



RetailNI

Standing up for
Independent Retailers

**Ms Denise Dickson
Head of Planning**

Causeway Coast & Glens Borough Council
Cloonavin
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24th May 2022

Dear Ms Dickson

Planning Application Reference – LA01/2021/0933/F

Location: Unit 12 & 13 and Front of Unit 17 Riverside Centre Castleroe Road Coleraine

Proposal: Proposed amalgamation of Units 12 & 13 to be used for a convenience store. External elevational changes, canopy and additional car parking and servicing arrangements and general site works

I refer to the above “Major Application”, which seeks to relocate Marks & Spencer (M&S) Simply Food from its current location (Nos. 13 The Diamond) at the heart of Coleraine town centre to an out of centre at the Riverside Retail Park (least sequentially preferable). This additional objection should be considered in conjunction with the earlier submission dated 22nd February 2022.

The approach by the Council to recommend approval of planning permission is completely perverse and irrational when paying regard to the “town centres first” approach in the Strategic Planning Policy Statement (SPPS) for Northern Ireland and the availability of sequentially preferable alternative sites in Coleraine Town Centre and Ballymoney, which are located within the whole catchment.

Whilst each case is determined on its own merits, the consistent application of regional planning policy and the local development plan are important material considerations both regionally and sub regionally, to maintain the credibility of the planning regime.

The Council is required to apply regional planning policy consistently as per Paragraph 1, Section 1 of the Planning Act (Northern Ireland) 2011, which seeks the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

The recommendation by Causeway Coast & Glens Planning Office to grant permission of this proposal is entirely inconsistent with its own previous approach to retail applications at the Riverside Centre, and consideration of alternative sites, in the following applications;

- LA01/2018/1106/F
- C/2014/0206/F (Appeal 2015/A0129)
- C/2013/0443/F (Appeal 2014/A0266)

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To demonstrate this inconsistency, I have included the Council's Statement of Case (SoC) for appeal 2014/A0266, and the re-hearing SOC following the original appeal decision being quashed.

I note the consideration of Mr Mathers on behalf of Causeway Coast & Glens Borough Council, at paragraphs 3.1.1 – 3.1.4 (15th December 2016) and paragraphs 1.4 (7th July 2015) where it is accepted that non-bulky goods retail proposals conflict with the Northern Area Plan (NAP) 2016. I also note the approach to the sequential site assessment, which significantly differs to the approach taken in this case.

Addendum 3 attempts to distinguish the previous Planning Appeal and Council decisions based on the nature and type of retail proposal, which is extremely surprising given the “towns centre first” approach and clear direction in NAP 2016 “to **promote the vitality and viability of town centres**”. The critical matter is the earlier appeal and this application are for non-bulky retail proposals.

The Plan considers “Retailing and Town Centres” (Volume 1, P.34) with the text highlighting in respect of Coleraine that “*The Plan will provide for the continued commercial strengthening of the town centre*”. Whilst it will aim to consolidate and strengthen the commercial roles of Ballymoney, Limavady and Ballycastle town centres.

Unfortunately, all the Council does is undermine its credibility and position, as it is apparent to any fair minded and impartial observer that the Council has ignored the PAC and its previous position regarding the Riverside Retail Park, to non-bulky retail proposals. as demonstrated in the mountain of available pre-existing evidence.

This change in approach is further reinforced when re-examining the assessment of alternative sites. Again, the Council has adopted a contradictory approach, with no adequate justification or explanation, apart from a very weak paragraph(s) (8.46 and 8.47) in the Committee Report why the Diamond Centre and Unit 1 (former JJB) Hanover Place are now unacceptable.

The Development Plan Team (DPT) responses, seem to have accepted everything the applicant has presented without discharging its duty of inquiry. The DPT are also oblivious to the previous position and arguments of the Council and that of the PAC regarding the alleged development issues they seek to readily accept.

For the avoidance of any doubt the position of the PAC is that any future development of the Riverside Centre is complementary to, rather than competing with, the town centres, and does not adversely affect the vitality and viability of the latter. They have also continuously resisted an non-bulky retail proposals.

The dictionary definition of “complementary” is combining in such a way as to enhance or emphasise the qualities of each other or another.

Instead, the Council has chosen to ignore this approach and act as facilitators to move an existing Class A1 convenience foodstore from the heart of the town centre to an out of centre location. The only justification being that the applicant wants to move and have a bigger store and more car parking.

To suggest this does not conflict with NAP 2016 or SPPS and is somehow distinguishable from the previous approach of the PAC and Council to all the different retail proposals sought at the Riverside is highly questionable and completely irrational. The reason why the Council has sought to try and distinguish the earlier position is that it is desperately trying to set aside the established legal principles in *ABO Wind NI Limited and Energia Renewables Company 1 Limited's Judicial Review [2021] NIQB 96* - Humphreys J referenced the precedent value of PAC decisions at paragraphs 34 – 38 & 100, reaffirming that **Commission's decisions must either be accepted and respected or challenged through the court.**

Catchment

The Council accepted in its Addendum 1 that the proposal would have a significant catchment that would extend beyond Zone 2 to include Ballymoney, furthermore it noted that there is no M&S Simply Food in Ballymoney.

Notwithstanding the local sphere of influence, the north coast has an influx of 2nd homeowners who would pass by the site and would result in inflow, as such the catchment would not be stereotypical.

The applicant accepts at paragraph 7.7 of the Retail Statement that; *“there is a clear demand for a large M&S food store to cover the geographical area of the north coast.”*

Paragraph 3.6 of the Retail Statement in relation to the “Role & Function of the Store”, that;

*“The store is located and designed to ensure that M&S customers in the **Causeway Coast and Glens Council area** have access to a full range M&S store without the need to make long journeys to competing towns. Whilst there is a small M&S store in Coleraine town centre, the nearest alternative large M&S store is located in Ballymena (26 miles/41.6km) to the south east and Derry (29 miles/46.4km) to the west. To the south the nearest M&S is a Simply Food store (which is considerably smaller than this proposal) and is located in Cookstown (37 miles/59.2 km). **There is a large geographical area not covered by a full range M&S store**”.*

The nearest M&S Simply Food Stores to Coleraine are located at the following sites:

- 1) The Fairhill Shopping Centre, Ballymena (26miles)
- 2) Crescent Link, Londonderry (29miles)
- 3) Foyleside Shopping Centre (32miles)

The catchment would in our opinion extend from Ballymoney to Ballycastle and around the north coast including Bushmills, Portballintrae, Portrush, Portstewart, Castlerock, Limavady and Garvagh.

Addendum 1 concludes; *“To enable the Planning Department to obtain a revised retail impact assessment from the applicant with (if applicable) a revised alternative site selection assessment”.*

Having considered the Technical Note on Adjustments we are in broad agreement that M&S competes predominantly with Sainsburys and as such it is noted that a greater inflow of trade is predicted from Zone 3 – Ballymoney. The note does not address the matter of revised alternative sites assessments to include Ballymoney.

Addendum 2 states; *“it was resolved that adjustments were required to show greater in-flow from Zone 3/Ballymoney....”.* Neither this addendum nor the Development Plan Team responses address the matter of revised alternative sites assessments to include Ballymoney.

Addendum 3 states; *“The Planning Department resolved the catchment can remain as representative of the main catchment for the proposal. As Ballymoney is located outside the main catchment for the proposal, consideration of sequentially preferable sites within Ballymoney is not required. This includes consideration of a site at Meetinghouse Street, Ballymoney identified by Mr A Stephens in objection to the proposal”.*

Paragraph 6.280 of the SPPS states:

“6.280 A sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date LDP. Where it is established that an alternative sequentially preferable site or sites exist within a proposal’s WHOLE catchment, an application which proposes development on a less sequentially preferred site should be refused.”

Unfortunately try as the Council may, the SPPS is explicit and as such Ballymoney is within the proposal’s **whole** catchment and BYT 03 Meeting House Street is required to be considered, as it is an edge of centre site and sequentially preferable to the Riverside Centre.

Alternative Sites

The Strategic Planning Policy Statement (SPPS) for Northern Ireland is a material consideration in the determination of planning applications. The SPPS introduced a policy which requires a **“town centres first”** approach (paragraphs 6.271 and 6.273) and “a sequential approach to the identification of retail and main town centre uses in Local Development Plans (LDPs) and when decision-taking’ (paragraph 6.271).

Paragraph 6.280 of the SPPS states:

“6.280 A sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date LDP. Where it is established that an alternative sequentially preferable site or sites exist within a proposal’s WHOLE catchment, an application which proposes development on a less sequentially preferred site should be refused.”

In carrying out a sequential site assessment, paragraph 6.289 of the SPPS states:

*“6.289 **Flexibility may be adopted** in seeking to accommodate developments onto sites with a constrained development foot print. For example, through use of creative and innovative design schemes, including multi-level schemes, or smaller more efficient trading floors/servicing arrangements. Applicants will be expected to identify and fully demonstrate why alternative sites are not suitable, available and viable.”*

When an alternative site is clearly identified as was the case in this instance it is for the applicant for planning permission to identify and fully demonstrate why that site is not suitable, available and viable. **It is not for an objector to demonstrate that the alternative site is suitable, available and viable.**

The approach to alternative sites by the Council in appeal 2014/A0266 from paragraph 3.3 onward is considered materially relevant.

Existing M&S Food Stores

The baseline position is that the current site has no designated car parking and relies on the public car parking to the rear (Abbey Street), which is dissected by Stable Lane. It also has no HGV servicing, although there is a designated loading bay on Stable Lane and HGV’s have been able to unload and service the store without difficulty since it opened as demonstrated overleaf.

I note that the applicants present the site selection criteria at paragraph 6.11 and insist that alternative sites **must** be able to address the **full extent** of the criteria specified.

It is immediately apparent that the applicants are not subscribing to the **flexibility proposed by Tesco Dundee or the SPPS**. This is a self-serving exercise to “drive a coach and horses through the sequential approach and render the policy nugatory” by simply ensuring highly specific selection criteria and a **test of perfection**.

M&S operate a wide variety of convenience food stores in a range of formats (stand alone, shopping centre, constrained sites) across Northern Ireland and it is noteworthy that **none of their existing stores meet these highly specific selection criteria**. It has clearly been demonstrated that no **flexibility** in design and format has occurred from the developers. The proposal fails the sequential test based on the selection criteria, as per the direction of paragraph 6.289.



HGV servicing the existing town centre store via Stable Lane – designated loading bay without difficulty



Overemphasis on car parking

The proposal is presented as a main food shop, which will compete with supermarkets in Coleraine.

Planning Policy Statement (PPS) 3, Policy AMP7 – Car Parking & Servicing Arrangement and the Parking Standards guidance document also consider that the standards should not be rigidly applied where they highlight that

“The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to these standards...”

Parking standards are there to ensure that appropriate consideration is given to the accommodation of vehicles attracted to the site within the context of wider government policy aimed at promoting modal shift to more sustainable forms of transport.

In town centres, “linked trips” are also a significant consideration, as they play a role in maintaining the vitality and viability of the town centre and in reducing car parking demand.

The applicant devotes the entire Retail Statement Addendum to a consideration regarding car parking, which conflicts with the Planning Statement that the subject site at the Riverside is a sustainable location and easily accessed by public transport (paragraph 2.8).

Unit 1 (former JJB) Hanover Square, Coleraine

It is accepted by all parties that this building and town centre site can accommodate the proposal and it would be visually prominent and enable competition with Tesco.

There are currently 42 direct car parking spaces, which is considerably more than presently available to the existing M&S store in the Diamond, which uses the Abbey Street car park (177 spaces).

The shortfall of carparking could be met by the alternative town centre car parking in the surrounding area (1,300 spaces).

KFC operated between 12noon-8pm, so there is no conflict with deliveries being made in the morning. When paying regard to the existing servicing arrangements via Stable Lane, it would be unreasonable to argue this is unacceptable, as it would be an improvement.

Enclosed is a video submitted as part of the appeal evidence in 2014/A0266, which demonstrates a 40ft HGV can access and egress the site without issue.

In relation to the claims that people are undertaking weekly main food shopping and pushing a “*heavily laden trolley to the car*”. M&S is at the highest price point for convenience food stores and the people who undertake a main food shop with a “*heavily laden trolley*” at M&S are in the minority. This is demonstrated with the amount of floorspace given over to small basket tills and self-service tills relative to long traditional belt tills.

We had previously highlighted the shifts in convenience food shopping in our objection of 22nd February 2022, which is also acknowledged by Nexus Planning, Planning Report and industry accepted experts Mintel.

It is accepted that fewer households now complete the traditional once-a-week “big shop”.

There is no evidence to support the assertion that large trolley-based shopping or heavily laden trolleys frequently occur in M&S food halls, especially given the rising cost of living.

I also note the position of the PAC and the Council (paragraphs 3.3.8.1 – 3.3.8.3 – 15th December 2016) in relation to this alternative site in 2014/A0266.

An absence of 115 car parking spaces when the current M&S site has operated without issue with zero car-parking would not be sufficient reason to discount this site paying regard to the “town centres first” approach and flexibility advocated at paragraph 6.289 of the SPPS it is suitable, available, and viable.

The Diamond Centre, Coleraine

The Planning Committee Report simply regurgitates the applicant’s assessment verbatim regarding this town centre site. This is highly surprising given the previous approach of the Council to this site and the “town centres first” approach in the SPPS.

There has been a complete failure by the DPT of the Planning Officer to make any adequate enquiry or consider alternative sites with the rigour normally applied in the Council and in Northern Ireland. Instead the applicant appears to have been given a “free pass” to an out of centre site against the policy context.

Enclosed is the current brochure for the Diamond Centre where it is immediately apparent that **Units 14-21 are vacant, with the agents indicating that units ranging from 180sqft to 10,350sqft are available for immediate occupation.** This site can clearly accommodate the proposal with ease.

I also include the consideration by MKA Planning as part of the evidence in appeal 2014/A0266, as the Diamond Centre was considered at length, as an alternative site

I note the Diamond Centres position relative to existing car parks, and that the same points would apply in respect of the overemphasis on large trolley shopping in M&S food.

This is a sequentially preferable town centre site and paying regard to the “town centres first” approach and flexibility advocated at paragraph 6.289 of the SPPS it is suitable, available and viable.

25 Church Street, Coleraine

This is the former Dixons retail unit in the town centre, which provides 1,227sqm of floorspace over three floors. It is accepted that this is not ideal for convenience retailing, but the use travellers and multi-level car parking in Tesco Springhill, Tesco Newtownbreda and Tesco Newry, have worked effectively on constrained sites.

It is not for an objector to demonstrate that the alternative site is suitable, available, and viable and neither the Council nor the applicant have identified this town centre site or considered it. This again highlights the lack of interrogation and inquiry into the alternative sites aspect.

Meeting Street, Ballymoney

This is an edge of town centre site at development opportunity zoning BYT 03, Meeting House Street (1.08 ha), so is the next sequentially preferable after the town centre sites in Coleraine.

The applicant's highly specific requirements could be accommodated, although one of the key site requirements states that the only retail development acceptable will be retail warehousing with units of not less than 1,000 square metres gross floorspace, selling bulky goods.

Whilst the proposal is not a retail warehouse selling bulky goods, the Riverside Centre has a suite of retail warehouses selling predominantly bulky goods and the Council is setting aside NAP's direction on the non-bulky retailing and the complementary to, rather than competing with, the town centres. On that basis this site would be more sequentially preferable and there would be no demonstrable harm to locate a foodstore at this edge of centre location.

Impact on Vitality & Viability

The Committee Report considers and concludes at paragraph 8.24 as follows:

"The analysis of different trade diversion percentages tends to support the conclusion that although some diversion will occur, it is unlikely that it will be to an extent that it will cause a significant adverse impact of harm on to the town centre. The agent's assertion that the majority of diversion will happen from existing stores outside of the town centre (which are not protected by policy) appears to be reasonable in this instance given the extent of the over trading that occurs at them. Therefore, in retail impact terms and the Retailing and Town Centre planning policy as per the SPPS, there is no objection to this proposal".

This fundamentally demonstrates a lack of understanding of retail planning, as the retail impacts on the existing store turnovers are only one aspect.

The health of a town or city centre is an important consideration in assessing the potential impacts of the proposal from not only direct diversion of convenience spending to the development; but indirectly by loss of footfall resulting from the proposed development.

It is a common misconception that there is an acceptable range of retail impacts on town centres. Retail impacts are always tempered against a centres condition and its ability to withstand them.

Vitality is a measure of how busy a centre is, and Viability is a measure of a centres capacity to attract ongoing investment for maintenance, improvement, and adaptation to changing needs. The focus is on maintaining the existing *status quo* or improving upon it.

Whilst Coleraine Town Centre can withstand the direct impacts from the diversion of convenience spending, there is no cognisance or understanding why town centre convenience retailers Tesco & M&S are already underperforming.

This can only be attributed to existing town centre convenience retailers being vulnerable to better located convenience stores (ASDA, Lidl & Sainsburys) at out of centre locations along the Strategic Road network.

The Council has avoided the issue of the existing M&S store and the implications of its closure, not on the retail impacts, but on the vitality and viability of Coleraine Town Centre, given the implications for "linked trips" between M&S in the Diamond and other retailers and businesses in Coleraine Town Centre at the same time. Such "linked trips" and the draw of M&S at a prominent town centre retail pitch would contribute to Coleraine town centres busyness and vitality.

There is no prospect of “linked trips” between Coleraine Town Centre and the Riverside Centre, rather it competes for tenants (e.g M&S food), trade, and turnover to the detriment of the town centre, which is apparent given the high vacancy rate (19%) and that existing multinational retailer Tesco are accepted to be underperforming.

On that basis the proposal will have a negative impact on existing vacancy, vitality, and viability, it will result in a reduction in footfall and “linked trips” as there is one less reason to visit the town centre. The PAC has consistently considered the impacts on “linked trips” in retail planning decisions, in the context of the vitality and viability, but it is completely ignored in this instance.

This proposal will strip away and undermine Coleraine’s capacity to attract ongoing investment for maintenance, improvement, and adaptation. There is already a significant amount of vacant prominent town centre retail space (>6years) and decisions such as this will accelerate Coleraine’s decline further.

Wide-Ranging Precedent

The implications of this decision will set a wide-ranging precedent for future non-bulky goods retail applications at the Riverside Centre.

An approval would send a clear signal to other town centre retailers that they can move from existing town centre locations to out of centre locations and that such non bulky retail development would be acceptable at the Riverside Centre against NAP 2016, SPPS and PAC decisions. This would not complement existing town centres, rather it would undermine their role and function.

This would set a widespread precedent which will lead to the incremental loss of town centre retailers and will undermine the policies contained within the SPPS and their application in Causeway Coast & Glens Borough Council.

There is no persuasive argument that the level of precedent would be limited to M&S, given the amount of available undeveloped space, at the Riverside Centre along with the continued desire by the applicants to develop it as witnessed in the detailed planning and appeal history. This will accelerate town centre dereliction, and which will require public funds to address, whilst the offshore landlord reaps the benefits of an extremely poor decision by the Council.

Economic Benefits

The applicants claim that *“These units have been selected because they require minimal physical alterations to allow M&S to occupy the buildings”*.

This statement does not reconcile itself with the figures presented that there will be 40 construction jobs and an investment of £2.5m.

The applicant has also not weighed the existing store closure in their consideration of the economic benefits. Rather it has been completely glossed over in the hundreds of pages of supporting documents.

Despite acknowledging that the existing M&S Simply Food in the Diamond may close the Council has not sought any pre-occupation condition to mitigate against the loss of footfall and V&V on Coleraine Town Centre or to prevent another vacant prominent town centre site.

The employment benefits of 70 jobs and rates of £67k per annum would also be realised if the proposal was located within a sequentially preferable alternative site, such as the Diamond Centre, Unit 1 Hanover Place or Church Street, which are more sustainable town centre location. The Planning Committee Report overlooks this fundamental consideration and

paragraph 14 of appeal 2015/A0129, which previously considered this matter in relation to a Class A1 proposal at the Riverside Centre.

It is simply not the case that the jobs will be lost if the proposal does not proceed and if M&S were committed to Coleraine these would still be realised at a town centre location.

Conclusion

The proposal seeks to enhance the Riverside Centre at the behest of Coleraine town centre, which is already vulnerable to better located development, as demonstrated by the high vacancy rate >19% and underperforming multinational retailers. Rather than seek to address the matter the Council has elected to undermine it further. This would not strengthen the town centre or promote its vitality and viability and would be contrary to NAP 2016, SPPS “towns centre first approach” and previous views of the PAC and Council.

There are several town centre alternative sites, which are sequentially preferable suitable, available and viable. The Council has not discharged its duty of inquiry, rather it has accepted the applicant’s position without any adequate consideration in the context of the policy requires of the SPPS nor has there been any cognisance of the Councils previous approach to these sites. In short there is no prohibition to the alternative sites if the Council and applicant applied flexibility as per paragraph 6.289.

Where it is established that an alternative sequentially preferable site or sites exist **within** a proposal’s **WHOLE catchment**, an application which proposes development on a less sequentially preferred site **should be refused** in accordance with paragraph 6.80 of the SPPS.

If you would like to discuss the content of this letter in more depth then, please do not hesitate to contact me.

Yours sincerely



Glyn Roberts
Chief Executive
Retail NI