

#### 4 PLANNING APPEAL DECISION (AN2-2015)

SAINSBURY - 1 TOM JOHNSTON ROAD, DUNDEE - Modification of Planning Obligation to permit not less than 70% of the net sales floor area to be allocated to the display and sale of food and other convenience goods.

Reference is made to Article II (a) of the minute of meeting of this Committee of 16th June 2014 wherein the Council refused to modify this planning obligation.

The Council decided, contrary to the Directors recommendation, to refuse the application on the grounds that increasing the area allocated to comparison goods to 30% of floor space would have a detrimental impact on Broughty Ferry District Centre and was contrary to the City Council's stated aims, in the Local Development Plan, of maintaining and enhancing the vitality and viability of the District Centre as a sustainable shopping location.

The decision was appealed by the applicant under the provisions of Section 75B of the Town and Country Planning (Scotland) Act 1997.

The appeal was determined by written representations and the decision was received by the Council on 18 December 2014. Copies of the Reporter's decision letter have already been circulated to Members by E Mail.

The Reporter **ALLOWED** the appeal and modified the planning obligation.

In reaching his decision the Reporter considered that the determining issues in the appeal were (a) whether the obligation in its current form met the 5 tests for Planning Obligations set out in Circular 3/2012 and (b) if it did not meet the tests whether the modified wording sought by the appellants met these tests.

He concluded that the current obligation met the tests of necessity, planning purpose, relationship to the development and scale and kind. In assessing the agreement against the test of reasonableness he noted that Policy 23 of the Local Development Plan stated that within food stores the sale and display of comparison goods shall be limited to no more than 30% of the net sales area of the store. He agreed with the appellants and not with the Council that this limit is intended to set an upper limit on an operator's flexibility to vary the amount of comparison floorspace, rather on the planning authority's flexibility as to how much comparison floorspace they can allow within a food store. He noted that the 30% limit had been applied to other foodstores in Dundee.

He agreed that it was important to protect Broughty Ferry District Centre in accordance with the Development Plan and Scottish Planning Policy and that it might be justifiable to depart from Policy 23 on the basis of likely damage to this centre.

He concluded that the evidence indicated that the impact of the proposed modification on Broughty Ferry centre would be small, and that the current apparent health of the centre indicated that this impact would be likely to be accommodated without significant harm to the centre's vitality and viability. He felt that a departure from the approach described in Policy 23 of the local plan was not therefore justified.

He therefore concluded that it would not be reasonable to continue to require at least 80% of the floor area of this store to be devoted to convenience goods and that setting this proportion at 70% would be reasonable. Finally he did not agree with the Council's argument that the legislation allowing the appeal of planning obligations was not retrospectively applicable.