the other elevations. This would be more in keeping with the heights and massing of buildings in the conservation area. That, together with the more extensive use of stone facing on this façade and the continuous built-up active frontage, would enhance the setting of the facing listed buildings and the conservation area and thereby benefit these heritage assets.
443. To further reduce the height of the trading floor, as sought in some representations to prevent any future enlargement of the sales area [347(b)], would risk a squat appearance for the store on Southgate with an overly horizontal emphasis. That would fail to effectively enclose the street and it would not complement the more vertical emphasis of the facing buildings in the conservation area.
444. The ugly existing Tesco Castlegate store lies wholly within the Town Centre Conservation Area and close to other listed buildings. There is Conservation Area Consent for its demolition although that is unlikely to proceed without an approved replacement store. Whilst no design for the redevelopment of that site has yet been agreed, it does create the opportunity to significantly improve the appearance of that site with the potential to enhance the character and appearance of the conservation area and the setting of listed buildings there as an environmental benefit.

Landscaping, trees and biodiversity

445. The loss of all 80 trees currently on the site would literally contravene the objective of UDP Policy NE9 to normally retain existing trees. However that policy allows for exceptions. The trees are typically small and they include many poor specimens. They would be replaced by 60 new trees that would mitigate the loss and there is the opportunity to select species of greater value to biodiversity than the ornamental and non-native plants which characterise much of the existing planting.
446. The Galpharm Stadium can already be seen in long views above the frontage trees and to remove the trees would not be justified simply to open some additional views of the stadium. Nevertheless to retain the existing trees would seriously compromise the layout and functioning of the development including the creation of an active frontage on Leeds Road.
447. Whereas most of the existing trees and other soft landscaping are prominently located on Leeds Road and Southgate, the proposed landscaping strip would be at the rear of the development along Old Leeds Road and behind Crown House. Whilst consequently less prominent in public views, the concentration of landscaping in one place has ecological benefits. Its proposed integrated location would soften and screen otherwise high and blank timber elevations to the

service areas whilst improving the present streetscape of Old Leeds Road. Removing soft landscaping from the Leeds Road frontage and formalising it on the Southgate frontage allows a suitably urban architectural treatment for these main elevations and provides enhanced physical enclosure for these wide roads.

448. The CD6.2 February 2011 Sub-Committee report concluded that the development did not meet national, regional and local policy objectives for landscaping, tree protection/new planting or the protection and enhancement of bio-diversity. However there have been subsequent modest improvements to the landscaping with a slight increase in the area of planting and some changes in the type of planting proposed. Whilst no bat roosts were found on site, a planning condition has been agreed between the parties to provide a watching brief in respect of one building. Bird and bat boxes are proposed to improve nesting and roosting opportunities. The Council now considers the scheme to be policy compliant [147-148]. That is not clear since there would still be a loss of trees and an overall reduction in soft landscaping. However the area to be provided is likely to be of higher quality and enhanced bio-diversity once it matures and it can be managed to enhance its potential benefits. That mitigates the loss and the associated policy conflict to an acceptable degree.

CONCLUSIONS ON DESIGN ISSUES

449. My overall conclusions on the design issues are that:

- a) The form and scale of the development and the active frontages would enhance the present appearance and functioning of the site and its surroundings including the setting of the heritage assets.
- b) Subject to control by conditions including reconsideration of the facing of the tower the materials would be acceptable.
- c) The overall design benefits and the potential for improved quality of landscaping and enhanced bio-diversity benefits outweigh the net loss in the number of trees and the loss of soft landscaping, particularly that on the Leeds Road frontage.
- d) For the above reasons the proposal would not be fully compliant with UDP Policy NE9 but would generally comply with relevant provisions of UDP Policies D2 and BE2 and with relevant national policy in PPS1 and PPS5.

Issue (d) PPG13 Transport

Transport Policies

450. The objectives of PPG13 'Transport' and PPS4 Policy EC10 and the UDP Transport policies [20] include promoting accessibility to jobs, shopping, and leisure facilities by public transport, walking and cycling and reducing the need to travel, especially by car. Major generators of travel demand are to be focused in town centres and this underpins the sequential test for retail development that is referred to above. EC10 requires consideration of the effect on congestion after public transport and traffic management measures have been secured.

Highway Capacity

451. Concerns have been raised by a number of persons that the development may result in traffic congestion, particularly at the junctions on Leeds Road [320, 332, 345, 347, 350]. The Transport Assessment does indicate that at certain peak periods, the traffic using the Leeds Road/Old Leeds Road junction could marginally exceed its capacity (105%) such that queuing traffic may have to wait for more than one cycle of the lights to pass through the junction [156]. There could also be knock-on consequences if queues extend between this and other junctions, as is possible. However the Local Highway Authority is content that the model used is conservative, that the underlying assumptions exaggerate the amount of traffic that is likely to be generated, that it does not take account of the effect of public transport and other measures in the Travel Plan, and that the overall traffic impact would be acceptable [156-158]. I agree.
452. The observation that the amount of traffic generated at the nearby Sainsbury's Shorehead is 21-29% less than that forecast for Tesco [116, 159] should be treated cautiously as the Tesco store would be larger with 19% more net sales floorspace than Sainsbury's (6,860sqm vs 5,761sqm) [4, 43] and with 52% more car parking spaces on site, (763 vs 500) [4, 46]. Nevertheless there are other mitigating factors such as the likely propensity of Tesco customers to time their visits to avoid congestion if they would not already be passing the site for other reasons such as a commuting trip [116(g)]. Some congestion is to be expected on radial roads at peak hours and the figures do not suggest a significant congestion issue. The added capacity to be created at several local junctions is also likely to aid traffic flows outside peak hours. Whilst there may be some peak queuing at the Leeds Road junctions, particularly on Friday evenings and on Saturdays, the development may delay, but should not prevent, access or egress to other business premises in Old Leeds Road [332, 350].

Local Access

453. Those who have concerns about access to local premises in Old Leeds Road and Quay Street do not object in principle to the proposed development [332, 350]. The issue concerning potentially increased use of the narrow Turnbridge by rat-running traffic relates to pedestrian safety rather than capacity. However should vehicular traffic increase there is an existing adjacent footbridge which pedestrians can use to avoid conflict with vehicles on the bridge deck. Other traffic management measures are also available short of closure of the bridge [161-165]. The risk that the bridge may need to be closed to vehicles on pedestrian safety grounds is thus small and there would be further opportunities for consultation and objection should that be proposed in the future [164-165].
454. The closure of Pine Street would require confirmation of relevant highway orders but all the premises which it currently serves would be demolished.

Parking

455. PPS4 Policy EC18 and UDP Policy T19 seek amongst other things that parking for retail developments on the edge of a town centre: is consistent with any town centre parking strategy; that the facilities will genuinely serve the town centre as a whole; and that the scale of parking is proportionate to the size of the centre. In the absence of local parking standards then maximum standards set out in PPG13 will apply.

456. In this case on-site parking provision of 763 spaces would exceed the 682 maximum spaces sought by the UDP Parking Standards for a store of this floorspace and would also exceed the 731 maximum spaces sought for foodstores in the PPG13 maximum standards. However that is justified in that there would be the loss of an existing on-site public car park (144 spaces) and also the loss of some on-street spaces. The overall parking provision is confirmed to be consistent with the Council's 'Huddersfield Town Centre Replacement Parking Strategy' approved by Cabinet in July 2009 and which includes the conversion of under-used short stay parking at the bus station to long-stay parking. The 3 hours of free parking at Tesco would suitably encourage linked trips to the town centre, avoiding the need for separate journeys and contributing to the needs of the town centre as a whole. Such use would lengthen stays and increase the need for spaces when compared to the shorter stays were customers only to visit the superstore itself. Similar free parking provision is currently available at the competing Sainsbury's store and the proposed development includes the replacement of free parking at the existing Castlegate Tesco store.

457. A parking management plan is proposed to be required by planning condition.

Pedestrian and cycle access

458. Pedestrian access is considered above in the context of access to and from the town centre and would be adequate. Some customers may also walk from homes, businesses and colleges outside the town centre.

459. The area is already well provided with cycle routes and the development would include covered cycle parking [58].

Public transport

460. The site is within 400m of Huddersfield railway station (that is - within walking distance). Several service buses would stop directly outside the Leeds Road entrance to the store. A wider range of bus services would be available about 100-200m away in Lord Street. Some other bus services use the bus station and not Lord Street. However those shoppers arriving at the bus station could use the free bus service to reach the Tesco store and they would in any event have a choice of other foodstores and comparison goods stores within easy walking distance of the bus station [58].

461. The S106 obligation provides for a financial contribution to an extended free bus service around the town centre lasting up to 5 years and including the provision of an extra vehicle [357]. The need for the service would then be reviewed. The service would be of particular benefit to the elderly or those of reduced mobility. Whilst the present frequency of the free service would be maintained, some representations object to the extension of the route on the basis that this would increase journey times and draw people from the town centre [347]. However the effect on journey times is likely to be modest and is unlikely to deter use of the service.

CONCLUSIONS ON TRANSPORT ISSUES

462. My overall conclusions on the transport issues are that;

- a) The development would not be likely to cause unacceptable highway congestion.

- b) Any issues arising from the use of the Turnbridge will depend on actual traffic movements and cannot be reliably identified in advance of the development. They are likely in any event to be capable of being addressed by traffic management measures which, if needed at all, would be the subject of public consultation with opportunities for formal objection under other processes.
- c) The parking provision would be appropriate subject to the approval of a Parking Management Plan required by condition.
- d) The arrangements for pedestrian and cycle access and public transport would make the site suitably accessible by sustainable means other than the car.
- e) For the above reasons the proposal would generally comply with relevant UDP Transport policies, and with the sustainable travel objectives of PPG13 and PPS4.

Issue (e) PPG17 and Sports Centre Replacement

463. PPG17 'Planning for Open Space, Sport and Recreation' seeks amongst other things to maintain an adequate supply of sports and recreational facilities. This is relevant as the development would require the demolition of the main Huddersfield Sports Centre. PPG17 Paragraph 10 provides that such existing recreational buildings should not be built on unless surplus to requirements. The existing centre is not currently surplus but will become so as and when a replacement sports centre is provided. There is planning permission for such a replacement at Spring Grove and there is provision for it in the Council's capital programme [35, 246, 247].

464. Mr Sheerman objects to the design and location of that replacement sports centre [325] but those are not issues for the Secretary of State. There is other support for that development [346]. It has been subject to a sequential assessment and its design has been approved by the Council [35].

CONCLUSIONS ON PPG17

465. I conclude that:

- a) there is provision for a replacement for Huddersfield Sports Centre and it will then become surplus to requirements;
- b) the policy requirements of PPG17 will therefore be met.

Issue (f) Energy Conservation

466. An RS Policy ENV5 objective of using combined heat and power plants for large developments would be satisfied [49]. However the Applicant's claim that exceeding Building Regulations requirements by 29% would exceed a 10% figure required by RS Policy ENV5 is a misinterpretation of that latter policy [94(h)]. Policy ENV5 refers to achieving 10% of energy requirements by on-site production of renewable energy. It appears unlikely that the small area of solar panels on the proposed tower would be sufficient on their own and no other source of on-site renewable energy has been identified. However there may be other means of producing on-site renewable energy such as the use of photovoltaic roof panels. As that does not appear to have been

investigated and there may be technical constraints then it would be reasonable for a relevant planning condition to also allow for alternative off-site renewable energy production that would meet the same environmental goal.

467. The Council refers to other Tesco developments which it considers to be superior in their environmental performance and seek that this store should be required to achieve a BREEAM 'excellent' rating [256]. However there are important design differences with those other smaller developments which may make that impossible to achieve here. In particular whereas the proposed 3-storey construction does itself make efficient use of land, the associated weight loadings generated by cars and service trucks as well as the store make the building less suitable for timber-framed construction than the single-storey buildings that have been erected elsewhere by Tesco. The Applicant also points out that the need for cut and fill to accommodate the site's slope may alone prevent the achievement of a BREEAM excellent rating [94(h)]. No more detailed assessment has been made as to whether it is feasible for the development to achieve any particular rating. To impose a mandatory but unachievable requirement would make it impossible to implement a planning permission and would be unreasonable.

CONCLUSIONS ON ENERGY CONSERVATION

468. I conclude that:

- a) given the construction constraints; and
- b) the lack of other specific local policy support for higher energy standards;
- c) the design does generally accord with the objectives of UDP Policy D2(iii) and PPS4 Policy EC10.2 to conserve energy and to limit carbon dioxide emissions.

Issue (g) Other Matters

Implementation period

469. The standard period for implementation of a full planning permission is 3 years. At the time of the February 2011 Sub-Committee Report, the Council was nevertheless considering issuing a permission that would have allowed 9 years in which to commence the development [246]. That was objected to by Asda and others [313]. There would have been a real risk that uncertainty about if and when the permission would be implemented would have had an adverse impact on decisions by other retailers as to whether, when, or where to invest.

470. In any event the Council and Tesco now agree that a 5-year period for implementation would be adequate [246]. Whilst that is still longer than the standard 3-year period it is justified by the particular circumstances which require that the replacement sports centre is constructed and available for use before its existing site may be released and that the existing residential occupiers of the tower blocks are accommodated elsewhere [245]. That a 9-year period was previously thought necessary does suggest some risk that these measures cannot be completed. However it appears that 9 years was always over-generous. The 5-year period is reasonable and should be achievable.

Cumulative impact

471. Both Tesco and Asda were asked by the Council to assess the cumulative retail impact should both stores go ahead [104,249]. It would have been appropriate to consider such impacts were the applications being determined at the same time. However the Asda scheme has been delayed by the unresolved highway and other issues [126, 202]. Notwithstanding the limited convenience goods capacity identified by the RCS [176], both Asda and Tesco consider that there is capacity for both developments, the Council has not formed a view as to the cumulative impact and it is not necessary for the decision maker to do so now [240-244]. The cumulative impact assessments were not tested at the Inquiry. If the current Tesco application is permitted then that development would become a commitment which would need to be taken into account when assessing the impact of the Asda development, just as the Tesco assessment has treated the Kingsgate 2 extension as a commitment, notwithstanding that the development remains unimplemented.

Air quality

472. The increased concentration of traffic on the adjacent section of Leeds Road would inevitably add to the local concentration of exhaust emissions. Whereas some representations object to the impact on the Air Quality Management Area (AQMA) [320, 329], that is about 3 miles east of the site (Document T7). There is no evidence that the development would cause an unacceptable deterioration in air quality in either location.

Loss of business premises

473. The proposal includes the loss of premises last used for employment. UDP Policy B4 allows for the redevelopment of sites last in business or industrial use but subject to various criteria including compatibility with surrounding uses and the number of jobs likely to be created or maintained. In those respects, and subject to the transport and design matters considered above and the application of conditions, the proposed development would not be incompatible with surrounding mainly commercial development or with the modest amounts of residential development from which the site is well separated by distance and intervening roads. No figures have been provided for the amount of employment previously on site before most of the various employment premises were vacated. The employment in the Council offices on site would be relocated. However the scale of the other buildings is modest and it is unlikely that the number of jobs provided previously, or which might be provided were the premises to be re-used, would exceed the additional employment now proposed by Tesco. Thus there would be no conflict with UDP Policy B4. The employment currently provided in the Sports Centre is likely to be replaced at the proposed replacement sports centre at Spring Grove.

Loss of residential buildings

474. UDP Policy H4 [21] appears to have been written with the change of use of residential buildings to other uses in mind but can also be interpreted as applying to the demolition of existing residential buildings and the re-use of their sites for other purposes. There would be a literal conflict with Policy H4 as the 84 flats on the application site would be demolished and the site is neither unsuitable for residential use nor required for a community purpose. However it is a material

consideration that a proportion of the existing dwellings on site are not occupied or suitable for occupation [3, 147]. Also the proposed development would release land elsewhere in the town centre at Castlegate for residential development of a likely greater overall number of dwellings including market and affordable housing [36]. There is also provision in the S106 Obligation for some of that housing to be leased to the Council or for an alternative financial contribution which would be used either to fund new affordable housing on land already owned by the Council or to fund the refurbishment of the Council's nearby Richmond flats [357], or both. Whilst there may be a net loss of affordable housing units, the quality and/or size of the new or refurbished units would be improved such that the underlying policy objectives to provide and maintain good quality housing would be satisfied. These considerations outweigh any literal conflict with Policy H4.

Other Matters

475. A number of other minor issues were raised in the Council's Sub Committee Report but these have been addressed by the planning conditions and are referred to below in that context.

Commentary on Conditions and Section 106 Planning Obligation

Conditions

476. The attached schedule of conditions has regard to those conditions that were agreed between the parties and to the discussion at the Inquiry [356]. The reasons for individual conditions are included on the schedule. The conditions are now grouped by subject and the amendments are commented on as follows.
477. In Condition 1, the 5-year period for implementation is reduced from the 9 years first proposed. A period longer than the usual 3 years is here justified by the need to relocate existing occupiers of the site before development can proceed.
478. In Condition 2 the drawings schedule has been amended to reflect the minor amendments to the facades and tree planting recently proposed by Tesco and agreed by Kirklees Council. In the Design conditions, Condition 4 has been amended to allow for reconsideration of the facing materials for the tower for reasons explained above [435].
479. In Condition 6 (Landscaping and Biodiversity) the Vegetation Management Plan is limited to a 5 year period. Should the Council wish to control the trees of amenity value over a longer period it has the option of making a tree preservation order.
480. As agreed, the Condition 16 (Noise and Odour Control) wording is based on the final report of the Noise Assessment (CD3.20).
481. The water and drainage conditions have been rationalised to prevent duplication. Condition 21 (Waste Management) has been separated from construction waste management as it relates to on-going operational waste.
482. In Condition 22 (Light Pollution) the Council's suggested wording referred to the protection of windows at any properties in the vicinity but the reason referred

only to residential occupiers. As glare and light spillage could potentially harm the occupiers of other types of building the reason has been amended.

483. In Condition 23 (Retail Floorspace) the figures have been amended from 'm² - metres squared' to 'sqm - square metres' to avoid ambiguity. A suggested condition defining convenience goods has been deleted as unnecessary.
484. Condition 24 limits the use of in-store concessions in order to encourage linked trips to the town centre. The Council's original proposal to exclude a pharmacy has been removed as the existing Castlegate Tesco store has a pharmacy and the staff would transfer. The nearby edge-of-centre Sainsbury's Shorehead also has a pharmacy.
485. Condition 25 (Energy) has been reworded to accord more closely with the objectives of the RSS Policy ENV5.
486. Condition 29 (Travel Plan) has been reworded to remove the potential requirement for the local planning authority to immediately approve a plan submitted just before the 3 month deadline.
487. Condition 32 brings together a number of separate provisions to manage demolition and construction.

S106 Planning Obligation

488. The provisions of the S106 obligation are set out at paragraph [357] and the full (unsigned) document is at Document 4. The financial contributions to highway and transport measures and works are appropriate. The cost of other highway alterations on highway land would be covered by a separate Section 278 Highways Act agreement with the Local Highway Authority.
489. The restriction on future retail use of the existing store site is commented on in relation to retail impact above.
490. The provision to lease housing on the Castlegate site to the housing to replace lost affordable housing lacks detail as to the type of housing or the terms on which it would be offered and it is uncertain that any such housing would be available by the proposed date which would be only 13 months after the closure of the existing store on that site. However the alternative £5m contribution to provision elsewhere is reasonable and the Council states that it has suitable land.
491. The S106 obligation provision for the Regeneration Partnership has desirable objectives to provide much needed employment for local people although their full achievement is not guaranteed. It nevertheless contributes to the overall social and economic benefits of the proposal.
492. I conclude that the above provisions are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. They therefore generally conform to the requirements of the Community Infrastructure Levy Regulations 2010. It follows that if a signed version of the S106 Obligation is not received by the Secretary of State before the application is determined then the lack of the necessary enforceable obligation would justify the refusal of planning permission.

OVERALL CONCLUSIONS AND RECOMMENDATION

493. PPS4 Policy EC17 brings together other PPS4 provisions for considering planning applications for main town centre uses such as this that are not in a centre and not in accordance with an up-to-date development plan.
494. In respect of EC17.1.a and UDP Policy S4, I conclude that the Applicant has not demonstrated full compliance with the requirements of the sequential approach in policy EC15 in the lack of demonstrated flexibility with regard to potential alternative scales and formats for the development that may allow for its location within the town centre. In respect of EC17.1.b there would be a slight loss of trade from the town centre as a whole and some short term local impacts in the northern part of the PSA. But in respect also of EC17.2 these do not amount overall to a significant adverse impact in the terms of PPS4 Policy EC16.1 and there are no other significant adverse impacts under Policy EC10.2.
495. Turning to EC17.2.a, there are significant positive economic, social and environmental benefits of the development in the terms of PPS4 Policy EC10.2 and the Planning for Growth Ministerial Statement. These include the cumulative effect of facilitating the new £35m sports centre at Spring Grove and the likely redevelopment in some form more beneficial to the Conservation Area of the existing Tesco site at Castlegate. These benefits, the lack of significant adverse impact on the town centre which will remain vital and viable, and the otherwise general compliance with the development plan together outweigh the lack of demonstrated flexibility in respect of the sequential approach in respect of both PPS4 and UDP Policy S4. They also outweigh the minor conflict with the objectives of UDP Policy NE2 in respect of tree loss - which would in any event be mitigated by significant new planting. The replacement housing would outweigh the loss of housing that is in conflict with UDP Policy H4.
496. Subject to the application of the recommended planning conditions and to the prior submission of a signed S106 obligation in the proposed agreed terms, the proposal is otherwise in general accord with the provisions of the development plan and national policy and I recommend that planning permission is granted.
497. However should a signed version of the S106 Obligation (Document 4) not be submitted, then I recommend that planning permission be refused as:
- a) the proposal would not make adequate provision for either sustainable transport (contrary to PPG13 and PPS4 and relevant UDP policies) or the replacement of lost affordable housing (contrary to UDP Policy H4);
 - b) there would be a risk of a significant adverse impact on the vitality and viability of the town centre through the operation of two large stores (which has not been fully assessed and which would contravene PPS4 Policy EC16); and
 - c) without the Regeneration Partnership, all the potential social and economic benefits would not be realised and the residual benefits would then not outweigh the lack of demonstrated flexibility in respect of the sequential assessment and the associated conflict with PPS4 Policy EC15.

RPE Mellor
INSPECTOR

ANNEX A - SCHEDULE OF RECOMMENDED PLANNING CONDITIONS

Procedural

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.

Reason: Pursuant to Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in complete accordance with the following approved plans and specifications except as may be required by other conditions:

- 51H General Arrangement External Areas
- 52J General Arrangement Gross Internal Areas
- 53H General Arrangement Gross External Areas
- A916 Existing Northern Elevation
- A917 Existing Western Elevation
- A918 Existing Southern Elevation
- A919 Existing Eastern Elevation
- A101 AA Sales Floor Level
- A102 Z Level B1 Car Park Mezzanine Deck
- A103 AA Level B2 General Car Park
- A104 M Roof Level
- A105 W Sales Floor Level
- A106 M Level B1 Car Park Mezzanine Deck
- A107 M Level B2 General Car Park
- 201 P Proposed Elevations 1 of 2
- 202 P Proposed Elevations 2 of 2 (as amended by 5221.P21 in respect of Fig 3 South West Elevation)
- A261 Service Yard Access Ramp Proposed Elevations
- A250 Rev A Proposed Petrol Station Elevations
- A301 Rev G Proposed Sections
- A950 Existing Block Plan
- LS17830 Lighting Plan
- ASP3 Rev N Landscape Masterplan
- ASP4 Public Realm
- ASP6 (a)&(b) Rev I Planting Plans
- 675905/16 Site Location Plan
- PSK002 Public Combined Sewer Diversion Plan
- PSK002 Existing Public Combined Sewer Easements
- PSK003 Water Mains Plan
- PSK003 Water Mains Easement Plan

Reason: In order to prevent any unacceptable deviation from the approved Plans and specifications.

Design

- 3) All areas of the proposed development indicated to be constructed of stone, including the building, boundary / retaining walls and petrol filling station, shall be constructed of natural stone.

Reason: To ensure that the proposed development safeguards the character and appearance of the Town Centre Conservation Area and the setting of nearby listed buildings on Southgate; and to accord with UDP Policies D2 & BE2, and national planning policy guidance in PPS5.

- 4) Before development (excluding demolition) commences details of all facing, roofing, hard landscaping materials and sample panels showing (i) the coursing, colour, type, finish and pointing of the stone facing; and (ii) the staining/painting of the timber boarding; and (iii) all facing materials for the tower feature, shall be submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and finishes which shall thereafter be retained as such.

Reason: To ensure that the proposed development safeguards the character and appearance of the Town Centre Conservation Area and the setting of nearby listed buildings on Southgate; and to accord with UDP Policies D2 & BE2, and national planning policy guidance in PPS1 and PPS5.

Landscaping and biodiversity

- 5) Notwithstanding the submitted details, no development (excluding demolition) shall take place until a revised species mix for the landscaping shown on plan ASP3 Rev N to include a programme for implementation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include structurally diverse predominantly native plant species including a proportion of heavy standard / semi-mature trees. The approved scheme shall be carried out in accordance with the approved programme for implementation, and shall be maintained in accordance with the approved Vegetation Management Plan referred to in Condition 6.

Reason: In the interests of enhancing biodiversity; and to accord with UDP Policy EP11, RSS Policy ENV8 and national planning policy guidance in PPS9.

- 6) No development (excluding demolition) shall take place until a Vegetation Management Plan has been submitted to and approved in writing by the Local Planning Authority. The principal aims of the Plan shall be to optimise biodiversity interests and shall include a timescale for implementation. The measures contained in the Vegetation Management Plan shall be implemented in accordance with the approved timescale and the vegetation shall be maintained in accordance with the principles of the Plan for a period of 5 years from the date set in the programme for implementation. All plants which die or are removed within that period shall be replaced on a like for like basis in the next planting season.

Reason: In the interests of enhancing biodiversity and safeguarding visual amenity; and to accord with UDP Policies BE2 & EP11, RSS Policy ENV8 and national planning policy guidance in PPS9.

- 7) No development shall take place until a scheme for the provision of a minimum ten bat boxes / bricks and ten bird boxes (including a timetable for installation and agreeing suitable locations) has been submitted to and approved in writing by the Local Planning Authority. The bat bricks/boxes and bird boxes shall be installed in accordance with the approved timetable before the first opening of the store and shall thereafter be maintained throughout the lifetime of the development.

Reason: In the interests of conserving and enhancing numbers of faunal species of acknowledged importance; and to accord with RSS Policy ENV8 and national planning policy guidance in PPS9.

- 8) No development (excluding demolition) shall take place until details of a scheme including a proposed timetable for the eradication of Japanese Knotweed and Himalayan Balsam have been submitted to and agreed in writing by the Local Planning Authority. All works to eradicate the two species shall be completed in accordance with the approved timetable, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to remove and prevent the future spread of non-native invasive species, and to accord with RSS Policy ENV8 and national planning policy guidance in PPS9.

- 9) No development shall take place until details of a Bat Watching Brief for Building B5 (south of Pine Street at the corner of Old Leeds Road and Pine Street, as identified on drawing no. 1733/EC03 in the submitted Ecological Assessment) has been submitted to and approved in writing by the Local Planning Authority. The demolition of Building B5 shall thereafter be implemented in full accordance with the approved Bat Watching Brief. In the event that bats are identified or encountered during demolition, demolition works on Building B5 shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence on Building B5 until a Bat Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. The demolition of Building B5 shall thereafter proceed in accordance with the approved Bat Mitigation Strategy.

Reason: In the interests of conserving faunal species of acknowledged importance; and to accord with RSS Policy ENV8 and national planning policy guidance in PPS9.

Contaminated land remediation

- 10) Development (excluding demolition) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy G6 of the Unitary Development Plan.

- 11) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 10, development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy G6 of the Unitary Development Plan.

- 12) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to Condition 11. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered (in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report) is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy G6 of the Unitary Development Plan.

- 13) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

Reason: In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy G6 of the Unitary Development Plan.

Crime prevention

- 14) The superstore shall not be opened for trade until a scheme detailing crime prevention measures to protect staff, customers and their property has been submitted to and approved in writing by the Local Planning Authority. The development shall be operated in accordance with the approved scheme upon the store first being operated and retained as such for the life of the development thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of crime reduction and community safety, and to accord with Policy BE23 of the Unitary Development Plan, and national planning policy guidance in PPS 1.

Noise and odour control

- 15) No development (excluding demolition) shall commence until details of the installation and/or erection of any extract ventilation systems, including details of the methods of treatments of emissions, and filters to remove odours and control noise emissions, have been submitted to and approved in writing by the Local Planning Authority. The extract ventilation systems shall thereafter be installed and operated in accordance with the approved scheme, and maintained in accordance with the manufacturer's instructions unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of safeguarding the amenities of nearby residents arising from odours and noise and to accord with Policy EP4 of the Unitary Development Plan, and national planning policy guidance in PPG24.

- 16) The rating level of plant noise emitted from the site shall not exceed 35dBA between 2300hrs and 0700hrs or 40dBA at any other time. The noise levels shall be determined by measurements or calculation at the boundary of the nearest noise sensitive property. The measurements and assessments shall be made according to BS 4142:1997. No fixed plant and/or machinery serving the development hereby permitted shall come into operation until details of the fixed plant and machinery, and any mitigation measures to achieve the above rating, have been submitted to and approved in writing by Kirklees Council.

Reason: In the interests of safeguarding the amenities of nearby residents arising from noise and to accord with Policy EP4 of the Unitary Development Plan, and national planning policy guidance in PPG24.

Water and drainage

- 17) Unless otherwise agreed in writing by the local planning authority, no building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of the water main, which crosses the site.

Reason: In order to allow sufficient access for maintenance and repair work at all times, and to accord with Policy D2 of the Unitary Development Plan.

- 18) No development (excluding demolition) shall take place until details of the separate proposed means of disposal of foul and surface water drainage, to include details of a 30% reduction on surface water run-off rates, and any balancing and off-site works, have been submitted to and approved in writing by the Local Planning Authority. Unless otherwise agreed in writing by the Local Planning Authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.

Reason: To ensure that no foul or surface water discharges take place until proper provision has been made for their disposal; in the interests of reducing the risk of surface water flooding; and to accord with Policy D2 of the Unitary Development Plan.

- 19) Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge. Roof drainage shall not be passed through any interceptor.

Reason: To ensure that there are no discharges to the public sewerage system which may injure the sewer, interfere with free flow or prejudicially affect the treatment and disposal of its contents, and to accord with Policy D2 of the Unitary Development Plan.

- 20) Any liquid storage tanks (other than for water) should be located within a bund with a capacity of not less than 110% of the largest tank or largest combined volume of connected tanks.

Reason: To ensure that there are no discharges to the public sewerage system which may injure the sewer, interfere with free flow or prejudicially affect the treatment and disposal of its contents, and to accord with Policy D2 of the Unitary Development Plan.

Waste management

- 21) No development shall take place until a Site Waste Management Plan (SWMP) has been submitted to and approved in writing by the Local Planning Authority. The SWMP shall include measures, objectives and targets for the reduction, recycling and re-use of waste generated from the operation of the store.

Reason: In the interests of waste reduction, re-use and recycling.

Light pollution

- 22) No development shall take place until a scheme which indicates the measures to be taken for the control of any glare or stray light arising from the operation of any proposed artificial lighting has been submitted to and approved in writing by the Local Planning Authority. These measures shall be implemented before any of the lighting is brought into use and thereafter the artificial lighting shall be operated in accordance with the approved scheme and maintained as such. The scheme shall include the following information: -

- i) The proposed design level of maintained average horizontal illuminance for the site.
- ii) The predicted vertical illuminance that will be caused by lighting when measured at windows of any properties in the vicinity.
- iii) The proposals to minimise or eliminate glare from the use of the lighting installation.
- iv) The proposed hours of operation of the lighting.

Reason: In the interests of safeguarding the amenities of nearby occupiers arising from excessive glare or stray light and to accord with Policy D2 of the Unitary Development Plan.

Retail floorspace

- 23) The net sales area of the store hereby permitted shall not exceed 6,860sqm. The net sales area is defined as the sales area within the building (i.e. all internal areas accessible to the consumer) but excluding lobbies, restaurants/cafes, customer toilets and walkways behind the checkouts. Within the net sales area hereby permitted, no more than 2,275sqm shall be used for the sale of comparison goods and no more than 4,585sqm shall be used for the sale of convenience goods.

Reason: In order to protect the future vitality and viability of Huddersfield town centre arising from potential adverse trading impacts, and to accord with Policies S1 and S4 of the Unitary Development Plan, and Government guidance in PPS 4 (Planning for Sustainable Economic Development).

- 24) The store hereby permitted will not include a post office, an optician, a dry cleaner, photo processing, or any other in-store concessions apart from a catalogue sales counter and the National Lottery.

Reason: In order to encourage linked trips and therefore protect the future vitality and viability of Huddersfield town centre, and to accord with Policies S1 and S4 of the Unitary Development Plan, and Government guidance in PPS4.

Energy

- 25) No development (excluding demolition) shall take place until a scheme has been submitted to and approved in writing by the local planning authority setting out the measures that will minimise carbon dioxide emissions over the lifetime of the development and achieve at least 10% of the expected energy needs of the development from on-site renewable sources of energy, unless that is demonstrated to be impractical in which event the scheme shall make provision for the same proportion of the expected energy needs to be achieved from a mixture of on-site and off-site renewable sources of energy. The scheme shall be implemented as approved.

Reason: In order to ensure the development secures the high levels of energy efficiency and limits carbon dioxide emissions over the lifetime of the development, and to accord with RSS Policy ENV 5, and Government guidance in PPS1 and PPS4.

Parking Management Plan, Travel Plan and Highways Works

- 26) No development shall take place until a scheme detailing the proposed design, construction and stability of all retaining walls adjacent to the public highway, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved scheme and implementation timetable, and the retaining walls shall thereafter be retained during the life of the development.

Reason: In order to ensure that any new retaining structures do not compromise the stability of the highway; and to accord with Policies D2 and T10 of the Unitary Development Plan.

- 27) No part of the development shall become operational until a Parking Management Plan detailing arrangements for the management and operation of the supermarket car park have been submitted to and approved in writing by the Local Planning Authority. This should include details of monitoring and enforcement of the length of stay. The Parking Management Plan shall be implemented before the development is first brought into use and thereafter retained subject to such amendment as may be agreed in writing by the local planning authority.

Reason: In order to encourage linked trips and therefore protect the future vitality and viability of Huddersfield town centre, and to accord with Policies S1 and S4 of the Unitary Development Plan, and Government guidance in PPS4.

- 28) In advance of the completion/implementation of the Full Travel Plan for the development, the development shall be operated in accordance with the details set out in the submitted Interim Travel Plan dated January 2011.

Reason: In order reduce dependence on the car and increase access by a range of non-car modes of transport in the interests of sustainability, and to accord with Government planning policy advice in PPS1 and PPG13.

- 29) Within 3 months of the development becoming operational, a Full Travel Plan shall be submitted for the approval in writing of the Local Planning Authority. The Full Travel Plan shall be consistent with the criteria/content of the Interim Travel Plan and the approved Travel Plan shall be operated from the time of approval for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority.

Reason: In order to reduce dependence on the car and increase access by a range of non-car modes of transport in the interests of sustainability, and to accord with Government planning policy advice in PPS1 and PPG13.

- 30) No development (excluding demolition) shall take place until details and phasing all highway works substantially in accordance with the proposals set out in submitted plans, Transport Assessment November 2010, Transport Assessment Addendum January 2011, and to include supporting Safety Audits, have been submitted to and approved in writing by the Local Planning Authority. These highway works shall include the following:

- i) changes to the Southgate / Leeds Road / Northumberland Street junction;
- ii) changes to the Leeds Road / Old Leeds Road junction;
- iii) changes to Old Leeds Road / Development site access junction;
- iv) formation of the servicing access junction off Old Leeds Road;
- v) changes to the staging and phasing at the Gas Works Street / Leeds Road Gyratory;
- vi) changes to the Castlegate / Northgate / Lower Fitzwilliam Street junction;
and
- vii) formation of a signalised pedestrian crossing on Leeds Road.

The superstore shall not open for trade until the highway works have been implemented in accordance with the approved details and phasing.

Reason: In order to ensure that any increases in traffic levels resulting from the development are adequately mitigated against in the interests of highway safety and congestion reduction, and to accord with Policies D2 and T10 of the Unitary Development Plan, and Government guidance in PPS4 and PPG13.

- 31) No development shall take place until details of the scope and programme of a traffic monitoring study at Quay Street, the Turnbridge and Turnbridge Road have been submitted to and approved in writing by the Local Planning Authority. The study shall be delivered within the approved programme and within three months of occupation, unless otherwise agreed in writing with the Local Planning Authority. Any Traffic Regulation Order(s) or works required to facilitate changes to restrict vehicular use of Turnbridge Road, Quay Street or Turnbridge shall be progressed within a timetable to be agreed with the Local Planning Authority.

Reason: In the interests of highway safety as a result of the potential for substandard Turnbridge Road bridge to be used as a short cut once the development is operational, and to accord with Policies D2 and T10 of the Unitary Development Plan, and Government guidance in PPG13.

Demolition and Construction Method Statement

32) No development (including demolition) shall take place until a Demolition and Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction. The Statement shall provide for:

- (i) the parking of vehicles of site operatives and visitors;
- (ii) access routing for demolition and construction traffic and methods of loading and unloading of plant and materials;
- (iii) storage of plant and materials used in constructing the development;
- (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- (v) wheel washing facilities and measures to control the emission of dust and dirt during construction;
- (vi) a site waste management plan for recycling/disposing of waste resulting from demolition and construction works; and
- (vii) measures for run-off water quality management to prevent adverse impacts on the Sir John Ramsden Canal.

Reason: In the interests of: (a) highway safety; (b) visual amenity; (c) pollution control in respect of safeguarding the amenities of nearby residents and the integrity of the SSSI; and (d) waste reduction, re-use and recycling, and to accord with Policies D2, NE3, BE2 & T10 of the Unitary Development Plan, and Government guidance in PPS9 and PPS10.

ANNEX B - APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Cannock	Of Counsel, Instructed by Mr D Wilkes, Solicitor to Kirklees Council
He called	
Mr Willock MRTPI	Major Developments Planning Officer, Kirklees Council
Mr K Nutter MRTPI	Retail Consultant, WYG Planning and Design
Mr N Hunston IHBC	Conservation and Design Group Leader, Kirklees Council
Mr P Firth BA DipTP MCILT MRTPI	Transport Consultant, Scott Wilson

FOR THE APPLICANT – TESCO STORES LTD:

Mr P Clarkson	Of Queen's Counsel, Instructed by Ashurst LLP
He called	
Ms M C Bath MRTPI	Retail Planning Consultant, DPP
Mr K C Brown MRTPI	Design Consultant, Townscape Solutions
BSC(Hons) MA Urban Design	
Mr D P Bennett CEng MICE MIHT	Transport Consultant, Mouchel

FOR AN INTERESTED PERSON – ASDA STORES LTD:

Mr Dinkin	Of Queen's Counsel, Instructed by Thomas Eggar
He called	
Mr R Serra BSc(Hons) DipSurv MRICS MRTPI	Retail Planning Consultant, Savills

OTHER INTERESTED PERSONS:

Mr B Sheerman MP	Member of Parliament for Huddersfield
Mr R Greenwood IEng FIHE	Of Sanderson Associates representing J Brierley Ltd
Cllr A Cooper	Kirklees Council member for a town centre ward
Mr C Ball	Local resident and former secretary of Town First

ANNEX C INQUIRY DOCUMENTS

DOCUMENTS SUBMITTED BY KIRKLEES COUNCIL

LPA1.1	Hunston Proof, Appendices and Summary
LPA1.2	Hunston Historic Maps of Application Site
LPA2	Willcock Proof and Summary
LPA3	Nutter Proof and Summary
LPA4	Firth Proof and Summary
LPA5	LPA Letter to Asda 2 March 2010
LPA6	Local Highway Authority Consultation Response on Asda Application 20 January 2011
LPA7	Letter from Cottee (Asda Transport Consultants) 21 January 2011
LPA8	LPA letter to Asda 23 August 2011
LPA9	Savill's letter to LPA 6 September 2011
LPA10	Introducing Greener Stores
LPA11	Draft List of Conditions
LPA12	Final List of Conditions with LPA comments on Tesco version
LPA13	LPA Closing Statement
LPA14	Costs application by LPA against Asda

DOCUMENTS SUBMITTED BY TESCO STORES LTD

T1.P	Bath Proof
T1.PA	Bath Appendices
T1.S	Bath Summary
T1.R	Bath Rebuttal
T2.P	Bennett Proof
T2.S	Bennett Summary
T2.R	Bennett Rebuttal
T3.P	Brown Proof
T3.PA	Brown Appendices
T3.S	Brown Summary
T3.R	Brown Rebuttal
T4	Opening Statement
T5	Draft Condition 36 relating to the Turnbridge
T6	Letters from Mr Sheerman MP to Government Ministers about Tesco
T7	Map showing location of Leeds Road Air Quality Management Area 3 miles from application site
T8	Tesco comments on LPA draft conditions
T9	Tesco Closing Statement
T10	Tesco application for costs against Asda

DOCUMENTS SUBMITTED BY ASDA STORES LTD

Asda1	Press Release by Kirklees Council – Changes to Sports Centre Plan
Asda2	Letter of support for Asda Application from Thomas Broadbent (Landowner) 3 November 2011
Asda3	Letter to Kirklees council from Savill's dated 4 April 2011
Asda4	Asda Closing Statement
Asda5	Email from Savills to LPA dated 17 August 2011 enquiring about date for Tesco Call-in Inquiry

- Asda6 Letter of representation on Tesco application dated 23 February 2011
Asda7 Letter of from representation from Thomas Eggar on behalf of Asda
dated 14 October 2011
Asda8 Serra Proof submitted on 28 October 2011

OTHER INQUIRY DOCUMENTS

- DOC1 Core Documents List
DOC2 Statement of Common Ground (Final signed version)
DOC3 Statement of Common Ground on Transportation Matters (Signed)
DOC4 S106 Planning Obligation Agreement - Final Version (Unsigned)
DOC5 Greenwood Statement on behalf of John L Brierley Ltd

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.