



Banff & Buchan Area Committee Report – 12 March 2024

Reference No: [APP/2022/0300](#)

Full Planning Permission For Erection of Supermarket, Including Cafe, Petrol Station, Car Parking and Associated Works, Vehicular Access and Landscaping at Canal Park, Bridge Road, Banff, Aberdeenshire

Applicant: Wm Morrison Supermarkets Ltd
Agent: Peacock + Smith

Grid Ref: E:369267 N:863861
Ward No. and Name: W01 - Banff And District
Application Type: Full Planning Permission
Representations: 368
Consultations: 12
Relevant Proposals Map Designations: Town Centre Area, Conservation Area
Complies with Development Plans: No
Main Recommendation: Refuse



NOT TO SCALE

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1. Reason for Report

- 1.1 The Committee is able to consider and take a decision on this item in terms of Section B.8.1 of Part 2A List of Committee Powers and Section C.3.1g of Part 2C Planning Delegations of the Scheme of Governance as the application is recommended for refusal but in the professional opinion of the Head of Planning and Economy there has been a substantial body of support for the development.
- 1.2 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

2. Background and Proposal

- 2.1 This is an application for Full Planning Permission to erect a supermarket and petrol filling station on land at Canal Park, Banff. It also includes car parking for customers, areas of landscaping, and a service yard area. The site lies at the eastern side of the town, close to the River Deveron estuary and Banff Bridge, as shown in **Appendix 1**.
- 2.2 At present the overall application site comprises the grassed Canal Park football pitch used by the Deveronside Football Club (amongst others), a derelict tennis court, pavilion building, and the former community centre on Old Market Place. The latter has a two storey frontage to Old Market Place and is finished in a grey wet dash harl with natural slate roof, while the pavilion building has an artificial slate roof with walls of grey artificial stone and a cream coloured render.
- 2.3 To the north the site is bounded by Old Market Place and the listed former Smiddy building (now silversmith's workshop). The boundary with the latter is marked by a wall of natural stone in excess of 2m high which extends around onto Bridge Road. To the east the site is bounded by Bridge Road, a car park and natural grassed/meadow area (both on the site of the former Crown Motors garage business), and by the Co-op supermarket and its customer car park. Right in the southeastern-most corner of the site, it abuts the electricity substation building – a small structure of traditional appearance (the former bridge toll house, repositioned when New Road was built) with grey wet dash harled walls and natural slate roof. The boundary along the eastern flank of the application site is formed of the natural stone wall described above, and of metal palisade and chain link fencing.
- 2.4 To the south the site forms a boundary with the New Road (A98) which sits on banking above the level of the application site. A chainlink fence currently sits at the foot of the banking with the New Road. To the northwest the site is flanked by the former community centre, while the remainder of the western boundary is with Princess Royal Park; home ground of Deveronvale Football Club. The boundary with the latter is marked by a fence of vertical timbers to around 2.5m in height, and finished in a dark brown stain.

- 2.5 As shown on the application site plan, the ownership area extends to 1.77ha although the overall application site boundary exceeds this to give an overall site area of 1.96ha. The discrepancy is accounted for by the additional visibility splays at both vehicular access points to the site which are on land outwith the applicant's control. The most recent site plan, incorporating landscaping proposals is attached to this report as **Appendix 2**.
- 2.6 Taking the proposed supermarket building first, this is a building with an overall footprint area of 3,148 square metres, of which 1,738 will form the internal retail floorspace area. The overall width of the building is 47.438m with a length of 68.05m. Maximum height is 6.3m – this represents the height of the walls which form a parapet and behind which is a shallow pitched roof to a maximum height of 5.548m. In other words, the highest point of the pitched roof will be below that of the parapet. Plans illustrating the floorplan, elevations, and sections are attached as **Appendices 3, 4, and 5** respectively.
- 2.7 The main frontage and public aspect of the store faces south towards the A98/New Road, and has an overall width of 47.438m. It features large areas of glazing at the western side of the frontage with three large window openings framed with basalt (dark) grey coloured fittings. The eastern side of the frontage also features large areas of glazing associated with the store entrance and foyer area with the same dark grey frames and fittings. The walls of this frontage are of natural stone, while upper walls in anthracite (very dark) grey cladding and basalt grey complete the finish.
- 2.8 On the eastern elevation the store entrance and foyer area again is a prominent glazed feature reflecting the second most public aspect of the proposed store when viewed from Bridge Road to the east. A further section of natural stone wall is proposed here before anthracite grey and then goosewing grey cladding complete the remainder of the eastern elevation. The northern elevation is the least public and is finished entirely in goosewing grey cladding with the exception of basalt grey capping. The western elevation again is finished mostly in goosewing grey cladding with the exception of the small canopy over the loading bay access, the capping, and two service doors in basalt grey. The final 18.15m of the frontage toward the south western corner of the building is shown as finished in anthracite grey cladding.
- 2.9 Associated with the main supermarket building, the home shopping unit is located just to the west of this and at the north-western corner of the overall site, and also accessed from Old Market Place. The purpose of the building is to load delivery vans taking orders placed online out to customers. It will measure 11.9m wide by 17.4m long and have a maximum roof height of 4.395m. Of rectangular footprint, the building would have a shallow, mono-pitched roof and be constructed largely of goosewing grey cladding with basalt grey flashings and fittings. Attached to the western elevation would be a canopy providing partial shelter to four delivery van bays. It also features a

mono-pitched roof and construction finished in basalt grey to match the fittings of the delivery unit. Details of the elevations and layout of the unit are illustrated in **Appendix 7**.

- 2.10 Situated at the southern-most point of the site and adjacent to the boundary with New Road (the A98) is the proposed petrol filling station. The kiosk serving this will be located parallel to the boundary with the neighbouring Co-op supermarket's boundary and car park, separated from it by a chainlink fence and a line of trees and shrubs. The building proposed has a rectangular footprint area measuring 21.27m long by 9.463m wide for a gross floorspace area of 191m squared. Of this area, 140m squared will be retail floorspace. The mono-pitched roof will have a maximum height of 4.61m at the main (western) elevation, dropping to 4.208m at the rear. Finishes proposed are goosewing grey cladding for the north, east, and south elevations with basalt grey flashing and fittings, while the main west-facing elevation will feature natural stone cladding and the main window and door openings. Elevation details of the kiosk and the canopy are illustrated in **Appendix 8**, with a 3D view in **Appendix 9** and site plan for the filling station in **Appendix 10**.
- 2.11 Detached from the kiosk building but associated with it are other structures including a canopy over the petrol pumps, a secure storage area, and a car wash bay. The canopy over the four petrol pumps will be to a height of 4.9m with a finish colour of basalt grey to match details of the kiosk building. Immediately adjacent to the southern gable of the kiosk is the secure storage compound for storage of waste and for plant associated with the forecourt. This would be constructed of vertical timber linings to 2m in height and would have a stained finish. Just to the north of the kiosk building a cage for gas bottles is indicated. To the west of the forecourt are bays for air and water, and a further one for a jet wash. The jet wash bay is to be screened, but there are no specific details of this at present.
- 2.12 In terms of servicing, it is proposed that the development will be served by mains water and public foul drainage infrastructure, while surface water will be dispersed on-site. Vehicular and pedestrian access to the site is proposed at two points; onto Old Market Place and the New Road (A98). The former will be for the purpose of accessing the service yard area and home shopping unit only and will entail the demolition of the vacant community centre building. The latter will be for customers of the proposed supermarket and/or the petrol filling station. An additional pedestrian access point is located at the north-eastern corner of the site – an existing gateway through the boundary wall onto Old Market Place.
- 2.13 Car parking for the store is located between the petrol filling station at the southern end of the site and the supermarket building to the north. In this area 166 spaces are proposed including 10x disabled bays, 10x parent and child bays, 2x click and collect bays, and four bays with electric vehicle charging points. A further six parking bays (including one disabled bay) are located on the forecourt of the petrol filling station for an overall site total of 172. No details are shown on the plans submitted of the finishing to the access and site roadways, and to the parking areas.

2.14 Overall site sections are attached as **Appendix 6**.

2.15 In terms of the Local Development Plan the application site is located within the settlement boundary for Banff. It lies within the conservation area and is also specifically included within the designated Town Centre area for Banff. It has no specific allocation in terms of development type (ie housing, commercial, recreation).

2.16 Relevant planning history

- APP/2005/0184: Full Planning Permission for supermarket, access and car parking. Supported at Area Committee and decision issued on 22 May 2013. This consent has since expired as no work commenced on the development.
- APP/2005/0188: Conservation Area Consent for demolition of buildings (Community Centre, Pavilion, Garage and Showroom). Supported by Area Committee and decision issued 22 April 2005.
- APP/2007/3778: Listed Building Consent to repair store and boundary wall. Supported by Area Committee and decision issued 20 May 2008.
- APP/2013/1255: Conservation Area Consent to vary time condition for demolition of buildings (as granted under application ref APP/APP/2005/0188). Supported by Area Committee and decision issued 26 June 2013.
- APP/2013/2105: Listed Building Consent for demolition of wall, opening of inner wall, and attachment of supermarket to wall. Supported by Area Committee and decision issued 10 April 2014.
- APP/2013/3253: FPP (retrospective) for erection of 2m high mesh fence and gates. Supported at Area Committee and decision issued 28 November 2013.
- APP/2015/3080: Full Planning Permission for extension to pavilion, erection of fence, wall, formation of car park, and 4x temporary cabins. Issued under delegated powers on 8 January 2016.
- APP/2017/1944: Change of Use from Community Centre to retail, café/restaurant and soft play area. Delegated grant on 29 September 2017.
- ENQ/2021/0326: Enquiry with regard to erection of supermarket, café, petrol filling station, formation of car parking, landscaping, and access. Superseded by submission of current application, although advice had been given on design and finish of the proposed supermarket building.

2.17 Supporting documents

- **Planning and Retail Statement (Peacock & Smith)**. This goes into detail about the submission and the pre-application process leading up to this, and provides a summary of the issues raised and conclusions reached in the other supporting documents listed below. It also goes into further detail about the calculated retail impact of the proposed new supermarket upon the existing town centre retail function in Banff and the wider area. Conclusions drawn are that the proposed development would be positive

in social and economic terms for the town, that heritage impact (both built and natural) is minimal, and that technical matters can be satisfactorily addressed.

- **Transport Assessment (Morrison's).** The assessment emphasises the accessibility of the site for pedestrians and cyclists and suggests that this will be enhanced through infrastructure improvements, while the vehicular access points are considered to be sufficient as proposed.
- **Sustainability Statement (DDA Building Services/Consultant Engineers).** Discusses the sustainability initiatives that the applicants are bringing to the design and operation of the store, and the use of renewable energy and carbon neutral technology.
- **Noise Assessment.** This assesses the likely impact of the development on noise sensitive receptors and concludes that this is within acceptable limits.
- **Lighting Statement (DDA Building Services/Consultant Engineers).** This report focuses on the external lighting design proposed for the site for the benefit and safety of customers and staff, while endeavouring to ensure that light pollution to the surrounding area is minimised.
- **Heritage Statement.** Considers the potential impact of the development on the conservation area for Banff and the setting of listed buildings – especially Duff House and its designed landscape. This concludes that considerable efforts have been made to formulate a design and to use materials which will blend in with the townscape of Banff and its conservation area, and that the impact of the development on the character and setting of listed buildings and the designed landscape for Duff House will be minimal.
- **Framework Travel Plan (Exigo Project Solutions).** Concludes by stating that a Travel Plan Co-ordinator will be appointed for the store to highlight to staff and customers sustainable transport options getting to and from the site.
- **Flood Risk Assessment (CPA Consulting).** This Assessment acknowledges the fact that the application site lies within an area liable to flooding, concluding that the overall risk is within acceptable limits.
- **Design and Access Statement (Smith Design Associates).** This statement highlights the design processes which have gone into the store design and finishes to ensure a proposal which is compatible with, and respectful of, its immediate environs, while providing an accessible and attractive shopping experience for the town and surrounding area.
- **Statement of Community Consultation (Psephos Consulting Ltd).** Details the consultation processes carried out prior to submission of the application. This includes engagement with Council Services, Ward Councillors, MSP, Community Councils, and with the public.

3. Representations

- 3.1 A total of 368 valid representations (183 support/185 objection) have been received as defined in the Scheme of Governance. All issues raised have been considered. The letters raise the following material issues:

In support

- *Will support the local economy and businesses.*
- *Will reduce travel (and thus carbon footprint) for shoppers who currently drive elsewhere to shop.*
- *Positive impact on the town's setting.*
- *Will draw in custom from a wider area.*
- *Positive in terms of employment generation for the town.*

Objecting

- *Flood risk (the site and area are prone to flooding).*
- *Road congestion close to Banff Bridge.*
- *Adverse impact on established local businesses.*
- *Loss of Common Good land.*
- *Loss of recreational land.*
- *62% of the community are alleged to be against the proposal.*
- *Adverse impact on neighbouring Princess Royal Park.*
- *Adverse impact on the character and appearance of the conservation area.*
- *Adverse impact on natural heritage.*

4. Consultations

Internal

- 4.1 **Environment and Infrastructure Services (Archaeology)** notes that Archaeological remains may exist beneath the ground surface at this site. In the event that the application is to be supported, a condition of consent is recommended requiring the submission of a written scheme of investigation to be submitted for the approval in writing of the planning authority.
- 4.2 **Environment and Infrastructure Services (Built Heritage)** did not object to the proposals but did request that details of the home shopping unit and petrol filling station be revisited and that landscaping be enhanced to reduce the visual impact of the car parking area. In response to this, revised plans were submitted showing a natural stone clad frontage to the main (western) elevation of the petrol filling station together with enhanced landscaping plans including greater detail on the maintenance. No revised plans were submitted in respect of the home shopping unit.
- 4.3 **Environment and Infrastructure Services (Contaminated Land)** does not require the submission of any further information in support of the application.
- 4.4 **Environment and Infrastructure Services (Environmental Health)** does not object to the application, subject to conditions relating to noise and light pollution in the event of permission being granted.
- 4.5 **Environment and Infrastructure Services (Flood Risk and Coast Protection)** objects to the development sited on a functional floodplain and

states that the Flood Risk Assessment submitted in support of the application does not satisfactorily address this issue.

- 4.6 **Environment and Infrastructure Services (Natural Heritage)** does not object to the scheme but suggests that further detail should be submitted relating to additional landscaping to mitigate the impact of the development, the nature of the landscaping, and a maintenance regime for this once implemented. In response to this a detailed landscaping plan was submitted indicating the nature of the landscaping to be provided and that which is being retained on site. Detail is also provided of maintenance.
- 4.7 **Environment and Infrastructure Services (Roads Development/Transportation)** has issued a holding objection in respect of the development proposal. There is no objection to the proposal in principle, although further detail is expected including a pedestrian link to the east and Bridge Road, a pedestrian crossing facility on Bridge Road, and detail of enhanced pedestrian and cycle access at the main site entrance onto New Road. There is also adverse comment with regard to the suitability of access and pedestrian/cycle movement *within* the site, while the simple priority junction onto the A98 is insufficient – particularly at the specific location shown.
- 4.8 **Environment and Infrastructure Services (Waste Management)** does not object to the application but asks that the design and site layout ensures that large refuse vehicles can access and turn within the site.

External

- 4.9 **Historic Environment Scotland** advises that the application site area lies on land which falls within the original designed landscape area for Duff House, and that the proposed development would impact on a number of listed buildings.
- 4.10 **Scottish Environmental Protection Agency (SEPA)** objects to the development on the basis that it is on a functional floodplain and may increase the risk of flooding in the surrounding area if developed. Only development of similar footprint area to the existing community centre could be accepted, and of the same vulnerability (eg. community or commercial, but not residential). SEPA highlights the content of the supporting Flood Risk assessment which indicates the potential for floodwater to a depth of 2.5m across the site, with insufficient mitigation.
- 4.11 **Scottish Water** does not object to the application, noting that there is capacity for foul drainage to service the site only, and not surface water. Water supply capacity cannot be guaranteed and should be the subject of a pre development enquiry to establish whether sufficient capacity exists in the supply.
- 4.12 **Sport Scotland** initially objected to the application due to the loss of a sports pitch. Following consideration of further information and especially the

mitigation measures put in place resulting from a previous application on the same site, the objection has been withdrawn.

5. Relevant Planning Policies

5.1 National Planning Framework 4 (NPF4)

Scotland's fourth National Planning Framework (NPF4) is a long-term plan looking to 2045 that guides spatial development, sets out national planning policies, designates national developments, and highlights regional spatial priorities. It is part of the development plan, and so influences planning decisions across Scotland.

On 13 February 2023 (0900am) Scottish Ministers adopted and published National Planning Framework 4 (NPF4), meaning that it is in force and National Planning Framework 3 and Scottish Planning Policy are superseded from that date and time. This will also have the effect that all strategic development plans and any supplementary guidance issued in connection with them cease to have effect on that date. As such the Aberdeen City and Shire Strategic Development Plan 2020 has now ceased to have effect. The NPF4 now forms part of the development plan along with the Aberdeenshire Local Development Plan 2023.

Policy 1: Tackling the climate and nature crises

Policy 3: Biodiversity

Policy 7: Historic assets and places

Policy 9: Brownfield, vacant and derelict land and empty buildings

Policy 13: Sustainable transport

Policy 14: Design, quality and place

Policy 15: Local living and 20 minute neighbourhoods

Policy 18: Infrastructure first

Policy 19: Heating and cooling

Policy 22: Flood risk and water management

Policy 23: Health and safety

Policy 27: City, town, local and commercial centres

Policy 28: Retail

5.2 Aberdeenshire Local Development Plan 2023

On 13 January 2023 the Aberdeenshire Local Development Plan 2023 was adopted.

Policy B1: Town Centre Development

Policy P1: Layout, Siting and Design

Policy P2: Open Space and Access in New Development

Policy P4: Hazardous and Potentially Polluting Development and Contaminated Land

Policy E1: Natural Heritage

Policy HE1: Protecting Listed Buildings, Scheduled Monuments and Archaeological Sites (including other historic buildings)

Policy HE2: Protecting Historic, Cultural and Conservation Areas
Policy C1: Using Resources in Buildings
Policy C4: Flooding
Policy RD1: Providing Suitable Services

5.3 Other Material Considerations

- Planning Advice 2023-19: Town Centre Impacts
- Town Centre Health Checks 2022 (Banff, Macduff, and Turriff)
- ALDP 2023 Appendix 3 Regeneration Priority Areas
- North East Local Flood Risk Management Plan (2022-2028)

6. Discussion

6.1 Although this application does not fit the criteria to be classed in hierarchy terms as a 'Major', it is nevertheless a significant proposal in the context of the town of Banff and there are several key policy issues to be addressed. Amongst these are the principle of development of the site for retail purposes, its impact on the setting of the town and in particular the conservation area and also, critically, site servicing and the potential for flooding. These matters are all addressed in detail below.

6.2 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires where, in making any determination under the planning Acts, regard is to be had to the development plan, and the determination is, unless material considerations indicate otherwise, to be made in accordance with that plan.

Principle

6.3 In terms of the site's location and designation, the 2023 Local Development Plan identifies the application site as situated within the defined settlement boundary for the town of Banff, within the defined Town Centre area, and also within the defined conservation area boundary for Banff. Given the location, the principle for development of a supermarket on the site is therefore acceptable in the first instance, although as already noted there are other factors and policy considerations which will ultimately determine the recommendation whether to grant or refuse permission.

Built Heritage

6.4 As highlighted above, the application site is located within the conservation area for Banff and close to a number of listed buildings; principal amongst which is Duff House within whose original Designed Landscape Area the site is also located. As such the application requires to be assessed against Local Development Plan policies HE1 (Protecting Listed Buildings, Scheduled Monuments and Archaeological Sites (including other historic buildings)) and HE2 (Protecting Historic, Cultural and Conservation Areas) and against NPF4 Policy 7 (Historic assets and places). This is a matter also highlighted in some of the representations objecting to the proposal, citing adverse impact on the character and appearance of the conservation area.

- 6.5 Given the sensitive location of the site and the potential impact of new development on the conservation area for Banff and the setting of listed buildings, the applicants sought pre-application advice from the Council on the design and finishes of the proposed supermarket building. Comments were offered in relation to the design and finishes and these are reflected in the proposals submitted for the application. Notwithstanding this, the Built Heritage team sought some amendments to the application plans as submitted; specifically the finishes of the Home Shopping Unit and to the kiosk at the Petrol Filling Station, while details of landscaping to mitigate the impact of the development were also sought. In response to this amended plans were submitted for the kiosk indicating a stone cladding finish to the main elevation of the building, together with a detailed landscaping plan. The former results in a much more appropriate finish to the principal and most public elevation of the building, while the latter provides detail of existing planting to be retained and of additional new planting which will help mitigate the impact of the new development on the townscape of Banff. No revised plan was submitted in respect of the Home Shopping Unit.
- 6.6 It is considered that generally the design and material finishes have taken cognisance of the sensitive location of the site, and positive comments in consultation responses from Historic Environment Scotland and the Council's Built Heritage team reflect that. Notwithstanding this, it is still the view of the Planning Service that there are elements of the design and finishes which could be made more sympathetic; notably that of the Home Shopping Unit which is relatively open to view from the south - the most public aspect of the development. There is also insufficient detail of the finishes to the proposed jet wash bay at the filling station. In the event that the application were to be supported, these matters could be dealt with by suspensive conditions. It would also be appropriate to attach a condition requiring that samples of the proposed natural stone finish for the walls of the supermarket and filling station kiosk be submitted for approval to ensure an appropriate material is used.
- 6.7 Taking all the above into consideration the view of the Planning Service is that the proposed development is largely in accordance with the pertinent Local Development Plan and NPF4 policies noted above.

Layout, siting and design

- 6.8 This is a matter inextricably linked with that of Built Heritage given the application site's location in the conservation area for Banff, within the designed landscape area for Duff House, and its potential to impact on the character and setting of listed buildings. These matters are addressed in more detail above.
- 6.9 Prior to submission of the application there was dialogue between the agents, applicants, and the Council (including the submission of draft plans) for consideration and comment. The Council made it very clear at this stage that the location was a very sensitive one and that the layout, design, and finishes of any new development would have to recognise this in a development form

which complemented and reflected its surroundings and did not detract from the overall character and setting of the town. Comments provided by the Planning Service were taken on board by the applicants and their agents, and the plans submitted with the application largely reflect those. As discussed elsewhere, further comments from consultees have resulted in some amendments to the plans as originally submitted with the application, although there is scope for further amendments and planning conditions (in the event of approval) to ensure that finishes are appropriate to the location.

- 6.10 In policy terms the proposal is broadly in compliance with NPF4 Policy 9 (Brownfield, vacant and derelict land and empty buildings) in that it would result in the demolition of the redundant former community centre on Old Market Place and the pavilion building currently on Canal Park; both of which are falling into disrepair and/or have become the target of vandalism. This could be viewed as a positive factor of the development.
- 6.11 Policies P1 (Layout, Siting and Design) of the Local Development Plan and 14: (Design, quality and place) of NPF4 place emphasis on the need to ensure that new development is of a high standard appropriate to its location, and that it is compatible with its immediate environs. As described at the start of this report in the description of the development, the design of the main supermarket building is contemporary, yet incorporates material finishes and a colour palette designed to reflect those of the existing townscape and to complement rather than detract from the surrounding area. The main supermarket building is not overly tall, and when viewed from the main public aspects to the east, south, and south west it will be set against a backdrop of buildings of equal or greater height. Thus its visual impact will be mitigated to a degree. A further factor in this respect is the positioning of the proposed store within the site. Had it been located toward the southern end of the site it would have been far more intrusive visually on the character and setting of the town. Viewed from the north on Old Market Place the new building would lie behind the 2m+ high historic wall and the Old Smiddy which front the roadway. These will offer a degree of visual screening, although the supermarket building will be taller than these and the upper walls will thus be visible. This is, though, arguably not the most important or sensitive public aspect of the development.
- 6.12 The proposed Home Shopping Unit to be located to the west of the main building would offer less potential visual impact by virtue of its lesser bulk and height; also benefitting from the backdrop of the existing townscape and partial screening of other buildings. Notwithstanding this, it will be visible from the south in particular and as described above would benefit from the use of a more muted finish. This could be covered by the use of a suspensive planning condition.
- 6.13 At the southern end of the site lies the proposed petrol filling station with its kiosk building, canopy, and ancillary structures. Closest to the main A98 roadway through Banff, this has the potential to be very prominent and thus visually intrusive. The position benefits, however, from being below the level of the main road by around two metres, and when viewed from the east and

south east would be considerably mitigated by the existing Co-op store, the electricity substation building, and by existing tree and shrub screening along the boundary. Viewed on approach from the west the Co-op building will offer an existing backdrop as mitigation. It is thus considered that there is sufficient mitigation in this location for the proposals, albeit that details are required of ancillary structures – a matter which could be dealt with by suspensive conditions.

- 6.14 The conclusion thus is that the proposals are largely in accordance with the policies noted for layout, siting, and design and for the redevelopment of brownfield sites and redundant buildings. As mentioned, the remaining matters of concern could be addressed through the use of suspensive planning conditions.

Technical issues

- 6.15 The technical issues to be considered in the assessment of this application relate to servicing of the site, flood risk, and the potential for contamination. As highlighted at the start of this discussion, while the principle of development on the site may accord with Local Development Plan allocations for Banff, there are Development Plan and NPF4 policies which are significant considerations relating to site servicing and which ultimately will determine the recommended decision for this application.

Access

- 6.16 As highlighted in section 4 of the report above, the Council's Roads Development/Transportation Service has submitted a holding objection to the development, citing a number of issues which require to be addressed; not least of which is the access by simple priority junction onto the A98 (New Road) where a right-turn stacking lane would be sought as a minimum requirement. This would have obvious implications for the internal layout of the site given the additional land take required to accommodate the stacking lane and realignment of the carriageway. Some adjustment to the site access road would almost certainly be required, and further works to the embankment, albeit that this may all be possible within the existing application site boundary and may not alter the description of the development. Added to this are the matters relating to pedestrian and cycle access to, and within, the site. Concerns with regard to access to the site and road congestion are also matters which have been raised in the letters of representation.
- 6.17 The applicants have been aware of the need to address these concerns in order to make the likelihood of a positive recommendation on the application more likely, but have not submitted any further information or amended plans to date – over 18 months since the Roads/Transportation comments were received.
- 6.18 Local Development Plan Policy RD1 (Providing Suitable Services) requires that: *'When development requires the formation of new accesses, these should be designed to the agreed standard, and must be resource-efficient,*

safe and convenient for cyclists, pedestrians and public transport. New accesses should also cause minimal impact on the character of the site and surrounding area and satisfactory arrangements for future maintenance of these access facilities should also be made'.

- 6.19 NPF4 Policy 18 (Infrastructure first) states that: *'The impacts of development proposals on infrastructure should be mitigated. Development proposals will only be supported where it can be demonstrated that provision is made to address the impacts on infrastructure'*.
- 6.20 In summary, the proposals as submitted are not considered to meet the required standards for vehicle, pedestrian, and cycle access and thus not to be in accordance with Local Development Plan Policy RD1 and NPF4 Policy 18. Whilst it might be possible to apply a suspensive condition to a positive recommendation requiring the submission of amended access details to the satisfaction of the Council as Roads Authority, in the absence of further details or an indication of the extent of material changes that may be necessary there remains the possibility that the revisions may require an entirely new planning application to be lodged. For this reason the use of a suspensive condition is not considered to be appropriate or acceptable by the Service.

Flooding constraints

- 6.21 Both SEPA and the Council's Flood Risk and Coast Protection Team have objected to the planning application at Canal Park. Specifically, the objections highlight that the site is fully within the functional floodplain. This indicates that there is a medium to high risk of flooding from the River Deveron. SEPA additionally advises that, as the site lies adjacent to an area at medium to high risk of coastal flooding, there is an increased flood risk resulting from combined impacts of these sources. It is noted that NPF4 Policy 22 Flood risk and water management seeks to strengthen resilience to flood risk by avoiding development in areas at risk as a first principle. Local Development Plan policy C4 also states that in such areas no development should be permitted, with the exception of the following;
- It is a development to alleviate flooding or erosion of riverbanks or the coast;
 - It is consistent with the flood storage and conveyance function of a floodplain;
 - It would otherwise be less affected by flooding (such as a play area or car park);
 - It is essential infrastructure. The location is essential for operational reasons for example for water-based navigation, agriculture, transport or utilities infrastructure and an alternative lower risk location is not available.
- 6.22 The policy further states that: *'If development is to be permitted on land assessed as at a medium to high risk of flooding it should be designed to be flood resilient for the lifetime of the development (this is normally a minimum of 100 years for residential development) and use construction methods to*

assist in the evacuation of people and minimise damage. It must not result in increased severity of flood risk elsewhere through altering flood storage capacity or the pattern and flow of flood waters’.

- 6.23 Letters of representation also state that the site is unsuitable for development given its propensity to flood.
- 6.24 In considering this matter further, in the context of the current application, the North East Local Flood Risk Management Plan (2022- 2028) was approved by the Infrastructure Services Committee (December 2022). The Plan provides “...the blueprint upon which the Scottish Environment Protection Agency (SEPA), local authorities and Scottish Water and any other responsible authorities will deliver their flood risk management duties under the Flood Risk Management (Scotland) Act 2009”.
- 6.25 This report identifies 23 areas as being potentially vulnerable to flood risk across the North East Local Plan District and these have been designated as Potentially Vulnerable Areas (PVAs). Banff is identified as a PVA and objectives have been set by SEPA and agreed with Council’s Flood Risk and Coast Protection Team following consultation.
- 6.26 In Banff the agreed objectives are:
- i. avoid an overall increase in flood risk,
 - ii. reduce overall flood risk, and;
 - iii. organisations such as utility companies and Historic Environment Scotland should actively maintain and manage their own assets.
- 6.27 There is no flood prevention scheme identified for Banff in the current North East Local Flood Risk Management Plan, which extends to 2028, and there is no clear indication at this time as to when such a scheme could come forward. It should also be noted that any potential flood prevention scheme cannot be developed in isolation by a developer. There is no short to medium term plan tabled by the Council and its partners to address the flooding of the Canal Park site.
- 6.28 Notwithstanding the information pertaining to the North East Local Flood Risk Management Plan, the Council’s Flood Risk and Coast Protection Team has advised further on flood protection. They have advised that a Flood Study for Banff including the identification and feasibility of preferred flood protection option is likely to take between 18 and 24 months, including appropriate consultation with stakeholders and the public. The Team has also indicated that to build an actual flood scheme (providing suitable funding could be found) could take around a further 6 to 10 years. It is also worth noting that Aberdeenshire Council must exercise its flood risk related functions with a view to reducing overall flood risk and, in particular; must exercise their function under Part 3 of the Flood Risk Management (Scotland) Act 2009 (Section 1) which promotes a ‘Plan Lead Approach’. Banff is not included in the Plan for a future flood study and therefore not included in any national prioritisation for a flood scheme. If the Council was to promote a flood

protection scheme for Banff without it being in a flood risk management plan, then this could also breach Section 41 of the 2009 Act.

- 6.29 Further recent correspondence from SEPA confirms that it could accept redevelopment of the existing community centre building or demolition and rebuilding to a similar footprint area, but not at any increased risk, such as development on lower ground or any development involving land raising. The community centre has a footprint of circa. 900 sqm. and is two storeys to the front, facing Bridge Street, with a larger single storey element to the rear. There is some land to the east and south of the site that makes the total site circa. 1500 sqm. There is a small forecourt to the front of the building, but the site does not benefit from any further dedicated car parking. To consider a change of use as a potential option the building would clearly need to be retained. The existing arrangement means that if the existing building were to be retained it could not be serviced by vehicles typical of supermarket operations. Furthermore, if the community centre site were to be cleared the site would not be sufficiently large enough to accommodate a store of the size proposed with associated servicing, access and parking arrangements.
- 6.30 Following receipt of the consultation responses the Planning Service has engaged in dialogue with the applicants to determine whether a solution to the potential flooding issue could be found. As discussed above, the conclusion reached by the Council in dialogue with SEPA was that any solution to the matter would require significant engineering works at considerable cost, and quite probably that third party land would be involved. While it is understood that the applicants have been looking at solutions to the issue to support their current application, to date none has been put forward for consideration. However it is also clear from discussion between the Council's Flood Risk and Coast Protection Service and SEPA that any flood mitigation scheme for Banff would require to address the whole of the affected area in Banff and not just the current application site.
- 6.31 It is thus apparent that there is no realistic prospect of a satisfactory scheme of flooding mitigation for the application site and the wider affected area of Banff at risk of flooding being brought to fruition in the foreseeable future. With this borne in mind the only conclusion that the Planning Service can arrive at is that the development as currently proposed is at risk of flooding itself and would exacerbate the risk of flooding in the surrounding area, and therefore does not accord with policy C4 (Flooding) of the Local Development Plan and Policy 22: (Flood risk and water management) of NPF4.
- 6.32 Whilst it remains a possibility that a solution could be found to address the objections of SEPA and the Council's Flood Risk and Coast Protection Service, the likelihood is that this may not be achievable, nor would it be forthcoming within a reasonable timescale, based on the information set out above. The use of a suspensive condition to address this matter is not thus considered to be appropriate or acceptable under these circumstances._

Retail impact

- 6.33 ALDP 2023 Policy B1 (Town Centre Development) states that new retail will only be allowed in defined town centres unless a sequential assessment shows that another site is clearly more appropriate. A retail impact assessment may be required for retail and leisure proposals with a gross floorspace below 2,500m² which may threaten the vitality and viability of an existing centre. There is no conflict between NPF4 Policy 27 and ALDP 2023 Policy B1.
- 6.34 NPF4 intends to direct retail investment to the most sustainable locations that are most accessible by a range of sustainable transport modes. In addition, development should provide communities with easy access to the goods they need. LDPs should consider where there may be a need for further retail provision, this may be when allocating sites for housing or the creation of new communities, in terms of the need for neighbourhood shopping and supporting local living.
- 6.35 NPF4 Policy 27 (City, town, local, and commercial centres) provides the most up-to-date policy context against which to assess the application. The policy intents for NPF4 are to encourage, promote, and facilitate development in our town centres by applying the Town Centre First (TCF) approach to help them adapt positively to long-term economic, environmental, and social changes. The application must also be considered against ALDP 2023 Policy B1 (Town Centre Development), along with Appendix 2 (Retail Centres).
- 6.36 NPF4 Policy 28a) states that development proposals for retail will be consistent with Town Centre First principles. This means that new retail proposals:
- i. will be supported in existing city, town and local centres;
 - ii. will be supported in edge-of-centre areas or in commercial centres if they are allocated as sites suitable for new retail development in the LDP; and
 - iii. will not be supported in out of centre locations (other than those meeting policy 28(c) or 28(d)).
- 6.37 NPF4 Policy 28b) states that proposals for retail that are consistent with the sequential approach (set out in a)) and click-and-collect locker pick up points, will be supported where the proposed development:
- i. is of an appropriate scale for the location;
 - ii. will have an acceptable impact on the character and amenity of the area; and
 - iii. is located to best channel footfall and activity, to benefit the place as a whole.
- 6.38 Having established that the development is consistent with sequential approach, NPF4 Policy 28b) is supportive of retail proposals where points i-iii) have been satisfied. Taking each in turn:
- i. is of an appropriate scale

6.39 The scale of the development is considered in more detail within the siting, layout, and design section of this assessment above. It is the view of the Planning Service that the use of the term, 'appropriate scale for the location' in the text of Policy 28b relates to the physical size of the building, that meaning the relationship between the size of an object and something else. An assessment has been made on this basis.

ii. will have an acceptable impact on the character and amenity of the area

6.40 The Planning Service is content that the proposed scale, massing, and materials will offer a local distinctiveness and identity for the development but that this is appropriate and would not appear incongruous. The scale of the building is considered proportionate in form and would not dominate the site or the wider setting leading the Planning Service to conclude the development is of an appropriate scale.

iii. is located to best channel footfall and activity, to benefit the place as a whole.

6.41 As the site occupies a Town Centre location it complies with the aims of the Local Development Plan to support town centres.

6.42 Amongst the documentation submitted with, and in support of, the application was a Planning and Retail Statement produced by the agents on behalf of the applicants. This concluded that impact of the proposed store upon existing retail businesses in the town and surrounding area would be within acceptable limits, as well as highlighting that the site lies within the defined Town Centre Area.

6.43 The Retail Statement has been assessed by the Planning Service, concluding that diversion to the new store from existing businesses in the town centre is likely to be in the region of 10%. This is considered to be an acceptable level of impact with the caveat that trade which currently diverts to other centres will be recaptured. The following observations are made;

- *Within Aberdeenshire, the approach taken to Retail planning is based on a "class of good" or "like for like" approach. This proposal could have an impact on convenience food retailers within the existing town centre. We would agree that there is a qualitative and quantitative need for a major food retailer in the area and that impacts on other major food retailers in their town centres will be minimal, as a result of diffusion of the diverted retail spend from multiple centres.*
- *The impacts on food retailers in Banff Town Centre retailers (Tesco, Co-op) may be significant. At the last assessment (Aberdeenshire Retail Assessment 2013), Banff, Macduff, and surrounding area was estimated to generate a retail convenience expenditure of £31.8m in 2022, with 45% of this expenditure "leaking" to other centres.*
- *Based on the turnover estimates provided in the Planning and Retail Statement a turnover of £17.43m is anticipated. This figure is £3.12m*

greater than the current estimate of leakage from the area (£14.31m) and an impact of approximately 18% on existing convenience turnover in the town, assuming parity in leakage and draw in respect to other centres (i.e. leakage continuing to other centres is balanced by draw from the existing centre).

- However, estimated turnover for Banff Town centre is £29.0m. This trade diversion to the new store from the existing centre is therefore likely to be only in the region of 10.1%. This would be an acceptable level of impact and would be unlikely to adversely effect other businesses in the town centre, with the caveat that all trade currently diverted to other centres is recaptured.*
- These figures are now also influenced by the approval by Aberdeenshire Council of APP/2021/2526 for the Erection of a Retail Foodstore (Class 1) with Associated Car Parking, Access, Landscaping and Associated Works at Duff Street, Macduff. This proposal will have the impact of reducing the leakage from Banff and Macduff to other centres and adding to the cumulative retail impact of the Canal Park proposal. It was estimated that Trade draw from Banff from this proposal would constitute £2.1m diversion. This would have the effect of raising cumulative diversion from Banff Town Centre to £16.4m, reducing turnover in Banff town centre, and increasing the retail impact of the proposal on the existing floorspace within Banff Town Centre, Retail impact on Banff Town Centre would therefore rise. On the basis that the new store will recapture trade from the proposed Aldi, (ie Leakage to the approved Aldi store will be recaptured by this store) the effect is likely to be a negligible increase in the scale of impact on Banff Town Centre.*

6.44 In formulating the assessment above, retail turnover of the proposed store is compared as a percentage of the retail turnover by goods type (food) in the centre and the estimated leakage (by type) to other centres. It assumes that leakage is fully addressed and what remains is the percentage impact on the town centre; i.e. turnover of the proposed store is made up of expenditure not currently being spent in the centre (and being spent in Elgin, Turriff, and Fraserburgh, for example) and trade draw from the existing centre. It is acknowledged that the conclusions are based on figures derived from a study undertaken 10 years ago, and based on turnover per square metre estimates, and retail flows between centres at that time, but the 2014 study compensated for that by providing predictions of future turnover for future years.

6.45 The conclusion is thus that whilst in principle the proposed supermarket may be in compliance with the Local Development Plan and NPF4 policies quoted above, the cumulative impact of the proposed development at Canal Park in Banff when added to the approved supermarket in neighbouring Macduff could have a greater impact on established town centre businesses. This has, however, not been fully assessed. In part this is due to the lack of an updated and cumulative retail impact statement in support of the current application, but the availability of Canal Park as a viable site for retail development, of the scale proposed, has also been called into question by the responses of SEPA and the Council's Flood and Coast Protection Service on flooding grounds. As such, it would be unreasonable to insist on submission of an amended retail

impact statement while other apparently insurmountable issues remain. The agent was asked to update their retail statement to include the cumulative retail impact of the current application site and the approved supermarket development in Macduff, however they have declined to submit such information and have not presented any further information to the Service to assess.

- 6.46 Furthermore, the Service's assessment of retail impact suggests that impact on the current town centre may be within acceptable limits. As a consequence, therefore although the agent has declined to submit a cumulative retail assessment to demonstrate that it would not have an adverse cumulative retail impact on existing Banff town centre businesses, neither has assessment by the Service shown conclusively that it would have an adverse impact. As it stands, and on balance, the proposal is thus not considered to be contrary to LDP Policy B1 and NPF4 Policies 27 and 28.

Other matters

- 6.47 The loss of open space used by the public and a sports pitch is a policy consideration and indeed has been referred to in several letters of representation objecting to the proposal. As detailed in the consultation section of the report above, this was initially taken up in a consultation response from Sport Scotland which objected to the proposals for that reason. In a later response, however, Sport Scotland withdrew its objection to the development, making reference to a previously consented development on the site through which enhanced sports facilities and additional pitches for Banff and Macduff had been secured and delivered as compensation for the loss. Given this and the allocation of the site in the Local Development Plan as a Town Centre site, there is considered to be no policy conflict in this respect.
- 6.48 Further objection was made in respect of the potential for adverse impact on natural heritage interests, although the Natural Heritage Service has provided comments in respect of the application, does not object, and no natural heritage concerns are noted.

Common Good land

- 6.49 There are several references in the representations to the loss of Common Good land but this is a legal rather than a planning matter and cannot thus be taken into consideration in the determination of this planning application. Nevertheless, a comment on the current situation pertaining to this is warranted.
- 6.50 For clarification, in order to release this land, the Council would require to obtain a Common Good Order from the Court of Session. A public consultation was undertaken in contemplation of such a petition being lodged in connection with the sale of Canal Park to the applicants. At the date of writing this report, a petition for a Common Good Order in respect of Canal Park has not been lodged by the Council. Whilst the Planning Service cannot

comment more specifically on that process or prejudice the outcome, it is likely that local interest groups would object to the petition. Legal & People (Conveyancing & Property) advise that an opposed Common Good petition could take between 12 and 18 months to be dealt with by the Courts, with no guarantee that an Order would be granted.

- 6.51 To reiterate, this has no bearing on determination of the current planning application.

Representations

- 6.52 As detailed in the report above, a significant number of representations were received, both for and against the application. The issues raised in those representations have been addressed in the text of the report above, and no further discussion of the matters raised is required.

Conclusion

- 6.53 The principle of a supermarket on the site may be acceptable in terms of the site's Local Development Plan allocation and details of the main building's design and finish may be considered appropriate to the location, whilst there would almost certainly be social and economic benefits to the development. However, there are issues relating to site access and especially to site flooding and drainage which have not been - and indeed may not be able to be - satisfactorily addressed. It thus remains a significant concern that the current access proposals for the site are unacceptable on that basis, and even more so that the potential for the site to flood cannot be satisfactorily mitigated for the foreseeable future.
- 6.54 The conclusion therefore must be that the proposal as it stands is not in accordance with both Local Development Plan and NPF4 policies specific to access and to flooding/drainage, and as such that the recommendation must be to Refuse Full Planning Permission.

7. Area Implications

- 7.1 In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

8. Implications and Risk

- 8.1 There are no staffing and financial implications.
- 8.2 There are no risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Development Plan unless material considerations justify a Departure.

8.3 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to, and wholly integral with, the planning process against the policies of which it has been measured.

9. Departures, Notifications and Referrals

9.1 Development Plan Departures

Policy RD1: Providing Suitable Services

Policy C4: Flooding

Policy 18: Infrastructure first

Policy 22: (Flood risk and water management)

Policy B1: (Town Centre Development)

Policy 27: (City, town, and local commercial centres)

Policy 28: (Retail)

9.2 The application is a Departure from the valid Development Plan and has been advertised as such. Any representations received have been circulated as part of the agenda and taken into account in recommending a decision. The period for receiving representations has expired.

9.3 The application falls within one of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009 and therefore requires to be notified to the Scottish Ministers prior to determination.

9.4 The application would not have to be referred to Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

10. Recommendation

10.1 REFUSE for the following reasons:-

1. The proposed development fails to comply with Local Development Plan Policy RD1 (Providing Suitable Services) and NPF4 Policy 18 (Infrastructure first) in that it has not been satisfactorily demonstrated that appropriate infrastructure can be provided to enhance access by sustainable transport means, and the proposed vehicular access onto the A98 is not considered to be acceptable.
2. The proposed development fails to comply with Local Development Plan Policy C4 (Flooding) and NPF4 Policy 22: (Flood risk and water management) in that it has not been demonstrated that the site can be developed as proposed without exacerbating the risk of on-site flooding and enhancing the risk to surrounding properties.

Alan Wood

Director of Environment and Infrastructure Services

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Report Date: 01.03.2024