

Our Ref: APP/V4305/V/08/1203375

25 November 2009

Dear Ms McLean,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77.  
APPLICATION BY TESCO STORES LTD  
LAND IN AND TO THE SOUTH OF KIRKBY TOWN CENTRE, KNOWSLEY,  
MERSEYSIDE.  
APPLICATION REF: 08/00001/HYB.**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Wendy J Burden BA(Hons) DipTP MRTPI, who held a public local inquiry which closed on 6 February 2009 into your client's application dated 22 November 2007 for:

Detailed planning application for the erection of a stadium and ancillary facilities for football and related uses; new convenience retailing, new comparison retailing, new leisure uses, new food and drink uses, new offices and service uses; new residential, new petrol filling station; new car parking, coach park and bus park; new vehicular and pedestrian accesses and circulation and related highway and footpath works; new public realm; new tree planting and landscaping; substations and energy centre; new boundary treatments; and related new infrastructure and engineering works; and,

Outline planning application (all matters reserved) for the erection of development for new retailing; new leisure uses; new library; new hotel; new food and drink uses; new offices and commercial uses; new residential; new car parking; new public realm; new tree planting and landscaping; new boundary treatments; and related new infrastructure and works; alterations to existing retail and other town centre uses; alterations to existing car parking areas; alterations to existing vehicular and pedestrian accesses and circulation; alteration to existing public realm; alteration to existing boundary treatments; and alterations to existing infrastructure.

at Land in and to the south of Kirkby town centre, Knowsley, Merseyside in accordance with application reference 08/00001/HYB, dated 22 November 2007.

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2. It was directed on 6 August 2008, in pursuance of Section 77 of the Town and Country Planning Act 1990, that the application be referred to the Secretary of State instead of being dealt with by the relevant planning authority, Knowsley Metropolitan Borough Council, because the proposals may conflict with national policies on important matters, could have significant effects beyond their immediate locality, and give rise to substantial regional controversy.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be refused. For the reasons given below, the Secretary of State agrees with her 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 the planning application has changed from that originally submitted (IR1.2.2 and 1.2.5). Like the Inspector, he has determined the application on this basis. He does not consider that any prejudice has been caused to any party by accepting these amendments.

5. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) and ES Addendums which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Like the Inspector (IR1.2.3) the Secretary of State considers that the ES as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

6. The Secretary of State has received a large amount of correspondence since the close of the inquiry, principally in the form of standard letters. The Secretary of State has carefully considered this correspondence but he does not consider that it raises any new issues which would either affect his decision, or require him to refer back to parties prior to reaching his decision. Copies of this correspondence are not attached but may be obtained on written request to the above address.

### **Policy Considerations**

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the North West of England Regional Spatial Strategy (RSS) (September 2008) and the saved policies of the Knowsley Replacement Unitary Development Plan (KRUDP) (June 2006).

8. Since the Inquiry closed, the Secretary of State has issued a direction that saves all UDP policies with the exception of H1, S3, S8 and T4. The Secretary of State considers that these "unsaved" policies should not carry any weight as they no longer form a part of the development plan. With regard to the implication this has for policy S8, (which has a bearing on the application before him), the Secretary of State observes that the Inspector anticipated that this policy was not to be saved as it

essentially replicates relevant policies in PPS6 (IR17.2.12) which is also a material consideration. The Secretary of State agrees with this assessment and on this basis, he does not consider that the changes represent material alterations on matters relevant to this application to the extent that they would either affect his decision, or require him to refer back to parties prior to reaching his decision. The Secretary of State agrees with the Inspector that the main development plan policies relevant to this application are those set out in IR3.1.1 – 3.2.15.

9. Other material considerations include Circular 11/95, *Use of Conditions in Planning Permission*, and Circular 05/2005, *Planning Obligations*. The national planning guidance listed in paragraph 7.1 of the Statement of Common Ground (Ref: SOCG/General/1) are also material considerations. With regard to the listing of draft Planning Policy Statement (PPS)4 and draft PPS6, these have been replaced by a consultation draft PPS4: *Planning for Prosperous Economies* published in May 2009. However, the Secretary of State affords this document little weight as it has yet to be published and may be subject to change. Since the close of the inquiry the consultation draft PPS15: *Planning for the Historic Environment* has been published. However, as this document is at consultation stage and may be subject to change, it too has been afforded limited weight.

10. The emerging local development framework is a material consideration but as it is at an early stage in its progress towards adoption the Secretary of State, like the Inspector (IR17.2.25), affords it little weight. The Sustainable Community Strategy is also a material consideration, but again, like the Inspector, and for the reasons given in IR17.2.25, the Secretary of State affords it limited weight.

11. The Secretary of State has had special regard to the desirability of preserving the listed St Chad's Church and its setting, or any features of special architectural or historic interest which it possesses, as required by sections 16(2) and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In view of the possible impact of the proposal on conservation areas, the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of the Old Hall Lane Conservation Area, as required by section 72(1) of the same Act.

### **Main Issues**

12. The Secretary of State considers the main issues in this case are those set out by the Inspector at IR1.3.2.

### **Whether the proposed development accords with the development plan for the area.**

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on whether the proposal accords with the development plan, as set out in IR17.2.1-17.2.30 and IR19.1-19.7. He agrees that regeneration is an important theme in the development plan, but that the spatial priorities have been established within the context of a wide range of spatial issues including regenerative needs throughout the region (IR17.2.27). He also agrees that there is a clear conflict resulting from the overall scale of the proposed retail development with the strategic policies of the RSS and KRUDP (IR17.2.29).

The extent to which the proposed development is consistent with Government policies in PPS6

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on the extent to which the proposal is consistent with Government policies in PPS6, as set out in IR17.3.1-17.3.94 and IR19.8-19.22. He agrees with the Inspector that: the applicant's assessment of quantitative need for this level of floorspace relies on the identification of a catchment area which is disproportionate to the size and function of Kirkby (IR19.8); the scale of the development is inappropriate to the role and function of the suburban town of Kirkby (IR19.9); the scheme does not meet the sequential test (IR19.10); the proposal would be likely to have a harmful effect on the vitality and viability of Kirkby, Bootle, Skelmersdale and St Helens, and would conflict with RSS policy to support and enhance the Liverpool city centre (IR19.16); the scale of the proposal is not in accordance with the retail hierarchy of the sub-region (IR19.17); the proposal should be promoted through the development plan process to enable potentially less harmful alternatives to be properly considered (IR19.18); and, the potential for linked trips between the old and new shops is poor (IR19.22).

Whether the proposal would deliver a sustainable form of development, respect the need for appropriate standards of design, and the spatial relationship between the different components of the scheme

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on whether the proposal would deliver a sustainable form of development, respect the need for appropriate standards of design, and the spatial relationship between the different components of the scheme, as set out in IR17.4.1-17.4.25 and IR19.23-19.26. He agrees that the proposal would fail to protect and enhance the environment and to provide good and inclusive design in the terms of PPS1 (IR19.26).

Whether the application promotes sustainable transport choices and reduces the need to travel by private transport as identified in PPG13:Transport

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on whether the application promotes sustainable transport choices and reduces the need to travel by private transport as identified in PPG13:Transport, as set out in IR17.5.1-17.5.32 and IR19.27-19.35. He agrees that it is likely that the retail development would lead to an increase in the use of private transport within the region (IR19.30). He also agrees that Kirkby is not a location in which the use of sustainable transport choices would be promoted by a retail development of the scale proposed, and it is far from certain that the aim to achieve a sustainable transport solution for football matches would be achieved (IR19.35).

Whether the proposal has taken into consideration the requirements of PPG17:Planning for Open Space, Sport and Recreation.

17. For the reasons given in IR17.6.1-17.6.13, the Secretary of State agrees with the Inspector's conclusion that there would be adequate provision of green space for formal and informal games, recreation and health, and the proposal would comply with the requirements of PPS17 and KRUDP Policy OS3, but that the loss of the

Valley Hills to development would conflict with the green space protection aims of sections (a) and (d) of KRUDP Policy OS1 and Policy OS (IR19.35.1).

The relationship between the development to the south of Cherryfield Drive and the existing Kirkby town centre, including the proposed phasing and the need to ensure that the planned development of the existing town centre is fully secured within an acceptable timeframe as far as possible

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on the relationship between the development to the south of Cherryfield Drive and the existing Kirkby town centre, as set out in IR17.7.1-17.7.19 and IR19.36-19.39. He agrees that the implementation of Phase 4 is critical to secure a development for Kirkby which would deliver the regenerative benefits claimed by the applicant for the town centre (IR19.39), but that there is a risk that the decline in the vitality and viability of the existing town centre as a result of the development of the Tesco scheme would reduce its attraction to such an extent that Phase 4 would not secure a developer (IR19.38). He also agrees that the planned development of the town centre is not fully secured within an acceptable timeframe (IR19.39).

Any other relevant matters

*The case for regeneration and the construction of the stadium*

19. The Secretary of State wishes to make it clear that regeneration through the planning system is one of his key priorities, and the potential regeneration of Kirkby is a factor which weighs in favour of the proposal. However, it is also clear to him that there are a number of other significant factors which weigh against the proposal, for example, the impact on other nearby centres, which collectively serve to outweigh the regeneration benefits that would result by way of the proposal. These matters are addressed elsewhere in this decision letter.

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on the case for regeneration and the construction of the stadium, as set out in IR17.8.1-17.8.21 and IR19.40-19.46. He agrees that the socio-economic benefits, such as the number of jobs for Kirkby and the relocation of the Everton stadium to Kirkby, should carry significant weight (IR19.41). However, he also agrees that, in the absence of evidence that an alternative could not be delivered which would comply with the sequential approach in national and development plan policy and secure the comprehensive redevelopment of the town centre as a whole, the regenerative benefits of the application proposal carry less weight (IR19.46).

*Living conditions*

21. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to living conditions, except where stated, as set out in IR17.9.1-17.9.35 and IR19.47-19.49. He agrees that the new stadium would have a harmful effect on the living conditions of the residents of a group of houses in Whinberry Drive through loss of daylight and harmful visual impact, and that residents in the Grange estate would also be the most affected by noise from the stadium during football matches (IR19.47). He also agrees that the disruption at the end of each match is likely to be

spread throughout the community and would have a significant effect on the way in which the town's residents conduct their lives during that time (IR19.49).

22. The Secretary of State does not agree with the Inspector's conclusion that this suburban residential town is not a suitable location for such a large football stadium (IR19.49). This is because, whilst he shares the Inspector's concerns regarding living conditions and those other concerns identified regarding the stadium, the Secretary of State does not consider that this necessarily precludes an alternative proposal for a stadium within the town of Kirkby coming forward which might be acceptable. However, the Secretary of State is clearly not in a position to reach any conclusions on future alternative proposals or appropriate mitigation measures, and were any new schemes to come forward they would need to be considered on their own merits.

### Heritage matters

23. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to heritage matters, as set out in IR17.10.1-17.10.3 and IR19.50. He agrees that the proposal would preserve the setting of the listed building and important views of it, and would comply with the conservation area and heritage protection objectives of RUDP policies DQ5 and DQ7 and with national guidance (IR17.10.3).

### Other material considerations

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on those other material considerations, as set out in IR17.11.1-17.11.5.

### Conditions and obligations

25. The Secretary of State has considered the proposed conditions and obligations in the light of the Inspector's comments at IR18.1-18.23, and national policy as set out in Circular 11/95 and Circular 05/2005. He considers that the proposed conditions as amended by the Inspector comply with the policy tests in that Circular. However, he does not consider that they overcome the reasons for dismissing the application. With regard to the planning obligations, the Secretary of State notes that the Inspector considers that this contains weaknesses, albeit these can largely be overcome by way of the proposed amended conditions (IR18.19-18.23). However, even allowing for the fact that the s106 was wholly adequate, the Secretary of State does not consider that the benefits it contains would have been sufficient to enable him to determine the application favourably.

### Overall conclusions

26. The Secretary of State agrees with overall balancing exercise and conclusion carried out by the Inspector in IR19.51-19.52.

27. As stated above, the Secretary of State is clear that regeneration through the planning system is one of his key priorities, and the potential regeneration of Kirkby is a factor which weighs in favour of the proposal.

28. However the proposal would also result in considerable harm. There is conflict with PPS1, PPS6 and PPS13 and related development plan policies. This includes that the proposal would be likely to have a harmful effect on the vitality and viability of Kirkby, Bootle, Skelmersdale and St Helens. Other factors weighing against the proposal include that the physical regeneration of the old town centre is uncertain, and the stadium would result in harmful impact on many of the town's residents. There is also no evidence that an alternative scheme which makes use of the town centre sites, could not be delivered with its own socio-economic benefits and without the identified significant conflict with national and development plan policy.

29. Having weighed up all relevant considerations the Secretary of State concludes that the factors which weigh in favour of the proposal are outweighed by the harm identified. He does not consider that there are any material considerations of sufficient weight to determine the application other than in accordance with the development plan.

### **Formal decision**

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses your client's application for:

Detailed planning application for the erection of a stadium and ancillary facilities for football and related uses; new convenience retailing, new comparison retailing, new leisure uses, new food and drink uses, new offices and service uses; new car parking, coach park and bus parks; new vehicular and pedestrian accesses and circulation and related highway and footpath works; new public realm; new tree planting and landscaping; substations and energy centre; new boundary treatments; and related new infrastructure and engineering works; and

Outline planning application (all matters reserved) for the erection of development for new retailing; new leisure uses; new library; new hotel; new Primary Care Trust (PCT) facilities; new food and drink uses; new offices and commercial uses; new residential; substation and energy centre; new car parking; new public realm; new tree planting and landscaping; new boundary treatments; and related new infrastructure and works; alterations to existing retail and other town centre uses; alterations to existing car parking areas; alterations to existing vehicular and pedestrian accesses and circulation; alteration to existing public realm; alteration to existing boundary treatments; and alterations to existing infrastructure.

at Land in and to the south of Kirkby town centre, Knowsley, Merseyside, in accordance with application reference 08/00001/HYB (as amended), dated 22 November 2007.

### **Right to challenge the decision**

31. 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.

32. A copy of this letter has been sent to Knowsley Metropolitan Borough Council, all parties who appeared at the inquiry, and those who requested a copy of the decision.

Yours sincerely

Michael Taylor

Authorised by Secretary of State to sign in that behalf