

THE MORAY COUNCIL

SPECIAL PLANNING & REGULATORY SERVICES COMMITTEE (PLANNING HEARINGS)

TUESDAY 17 JUNE 2008

COUNCIL OFFICE, ELGIN

PRESENT

Councillors S. Cree (Chair), J Russell (Deputy Chair), L Bell, G Coull, J Divers, J Hamilton, M McConachie, A McDonald, G McDonald, A McKay, F Murdoch and D Stewart.

APOLOGIES

Apologies for absence were intimated on behalf of Councillors A Wright.

ALSO PRESENT BY INVITATION

In respect of item 3 (i)

The applicant, Mr G Forbes, Edgar Road Properties Limited and his representative, Mr A Mackie, Ashley Bartlam Partnership. Also present were Miss C Crossan, Mr J Montgomery, Mr I Robertson and Mr I Walker, objectors to the application.

In respect of item 3 (ii)

Mr P Pritchett, Pritchett Planning Consultancy, representing the applicant Tesco Stores Limited

IN ATTENDANCE

The Head of Development Services, the Development Control Manager, J Martin, Principal Planning Officer (Development Control), T Simpson (Engineer (Development Control)), A Scott, Principal Solicitor (Commercial & Conveyancing) and the Senior Committee Services Officer, Clerk to the Meeting.

1. DECLARATION OF GROUP DECISIONS

There were no declarations from group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda.

2. PLANNING APPLICATION PUBLIC HEARINGS

- (i) **PLANNING APPLICATION 06/02897/OUT : OUTLINE FOR PROPOSED RESIDENTIAL DEVELOPMENT (9 DWELLINGHOUSES AND TWO 10 APARTMENT FLATS) INCLUDING THE DEMOLITION OF 14 DWELLINGS AT PALMERS CROSS, PLUSCARDEN ROAD, ELGIN FOR EDGAR ROAD PROPERTIES LIMITED.**

There were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding an outline application in regard to a proposed residential development of nine houses and two ten apartment flats, including the demolition of fourteen dwellings at Palmers Cross, Pluscarden Road, Elgin for Edgar Road Properties Limited.

The report by the Chief Legal Officer advised that, in terms of the Council's Scheme of Delegation relating to Planning Applications, the application had been referred direct to a Hearing to which the applicant and objectors were invited to attend and be afforded the opportunity of being heard. The report also set out the proposed procedures for the Hearing. The meeting also noted that members of the Committee visited the site of the application on Friday 13 June 2008.

The report by the Director of Environmental Services gave details of the application and the consultations, which had been undertaken regarding it and the relevant planning criteria in terms of the Moray Development Plan and the Emerging Local Plan 2008 as a material consideration. The report recommended that planning consent be granted as an acceptable departure, subject to conditions detailed in the report and the completion of a legal agreement, prior to the issue of consent, regarding a financial contribution towards an equipped play area. The reasons for recommending approval of a departure from policy were set out on page 14 of the Planning Officer's report.

The Chairman welcomed those present to the meeting and advised them that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that the applicant was present and would be represented by Mr Mackie, Ashley Bartlam Partnership.

The Clerk to the Committee advised the meeting that of those objectors to the application listed on page 33 of the Planning Officer's report Miss E Crossan, J Montgomery (on his own behalf and on behalf of Mr Coomber), S Robertson and I Walker had accepted the invitation to be heard and would be addressing their objections. Mr Parkins had intimated that he wished to be heard, however he had unfortunately been involved in an accident and was unable to attend the Hearing, but would be represented by Mr Walker. E Carle and J Petrie had declined the invitation to be heard. The meeting noted that details of the objections and the Agent and Officer comments thereon were set out in the report.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr Mackie addressed the meeting, on behalf of the applicant, in regard to the proposed outline application in respect of a proposed development at Palmers Cross, Elgin. Mr Mackie advised the meeting that having reviewed the Planning Officer's report on the application his client considers it to be a fair and honest summary document of what has been assessed and tabled to date. It is an outline application seeking, in principle, to replace fourteen residential chalets with nine single dwelling houses and two ten-apartment flats. There were no detailed proposals for the buildings themselves. Mr Mackie referred to the Planning Officer's

report, which advised that all formal consultees including SEPA, the Roads Section and the Moray Flood Alleviation Group supported the application. He expressed his appreciation, on behalf of his client of the assistance from the Moray Flood Alleviation Team in reviewing local historical flood data which assisted in illustrating that all properties proposed lie outwith the 1 in 200 year flood event area.

In regard to site density Mr Mackie advised the meeting that the site extends to approximately 2.5 hectares with 29 properties proposed in total, which averages over 860m² per dwelling. However with 20 of the units located in two 10 apartment flats the perceived density when viewed from within the site or from neighbouring land will be very much lower, more in the region of 2,000m² per property, with housing in the countryside plots recommended at 1,400m². Mr Mackie also confirmed that, in terms of policy ENV3 in the current Local Plan, the proposals include the retention of all mature trees. The ENV10 designation in the emerging Local Plan proposes a Tree Preservation Order (TPO), for Pluscarden Road covering the bank of trees bounding the railway line on the north of the site. In this regard Mr Mackie advised the meeting that as the development relies on the retention of this thick belt of mature trees for its successful integration there will be no conflict with the New Plan.

Mr Mackie referred members to the Planning Officer's report, which advised that the proposal is not considered to have a significant adverse impact on the amenity of the surrounding area including property to the north. Following a detailed survey of the site by Scottish Natural Heritage no protected species will be at risk should the development go ahead. In conclusion Mr Mackie expressed the view that the proposed development is seen as an exciting development for Elgin which would integrate with the surrounding area so well that unless you lived there it would be nigh on impossible to tell what lies behind the entrance at Palmers Cross.

In response to a question from Councillor Murdoch in regard to affordable housing provision Mr Mackie advised the meeting that his client accepted the requirement, set out in Condition 11, for six affordable units. There were no other questions to Mr Mackie.

REPRESENTATIONS TO THE APPLICATION

Miss E Crossan addressed the meeting on her representations on the application and in particular to visual impact and the infrastructure of the area. She referred to the applicant's comments contained within the Planning Officer's report which intimates that the development will not impact the houses to the north of Palmers Cross because there are currently 23 properties on this land and it will only increase to 29. Miss Crossan was of the view however that when viewed from the properties in Wiseman Road there are actually only a few chalets visible at the moment. As will be noted from the site plans the chalets lie in a semi-circle and only numbers 5 – 10 are visible from Wiseman Road. Behind these chalets is another tree line and the remaining chalets are beyond this. In regard to the chalets that are visible Miss Crossan advised that only one of these chalets actually has a car parked in that area that is visible from her property. She also expressed the view that the area currently has no artificial lighting whatsoever so it is in complete darkness at night. Miss Crossan referred to the site plans which show that there are six plots going along a similar line to the chalets she referred to and much closer to the boundary line there will be 20 flats which, in her opinion, will impact on the houses to the north, which are one and a half storey houses. Miss Crossan was also of the view that the

proposed flatted property development, which will be located on land 3 metres higher than Wiseman Road, will look directly on to the properties on Wiseman Road and will look completely out of proportion and character with the area

In regard to the applicant's comments relating to the tree line Miss Crossan was of the view that, in her opinion, they do not form a static height and there are lots of gaps and spaces between the trees therefore light does get through. In support of her views a photograph, taken from her rear garden, was circulated at the meeting, which clearly shows there is a very large gap in the trees where one of the proposed blocks of flats is to be located. During the autumn, when there is much less foliage, the chalets, which are further away than the proposed flats, can be seen from Wiseman Road. In this regard Miss Crossan was of the view that, if approved, the flats would block this light, they would overlook and overshadow the properties on Wiseman Road and they would remove the privacy that the houses are entitled to. She also expressed her concern in regard to the potential affect the proposed development will have in regard to getting digital TV reception, which is currently poor in the area. Miss Crossan also expressed her concerns in regard to road safety given there is no bus route along Wiseman Road, no footpath at that side of Pluscarden Road and no scope for one as it borders the railway bridge to come into Elgin. In regard to the inclusion of a possible pedestrian crossing Miss Crossan was unsure as to how safe this would be given the amount and speed of traffic in the vicinity of the proposed development.

In conclusion Miss Crossan also expressed her concerns in regard to primary school provision in the area. In support of her concerns she referred to the report which advised that there are currently six to eight children on the site and the proposed development includes 4-5 bedroom houses and flats, which would, most likely house substantially more children. The current capacity of West End Primary is 250 and is currently full and Miss Crossan was of the view that any more housing in the catchment area will lead to overcrowding which could be detrimental to all pupils receiving their education there.

There were no questions to Miss Crossan

Mr Montgomery addressed the meeting on his representations and that of **Mr Coomber** who was unable to attend the Hearing. The meeting noted that his concerns related to a Tree Preservation Order (TPO) in respect of the existing woodland on the proposed development site. In this regard Mr Montgomery referred to correspondence with the Council which received a favourable and encouraging initial response. In response to subsequent requests for updates he was advised in August 2006 that the matter was being progressed through the Local Plan review process. He was also advised that some of the areas identified had been included in the finalised Local Plan for a proposed TPO. This, in Mr Montgomery's opinion, effectively meant that the Council had approved the principle of a TPO on the site and would serve the order along with all the other ones proposed in the Local Plan when resources permitted.

In conclusion Mr Montgomery was of the view that notwithstanding the proposals that are now in place together with the assurances he had received there has been no indication of a TPO being served.

There were no questions to Mr Montgomery.

Mr Roberston intimated that he objected to the proposed development on the grounds of loss of amenity. He advised the meeting that the main reason was, in his opinion, the loss of natural sunlight during the winter hours. In support of his concerns he referred to the height of the proposed blocks of flats, at least 10.7metres high and after some measurement he advised the meeting that the sunlight doesn't percolate through in the winter time and solid buildings will reduce this sunlight even further. Mr Montgomery also expressed his concerns in regard to road safety at and around the junction onto Pluscarden Road.

There were no questions to Mr Robertson.

Mr Walker addressed the meeting in regard to his concerns relating flood issues arising from the proposed development. He advised the meeting that the embankments at Palmers Cross had substantial works undertaken to them in the Autumn of 2006 and to the eye they seem to be higher than the embankment that was previously in place. It is understood that the embankment works were undertaken as permitted development as a private maintenance exercise to upgrade and stop the shield bank from eroding back into the river and that the river bank was not built up and didn't physically change the characteristics of the river. Unfortunately as the embankment works were deemed permitted development none of the local residents knew anything was going to happen and there is no photographic evidence to confirm the height of the embankment before the work started compared to now.

Mr Walker, a qualified surveyor, was of the view that the level of the embankment does seem higher than it was but obviously had no information to confirm that that is correct. In support of his view Mr Walker referred to the lower gardens of Palmers Cross which flooded in 1997 and 2002 and the properties that used to be along the front of the road which have now been demolished also flooded in 1997 and 2002. The proposed development includes the provision of a house plot in the position where these former three houses were at the front of the site beside the river. Therefore, in his opinion, if the embankment has not been increased in height this plot will flood. In this regard Mr Walker referred to the Planning Officer's comments which stated that as raising the embankment is considered permitted development and no formal planning application is required any works undertaken would not have been considered by the Council or the Flood Alleviation Team. He also referred to plans drawn up by SEPA which show Wiseman Road, Pluscarden Road, Conon Crescent and Fleurs Road to be at risk of flooding. Mr Walker intimated that whilst the Planning Officer's report refers to the inadequacies of the SEPA plan it does highlight those areas in Elgin which are susceptible to flooding or are in very close proximity to flood areas. None of the residents in areas referred to have ever been notified or been involved in any of the flood alleviation consultation processes and yet they are in very close proximity to the River Lossie. Whilst accepting that landowners in countryside locations can upgrade river embankments Mr Walker was of the view that Palmers Cross is in Elgin, within the 30mph zone and expressed his concern that, perhaps, embankment works within Elgin may not have been monitored as effectively as they should have. In conclusion Mr Walker expressed the view that if the embankments have not been checked then the word of the applicant that nothing has changed is not very comforting, especially to the 50 households in

Wiseman Road, Pluscarden Road, Conon Crescent and Fleurs Road that might be at a risk as a result of alterations that were carried out to the river embankment.

Mr Walker then addressed the meeting on behalf of **Mr B Parkins** who, due to an unfortunate accident, was unable to attend the Hearing. The meeting noted that Mr Parkins was of the opinion that as the existing properties in Wiseman Road are bungalows or chalet bungalows the proposed scale and size of the plots are not consistent with the current location. Mr Parkins also referred to the Planning Officer's comments that the proposal is not considered to have an adverse affect or impact on the amenity of the surrounding area. He was of the view that the size and scale of buildings might be acceptable if you are standing in the development site but looking at it from Wiseman Road it will give a completely negative perspective.

The increase in artificial light was also a concern of Mr Parkins. The plans available for public inspection indicate that the central area between the two plots is shown as car parking and as the agents have stated that there will be good security for the apartments it follows that, in all probability, the levels of illumination will be high. Given the positioning of the proposed blocks of flats the light will, in Mr Parkins opinion, be funnelled either to the south or to the north towards numbers 29 and 31 Wiseman Road and that will result in significantly increased light pollution with potential of sleep disturbance.

There were no questions to Mr Walker.

SUMMARIES OF SUBMISSIONS

On the invitation of the Chairman, Mr Mackie, in summarising his presentation, advised that the single house plot referred to by Mr Walker was the subject of a separate application, dealt with on its own merits. He also advised that in regard to that application, whilst the defence wall was at the same level as before the finished levels of the proposed new house would be much higher than the previous dwellings. A catchment zone is also being created so that any floodwaters can be contained without affecting adjoining land. Mr Mackie also advised that a traffic survey had been carried out which was accepted by the Council's Transportation Section and that there were no records of any accidents at the junction. In regard the embankment Mr Mackie confirmed that that these had been heightened by the applicant, as a concerned owner, under permitted development, and that the Planning Officials had been furnished with evidence of before and after and had no concerns regarding this issue.

Thereafter Miss Crossan, Mr Montgomery, Mr Robertson and Mr Walker summarised their respective presentations on their representations in regard to loss of amenity, scale and visual impact, road safety concerns, and service of a TPO and flooding. An assurance was also sought from the Council that flood was not an issue in the Wiseman Road area and that statutory authorities should get together and request that SEPA amend its flood risk maps.

In response to a question from the Chair, all those addressing the Committee on their respective presentations intimated that they were satisfied with the conduct of the proceedings of the Hearing.

COMMITTEE CONSIDERATION OF THE APPLICATION

Prior to considering the application the Development Control Manager advised the meeting in regard to a number of issues which arose during the presentations. In regard to concerns relating to visual impact, loss of amenity in terms of overlooking/privacy and lighting, particularly in regard to the siting of the proposed flatted accommodation, he referred the Committee to page 15 of the Planning Officer's report which advises that even with the proposed scale of development up to 2-storey (plus penthouses in the roofspace of the apartments, south not north facing towards Wiseman Road), the proposals are not considered to have an adverse impact on the locality, including properties within and outwith the grounds of the House. In regard to the TPO he confirmed that, in terms of the ENV10 Designation in the emerging Local Plan there are proposals for a TPO on Pluscarden Road and that the proposed development will not affect the integrity of the woodland setting. In regard to the flooding issues raised he advised the Committee that, in terms of the relevant policies, the applicant had submitted a flood risk assessment which was considered to be acceptable and that both SEPA and the Moray Flood Alleviation Team had not objected to the proposed development on the grounds of flood risk. There were also no objections from the Council's Environmental Health section in terms of light pollution or disturbance impact from the use and layout of the site.

In regard to road safety concern issues the Engineer (Development Control) advised the meeting that following an assessment of the applicant's Technical Report a number to proposals had been agreed to improve the access, as intimated on page 44 of the report and included in the proposed conditions. Whilst it is accepted that there will be an increase in traffic using the access this is outweighed by the significant improvements to the visibility at the access. In regard to the proposed pedestrian crossing it was considered that there was a need to link into the footpath on the north side of the road given that it is not possible to continue the footpath on the south side. The type of crossing may be re-visited at the detailed stage. He also referred to an alternative footpath link (Condition 20) from the site to Fairy Park off Mayne Road.

Thereafter officers responded to Members questions during which it was noted that whilst the meeting could give an indication to the applicant that alternative access arrangements and siting of the flatted accommodation should be investigated for the detailed stage this was an outline application and the detailed arrangements for the design and layout of the accommodation on the site will require to be 'reserved' for consideration during any subsequent full or detailed application for permission. In regard to the TPO the meeting noted that the emerging Local Plan has a commitment to promoting a TPO on Pluscarden Road and promotion of this TPO had not been held up by the planning application and would be promoted in the near future as resources permit, as intimated to Mr Montgomery.

Following consideration of the presentation and points of clarification the meeting agreed to approve the application, as an acceptable departure, subject to the completion of a legal agreement, prior to issue of any consent, regarding a financial contribution towards an equipped play area and the following conditions:-

1. (a) That in the case of any reserved matter, application for approval must be made before:-

- (i) that expiration of 3 years from the date of the grant of outline planning permission; or
 - (ii) the expiration of 6 months from the date on which an earlier application for such approval was refused; or
 - (iii) the expiration of 6 months from the date on which an appeal against such refusal was dismissed; whichever is the latest: provided that only one such application may be made in the case after the expiration of the 3 year period mentioned in subparagraph (i) above.
 - (b) That the development to which the permission relates must be begun not later than whichever is the later of the following dates:-
 - (i) the expiration of 5 years from the date of the grant of outline planning permission; or
 - (ii) the expiration of 2 years from the final approval of the reserved matters or in the case of approval on different dates the final approval of the last such matter to be approved.
2. The approval hereby granted is in outline and prior to the commencement of the development approval of the details, including the siting, design and external appearances of the building(s) the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Council, as Planning Authority.
 3. The proposed development shall be carried out only in accordance with detailed drawings, which shall previously have been submitted to and approved by the Council, as Planning Authority. These drawings shall show the reserved matters numbered 4 - 8 below.
 4. Plans, sections and elevations of all buildings proposed with details of the type and colour of all external materials and finishes shall be submitted in accordance with condition no. 3 above.
 5. The proposed layout of the site showing the exact position of the site boundaries, the position of all buildings, the means of access, areas for vehicle parking and the arrangements for the disposal of foul and surface water shall be submitted in accordance with condition no. 3 above.
 6. Details of the exact extent, type and finish of all other works including walls, fences and other means of enclosure and screening shall be submitted in accordance with condition no. 3 above.
 7. Sections through the site showing the development on its finished levels in relation to existing levels shall be submitted in accordance with condition no. 3 above.

8. Landscaping proposals showing any existing trees/hedges/shrubs to be retained or removed together with details of the type, position and number of all planting to be undertaken and details of all surfacing materials shall be submitted in accordance with condition no. 3 above. (See Condition 21).
9. The site layout arrangements for the development shall be closely based on the illustrative details submitted but not approved as part of the current proposal, in particular amended drawing (Block Plan) 7381/1/BP1 Rev. C as submitted under cover of the applicant's agent letter dated 14th March 2008 including the plot layout and supplementary details regarding finished levels, identification of trees to be retained and the proposed foul drainage arrangements.
10. As part of the requirements of Condition 3:
 - a) the use of existing and proposed septic tank/soakway drainage systems or similar is not approved and the development shall connect to the public system and be closely based on the details shown on drawing 7381/1/BP1 Rev. C regarding the proposed location of the proposed pumping station and pumped sewer route through the site;
 - b) for plots 3 and 4 the apartment blocks shall not exceed 10.65 m in height (from finished ground floor level, which shall not to exceed 29.41 m (AOD) as indicated on drawing 7381/1/BP1 Rev. C) and shall be two storey in scale (although south facing, 'penthouse' accommodation within the roofspace and basement car parking arrangements may be permissible);
 - c) for plots 1, 2, 5 - 11, the single dwellinghouse on each plot shall not exceed two-storey in construction;
 - d) the roof of the dwelling houses and apartment blocks hereby approved shall be finished in natural slate or a good quality artificial slate to be agreed, in writing, by the Council (as Planning Authority) prior to the commencement of development; and
 - e) Details shall be submitted in accordance with the requirements of Conditions 11, 12, 14, 15, 17, 18, 20, 21, 23, and 24 as set out below.
11. As part of the 29-unit development hereby approved, six (6no.) units of affordable housing accommodation shall be provided within the site where:
 - a) no development shall commence on the site until details have been submitted to and approved by the Council, as Planning Authority regarding the location(s) of the required accommodation within the site; and
 - b) no development shall commence on the location(s) identified for the affordable accommodation (Condition 11a) until details have been submitted to and approved by the Council, as Planning Authority regarding the design and size mix of the required accommodation and the arrangements to ensure the long-term delivery and provision of the affordable accommodation; and

- c) thereafter, the development shall be implemented in accordance with the approved plans.
12. No development shall commence until details have been submitted to and approved by the Council, as Planning Authority regarding: -
- a) in accordance with the details indicated on drawing 7381/1/BP1 Rev. C, the location, route, design construction specifications and time-scale for implementation of the proposed foul drainage infrastructure arrangements;
- b) in accordance with the submitted drainage strategy (February 2008), the location, design specification, arrangements for maintenance and time-scale for the implementation of all arrangements for the disposal of surface water from the site, including the use of SUDs; and
- c) thereafter, all infrastructure shall be provided in accordance with the approved details.
13. No water shall be permitted to drain onto the public footpath/carriageway.
14. For plots 1, 2, 5 - 11 two private car parking spaces for up to a 3 bedroomed dwelling and three private car parking spaces for a 4 or more bedroomed dwelling shall be provided.
15. For Plots 3 and 4, car parking shall be provided at a rate of 1.5 spaces per unit of accommodation i.e. 30 parking spaces for 20 apartments where a communal (shared) car parking arrangement is proposed, or in accordance with the requirements of Condition 14 above, where a dedicated parking arrangement is proposed with specific parking spaces allocated to each apartment.
16. A turning area shall be provided within the curtilage of the site to enable vehicles to enter/exit in a forward gear.
17. As part of the development hereby approved and in conjunction with the access arrangement onto Pluscarden Road (B9010), as approved under formal decision notice 06/01635/FUL dated 28th August 2006: -
- a) a visibility splay of 4.5 x 90 m shall be provided at the site access, to the south west direction;
- b) a visibility splay of 4.5 x 70 m shall be provided at the site access, to the north east direction; and
- c) there shall be no obstruction to visibility over 1 m in height with the splay areas, which shall be provided prior to first use commencing of the development hereby approved and thereafter, shall be maintained at all times.
18. No development shall commence until details have been submitted to and approved by the Council as Planning Authority regarding: -

- a) the location, design construction specifications, surfacing materials and time-scale for provision of a new pedestrian crossing on Pluscarden Road (B9010) to be located to the north east side of the site access onto Pluscarden Road; and
 - b) thereafter, the pedestrian crossing shall be provided in accordance with the approved details.
19. No house shall be occupied until all roads, footpaths and parking serving the house has been provided in accordance with the approved plans or to at least base course level, or to a stage of road construction which shall previously have been agreed, in writing, with the Council as Planning Authority.
20. No development shall commence until details have been submitted to and approved by the Council as Planning Authority regarding: -
- a) the location, route, design construction specifications, surfacing materials and time-scale for provision of a footpath link or similar to be provided between the site and the existing play area, Fairy Park off Mayne Farm Road; and
 - b) thereafter, the footpath link or similar shall be provided in accordance with the approved details.
21. That no development shall take place until a Landscape Scheme (drawn to scale) is submitted to and approved by this Council (as Planning Authority). This Landscape Scheme shall show:-
- (a) the location of any existing trees, shrubs and hedgerows on the site and identify those to be retained and those to be removed;
 - (b) details of the measures to be taken to protect any existing trees, shrubs and hedgerows during the course of developing the site;
 - (c) details of the numbers, species, position, planting distances and sizes of all planting to be undertaken.
 - (d) details for the management and maintenance of the woodland.
22. That all planting, seeding or turfing forming part of the approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the development or the completion of the building works, whichever is the sooner. Any trees or plants which (within a period of 5 years from the planting) die, are removed or become seriously damaged or diseased shall be replaced in the following planting season with others of similar size, number and species unless this Council (as Planning Authority) gives written consent to any variation of this planning condition.
23. No development shall commence until details have been submitted to and approved by the Council, as Planning Authority regarding: -

- a) the location, number, design and time-scale for provision of bird boxes to be provided within the site; and
 - b) the time-scale for all tree felling, scrub clearance and vegetation clearance operations, which shall take place outwith the period 1st April - 31st July inclusive.
24. No development shall commence until details have been submitted to and approved by the Council as Planning Authority regarding: -
- a) in accordance with the submitted energy statement (April 2008), details of all zero and low carbon equipment to be incorporated into the development and their predicted carbon emissions using SAP or SBEM calculations;
 - b) the location, design, external appearance and material finishes and time-scale for provision of all equipment (Condition 24a) to be provided; and
 - c) thereafter, the development shall be provided in accordance with the approved details.
25. If significant unsuspected contamination is found then all work shall cease until an appropriate investigation to determine the nature, extent and potential impacts of the contamination has been undertaken and a remediation method statement agreed with The Council as Planning Authority.

Reasons:

1. The time limit condition is imposed in order to comply with the requirements of Section 59 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that the matters specified can be fully considered prior to the commencement of development.
3. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.
4. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.
5. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.
6. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.
7. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.

8. As the consent is in outline only and in order that detailed consideration can be given to the matters specified.
9. In accordance with the applicant's submitted particulars and in order to ensure that the development harmonises with the appearance and character of the surrounding properties and area.
10. In accordance with the applicant's submitted particulars and to ensure an acceptable form of development in the interests of the character, appearance and amenities of the development and the surrounding area.
11. To ensure an acceptable form of development and safeguard the required provision of such accommodation on the site (for example, in accordance with policy L/H7 of the adopted Moray Local Plan 2000) including details of the matters specified which are currently lacking from the submission.
12. In accordance with the applicant's submitted particulars, including information currently lacking from the submission and to ensure an acceptable form of development in terms of foul drainage.
13. In the interests of road safety.
14. In the interests of road safety.
15. In the interests of road safety.
16. In the interests of road safety.
17. In the interests of road safety.
18. To ensure a satisfactory form of development in the interests of pedestrian safety.
19. To ensure a satisfactory standard of access and parking is provided at an early stage for the servicing of each house plot.
20. To ensure a satisfactory form of development in the interests of providing access to/from the development and a nearby existing recreational facility.
21. In order that detailed consideration can be given to the landscaping of the site.
22. In order to ensure that the approved landscaping works are timeously carried out and properly maintained in a manner which will not adversely affect the development or amenity and character of the area.
23. To ensure a satisfactory form of development and in order to address the loss of breeding birds, as advised by SNH.
24. To ensure the development complies with the on-site carbon emission targets of SPP 6.

25. In order to safeguard the health and safety of the occupants of the property from the effects of harmful ground contamination.
- (ii) **PLANNING APPLICATION 08/00783/FUL : ERECT EXTENSION TO EXISTING CONSENTED SUPERMARKET AT FROMER SEAFIELD MILL UNION TERRACE AND ADJOINING PROPERTIES AT 127 - 135 MOSS STREET KEITH FOR TESCO STORES LIMITED**

There were submitted reports by the Chief Legal Officer and the Director of Environmental Services regarding an application for an extension to the existing consented supermarket at the former Seafield Mill, Union Terrace and adjoining properties at 127-135 Moss Street, Keith for Tesco Stores Limited.

The report by the Chief Legal Officer advised that, in terms of the Council's Scheme of Delegation relating to Planning Applications, the application had been referred direct to a Hearing to which the applicant and objector were invited to attend and be afforded the opportunity of being heard. The report also set out the proposed procedures for the Hearing. The meeting also noted that members of the Committee visited the site of the application on Friday 13 June 2008.

The report by the Director of Environmental Services gave details of the application and the consultations, which had been undertaken regarding it and the relevant planning criteria in terms of the Moray Development Plan and the Emerging Local Plan 2008, as a material consideration. The report recommended that planning consent be granted as an acceptable departure, subject to receipt of satisfactory consultation responses from the Council's Transportation Manager, Transport Scotland and BEAR Scotland and conditions detailed in the report. The report also advised that given the Council's interest as part owners of the site it would be necessary, in terms of Circular 5/2007, to notify Scottish Ministers prior to the issue of any consent. The reasons for recommending approval of a departure from policy were set out in the Planning Officer's report.

The Chairman welcomed those present to the meeting and advised them that submissions must be restricted to those already submitted and that the Hearing would be confined to examining the planning merits of the application and therefore discussion on irrelevant non-planning related issues would not be considered.

The meeting noted that the applicant was represented by Mr P Pritchett, Pritchett Planning,

The Clerk to the Committee advised that the objector to the application had declined the invitation to be present and had submitted a statement to be read out at the appropriate juncture in the proceedings. A copy of the statement and supporting documents had been circulated to members of the Committee prior to the meeting.

REPRESENTATIONS ON BEHALF OF THE APPLICANT

Mr Pritchett addressed the meeting on behalf of the applicant, Tesco Stores Limited which had submitted an application for detailed planning permission for an extension the original application for the re-development of the Seafield Mill. The meeting noted that since approval the main work priorities related to satisfying the Trunk Roads Authority, other issues regarding the environmental nature of the site

and ensuring all of the consents necessary have been acquired. Mr Pritchett also advised the meeting that detailed discussions had also taken place with the property owners on Moss Street where a lane between Moss Street and Mid Street requires to be put back to one way and those discussions have been ongoing.

On being aware of land becoming available to the rear of the proposed development Tesco had expressed an interest in acquiring it with a view to adding more floor space onto the proposed store. Mr Pritchett referred to the previous plans and the current plan from which it was evident that the store can be extended on the south side by an extra bay onto the store. He advised the meeting that the proposal would add 500 square metres to the store building at the southern end. He also stressed that the reason for the extension at this time, before the original consent is built, is that it is not economical to extend a building of this nature once the original has been built. Mr Pritchett also advised that it was unlikely that such a small extension would significantly increase turnover and Tesco certainly would not want to inconvenience customers once the store is opened. Therefore they had delayed in effect the development of the store until such times as the outcome of the extension proposals were known.

In regard to the letter of representation Mr Pritchett was of the opinion that this related more to an issue the sale of land and not a planning issue. He was also of the view that the area of ground Tesco are looking to acquire forms a logical rectangular area more in keeping with the way in which Tesco would normally wish to develop a site of this nature with a regular service yard tucked to the side of the store rather than at front of the store, as contained in the original application. The proposed extension also allows for a direct pedestrian link from Union Terrace, directly to the front of the store, which was not part of the original consented scheme. It also enables the service yard to be set behind the store frontage, which is a more pleasing appearance to the frontage of the store.

Mr Pritchett also advised the meeting that as the existing consented service yard already has a boundary abutting the Union Terrace pavement the proposed revised location is no different, just further east along Union Terrace, there is actually no difference in planning terms as to where the position of the service yard is. Mr Pritchett also advised the meeting that, subsequent to the issue of the Planning Officer's report, agreement had been reached with the council's Environmental Health Section in regard to acoustic measures screening which deals with all of the issues around the service yard onto the neighbouring properties at Union Terrace.

In conclusion Mr Pritchett was of the view that a modest logical extension was being applied for and, if granted, Tesco would start construction at the earliest opportunity which would hopefully allow for Christmas trading this year and sought Committee approval of the application.

There were no questions to Mr Pritchett.

REPRESENTATIONS TO THE APPLICATION

The Clerk read out the statement on behalf of **Mr J R Logan** on his objections to the application. The meeting noted that Mr Logan was broadly in agreement to the conversion of the derelict mill site for retail use. His main objection related to an apparent change in planning policy by the council in regard to the area of amenity ground since he had applied to acquire a section of the site for retention as a

wooded area. At the time he was advised that the wooded area was part of a planning consent for the industrial estate and that it would be unlikely that the Council would be prepared to dispose of all or part of the site. Mr Logan was also concerned in regard to the potential increase in noise pollution stemming from the proposal to site a large sprinkler tank immediately adjacent to his property and extend the lorry loading and unloading area.

SUMMARIES OF SUBMISSIONS

On the invitation of the Chairman Mr Pritchett declined the invitation to summarise intimating that he had covered everything in his presentation. In response to a question from the Chair, he also intimated that he was satisfied with the conduct of the proceedings of the Hearing.

COMMITTEE CONSIDERATION OF THE APPLICATIONS

Prior to considering the application the Principal Planning Officer (Development Control) referred to the reference by Mr Logan to a planning application and advised Members that this related to a request to purchase an area of ground and was not a planning application. He also advised that the proposed extension would not bound directly onto Mr Logan's property and the existing tree & shrub screening between the residential area and the industrial estate would remain. A 4.5m high acoustic screen fence would also be provided along the northern boundary with Union Terrace.

In regard to the outstanding consultations responses the Principal Planning Officer (Development Control) advised that whilst the Council's Environmental Health Section have no objections to the proposed development they have recommended two amendments to the previous conditions of consent relating to service yard noise and impact on adjoining properties. He also advised that the Council's Transportation Section had recommended two additional conditions relating to car parking provision and that of the 227 spaces recommended a minimum of 13 spaces for people with disabilities would require to be provided prior the opening of the store. He further advised that whilst approval of the modest extension would lead to a very small impact on town centre trading it is considered that this would be offset by spin-off trade from supermarket customers. The meeting also noted that it was anticipated that the responses from Transport Scotland or BEAR Scotland would be received in the near future. It was also noted that in the absence of satisfactory responses from the outstanding consultation the matter would be referred back to Committee for consideration and determination.

Following consideration, during which the meeting noted the location of the proposed new footpath link off Union Terrace, the Committee agreed that, subject to the receipt of satisfactory consultation responses from the Transport Scotland and BEAR Scotland, and notification to Scottish Ministers prior to the issue of consent, the application be approved, as an acceptable departure, subject to the following conditions:-

1. The development to which this permission relates must be begun not later than the expiration of five years beginning with the date on which this permission is granted.

2. Unless otherwise agreed with the Council, as Planning Authority, the development hereby approved shall be carried out strictly in accordance with the approved plans and conditions.
3. The development is related to, and requires to be provided in conjunction with the development approved under formal decision notice 04/00767/FUL dated 28th August 2006 in relation to the overall site layout and service provision for the development, and the conditions as attached thereto are hereby reiterated and remain in force in so far as they relate to the development hereby approved.
4. That prior to opening of the store, a total of 227 car-parking spaces shall be provided, and available at all times thereafter.
5. That prior to opening of the store a minimum of 13 spaces for disabled people shall be provided at the most appropriate location for access to the store, and shall be available at all times thereafter.
6. A scheme outlining service yard boundary treatments shall be agreed in writing with The Moray Council. The scheme shall ensure that noise levels from deliveries do not exceed 55 dB Laeq 1 hour between 0700 hours and 2000 hours when measured or calculated 1 metre from the façade of the nearest noise sensitive property.
7. Noise emissions from fixed plant (including refrigeration plant, and associated machinery) shall not exceed Noise Rating Curve 25 as measured inside the nearest noise sensitive dwelling between the hours of 2300 and 0700 hours.

Reasons:

1. The time limit condition is imposed in order to comply with the requirements of Section 58 of the Town and Country Planning (Scotland) Act 1997.
2. In order to ensure that there are no unauthorised departures from the approved plans, which could adversely affect the development or character and amenity of the surrounding properties and area.
3. To ensure an acceptable form of development.
4. In the interests of road safety.
5. In the interests of road safety.
6. In order to protect the amenity of nearby residential properties.
7. In order to protect the amenity of nearby residential properties.